



# Review of Laws and Policies Related to Payment for Ecosystem Services in Viet Nam

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# 1. Introduction

## The Asia Regional Biodiversity Conservation Programme

This report has been produced as part of the Asia Regional Biodiversity Conservation Programme (ARBCP). The goal of ARBCP is to improve the sustainable management of natural resources and the conservation of biodiversity in Viet Nam and the Greater Mekong Sub-region.

In Viet Nam, ARBCP is working closely with the Government to develop and increase the capacity of key stakeholders to design and implement an ecologically and financially sustainable biodiversity conservation landscape in the Dong Nai watershed in southern Viet Nam. The project has a major focus on investigating the potential of *payments for ecosystem services schemes* as mechanisms to provide local incentives and sustainable financing for biodiversity and natural resource conservation, as well as to make tangible improvements in the livelihoods of the rural poor, and strengthen environmental governance and institutional building. The programme is working to build capacity and awareness of payments for ecosystem services among key national and local stakeholders, as well as through the piloting of on-the-ground payments for ecosystem services mechanisms in the Dong Nai watershed. Lessons learned from activities in Viet Nam will be shared, and dialogue promoted, with other countries in the Greater Mekong Sub-region.

### Defining “payments for ecosystem services”

“Payments for ecosystem services” is a relatively new concept globally, and in Viet Nam (Wunder 2005). One of the key outputs of awareness and capacity building activities to be carried out under ARBCP is to build consensus and to reach a definition of payments for ecosystem services which is relevant, useful and applicable to Viet Nam.

Until such a time as this definition has been developed and agreed, this review takes the following working definition of payments for ecosystem services:

*Payment for ecosystem services is a voluntary agreement to enter into a legally-binding contract under which one or more buyers purchase a well-defined ecosystem service by providing financial or other incentives to one or more sellers who undertake to carry out a particular land use on a continuous basis, which will generate the agreed ecosystem service at specified levels.*

“Ecosystem services” can be simply defined as the conditions and relationships through which natural ecosystems, and the species that make them up, sustain and fulfil human life (Daily 1997). In Viet Nam, there are a wide range of natural ecosystems which generate important ecosystem services. Some of these ecosystems and related services are listed below in Table 1.

**Table 1: Examples of ecosystem services**

Ecosystems	Ecosystem services
Forests	Watershed protection, carbon store, biodiversity, scenic beauty
Wetlands	Flood control, waste treatment, water supplies, biodiversity
Mangroves	Shoreline protection, nutrient retention, erosion control, fish breeding
Coral Reefs	Recreation, carbon store, shoreline protection, rare and endangered species

The basic economic rationale for payments for ecosystem services is that although natural ecosystems generate economically and socially important services for society, the market currently does not work to ensure that these services are adequately provided.

Most ecosystem services have no market price. Although many people benefit and profit from ecosystem services, they do not pay for them. This also means that the people who use and manage ecosystems (such as both government conservation agencies, and private and community landholders) do not have the opportunity to gain from conservation practices which generate such services for others. While they can earn substantial income and revenues from environmentally-degrading activities, and from the harvest of other natural resources, there is no mechanism for them to gain from the production of ecosystem services — even though land and resource conservation for ecosystem services incurs real costs on them.

These market and price failures as regards ecosystem services are both inefficient and inequitable. On the one hand, they lead to a situation where there are few or no incentives for people to conserve ecosystems

which generate ecosystem services because there is little or no private gain or profit to them in doing so. On the other hand it places an unfair cost burden on (often poor) land users and land managers in ecologically sensitive areas, while those who reap the benefits and profits from the ecosystem services (often relatively better-off urban dwellers, industries and private companies) are allowed to receive them freely or at very low cost.

## Background to the legal and policy review

Both the use of economic and financial instruments for biodiversity conservation generally, and payments for ecosystem services specifically, constitute relatively new concepts in Viet Nam. The idea of payments for ecosystem services in particular is familiar to only a few technical specialists in the country, and even among these specialists there are different interpretations and views. However, both existing and emerging policies and legislation enable, and lend support to, the use of such tools and approaches. There is also some history, in the country, of economic and financial instruments being used to support environmental protection and biodiversity conservation goals.

For payment for ecosystem services approaches to be successful in practice, and for them to be acceptable to decision-makers, it is essential that the institutional, legal and policy structures required to support their implementation are identified and clearly articulated. This legal and policy review therefore aims to document and analyse the policies and laws that regulate and govern biodiversity conservation and the application of financial mechanisms in Viet Nam, with a view to identifying current opportunities and gaps relating to payments for ecosystem services.

There are many aspects to payments for ecosystem services which require a clear legal framework to enable them. Key questions to be answered by the review therefore include:

- What are the provisions in existing laws which relate to the right to own, manage and benefit from land and the environmental resources contained within it? (Chapter 2)
- What does this review tell us about the legal basis for applying a payments for ecosystem services concept in Viet Nam? (Chapter 3)

It should be noted that many laws, decrees, decisions and circulars in Viet Nam have some relevance to payments for ecosystem services. The current study makes no claims to be comprehensive: it reviews some of the major legal and policy instruments which refer to, enable or directly mention the use of financial and economic instruments for environmental conservation.

Although the term "environmental services" is commonly used, in many parts of the world, this report uses the term "ecosystem services". The reason for this is that the term "environmental services" is already used within the Law on Environmental Protection 2005, to refer to services such as waste management. To distinguish the services provided by natural ecosystems from this type of interpretation and usage, this report uses the term "payment for ecosystem services".

