

### **3. Oil Palm Development in Vietnam<sup>4</sup>**

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#### **Introduction**

Vietnam lies near the Equator and is divided into highlands in the north and coastal lowlands in the south. Tropical forests cover 42% of the total surface area (325,360 sq km). Weather conditions range from tropical in the south and monsoonal in the north with a hot rainy season and a warm dry season. Located in the Indomalaya ecozone, Vietnam is home to a unique range of flora and fauna. The population of Vietnam is approximately 85 million of which 60% work in the agricultural sector. 25 million ha of Vietnam is used for agricultural purposes, 3.4 million ha for non-agricultural uses, and 4.7 million ha consist of unused land. The climate, temperature and humidity levels of Vietnam make it appropriate for the plantation of tropical plants such as oil palm.

At present, oil palm cultivation at Vietnam remains at the experimental stage such that few negative social and environmental impacts resulting from the development of palm oil production have been documented. Based on the very limited amount of literature available, this report attempts to predict the future potential for development of oil palm cultivation for commercial ends in Vietnam and its eventual impact on local communities and the environment.

#### **Palm oil and the RSPO**

According to the Center for People and Forests (RECOFTC), oil palm expansion is a major driver of deforestation in the South East Asian region. Over five million ha are already under oil palm in

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Malaysia with further expansion planned in Sarawak. More than seven million ha of land are under oil palm in Indonesia and provincial plans have slated an additional twenty million ha for oil palm development. Thailand and Papua New Guinea are now also experiencing a rush to expand the crop, and there are initiatives to develop oil palm plantations in Cambodia, Vietnam and the Philippines.

Most of this expansion is happening in “forest” areas where people have weak or unrecognised rights to land and natural resources. This expansion is already having serious social and environmental impacts in terms of forest and biodiversity loss, expropriation of community lands and violations of rights and the exploitation of the workforce, especially of women and migrants. To date, sustained civil society engagement with the industry and national dialogues over palm oil have in large part occurred in Indonesia and to a lesser extent in Malaysia.

Recognising the need for standard-setting and accountability in the production of sustainable palm oil, the Roundtable on Sustainable Palm Oil (RSPO) was established in 2004 by the World Wildlife Fund (WWF) and businesses involved in the production, processing and retailing of palm oil. The RSPO is a multi-stakeholder body which on the one hand seeks to improve company practices, but on the other hand seeks to legitimise continued expansion.<sup>2</sup> The RSPO has adopted eight principles, thirty nine criteria and more than 120 indicators for socially and environmentally sustainable palm oil as well as certification systems and indicators for schemed and independent smallholders.

The RSPO affirms the rights of indigenous peoples to their customary lands, requires just land acquisition and the redress of conflicts, and insists that no lands can be taken from indigenous peoples and local communities without their free, prior and informed consent (FPIC), expressed through their own freely chosen representatives. Although civil society engagement in this process has secured some important gains for local communities and indigenous people, there remain a number of concerns that RSPO

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processes require further re-examination and improvement for its objectives to be achieved.<sup>3</sup>

This country case study on palm oil in Vietnam contributes to some of the following objectives of the RSPO:

- Raising awareness about rights, tenure, processes of land expropriation, and the possible future socio-economic and environmental consequences of oil palm development
- Exposing problems from various sectors and possible solutions including through RSPO but also, more importantly, through the framework reforms needed to regulate the sector
- Strengthening social mobilisation to defend lands and forests from predatory enterprises

### **Palm oil in state policies and the market**

#### *The history of palm oil in Vietnam: government policies and targets*

Oil palm (*Elaeis guineensis*) was first introduced to Vietnam by the French in 1878 and used primarily as a decorative plant. Although there now exist several policies regarding the introduction and development of oil palm in the cropping system as a potential and valuable commercial industrial plant, oil palm cultivation at Vietnam remains at the experimental stage.

Palm oil has appeared intermittently in governmental policies over the past five decades, beginning in 1962, when President Ho Chi Minh instructed the Ministry of Agriculture (now known as the Ministry of Agriculture and Rural Development) to research and develop oil palm. In 1967, Vietnam imported Dura oil palms from China to plant in three experimental farms in Thanh Hoa, Hung Yen and Nghe An provinces. By March 1971, oil palm had been planted for research purposes in Huong Son district, Ha Tinh province.

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Source: Nguyen, Nguyen & Tran 2008

<b>Box 1: Major Milestones in Policy and Legal Framework</b>	
Aug. 1991:	Law on forest protection and development passed by the 8 <sup>th</sup> National Assembly, marking an effort to involve local people and different economic sectors in forest protection and development
Jul. 1993:	Land law passed by the 9 <sup>th</sup> National Assembly, stipulating the rights of title holder to lease, exchange, inherit, mortgage, and transfer land use title.
Jan. 1994:	Government decree 02/CP on allocation of forest land to local organizations, households and individuals.
Jan. 1995:	Government decree 01/CP on allocation of land through contracts for agriculture, forestry and aquaculture purposes.
Nov. 1999:	Government decree 163/1999/ND-CP on land allocation and lease for forestry purposes.
Nov. 2003:	Land law passed by the 11 <sup>th</sup> National Assembly, recognizing the legal status of community in land tenure
Dec. 2004:	Law on forest protection and development passed by 11 <sup>th</sup> National Assembly, recognizing common property as a legal forest management arrangement

