

*Hanoi, April 20, 2018*

**RECOMMENDATION FOR SUPPLEMENTATION AND AMENDMENT  
OF THE DECREE**

**Detailing the implementation of a number of articles of  
the Law on Forestry 2017  
(First recommendation)**

**To:**

- The Decree drafting committee,
- Vietnam Administration of Forestry - Ministry of Agriculture and Rural Development

In order to implement the Scientific Cooperation Program between the Vietnam Union of Science and Technology Associations (VUSTA) and the Vietnam Administration of Forestry for the period 2017 - 2018, the Forest Land Coalition (FORLAND), including some groups directly under the VUSTA such as the Center for Indigenous Knowledge Research and Development (CIRD), PanNature, and the Center for Tropical Forestry Research (TROPENBOS-Vietnam), organized a workshop for providing technical comments regarding the draft decree detailing the implementation of a number of articles of the Law on Forestry 2017. The workshop was held on April 13, 2018 in Hanoi with more than 30 participants, including experts on forestry and natural resources policies, representatives of social organizations, business associations, research institutes, Vietnam National University of Forestry, and forest management officials.

The workshop discussed the contents of the draft Decree detailing the implementation of a number of articles of the Law on Forestry 2017 (2nd draft), which is currently available online. From the presentations, speeches and opinions delivered directly at the workshop, the Forest Land Coalition has summarized the following comments and recommendations:

**I. POSITIVE POINTS OF THE DRAFT DECREE**

The draft Decree provides further detail regarding aspects of the Law on Forestry 2017, institutionalizing the contents of the Party's and the State's documents related to the current period such as Resolution No.13/NQ-TW on strengthening forest protection, Land Law 2013, Law on Biodiversity 2008, Law on Planning 2017 and some other legal documents.

The Decree has inherited the provisions of the current regulations on forestry, not being contrary to the provisions of the Law and added new detailed provisions in accordance with the legal regulations, the practice of Vietnam and international treaties of which Vietnam is a member.

The supplemented contents of the Decree are quite comprehensive and reflect the great efforts of the Decree drafting agencies. However, there are still some points that need to be discussed and adjusted further to ensure the rights of the people, local communities, and enterprises in forestry activities, and at the same time, as a basis for promoting more transparent and effective forestry governance.

## **II. CONTENTS THAT NEED TO BE AMENDED**

### **1. General issues on the contents of the Decree**

- The approach of the Decree is still based on the old thinking, focusing too much on the role of the government to exercise power to protect and develop forests, without considering the role of communities. There are many provisions for budget expenditures and beneficiaries of the budget but there need to be more focus on developing and maintaining an effective relationship between Peoples Committees at provincial, district and commune level and communities, households and individuals. The composition of the forest value chain is not reflected in the perspective and content of the law.

- On the completeness of the contents of the Decree: Some points in the Decree have not guided in detail the contents of the Law that are assigned to the Government for elaboration of detail regulation. Some contents of the Law are not assigned to the Government for further guidance, but such provisions are still very general, which would cause the implementation to be difficult and might result in different interpretations when the Law takes effect, Therefore, the drafting committee should specifically consider the outcomes when developing the contents of the Decree so that it is fully supplementary to the Law for more feasible application of the Law in practice.

- Although mentioned in the Decree, the contents on the rights, benefits and strength of local communities in forest protection, illegal logging prevention, preventing and responding to forest fires, and the role of the households, individuals and communities in the forestry value chain are not sufficiently provided.

- Forestry varies widely among different regions; for example, the traditions and customs of forest land use in the Central Highlands differ from those in the Northern Mountains; and the typical forest trees, forest owners, and ownership characteristics of each region are also different. The general provisions in the draft are difficult to implement; therefore, it is suggested that the drafting committee should provide more specific guidance on the contents while taking into account regional factors.