There is no Vietnamese equivalent for the English term "tenure". So as to avoid misunderstanding or misinterpretation, the report therefore does not use this term. The term used in this report is "land use right". In Vietnamese, this term is understood to mean that, for a period of time specified by law, individuals, households and organizations to which the State has allocated land have rights to use (including to construct houses and to work, farm, and otherwise exploit the land), to hold, to dispose of (including to transfer, rent, bequeath, donate, mortgage, offer as collateral or as co-financing on an investment), and to be compensated for in it the event the State recovers it (Article 105-106, Land Law). The State regulates and enforces land use rights.

## 2. Rights to use, manage and benefit from land and environmental resources

Payments for ecosystem services must be supported by legally-binding agreements. In order for those agreements to be effective, the rights of the parties – whether they are individuals, households, communities or organizations – to use, manage, and benefit from the resources that provide the services must be clearly established. National laws, regulations and circulars provide the required legal basis for all aspects of payments for ecosystem services: defining the ecosystem services themselves; defining the capacity of potential parties to enter into agreements; and defining the rights of all parties in the resources and services and the benefits they provide.

### Ecosystem services in national law

National law, including the Law on Water Resources 1998, the Land Law 2003, the Law on Forest Protection and Development 2004, and the Law on Environmental Protection 2005, recognises certain elements of the ecosystem services provided by ecosystems: biodiversity protection; landscape beauty; watershed protection; and carbon sequestration.

- The Law on Environmental Protection 2005 provides that biodiversity protection must be implemented based on the assurance of the rights and legitimate benefits of local communities (Article 30.1).
- The Land Law 2003 stipulates that coastal and “famous” landscapes are to be protected and managed (Articles 79, 98), while the Law on Environmental Protection 2005 provides that natural landscapes are to be protected (Articles 6, 29, 31).
- The Law on Water Resources 1998 calls for preventing the deterioration of water sources (Article 11). The Law on Environmental Protection 2005 goes further, providing that river water and river basins must be protected and managed and benefits to communities ensured (Article 59), while the Law on Forest Protection and Development 2004 stipulates that watershed protection is one of the purposes of protection forests (Article 4).
- The Law on Forest Protection and Development 2004 also provides that climate regulation is one of the purposes of protection forests (Article 4). The Law on Environmental Protection 2005 does not specifically enable carbon sequestration, but does enable other economic and financial measures that would contribute to mitigating climate change, including international trading in greenhouse gas emissions (Article 84.2) and financial incentives for the development and use of clean and renewable energy sources (Article 33.2).

None of these laws, however, addresses ecosystem services in any detail or regulates their valuation and use.

### Capacity to enter into agreements for payments for ecosystem services

According to the definition, payments for ecosystem services are based on voluntary legally-binding agreements. It is therefore important that all parties to agreements for payments for ecosystem services have the legal capacity to enter into contracts and to own, manage, and receive benefits from the use of natural resources. Before examining the issues of rights to own, manage and benefit from the use of natural resources, the following paragraphs will discuss the legal capacity of potential beneficiaries to enter into agreements for payments for ecosystem services.

Under Viet Nam’s Civil Code 2005, it is clear that individuals and organizations are legally enabled to enter into contracts. Communities, however, have limited rights to enter into contracts and other civil legal relationships.

As commonly understood in Viet Nam, a community is an entity smaller than a commune, which is the smallest administrative unit of government. The Law on Forest Protection and Development 2004 defines “village population community” as all households and individuals living in the same village, hamlet or equivalent unit.



The Civil Code provides for community ownership of common assets (Article 220), stipulates the categories of legal entities recognised under Viet Nam law and specifies four conditions which must all be met for a legal entity to be able to enter into civil legal relationships (Article 84). These conditions are: being legally established; having an organizational structure; having assets independent of those of other organizations and individuals and being responsible for those assets; and being able to participate in legal relations independently and in their own name. Because communities do not meet all of these conditions, under Article 84 they cannot be parties to a civil legal relationship. The Civil Code also provides, however, that in the event there is no specific legislation or agreement enabling a civil relationship, custom may apply as long as it does not contradict the principles of the Code (Article 3). Members of communities, therefore, following agreement or custom, have rights to enter into certain civil transactions and may dispose of their common assets, other than land and forest use rights.

## Rights to use land

Article 17 of the 1992 Constitution provides that all resources including air, land, forests, rivers, lakes and other water supplies, subsurface resources, and marine resources belong to the State and are owned by all the people of Viet Nam. The State acts as the representative for the people of Viet Nam in all matters related to land distribution, management and use (Land Law 2003, Article 5). People's Committees at all levels are responsible for carrying out State functions related to land and in particular for assigning land use rights and leasing land in their jurisdictions (Land Law 2003 Articles 7.4, 37).

Prior to 1999, while awaiting detailed instructions from the General Directorate of Land Survey, some provinces in the South issued land use right certificates which were called a "Green Book". Those issued since 1999, in the whole country, after instructions were issued are referred to as a "Red Book".

### *Community use rights*

A community may apply for a land use right certificate for land that is used as common property of the community (Land Law 2003, Article 48). A community does not pay land use fees for agricultural land assigned to it (Land Law 2003, Article 33.7). A community with a land use right certificate has the same responsibilities as other land users, but a community may not exchange, transfer, lease, or donate its land use rights (Article 9). In addition, it cannot mortgage or use the land under its management as collateral or security or as a contribution to joint investment (Article 117). The Land Law 2003 does not specify the length of time that land use rights may be assigned to a community.