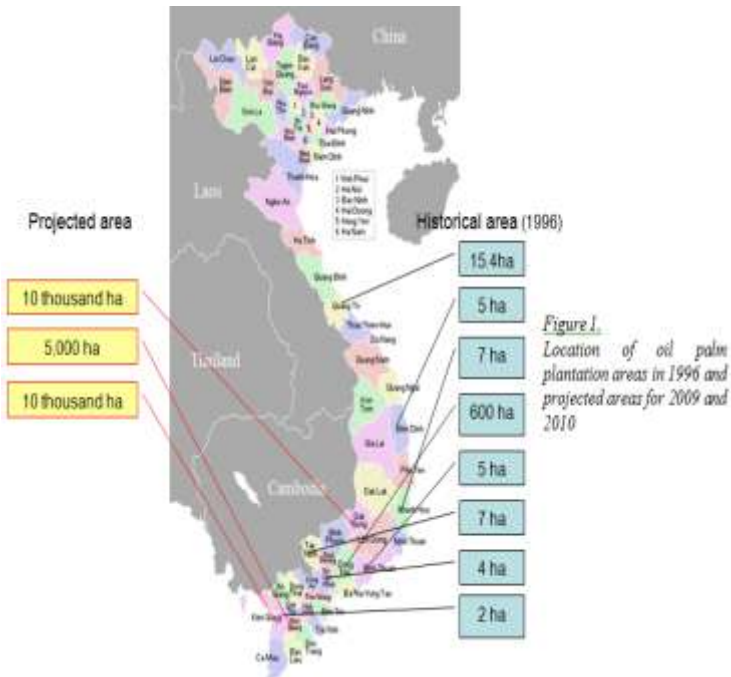
From November 17<sup>th</sup> to 19<sup>th</sup> 1980, the Ministry of Agriculture organised a conference focusing on oil palm in Ha Tinh province and concluded that oil palm could be cultivated from Ha Tinh to the southern areas of Vietnam. In 1981, the result of the conference was reported to the Prime Minister who later agreed to initiate oil palm cultivation on a large scale. Later in 1986, the government assigned the project of a “Study on the adaptability of oil palm grown in the south of Vietnam” to the Vietnam Vegetable Oil Research Institute in order to establish a scientific basis for the planning and development of oil palm in Vietnam.

As mentioned previously, no commercial CPO is currently being produced in Vietnam. Annually, Vietnam imports a large amount of vegetable oil of a value of over 700 million USD of which palm oil imported from Indonesia and Malaysia accounts for 77.88%. Oil palm production remains in the trial period and has not yet been expanded commercially for several reasons. Firstly, detailed and practical research and trials are necessary before oil palm can be cultivated as a viable commercial crop. Secondly, there are already several high value industrial crops occupying extensive areas of land in Vietnam, such as copra, soybean, peanut and sesame. It remains to be established to what extent land suitable for growing oil palm may conflict with these other high value crops. Finally, and related to the previous point, there remains relatively little unused land available for oil palm cultivation as a result of the mass production of other high value crops.

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Despite these limitations, cultivating oil palm to develop bio-oils is being considered as an option by the Vietnamese government. On November 20<sup>th</sup> 2007, the Prime Minister approved a project named “The development of bio-fuels for the year 2015, vision to 2025”. The project suggests that the production of ethanol and vegetable oils (from diverse types of oily materials, and not only palm oil) has to reach 1.8 million tons in order to meet 5% of the petrol needs of the country.

The government also gives rights to the Ministry of Agriculture and Rural Development to combine with the Ministry of Industry and Trade, the Ministry of Planning and the Investment Portal to plan and develop the areas for Vietnamese bio-fuel industry in the future. The government is investing 259.2 billion VND (28.8 billion USD per year) for the nine-year project that will run from 2007 to 2015.



*Figure 1. Location of oil palm plantation areas in 1996 and projected areas for 2009 and 2010*

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### *Current and prospective oil palm plantations*

Although no commercial production of palm oil can be documented yet in Vietnam, some of the landmarks in oil palm cultivation in recent years can be identified. In 1978, oil palm was thinly grown as a model crop in Nghe An, Quang Tri, Binh Dinh, Khanh Hòa, and Dong Nai provinces. In 1980, oil palm continued to be imported and planted for experimentation in some southern provinces of Vietnam. By 1996, the area of cultivated oil palm was 650 hectares including 600 ha in Xuan Loc (Đong Nai), 5 ha in Ham Tan (Thuan Hai), 7 ha in Suoi Trau (Khanh Hoa), 5 ha in Phu Cat (Binh Dinh), 4 ha in Ho Chi Minh City, 7 ha in Tay Ninh, and 2 ha in Kien Giang. In 2001, oil palm was grown over an area of 56.7 ha in Dong Ha (Quang Tri). However, this area was reduced to 15.4 ha in 2007. As a result, Vietnam now has more than 650 ha of oil palm plantations. While this area appears insignificant at present, it may act as a foundation for the further expansion of oil palm in the near future.

More recently in 2009, the people's committee of Dak Nong planned to develop oil palm over an area of 10,000 ha in Dak G'Long district. The CT Group from Malaysia handles this project. In the first period, the CT group will plant 2,000 - 4,000 ha of oil palm if conditions are favourable for the project. From 2010 to 2015, the Department of Agriculture and Rural Development of Hau Giang projects to build a high-tech agricultural area of 5,000 ha, all of which will be used to grow oil palm in order to produce edible oils and bio-oils. The investors plan to expand palm oil production in Bac Lieu, Kien Giang by increasing the plantation area by up to 10,000 ha.

### *Vegetable oil crops*

In Vietnam, vegetable oil is mainly produced from copra, soy bean, peanut and sesame. Domestic agricultural production does not supply enough for local vegetable oil consumption and as a result, oily materials (including crude palm oil) used by almost all vegetable oil companies have to be imported.