Forest land may be assigned to a community for up to 50 years if: the community is already managing the forest efficiently; the forest contains the water source for the community; or the forest is being used communally (Law on Forest Protection and Development 2004, Article 29; Decree No. 23/2006/ND-CP, 03/03/2006, on the Implementation of the Law on Forest Protection and Development, Article 23.1). Similar to the provisions of the Land Law 2003, the Law on Forest Protection and Development 2004 provides that a community may not divide forests among its members, nor may it convert, transfer, donate, lease, mortgage, or use the value of its land use rights in assigned forests as collateral (Article 30).

### *Individual and household use rights*

Rights in land that is used for annual agricultural crops, aquaculture or salt-making may be assigned to an individual or household for up to 20 years and the assignment may be renewed. No more than three hectares of each category of land may be assigned to one individual or household. If land in more than one category is assigned to an individual or household, the total amount of land assigned may be no more than five hectares (Land Law 2003, Article 70). Individuals and households do not have to pay land use fees (Article 33).

Natural production forest land and plantation forest land may be assigned to an individual or household for up to 50 years and the assignment may be renewed. (Land Law 2003, Article 67; Law on Forest Protection and Development 2004, Article 24.3.a). The amount of production forest that may be assigned to one individual or household is 30 hectares. If that individual or household has also been assigned agricultural land, the amount of forest land that may be assigned is reduced to 25 hectares (Decree No. 23/2006/ND-CP, Article 22.1).

Households and individuals may also lease land, subject to payment of annual rent, for agricultural production, forestry, aquaculture, and salt making as well as for specified commercial purposes (Land Law 2003, Article 35.1).



#### *Use rights of domestic and foreign commercial enterprises and overseas Viet Nam*

Land use rights that may be assigned to domestic commercial enterprises, foreign enterprises investing in Viet Nam, and overseas Viet Nam may be for a period of up to 50 years and are decided on a project-by-project basis. For projects that require large capital investment, the period of the land use right may be extended to 70 years. These land use rights are renewable (Land Law 2003, Article 67.3).

Domestic and foreign commercial enterprises and overseas Viet Nam may lease land, subject to payment of annual rent, for agricultural production, forestry, aquaculture, and salt making as well as for specified commercial purposes (Land Law 2003, Article 35.1).

Production and plantation forests may be assigned or leased to commercial enterprises for up to 50 years. Where circumstances dictate a business cycle of more than 50 years, the period may be extended to 70 years (Decree No. 23/2006/ND-CP, Article 23.1).

Protection forests of less than 5,000 hectares may be assigned or leased to commercial enterprises (Law on Forest Protection and Development 2004, Article 46.2).

#### *Land use change*

The following changes in land use require prior approval:

- from agriculture to non-agricultural use;
  - from wet rice cultivation to forest land or aquaculture land;
  - from special-use and protection forest land to land used for other purposes;
  - from non-agricultural land assigned free of land use levies to non-agricultural land assigned on payment of land use levies or to leased land; and
  - from non-agricultural land other than residential land to residential land.
- (Land Law 2003, Article 36.1)

Any change from one type of forest use to another must be consistent with forest protection and development plans and must have prior approval (Law on Forest Protection and Development 2004, Article 27).

### **Rights to manage land and use resources**

The Land Law 2003 recognises the rights of all land users to manage the lands assigned or leased to them and specifies their responsibilities (Articles 105 and 107). Land users that are assigned land free of land use fees are not allowed to sell or otherwise transfer their land use rights (Article 109).

The Law on Forest Protection and Development 2004 provides a general right to use dead trees and specified non-timber forest products in natural protection forests (Article 47.1-2) and to exploit live trees in planted protection forests under specified conditions (Article 47.3). Where protection forests are interspersed with production forests, holders of forest use rights may manage and use them as production forests (Article 48.1). In special use forests, extracting dead and fallen trees and non-timber forest plants is allowed, but hunting, catching and trapping animals is not (Law on Forest Protection and Development 2004, Article 51.1).

#### *Community management rights*

The Law on Forest Protection and Development 2004 guarantees communities' rights to manage the forest land assigned to them and to use the forest products derived from them for domestic and public purposes (Article 30.1). Special use forests may also be assigned to communities to manage (Decision No. 186/2006/QĐ-TTg, 14/08/2006, Promulgating the Regulation on Forest Management, Article 15.3).

Community forest management is specifically provided for in Decision No. 106/2006/QĐ-BNNPTNT, 27/11/2006, which specifies how forest land is allocated for community management, how communities develop their own management regulations, and how they plan, organize, supervise and assess management activities. This Decision was issued to apply to 40 communes in a community forestry pilot

programme that was enabled by Decision No. 1641/2006/QĐ-BNN-HTQT, and also extends to certain communities in communes that are not subject to Decision No. 1641.

#### *Individual and household management rights*

Protection forests smaller than 5,000 hectares may be assigned to be managed by individuals or households, without payment of forest use fees (Law on Forest Protection and Development 2004, Article 24.2). The law does not specify the length of time that protection forests may be assigned to individuals or households.

Where land assigned to individuals and households for agriculture, aquaculture or salt-making is interspersed with protection forest that has not been included in planning for protection forests, the protection forest may be managed according to the purpose of the land assigned under the Land Law 2003 (Law on Forest Protection and Development 2004, Article 48.2).

#### *Management rights of domestic and foreign commercial enterprises and overseas Viet Nam*

Commercial enterprises that lease land have specified rights to sub-lease and mortgage the leased land (Land Law 2003, Articles 109-111).