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In 2008, Vietnam had thirty five companies processing vegetable oil in thirteen provinces with a potential capacity of 1,129,000 tons of refined oil per year (the real capacity was 51.3% of the total) and 2,969,000 tons of oily materials (the real capacity was 35.3%), equal to 85,000 tons of crude vegetable oil. Among them, the Vocarimex Company and its sub-companies and joint ventures produced 78.74% of total refined oil and 23.24% of total crude vegetable oil.

*Figure 2. Oil crop production in Vietnam in 2008 (source: FAO 2010)*

	Area harvested (ha)	Yield (kg/ha)	Production (tons)	Seed (tons)
Castor oil seed	7,000	714	5,000	105
Coconut	138,300	7,852	1,086,000	
Cottonseed			4,595	920
Groundnut with shell	256,000	2,085	533,800	15,360
Seed cotton	5,200	1,327	6,900	
Sesame seed	45,000	489	22,000	450
Soybeans	191,500	1,403	268,600	6,702

The competitive ability of Vietnam's vegetable oil is lower than that of other South East Asian countries because Vietnam has to import 90% of its oily materials, of which palm oil is primarily imported from Malaysia and Indonesia. Almost all the oil companies in Vietnam import refined oil to produce end-products.

*Import and export markets*

From 2000 to 2008, the rate of oil import in Vietnam increased by an average of 12.6% per year, but the rate of oil export decreased gradually. Therefore, the trade gap in Vietnamese oil industry was extremely high. In 2008, the export turn-over of the oil industry reached \$700 million. Based on forecasts for vegetable oil, Vietnam will have to import crude oil for a value of more than \$1 billion by

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2025 if it does not develop its own oil-producing plantations. By 2020, it is estimated that Vietnam will produce 1,420,000-1,730,000 tons of refined oil, 280,000-430,000 thousand tons of crude oil (mainly produced from different imported oily materials, including crude palm oil) and will export 60,000 tons of oil. By 2025, Vietnam will be able to produce 1,680,000-2,130,000 tons of refined oil and 320,000-520,000 tons of crude oil and will export 80,000 tons of oil. However, it must be kept in mind that disaggregated data on these predictions is both difficult to obtain and to verify.

The main oil company in Vietnam is National Company for Vegetable oils, Aromas and Cosmetic of Vietnam (Vocarimex). Its joint ventures include: Golden Hope Nha Be Edible Oils., Ltd, Cai Lan Oils & Fats Industries Co., Ltd, and LG VINA Cosmetics. This group of companies holds 95% of the market shares in edible oils and 20% of perfume shares in the domestic market. They currently have a mill capacity to process 828,000 tons of edible oils mainly from imported oily materials, including crude palm oil from Indonesia and Malaysia. It is expected that by 2015 the capacity of these companies will increase to 1.5 million tons of oil. However, disaggregated data regarding how much palm oil is being processed is not available.



### ***The role of the State***

The 1980 Constitution of Vietnam vested all rights in land to the state. This principle was part of the 1988 Land Law, but was rephrased as “people’s ownership” and “state management” in the 1992 Constitution and 1993 Land Law. Since the central and local governments exercise the right of land ownership on behalf of the people, they also have rights to possess, use and dispose of land. While retaining ultimate control over legislation and policy, the central state has devolved land management to People’s Committees. Local authorities are also responsible for promulgating zoning and land use regulations, registration and resolving certain types of land use disputes.

Overall, the State still dominates the management of forest resources. Local people need to apply to a State body to obtain a land title, the State decides on the use of forest resources already allocated to local people, the best quality forests are reportedly owned by state actors and state-elected village leadership plays a dominant role in land-related negotiations. As a result, past and present (forest) land allocation policies have not been able to provide necessary power over forest use and management to local people.<sup>4</sup>

### ***Vietnam's land policy reforms***

In December 1986 at the Sixth National Congress, the government of Vietnam introduced a wide ranging number of reforms known as “*doi moi*” (“renewal” or “innovation”). Designed in response to some of the failures of central planning, the *doi moi* reforms were intended to gradually liberalise the Vietnamese economy. Linked to these reforms was the 1993 Land Law (and revisions of 1998) which followed the 1988 “Resolution 10”, formalising the farm household as the primary unit of agricultural production and providing for the allocation of land use rights to such households. These land use rights gave households decision-making rights related to the purchase and use of inputs, the sale of outputs, and, to a certain degree, the use of land.

The 1998 amendments to the Land Law divided land into six categories: forest land, agricultural land, rural residential land, urban land, special land and unused land. Forest land was further classified as forested land and non-forested land planned for reforestation. The 1998 Land Law distinguishes “plantation forest” and “natural forest”. It allows organisations, but not individuals, to use the value of timber growing on allocated forest land for mortgage purposes. Organisations can also use the land as capital contribution for forestry joint venture projects.<sup>5</sup> In November 2001, the government made another revision to the Land Law, allowing foreign banks to take land use rights as collateral for loans and help set up a land market.<sup>6</sup>

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***Law on Land (1993)***

The Law on Land (1993) is based on six main principles governing land:

- (1) land belongs to the entire people;
- (2) land is uniformly administered by the state;
- (3) which promotes effective and economical usage. Further,
- (4) the state protects agricultural land;
- (5) encourages investment in land; and
- (6) stipulates the value of land.

The 1993 Land Law allows provincial authorities to decide on land use and to allocate or confiscate land in accordance. Such powers, along with provincial government and forest enterprises' need to generate their own funding, have caused an increase in commercial crops, including industrial tree crops, but often at the expense of subsistence economies of local rural communities. For example, in Song Be province, one of the most popular provinces for foreign investors, investment in plantation projects has occupied large tracts of land, undermined farmers' land rights and effectively turned farmers into permanent tenants rather than actual landowners.<sup>7</sup>

### ***Trends in commercial agricultural production...***

As mentioned above, land tenure reforms have led to a significant increase in industrial crop area from 1,135,300 ha in 1993 to 2,632,500 ha in 2007. However, commercial agricultural production of cash crops (such as paddy rice, coffee, rubber, cashew nut and pepper) has been carried out at the expense of subsistence agricultural production. Resulting from this has been the diversification and intensification of land use, a switch from traditional to high value cash crops with the adoption of new technologies and the intensified use of fertilisers, pesticides, high yield varieties and deep ploughing with tractors. This is becoming an increasingly common practice among farmers as well as indigenous people who traditionally practiced rotational farming for subsistence purposes.<sup>8</sup> Much of the development of intensive agriculture and agricultural growth has been driven by land policy reforms, pricing reforms, market liberalisation, integration within the global economy and external market forces. Since 2001, investments in renewable energy sources, including oil palm, have been growing rapidly.

### ***...and the issue of landlessness***

Successive land reform policies since 1988 have tended to reduce land fragmentation, and allow larger land holding sizes, longer land use rights, and more flexibility in land use. The effects of policies can be seen in the form of larger farms, and increased pressure for change in land use from subsistence to major food and industrial cash crops, such as maize, soybean, cassava, sweet potato and peanut.

However, the imbalance of land ownership is also increasing, creating a visible gap between the landless poor and wealthy land owners.<sup>9</sup> Land consolidation and accumulation by wealthier families and individuals has in turn led to an increase in the number of rural households without land. There is evidence that the percentage of landless farmers, particularly in the Mekong delta, is increasing in Vietnam. Surveys by the Government Statistical Office in 1994 and 1998 indicate that the number of landless households had increased from 12,250 farmer households or 0.7% of the Mekong total population, to more than 1,000,000 farmer households or 6% of the region's population.<sup>10</sup>

### ***Forest classification***

Vietnam's 2004 Law on Forest Protection and Development (FPDL) defines forest as "an ecological system comprising populations of forest fauna and flora, forest microorganisms, forest land and other biotic factors, of which trees, bamboo or typical flora are the main components with a canopy cover of at least 10%". In 2005 Vietnam had a total forest area of 12.6 million ha, including 10.3 million ha of natural forest and 2.3 million ha of plantations. This is equivalent to a national forest cover of 38.2% (31.1% natural forest and 7.1% plantations).

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%). Production forests are used mainly for the production of timber and non-timber products, though they also contribute to soil and water protection, the main function of protection forests. Special-use forests are dedicated to nature conservation, research, tourism and cultural and historical protection.<sup>11</sup>

### ***Forest tenure***

Vietnam has seen radical changes in its forest tenure legal framework over the past two decades with forest areas officially under the management of local people having expanded to nearly 3.5 million ha (27% of national forest area).<sup>12</sup> Both the Land Law 1993 and the Forest Protection and Development Law 1991 took forest management out of solely state hands. Revisions to both documents in 2003-4 enabled the legal recognition of communities in managing land and forest resources. Overall, the legal framework related to forest tenure has shown a trend towards the recognition and inclusion of various stakeholders in the management and use of forest resources. The first plantation programme in Vietnam dates back to 1956. In the last decade, government support to plantation development has intensified, both through Programme 327 and, since 1998, through the Five Million Hectare Reforestation Programme (5MHRP).

From an economic perspective, Vietnam has made notable progress in combating poverty in the past decades and economic growth has been strong. However, no disaggregated data exists about the relative situation of people in forests. Case studies show that household forestry has brought significant gains to those establishing planted forests. However, household management of natural forests has brought uncertain returns. When such forests are remote and hard to reach and control, they are problematically treated as open access resources by surrounding groups.

### ***Ethnic minorities in Vietnam***

It is widely reported that ethnic minorities in Vietnam have gained less security in land and forests than the national majority (*Kinh*). Officials too admit a growing wealth disparity between *Kinh* and ethnic minorities.<sup>13</sup> State policies are still aimed at putting an end to swidden farming and bringing these ethnic minorities out of their 'backward' state. Traditional forest-related knowledge and customary systems of land use are not promoted. Although rights recognition in forests and land allocations have been to individuals, ethnic minorities have tended to be excluded from their share of entitlements, in particular, ethnic minority women, some of whom have reported feeling disenfranchised by the land allocation process.

The individualisation of land tenure in the agrarian reforms has caused ethnic minorities to lose access to land in the land markets that ensued, as has been reported among the Hmong, Vietnam's largest ethnic minority. This is both because poor people have sold land to get out of short-term financial difficulties and because the new system requires that the individual farmer or property-owner has a sound knowledge of management and, preferably, good 'connections'. Inevitably, many ethnic minority people are destined to lose out in this competition over scarce resources.<sup>14</sup>

Policies encouraging capital investment and allowing joint ventures and corporations to control lands and forests, and engage in commercial plantations in areas inhabited by ethnic minorities for generations, are now expanding. It is crucial that key stakeholders and decision-makers be made aware of the customary practices of ethnic groups in planning, managing and commercialising forest resources. Further progress in this respect will depend on developing and disseminating more culturally sensitive approaches to ethnic minorities, promoting respect for customary rights, strengthening community institutions, enhancing local officials' understanding of tenure and management rights, ensuring equitable benefit-sharing mechanisms and developing more comprehensive assistance packages and clearer access to markets to these ethnic minorities.