Protection forests of less than 5,000 hectares and special use forests may be leased to commercial enterprises to manage for up to 50 years; the lease may be renewed (Law on Forest Protection and Development 2004, Article 50; Decree No. 23/2006/ND-CP, Article 23.1).

### **Rights to benefit from management and use of resources**

The Land Law 2003 guarantees that land use rights holders may enjoy the yields of their labour and their other investments in land and may benefit from State projects on agricultural land protection and improvement (Land Law 2003, Article 105).

The Law on Forest Protection and Development 2004 recognises a general right to benefit from public works in forest protection and development (Article 59.7).

#### *Community rights to benefits*

The Law on Forest Protection and Development 2004 guarantees communities' rights to enjoy the fruits of their labour and investment in the forest land assigned to them (Article 30.1.c). Decision No. 106/2006/QĐ-BNNPTNT specifies communities' rights to benefit from community forest management in specific situations.

#### *Individual and household rights to benefits*

Households and individuals to whom special use forests are allocated by the State for management and protection are funded by the State to carry out their work and are allowed to conduct scientific, cultural and social research services, and eco-tourism. (Decision Number 178/2001/QĐ-TTg, 12/11/2001, on the rights and obligations of households/individuals allocated and contracted forest and forestland for benefit sharing, Articles 4 and 13).

Households and individuals who are allocated protection forest are entitled to payment for protecting, regenerating and planting forests. They are allowed to:

- receive funds from the State for management and protection of the forest;
- harvest non-timber forest products, dry timber, and dead trees, and to harvest bamboo with a maximum cutting intensity of 30% when the forest cover reaches 80%;
- harvest timber by selective cutting with a maximum cutting intensity of 20% of the total stand volume, excluding species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- retain a stipulated percentage of the total value of forest products harvested after paying all taxes due (Decision 178/2001/QĐ-TTg, Article 5).

The benefits to which households and individuals are entitled for managing protection forests are:

- 80-90% of the total value of forest products harvested, after tax, if they receive financial support from the State for plantation, protection and regeneration of natural forest in watershed protection forest; and
- 60-70% if they are allocated protection forest for prevention of wind, sand or tide erosion, sea encroachment or environmental protection.

*Rights of domestic and foreign commercial enterprises and overseas Viet Nam to benefits*

Other than the general guarantees of benefits, neither the Land Law 2003 nor the Forest Protection and Development Law 2004 stipulates specific benefits for domestic and foreign commercial enterprises or overseas Viet Nam.

### 3. Conclusions on the legal and policy basis for developing payments for ecosystem services in Viet Nam

The concept of payment for ecosystem services can be implemented in Viet Nam

Although there are differences in interpretation and understanding among experts in Viet Nam about the definition of the terms “payments” and “ecosystem services”, it is possible to implement the concept in Viet Nam, provided that the concept is comprehensively explained to the general public in lay person’s terms.

If “payments for ecosystem services” are understood as paying the cost of services that the environment provides human beings, it is consistent with Article 130 of the Law on Environmental Protection 2005, that implements the “polluter pays” principle – those who benefit from ecosystem services must pay for those services and whoever damages the environment must compensate for the damage.

The current legal framework allows for taxes, charges and fees for ecosystem services

Chapter 2 of this report has discussed policies and legal instruments which relate to payments for ecosystem services and which have already been regulated in Viet Nam. The current legal framework in Viet Nam allows for a range of price- and market-based instruments that may be applied to tax, charge for, or set fees for ecosystem goods and services. These instruments could be applied to enable payments for ecosystem services under the provisions of existing laws. Tables 2 and 3 below summarise ecosystem services which are already recognised as needing conservation in existing laws, and existing laws that are relevant to payment for ecosystem services.

There is a need to determine whether payments for ecosystem services are treated as taxes, fees, charges or market prices

The most critical issue to be resolved in order to apply payments for ecosystem services in Viet Nam is the question of whether payments for ecosystem services are considered to be based on a tax, fee, or a charge, or whether they are considered to be based on market prices for a product or service. This is important both in terms of which law is used to enable the payment, well as in relation to the mechanisms for how and by whom it is calculated, collected and managed.

Under current provisions, it is only the State that can set the rates of taxes, fees and charges, and all income is treated as budgetary revenue belonging to the State, at the central, provincial, or local level. Households, individuals and other use rights holders may benefit, however, from the sale of specified ecosystem products derived from land the State has allocated to them.

- If payments for ecosystem services are treated as ecosystem products that have a market value and that rights holders may sell, based on the market value of ecosystem products/services, then they can be implemented on the basis of existing law.
- If payments for ecosystem services are treated as charges, fees or taxes, then additional provisions must be added to existing laws, decisions and circulars to allow providers other than government agencies to retain revenues from them.

There is a need to list ecosystem services in the schedules of relevant laws

In either case, in order to fully enable payments for ecosystem services in Viet Nam, ecosystem services must be listed specifically in the relevant schedules of taxes, charges, fees, and prices that are included in existing laws, decisions, and circulars and in any that may be issued to implement the Biodiversity Law once it is adopted.