### ***Land and ideology***

In Vietnam, the debate over the desirable extent of land reforms is inextricably linked to both the state's ideological stance and poverty alleviation attempts. People's ownership and state management of land are central principles of Communist doctrine that underlie legal definitions of land ownership and use. Doctrinal issues are most visible in the regulation of rural and other income-producing land. As a result, land policy in Vietnam is a politically sensitive and highly complicated issue. Moreover, the land law regime in Vietnam is exceedingly complex.<sup>15</sup> This has been reported as a serious obstacle to local people's ability to understand and act upon their rights as well as seek redress in instances of rights violations.

Continued state land management is rooted in concerns over land productivity, national food security and Socialist ideology. The axiom that the state has a duty to "manage" (*quan ly*) land underlies all land laws and policies. Socialist doctrine treats land, along with other income producing resources, as "special means of production" (*tu lieu san xuat dac biet*) that must be managed by the state to ensure maximum productivity. Land use should be complete (*day du*), in other words, all land should be used; and land use must be reasonable (*hop ly*), in other words, the land should be farmed efficiently with appropriate crops and rotations and attention paid to sustaining the fertility levels of the land. In practice, this is determined by restrictions on land use that are specified on the certificate of land use rights.

Long after central planning was dismantled in the commodity market, the Marxist-Leninist belief in the benefits of state-directed allocation remains embodied in "state land management" (*quan ly nha nuoc ve dat dai*). There are conflicting views regarding to what extent the use of land should be the province of the individual or controlled by the State. However, the centrality of state land management to government policies remains paramount.

### ***Community use rights***

Vietnam's Constitution mandates that land belongs to all the people with the state acting as their representative. However, the following legal issues related to community use rights must be noted:

The Civil Code 2005 does not recognise the community as subject of a civil legal relationship although legislation provides for common ownership by the community. This is particularly problematic in the light of customary notions of land as collectively owned and managed, as described above.

The Land Law and the Forest Protection and Development Law give the community the same rights and responsibilities as other land users (i.e. it can exploit and enjoy of the benefits of the resource in question), but it cannot exchange, transfer, lease or donate its land use rights. In addition, it cannot mortgage, provide guarantees or use the land under its management as a contribution to joint investment. Nor can the community divide its forests among its members.

As stated in the 2008 IUCN report on Statutory and Customary Forest Rights in Vietnam, the practice of land and forest allocation to village communities raises numerous questions including: (i) whether the community includes all households and individuals living in the village, or only a group of households and individuals; (ii) whether a village community can be allocated other forest areas beside the one satisfying the allocation conditions; (iii) what mechanism of conflict resolution is available in case of conflicts over land and forest use between the community and other actors; and d) what mechanism is available to ensure fair sharing of benefits within the community.<sup>16</sup> Such questions reflect the ambiguity and ensuing interpretative problems of Vietnam's legal provisions which in turn raise barriers to equitable and sustainable forest and plantation management in Vietnam.



***Problems with land tenure and security***

One of the difficulties with the existing land tenure system is that despite constitutional and legal authority to transfer land use rights, vague administrative procedures coupled with the doctrine of “state land management” impose an “administrative consent on transfer”.<sup>17</sup> Previous land reform projects have concluded that unless the concessionary approach to land management changes, bureaucrats would continue to violate or neglect statutory rights to land. Overall, land rights in practice remain insecure as local authorities have retained control over land through their control of titling, land use restrictions and land appropriation for infrastructure projects. Moreover, little is known about the extent to which such tenure reform has worked in practice and how it has affected local people’s livelihoods and wellbeing.<sup>18</sup> The Land Law of 1993 has not been evenly implemented and varies largely across regions. Problems in the implementation of the Land Law include ambiguous and inconsistent land legislation, inconsistent local decisions and guidelines, complicated implementation procedures, a top-down approach, and shortcomings in governance.<sup>19</sup> One consequence of this has been that local people appear to have a very limited understanding and awareness of their land and resource rights. Compounded to this is the serious lack of information available related to conflict or dispute resolution and mechanisms of redress for local people whose rights to land and resources may be violated.<sup>20</sup> Uneven land holding has also emerged as a problematic aspect of Vietnam’s land tenure. Some households have illegally seized forests close to their residence for cultivation purposes, since the potential supply of new land for cultivation in the village has grown scarce and local demand for agricultural land has grown significantly due to population growth and commercial farm expansion. Landlessness has been one negative outcome of the formal and informal buying of land by wealthier households.

### ***Forestry-related problems***

Despite a relative devolution of forest management to local people and the integration of poverty alleviation measures into forestry activities, a number of local communities still face obstacles in terms of their understanding of and ability to implement their rights to land and resources. Areas of concern include:

**Inconsistencies between different legal documents:** Some provisions in different legal documents are contradictory. For example, local communities are legally recognised as owners of forest under the Forest Protection and Development Law but not under the 2005 Civil Code.

**Ambiguity and changes in state forestry legislation:** The system of normative legal documents for forest management is complex and subject to frequent changes. Some provisions are still general and lack implementing guidelines. Others, including those on forest valuation, the value of forest use rights, and the value of planted production forests, are too complex to allow widespread understanding and compliance.<sup>21</sup> Confusion means that local authorities are unable to implement some state policies, particularly policies regarding changing forest uses, benefit-sharing with households and individuals, and regeneration and forest planting.