Additional needs to be addressed in the regulatory framework

In addition, the following issues will need to be addressed in the regulatory framework:

- *Biodiversity protection* – the issue of re-investment mechanisms for biodiversity protection and management in protected areas has not been addressed in existing law, nor has protection of biodiversity outside of protected areas. In order to provide a basis for determining the level of

payments for ecosystem services, mechanisms for valuing ecosystems and other biological resources must be put in place. This is already enabled for forest resources in the Law on Forest Protection and Development 2004 and must be enabled for other biological resources as well. The draft Biodiversity Law, in preparation in 2007, is expected to regulate these issues and to specifically enable payments for ecosystem services.

- *Natural landscape preservation* – other than the legal instruments listed in Table 3 and in Chapter 4, there are no provisions for economic instruments related to ecosystem services in the context of the market economy.
- *Watershed Protection* – tax rates on water supply services are insufficient and irrelevant to market mechanisms. Organizations and individuals located along the lower sections of rivers are not obliged to pay for forestation and reforestation in the arable hills and land in the upper reaches. When irrigation fees are reduced in the near future (as referenced in the Report of the Prime Minister at the Congress on 27 November 2006), it will become necessary to value the ecosystem services of watershed protection more accurately.
- *Carbon Sequestration* – markets and initiatives for forest carbon sequestration and storage have not yet been developed in Viet Nam. Although Article 84 of the Law on Environmental Protection 2005, stipulates that green house gases must be managed, detailed guidance on fees and taxes promoting carbon sequestration has not yet been issued.
- *Land use change* – most changes in land use require prior approval from the State. This means that individuals, households, communities and enterprises interested in entering into an agreement for payment for ecosystem services that would require a change in the way they use the land they have been allocated would have to apply for permission to do so, and the agreement could not be effective until the land use change was approved. Existing laws and regulations could be revised to facilitate approval of land use changes for the purposes of agreements for payments for ecosystem services.
- *Capacity to enter into agreements* – under existing law, individual land holdings are relatively small, with the exception of protection forests that may be allocated to individuals or households and special use forests which may be allocated to commercial enterprises to manage. This means that an agreement for ecosystem services may require that individuals and households would need to enter into joint agreements or that entire communities would need to participate in agreements on payments for ecosystem services in order to create an area of land or forest that is large enough to provide the particular ecosystem service required. While individuals and households are recognised as legal entities with the power to enter into agreements, there are limits on communities' ability to do so. In order for communities to be able to benefit fully from payments for ecosystem services, there would need to be a clarification of communities' status as legal entities.

## Ways forward

In Viet Nam, the possibility of various types of payments may be considered, depending on the type of beneficiary. Beneficiaries who can pay in cash should do so, while those who cannot may be allowed to make payments in kind for ecosystem services. Agreements for payments for ecosystem services may also provide for differentiated payments when the beneficiary will not use the ecosystem service for a commercial purpose.

Viet Nam is already using most of the economic and financial instruments that are needed to implement payments for ecosystem services. The additional measures that need to be taken to fully enable payments for ecosystem services in the country are relatively few, although each is important. The process of developing and implementing the Biodiversity Law provides a unique opportunity to address these issues comprehensively and begin to use payments for ecosystem services to achieve a double goal: reducing poverty while conserving the nation's natural infrastructure.

## Summary of provisions in existing laws and policies that relate to payment for ecosystem services

**Table 2: Ecosystem services which are already recognised in existing laws as needing conservation**

Ecosystem Services	Legal Framework	Content
Biodiversity Protection	Law on Environmental Protection 2005	Biodiversity protection must be implemented based on the assurance of the rights and legitimate benefits of local communities (Article 30.1).
Landscape Beauty	Law on Environmental Protection 2005 Land Law 2003	Natural landscapes are to be protected (Articles 6, 29, 31) Coastal and “famous” landscapes are to be protected and managed (Articles 79, 98)
Watershed Protection	Law on Water Resources 1998 and Decree No. 179/1999/Nd-Cp of 30/12/1999 Stipulating the Implementation of the Law on Water Resources Law on Forest Protection and Development 2004 Law on Environmental Protection 2005	Prevent the deterioration of water sources – Law on Water Resources 1998 (Article 11); Decree No. 179/1999, (Article 3) Watershed protection is one of the purposes of protection forests (Article 4) River water and river basins must be protected and managed and benefits to communities ensured (Article 59)
Carbon Sequestration	Law on Forest Protection and Development 2004	Climate regulation is one of the purposes of protection forests (Article 4)

**Table 3: Existing laws and regulations that are relevant to payment for ecosystem services**

Legal instruments	Financial or economic Instrument enabled	Relevance to PES
Decision 186/2006/QĐ-TTg (14/08/2006) Promulgating the Regulation on Forest Management		Establishes the principle that forest owners and lessees are allowed to use their rights and the economic values of biological resources, including entering into joint ventures for investment in special use forests and production forests
Decision No.05/1998/PL-UBTVQH10, 16/04/1998 Decree No.68/1998/ND-CP, 03/09/1998 Circular No.153/1998/TT-BTC, 26/11/1998	Water Resource Tax	They specify tax rates to be paid by users of various goods which depend on good environmental quality, or on ecosystem services: for example water, natural forest products and natural aquatic products. They specify tax rates to be paid by users of water, the supply and quality of which depends on good environmental quality, or ecosystem services.
Agricultural Land Use Tax Law 1993 Decree No.15/2003/QH11, 17/06/2003 Circular No.112/2003/TT-BTC, 19/11/2003 Decree No.129/2003/ND-CP of 03/11/2003	Tax applicable to entities that are allocated land for agricultural production but are not using the land.	They allow for the imposition of differential tax rates based on land use which could in principle distinguish between land uses which generate ecosystem services, and those which do not. They allow for tax exemptions and reductions on particular land uses, which could in principle distinguish between land uses which generate ecosystem services, and those which do not.
Land Law 2003 Law on Land Use Right Transfer Tax 1994 Law on Revision, Supplementation of the Law on Land Use Right Transfer Tax 1999 Decree No.19/2000/ND-CP, 08/06/2000 Circular No.104/2000/TT-BTC, 23/10/2000	Tax on the transfer of land use rights	They allow for the value of ecosystem services to be incorporated into the land use right transfer tax. They also allow in principle for the possibility of setting relatively lower taxes on the transfer of land that is used for conservation purposes.
Decree No.198/2004/ND-CP, 03/12/2004. Circular No.117/2004/TT-BTC, 07/12/2004	Land use levies	They relate to how land use levies are calculated, and in principle could incorporate ecosystem service values into land use levies.
Decree No.188/2004/ND-CP, 16/11/2004 Circular No.114/2004/TT-BTC, 16/11/2004	Determining land prices and price brackets	They relate to how land is priced, and in principle could incorporate ecosystem service values into land pricing.
Decision No.358/TTg, 29/05/1997	Preferential taxation of off-shore fishing	It specifies tax rates to be paid by users of aquatic resources, which depend on good environmental quality and on ecosystem services and could thus in principle include provisions for payments for ecosystem services.
Circular no. 91/2000/TT-BTC, 06/09/2000 Decision No. 187/1999/QĐ-TTg (16/09/1999)	Value-added Tax Corporate Income Tax	It allows for the reduction or exemption of VAT on environmentally-beneficial activities. In principle, these provisions could be extended to activities which generate ecosystem services. It distinguishes certain business activities and earnings which are subject to lower or preferential corporate income tax rates. Currently only the harvest of forest products and agro-forestry products are included, but in principle these provisions could be extended to activities which generate ecosystem services.
	Special Consumption Tax	It distinguishes certain products and services which are liable for (additional) special consumption tax. In principle these provisions could be extended to product and commodities that depend on ecosystem services.

Legal instruments	Financial or economic Instrument enabled	Relevance to PES
Decree 175-CP 1994 implementing the Law on Environmental Protection Order 13/2001/L-CTN promulgating Ordinance 38/2001/PL-UBTVQH10 Order 10/2002/I/CTN promulgating Ordinance on Prices 40/2002/PL-UBVQH10	General provisions for environmental fees and charges	These allow for the concept of raising revenues from environmental fees and charges. In principle these provisions could be taken to include revenues earned from payments for ecosystem services.
Law on Forest Protection and Development 2004	Prices and charges for forest goods and services	It allows for prices to be set for forest goods and services. Although it currently refers to forest products (such as timber, non-timber forest products and tourism-related activities), in principle this provision could be taken to include the pricing of, and fees and charges from, payments for ecosystem services.
Decree No. 67/2003/ND-CP, 13/06/2003 Joint Circular No.125/2003/TTLT-BTC-BTNMT, 16/12/2003	Waste water charges	It allows for money to be raised from individuals and entities who generate waste water, which can then in principle be allocated to land users, enterprises or individuals who generate ecosystem services relating to wastewater treatment, for example wetlands.
Inter-Sectoral Circular No. 126/1999/TTLT-BTC-BCN-BKHCNMT, 22/10/1999	Environmental bonds	It sets a precedent both for imposing bonds on activities which may harm the provision of ecosystem services, as well as requiring the maintenance and restoration of ecosystem services in the course of carrying out mining and other activities.
Decision No. 82/2002/QĐ-TTg, 26/06/2002 Decision No. 53/2002/QĐ-BKHCNMT, 16/07/2002 Decision No. 64/2003/QĐ-TTg	Viet Nam Environment Protection Fund	These funds establish mechanisms for retaining and allocating environmental charges and fees, and other environmental funding. In principle such arrangements could be extended to fees collected as environmental payments, and their allocation to ecosystem service providers and activities.
Decision 34/2002/QĐ-BNN	Viet Nam Conservation Fund	
Law on Forest Protection and Development 2004 Order 10/2002/I/CTN promulgating the 2002 Ordinance on Prices 40/2002/PL-UBVQH10	Setting environmental charges and fees	These suggest that the state would be likely to play an active role in prescribing the methods in calculating payment levels, and determining prices for ecosystem services.
Natural Resource Tax Law Order 13/2001/L-CTN promulgating Ordinance 38/2001/PL-UBTVQH10 on Charges and Fees Decree 10/2002/ND-CP	Collecting environmental charges and fees	While these allow for various state bodies and agencies to collect and manage charges and fees, there is little or no mention of the powers of communities, individuals or companies to collect and manage environmental charges.
State Budget Law of 1996 (amended 2003) Order 13/2001/L-CTN promulgating Ordinance 38/2001/PL-UBTVQH10 on Charges and Fees Decree No 60/2003/ND-CP Decision 178/2001/QĐF-TTg Decision 186/2006/QĐ-TTg	Allocating environmental charges and fees	While these allow for retention of a portion of fees collected by the government (and their distribution between various levels of government), there is an emphasis on charges and fees being absorbed into the State budget. Although households and individuals are permitted to benefit from the sale of forest products, these provisions do not appear to apply to charges and fees raised. There thus remains a certain degree of ambiguity as to the power of communities, individuals or companies to retain environmental payment charges.
Decision No. 106/2006/QĐ-BNNPTNT Decision No. 178/2001/QĐ-TTg	Benefit-sharing	These allow for testing benefit-sharing in the context of community forestry in 40 pilot communities and for sharing benefits between the State and village communities that have been allocated forest land or contracted to manage protection, special use or production forests. The lessons learned from the forest context could be used in designing similar arrangements for agreements on payments for ecosystem services in any type of ecosystem.
Decree No.48/2007/ND-CP	Principles and methods to determine forest prices	Allows for principles of prices to be set for forest environmental goods and services.