**An unclear legal framework:** Many legal documents are subject to varying interpretations, largely because of their complicated language. Decision 178/2001/QD-TT, for example, is meant to regulate the entitlements and obligations of forest owners, but many people report finding the formula for calculating benefits for specific owners too complicated to understand.<sup>22</sup>

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***The Five Million Hectare Reforestation Programme (5MHRP)***

Aims:

- Efficiently protect the existing 9.3 million ha of forest;
- Create two million hectares of special use and protection forests, as watershed protection and to protect against wind, sand and waves. One million hectares of the total area is to be established through natural regeneration and one million through plantations;
- Create three million hectares of production forest, of which two million hectares is to be plantations to provide raw material for paper, pit-props for mines, timber, and one million hectares of long-term industrial crops and fruit trees;
- 50 million trees per year to be planted around houses, offices, schools and along roads and dykes to provide fuel wood and material for domestic furniture;
- Speed up forest plantation, re-green bare land, protect existing forests as well as new forests, and increase the forest cover to more than 40% of the country;
- Create employment, increase rural incomes, develop production and ensure national defence and security;
- Create raw material areas and develop industries to process forest products and;
- Create new forests through a number of local projects designed in close cooperation with the local people since people are the driving force for the establishment, protection, and regeneration of forests and are entitled to enjoy benefits from forest-related activities.<sup>23</sup>

***Problems with the 5MHRP***

The 5MHRP includes highly ambitious proposals for increasing the area of commercial plantations. Yet, more than two years into the programme, there has been apparently no study of what these plantations are for. An additional cause of concern is that Vietnam's policy makers, and their international advisors and funders, appear to show little interest in studying the impacts of commercial plantations on local people, their livelihoods and their environment.<sup>24</sup>

The 5MHRP is not only aimed at increasing the area of industrial tree plantations. It also states that "land allocation must be conducted openly and democratically".<sup>25</sup> However, the projects under the programme must ultimately be approved by the Ministry of Agriculture and Rural Development (MARD). This means that the projects must fit in with the bureaucratic requirements of Hanoi-based officials. There is thus a danger that local people's knowledge and skills will be excluded from the design of such projects.

In particular, when government officials carry out land allocation and land use planning in indigenous peoples' areas, the assumption that ethnic minority groups practising "slash and burn" agriculture destroy forested areas tend to predominate.<sup>26</sup> To many government officials, fallows are simply "unused lands". Local people thus lose part of their farmland when it is targeted for reforestation. If fallow areas are planted with trees, farmers have no choice when the time comes to re-use the land other than to clear another area for their crops or to cut down the planted trees. Furthermore, current tenure regulations do not permit joint ownership by communities. Common land is therefore at risk of being privatised through the land allocation programme.<sup>27</sup>

### ***Customary land use***

Local authorities in Vietnam regularly find themselves grappling with the complex issues involved in reconciling the 1993 Land Law with customary land-use patterns and rights. The scope for disputes is large since customary owners may vigorously contest the allocation of individual rights due to its divergence from customary common land use and ownership. In areas populated by ethnic minorities, the trend has been one of increased control by the State over land through administrative controls. As a result, the role of community management has been seriously undermined. While this trend may enhance the role of the State, contributing to the society order and security, it may also create new loopholes, posing a threat as a new source of inequity, particularly for rural ethnic minorities. Since statutory law does not recognise traditional rules, local people who follow customary law are in fact violating the law and this practice is considered illegal.

Among such groups, public ownership is the most frequent customary approach to land and resources. Public land is understood as the common land of a village, or of some villages, or land of a certain family. In customary public land ownership, the community has total rights to land management such as determining dwelling areas, cultivation areas, areas for cemeteries, etc. and is entitled to punish violators of the above regulations. Individuals have the rights to use the land only, the rights to inheritance, to exploitation of natural products but have no rights to transfer or sell the land to people outside the community.<sup>28</sup>

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Conflict between current government policies and traditional conceptions of land tenure and use rights is considered to be one of the major causes of disputes in Vietnam's upland regions over the past decade.<sup>29</sup> Conflict usually occurs where traditional forest land is allocated under statutory laws to outsiders or even to community households. The new formal land tenure regime of the State, known as "public ownership of land", has led to traditional community land ownership and use rights being transferred to households and economic organisations. Customary land use rights have been restricted. Moreover, customary benefit-sharing arrangements are not formally recognised under statutory law. Customary laws control benefit-sharing within the community, whereas statutory law prescribes benefit-sharing methods which are complex and left largely unexplained to local inhabitants.

Moreover, land and forest administrators at different levels are sometimes unaware of the role and significance of customary systems for controlling land and resources, and their lack of knowledge limits the extent to which the positive features of customary norms and rules can be incorporated into formal land management practices. Although some forest policy makers and administrators do recognise the existence of customary law, many view it as an obstacle rather than an aid to implementing statutory law on forest management and development.

In addition, although village forest protection regulations tend to be developed in consultation with villages, villagers often regard them as another form of externally imposed statutory law, possibly inconsistent with customary rules. Most village communities have not received legal recognition of their customary forest land rights, and often see forest protection under village regulations as a means for "others" to gain financial benefit.<sup>30</sup> In addition, village regulations are decided by a state-nominated village head rather than customary village leaders, causing frictions in terms of who gives consent, on whose behalf, and in whose interests.

### ***Poverty alleviation?***

The economic changes launched by the *Doi Moi* reforms pulled many Vietnamese out of poverty. Land reforms that grant land use rights to individual households and encourage the equitable distribution and efficient use of land are considered to be “indispensable for rural development, for the mobilisation of human resources, and for increased production for the alleviation of poverty”.<sup>31</sup> However, the incidence of poverty is still very high in mountain areas, particular among ethnic minorities. The number of people living in absolute poverty remains high and this poverty is inextricably linked to the fact that some households still have poor access to land or have access only to poor-quality land.<sup>32</sup>

Forest tenure reform will have to address the issue of poverty alleviation through the allocation of quality forests, the establishment of forest-benefit distribution mechanisms in favour of the poor, increased transparency in planning and decision-making processes, and respect for and inclusion of customary practices. The involvement of poor villagers in forest-based commercial activities as partners in planting, maintaining or protecting forests, or as contributors of forest land, must also be encouraged.