## 4. References

### Technical documents referred to in the report

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Wunder, S., Bui Dung T., and E. Ibarra, 2005, *Payment is good, control is better: why payments for forest ecosystem services in Viet Nam have so far remained incipient*. CIFOR, Bogor.

### Legal instruments discussed in the report

#### *Constitution and Laws*

##### Constitution 1992

1. Government Organisation Law 1992
2. Agricultural Land Use Tax Law 1993
3. Law on Land Use Right Transfer Tax 1994 and Law on Revision, Supplementation of the Law on Land Use Right Transfer Tax 1994, 1999
4. State Budget Law of 1996 (amended 2003)
5. Law on Water Resources 1998
6. Land Law 2003
7. Law on Forest Protection and Development 2004
8. Law on Environmental Protection 2005
9. Civil Code 2005

#### *Politburo Resolution*

1. Politburo Resolution No.41/NQ-TW, 15/11/2004, on "Environmental Protection in the period of accelerated national industrialization and modernization"

#### *Decrees, Decisions, Circulars*

1. Decree No. 23/2006/ND-CP, 03/03/2006, on the Implementation of the Law on Forest Protection and Development
2. Decision No. 186/2006/QD-TTg, 14/08/2006, Promulgating the Regulation on Forest Management
3. Decision No. 1641/2006/QD-BNN-HTQT, 05/06/2006, on the Pilot Program on Community Forestry for 2006 and 2007
4. Decision No. 106/2006/QD-BNNPTNT, 27/11/2006, on the Implementation of Decision No. 1641/2006/QD-BNN-HTQT, 05/06/2006
5. Decision No. 178/2001/QD-TTg, 12/11/2001, on the rights and obligations of households/individuals allocated and contracted forest and forestland for benefit sharing
6. Decision No. 256/2003.QD-TTg, 02/04/2003, approving the "National Strategy on Environmental Protection up to year 2010 and vision to 2020"
7. Decision No. 05/1998/PL-UBTVQH10, 16/04/1998, Promulgating the Ordinance amending the natural resources tax
8. Decree No. 68/1998/ND-CP, 03/09/1998, on the Implementation of the Natural Resource Tax Ordinance
9. Circular No.153/1998/TT-BTC, 26/11/1998, providing guidance for the implementation of Decree No. 68/1998/ND-CP
10. Decree No. 60/2003/ND-C, 06/06/2003, guiding the implementation of the Law on State Budget
11. Decree No.15/2003/QH11, 17/06/2003, providing detailed regulations on the implementation of the agricultural land use tax exemption and reduction
12. Circular No.112/2003/TT-BTC, 19/11/2003, guiding the agricultural land use tax exemption and reduction from 2003 to 2010 and implementing Decree No.129/2003/ND-CP of 03/11/2003

13. Decree No.19/2000/ND-CP, 08/06/2000, providing detailed regulations to implement the Law on Transference of Land Use Right 1994 and Law on Revision, Supplementation of the Law on Transference of Land Use Right 1999
14. Circular No.104/2000/TT-BTC, of 23/10/2000, guiding the implementation of Decree No.19/2000/ND-CP
15. Decree No.198/2004/ND-CP, 03/12/2004, on the collection of land use levies
16. Circular No. 117/2004/TT-BTC, 07/12/2004, guiding the implementation of Decree No.198/2004/ND-CP
17. Decree No.188/2004/ND-CP, 16/11/2004, on methods of determining land prices and assorted-land price brackets
18. Circular No. 114/2004/TT-BTC, 26/11/2004, guiding the implementation of Decree No.188/2004/ND-CP
19. Decision No. 358/TTg, 29/05/1997 on preferential taxation of off-shore fishing
20. Circular No. 91/2000/TT-BTC, 06/09/2000, guiding the implementation of the VAT and Corporate Income Tax exemption
21. Decree 175-CP, 1994, guiding the implementation of the Law on Environmental Protection 1993
22. Order 13/2001/L-CTN promulgating Ordinance 38/2001/PL-UBTVQH10 on Charges and Fees
23. Decree No. 57/2002/ND-CP, 03/06/2002, guiding the implementation of the ordinance on charges and fees
24. Order No. 10/2002/L/CTN promulgating the Ordinance on Prices 40/2002/PL-UBVQH10
25. Decree No. 67/2003/ND-CP, 13/06/2003, limiting environmental pollution caused by waste water, guiding the economical use of clean water, and generating funding for the Environmental Protection Fund
26. Joint Circular No. 125/2003/TTLT-BTC-BTNMT, 16/12/2003, guiding the implementation of Decree No. 67/2003/ND-CP
27. Decree No. 78/200/ND-CP, 26/12/2000, on petrol and oil charges
28. Inter-Sectoral Circular No. 126/1999/TTLT-BTC-BCN-BKHCHNMT, 22/10/1999, guiding deposit-bonds for environmental rehabilitation after mineral exploitation
29. Decision No. 82/2002/QĐ-TTg, 26/06/2002, establishing the Viet Nam Environment Protection Fund
30. Decision No. 53/2002/QĐ-BKHCHNMT, 16/07/2002, on providing the regulations on organisation and operation of the Viet Nam Environment Protection Fund
31. Decision No. 64/2003/QĐ-TTg, guiding the control of pollution and waste
32. Decision No. 34/2002/QĐ-BNNPTNT, approving a project for the preparation of the Viet Nam Conservation Fund
33. TCVN 14024: 2005, dealing with environmental labelling and environmental standards and translating ISO international standards into Viet Nam
34. Decree No. 10/2002/ND-CP, on financial management of revenue-generating economic public service units