***Future steps***

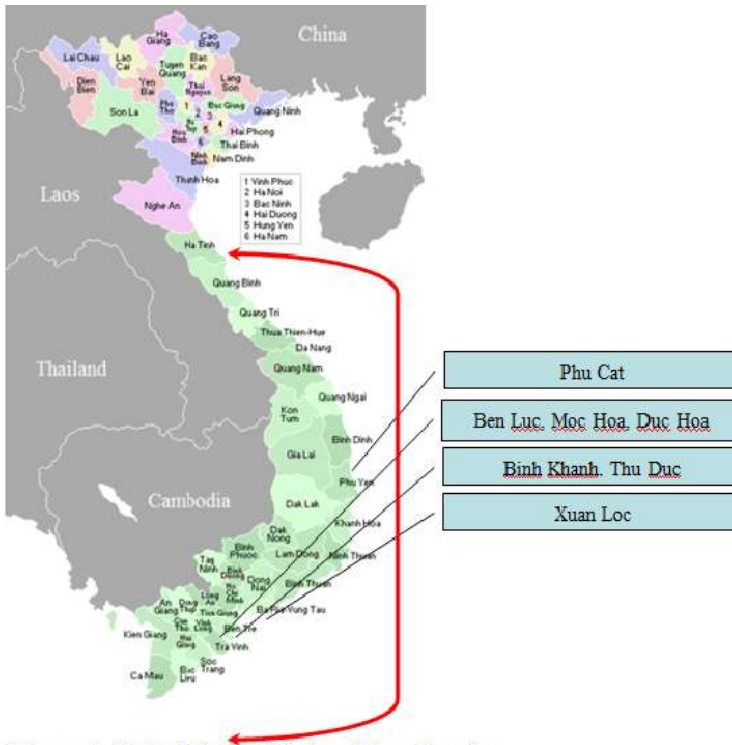
A meaningful devolution of forest management to local people as well as the free, prior and informed consent of local inhabitants when land and resource decisions are taken that affect them directly or indirectly are also essential. At present, the regulations governing forest use are still restrictive and the ownership of forest resources by local people remains nominal. To make forest devolution more meaningful, not only should rights to the forest be devolved but also the authority to decide on forest resource management, taking into account existing traditional governance structures. Timely support should be provided to build the capacity of local people to exercise their rights and responsibilities. Moreover, existing mechanisms, policies, tenure systems and means of redress must be clarified and understood by the affected parties. A comprehensive land tenure reform would involve not only normative and procedural changes, but also institutional reconfiguration. A shift from a concessionary to a rights-based tenure system would centralise state administrative powers and simultaneously devolve more decision-making power to non-state players.<sup>33</sup>



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**Land acquisition and use**

Although research on the suitability of oil palm to Vietnamese soil and weather conditions is currently at a preliminary research stage, it is generally thought that oil palm could grow well in the central area and the south of Vietnam, from Ha Tinh province southwards (Figure 3).



*Figure 3. Potential suitable land for oil palm cultivation*

According to Tang Thi Tram et al. (1996), who have analysed some of the characteristics of weather and soil conditions for oil palm cultivation, oil palm would grow well in the thionic fluvisols of

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Vietnam and oil yield here would be one of the highest in current experimental areas. More research on new planting techniques and new varieties to achieve a higher yield of palm oil are necessary. Should oil palm be commercially cultivated in Vietnam, this would most likely happen in former forested areas or where other industrial crops were formerly grown. This has already been the case with rubber, where the government encouraged replacing degraded forested areas and former cashew nut plantations with rubber trees.

#### *Processes of land acquisition*

According to Vietnamese law, land is national property. Vietnamese citizens only possess land use rights. The government has the right to revoke land from persons or/and organisations and assign it to new users if the project has been approved. After the new project has been approved (by the central or local government depending on the scale of the project) the investors must negotiate with and compensate local inhabitants who live in the area to be allocated to the project if they are required to relocate. If an agreement cannot be reached, the investors have to adjust their project (if the project is simply a commercial one) or the local persons have to be moved coercively (if the project is a welfare one). This means that if the investors want to acquire land for commercial oil palm cultivation, they must have an approved project and then negotiate successfully with the local inhabitants of the project's allocated area.

#### *Legal framework of land acquisition*

All activities in Vietnam related to land ownership and land use are subject to the Land Law of 2003. Regulations for domestic and international organisations or individuals who rent land in Vietnam are presented in Vietnam's Land Law in Article 24-L/CTN.

The government allows domestic and international organisations, and Vietnamese citizens who live in Vietnam or in other countries to rent land. The rights and duties of land renters are:

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- Letting out land to an organisation or an individual has to be based on economic-technological foundations which were approved by the government in the foreign investment law in Vietnam.
- Domestic and international organisations and Vietnamese citizens who invest and rent land in Vietnam have to follow this law and other regulations of Vietnamese law.
- The duration of land use by organisations or individuals is stipulated in the foreign investment law in Vietnam.
- Foreigners who break the Vietnamese land law will be punished by Vietnamese law, while taking into account international treaties that the Vietnamese government must follow.

### *Protection of farmers and indigenous peoples' rights*

The government provides grants to farmers to reduce poverty and has programs to encourage agricultural production. According to the “Development project for Vietnamese vegetable oil industry through 2020, vision for 2025” oil companies will make patterns of oil palm production for farmers to interchange experiences in local areas, especially for minority groups. Legally speaking, the land use rights of farmers and indigenous peoples are assured. Before the project is implemented, the investors must negotiate with and compensate local farmers and indigenous peoples who are affected by the project appropriately.

### *Land grabbing and land conflicts*

The land law strictly forbids land grabbing, changing the right of land use illegally and using land for other purposes than those claimed. People who grab land, destroy soil, transfer the right of land use illegally or break the land law will be dealt with according to Vietnamese laws. People who use their position in the political system to their advantage and against the land law will also be dealt with according to these laws and will have to compensate for their actions.

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### *Land rights of smallholders*

The government protects the legal rights and benefits of land users. Families or people to whom the government gives land have the right to use the land and may transfer, lease, inherit and mortgage the right of land use. The above rights only apply when the land is used according to stated purposes and in line with the Land Law and other laws. The Vietnam Farmers' Union has as its purpose to protect the rights of Vietnamese farmers, including to protect them against abuses of their right of land use. The civil tribunal adjudicates civil land use conflicts.

The land users have duties to protect, improve and use the land effectively. They must have legal documents for their land, and pay land transfer taxes and other payments stipulated by the law. The government encourages land users to invest labour and materials in order to increase the value of their land, apply intensive cultivation to increase crop yield, reclaim land, encroach on coastal land, cover bald land and dunes near the sea in order to carry out agricultural production, forestry and fishery, protect, improve and increase soil fertility, and use the land effectively.

### **Projected impacts of palm oil**

#### *The environment*

We cannot as of yet examine the environmental impact of oil palm plantations in Vietnam. However, agricultural scientists assume that oil palm has a great potential to develop in Vietnam. Besides contributing to the vegetable oil industry, oil palm plantations also reportedly have positive effects in preventing damage caused by strong winds. According to the Ministry of Environment and Resources, Quang Tri province had planned to cultivate oil palm along its coast to reduce damage by tropical storms. However, nowadays, concerns have been voiced about the environmental sustainability of palm oil production, particularly the threat that oil palm expansion poses to tropical forests as a unique source of biodiversity.

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### *Rural workers and farmers*

The population of Vietnam in 2009 was of around 86 million of whom 44 million were of working age. Agricultural workers represented 60% of the total population (26.3 million people) over an agricultural area of 21,454.7 ha. However, some agricultural sectors, such as latex tapping and seasonal harvests of tea, coffee and cashew nut have recently suffered from a lack of labour. According to Dr. Dang Kim Son, Head of the Institute of Policy and Strategy for Agriculture and Rural Development, Vietnam now has millions of unemployed workers in the agricultural sector.

The large scale commercial cultivation of oil palm could allow for the generation of further employment opportunities, provided it takes into account the nature and conditions of Vietnam's unskilled labour force. Expanding agricultural productions such as oil palm may also attract migrant workers back to their hometowns to find work, thereby alleviating the pressure on many cities in Vietnam resulting from mass migration from rural to urban areas.

According to the financial policy of the government to support agriculture and rural development, farmers may receive bank loans of a maximum of fifty million VND without any mortgage to support their agricultural production (including oil palm production, if any) from June 1<sup>st</sup> 2010. This is evidence that the Vietnamese government strives to provide farmers with the best financial conditions and incentives possible to produce agricultural products. However, as oil palm has not yet been planted over large areas, no research is available to evaluate the wider effects of oil palm production on rural economies. It is to be expected that some of the positive effects will include providing more work opportunities for local people and improving basic infrastructures in rural areas.

Finally, in terms of food security, as the current area of oil palm is only of about 600 ha mainly planted in farms or in research centres, oil palm has not had any impact on plantations of other cash and subsistence crops such as rice. Food security therefore appears stable and is expected to remain so due to the fact that oil palm is

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not projected to be grown in competition with or in replacement of existing food crops.

### **Looking forward**

Although Vietnam has not yet developed any national standards to improve or regulate its palm oil production, in the report “Vegetable Oil Sector of Vietnam – a Vision to the First 25 Years of the 21<sup>st</sup> Century”, Phan Lieu claims Vietnam has to expand the area of oil palm cultivation by 70,000 to 100,000 ha in order to secure and achieve its domestic production target of oily materials by 2015. He also concludes that the potential of oil palm is several times higher than that of other oil plants (four to five times higher compared to groundnut, for example). Therefore, he recommends that oil palm become a major source of oil for Vietnam in the future. The likelihood of oil palm being grown commercially in Vietnam is also increasing due to Vietnam’s great need for edible oils and current large scale import of palm oil from Indonesia and Malaysia. The Vietnamese government has already demonstrated an interest in developing its bio-energy industry through the plantation of oil palm, as reflected in several policies.

Oil palm has a great potential to develop over large areas in Vietnam which still has sufficient stretches of fallow and unused land throughout the country for plantations to be established. The weather conditions are also advantageous for oil palm growth, and the abundance of cheap labour in rural areas may boost the development of palm oil production. However, in order to develop oil palm commercially in Vietnam, there remain numerous social, environmental and economic concerns that must be taken into consideration in a careful and systemic manner.

As a newly introduced crop, palm oil will require further research and experimentation before achieving its status as a commercial crop in Vietnam. Furthermore, Vietnam should engage in a dialogue with other South East Asian CPO producing countries in order to learn from their experiences and avoid replicating mistakes made at the detriment of the environment and local socioeconomic conditions.

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## **Endnotes**

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- <sup>1</sup> Faculty of Agronomy, Nong Lam University (NLU) Ho Chi Minh City, Vietnam – *vthaidan@yahoo.com*
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