*Additional Legal Instruments Relevant to Payments for Ecosystem Services*

1. Joint Circular No. 09/2004/TTLT-BNN-BTC, 31/03/2004, guiding the implementation of the migration support regime under Decision No. 190/2003/QĐ-TTg, 16/09/2003 on migration policies for realization of population planning and relocation in the 2003-2010 period
2. Circular No. 116/2004/TT-BTC, 07/12/2004, guiding the implementation of Decree No. 197/2004/ND-CP, 03/12/2004 on compensation, support and resettlement when land is recovered by the State
3. Circular No. 69/2006/TT-BTC, 02/08/2006, amending and supplementing Circular No. 116/2004/TT-BTC, 07/12/2004, guiding the implementation of Decree No. 197/2004/ND-CP, 03/12/2004 on compensation, support and resettlement when land is recovered by the State
4. Circular No. 01/2005/TT-BTNMT, 13/04/2005, guiding the implementation of Decree No. 181/2004/ND-CP, 29/10/2004 on the implementation of Land Law 2003
5. Circular No.120/2005/TT-BTC, 30/12/2005, guiding the implementation of Decree No. 142/2005/ND-CP, 14/11/2005 on land rents and surface water rents

6. Circular No. 70/2006/TT-BTC, 02/08/2006, amending and supplementing of Circular No. 117/2004/TT-BTC, 07/12/2004, guiding the implementation of Decree no. 198/2004/ND-CP, 03/12/2004 on the collection of land use fees
7. Directive No. 02/2004/CT-BTNMT, 02/06/2004, strengthening the management of underground water resources
8. Circular No. 02/2005/TT-BTNMT, 06/06/2005, guiding the implementation of Decree No. 149/2004/ND-CP, 27/07/2004, regulating the issuance of permits for water resource exploration, exploitation and use, and for discharge of wastewater into water sources
9. Decision No. 38/2005/QD-BTC, 30/06/2005, on brackets of daily-life clean water prices
10. Circular No. 05/2006/TT-BTC, 19/01/2006, guiding the implementation of regulations on water tax when exploiting natural water, especially water tax on hydroelectric production
11. Directive No. 12/2003/CT-TTg, 16/05/2003, regarding the revision of urgent measures for forest protection and development
12. Joint Circular No. 80/2003/TTLT-BNN-BTC, 03/09/2003, guiding the implementation of Decision No. 178/2001/QD-TTg, 12/11/2001, on the benefits and obligations of households and individuals assigned, leased or contracted forests and forest land
13. Circular No. 28/2005/QD-BNN, 26/05/2005, guiding revision and supplement of Circular No. 63/2004/TT-BNN, 11/11/2004, which guided implementation of Decree No. 139/2004/ND-CP, 25/06/2004 referring to administrative sanctions applying to forest management, forest protection and forest products management
14. Decision No. 43/2006/QD-BNN, 01/06/2006, promulgating the Regulation on international exchange of gene sources of precious and rare domestic animals
15. Circular No. 43/2002/TT-BTC, 07/05/2002, guiding the management and allocation state budget for five million hectares reforestation programme
16. Circular No. 63/2002/TT-BTC, 24/07/2002, guiding the implementation of the provisions of Ordinance on charges and fees
17. Circular No. 45/2006/TT-BTC, 25/05/2006, amending and supplementing the Finance Ministry's Circular No. 63/2002/TT-BTC, 24/07/2002, guiding the implementation of the provisions of the Ordinance on charges and fees
18. Official Letter No. 1306/TC-CSTC, 14/02/2003, listing charges and fees
19. Decision No. 149/1999/QD-BTC, 30/11/1999, regulations on entrance fees for visitors in National Parks and Natural Reserves
20. Circular No. 71/2003/TT-BTC, 30/07/2003, guiding the implementation of Decision No. 149/1999/QD-BTC
21. Circular No. 44/2005/TT-BTC, 03/06/2005, guiding the drafting of the State budget estimates for 2006 and the 2006-2010 period
22. Circular No. 83/2005/TT-BTC, 22/09/2005, guiding the experimental self-declaration and self-payment of natural resource tax by production/business establishments under Decision No. 161/2005/QD-TTg, 30/06/2005
23. Circular No. 74/2006/TT-BTC, 16/08/2006, guiding the implementation of tax exemption to activities as sea fishing, non-refined salt production and tax reduction to business units which employ minority labourers from 2006 to the end of 2010.
24. Decision No. 18/2006/QD-TTg, regulations for ecological tourism activities which can be conducted through joint ventures in special use forests
25. Decision No. 661/1998/QD-TTg, 29/07/1998, regulations on protecting existing forests, promoting forest plantations and rehabilitating forest areas
26. Decree No. 143/2003/ND-CP, regulations on irrigation fees on exploiting and using water from irrigation works for hydroelectric production, tourism, hotels, entertainment, and irrigation
27. Decree No. 48/2007/ND-CP, 28/03/2007, on principles and methods to determine price of all kinds of forests