- Transitional provisions: The draft Decree must integrate the content from the relevant decrees for the 2004 Law on Forest Protection and Development. According to current provisions, some current legal documents that are being applied pursuant to the Law on Forest Protection and Development 2004 will expire when the Law on Forestry takes effect. Therefore, it is recommended that the drafting committee integrate the content of these into the 4 Decrees and 7 Circulars that are currently being drafted, and at the same time abolish those documents which are already integrated into the contents of the Decree.

- The structural design of the Decree is not suitable and yet to express the logic of the Law. The content of the Law is clearly expressed with regards to the value chain of the forestry sector, from forest protection to forest development, forest exploitation, processing and trade of forest products. Such a structure would be easy to understand and easy to make references, whereas the draft Decree is structured by forest types, which would be hard to follow and to make reference to the Law. For example, in the Law, the content of the opening and closing of natural forest is put after forest land allocation, forest lease, and forest conversion etc., whereas the decree is arranged conversely. The lack of structural logic between the Law and Decree will lead to many difficulties and misunderstanding in the search and application of the Law and the Decree, especially for the local people.

- According to the plan, 04 Decrees and 7 Circulars will be developed to guide the Law. Therefore, the drafting committee and line agencies need to publicize concurrently the content of all aforementioned Decrees and Circulars in order that all organizations and individuals can easily follow and provide comments for them.

## **2. Some policy contents proposed for amendment**

The Law on Forestry has introduced some new contents such as forest owner being a local community; priorities for ethnic minorities; trade and processing of forest products etc. Although such contents have been provided in some policy documents, their provisions are still fragmented and scattered in many regulations within and outside the forestry sector. Consequently, the development of a consistent and dedicated policy in the forestry sector on these new contents is extremely important for the implementation of the Law, for the unification of the forestry policy system, and at the same time serving as an important basis for the enforcement of the Law on Forestry.

Below are the policy recommendations from FORLAND:

2.1. Clause 6, Article 4 of the Law on Forestry provides for "State guarantees for ethnic minority people, local communities ..." in accordance with the regulations of the Government. There are some unclear contents such as "cooperation and partnering in forest protection with forest owners, sharing

benefits from forests, practicing cultural belief ...". This is the content that international partners especially appreciate because of its improvement in comparison with the previous law; it is stipulated in Clause 8, Article 1 of the draft Decree in the object and scope of application. However, the draft decree does not have enough detail for implementation.

2.2. Contents related to forest allocation, forest lease, conversion of forest use purpose to other purposes, forest acquisition:

a. Article 14 of the Law on Forestry stipulates very important contents of the principle of forest allocation, forest lease, conversion of forest use purpose to other purposes, and forest acquisition. However, the draft decree only guides the fifth principle "Unification and consistence with land allocation, land lease, conversion of land use purpose, land acquisition." Some other important principles are not specifically guided in the draft decree, for example the principle of transparency, participatory approach and accountability, either having no or little guidance: Participation of forest owners is only at the stage of field inspection and handover; there is no participation of their representatives in the planning, plan development, appraisal, approval, etc. Priorities for ethnic minorities in forest allocation, and the respect for traditions, customs, cultures, beliefs and forest-associated traditions of ethnic minority communities have not been mentioned in the draft.

b. The guidelines for forest allocation and/or forest lease associated with first-time land allocation and/or land lease to households, individuals and communities is quite clear; however, it is difficult to implement. Reality has shown that community forest is managed by a group of people, so it is important to have a mechanism that identifies who holds the highest legal liability, or liability of each member when participating in forest protection, and the response from authorities to violations of the law. Therefore, the draft decree should provide further guidance on how to develop community forest management regulations, community forest management plans; how to identify applicants on behalf of the community for land allocation in the community, etc. The Decree should separate the contents of forest allocation and forest lease associated with land allocation and land lease, individually or specifically, for each target group between the community and the household.

c. Change of forest types, change of forest use purpose to other purposes:  
For forest type conversion options:

Currently, the decree contains a regulation that the opinions of the communities of concern have to be collected and documented to ensure agreement, and the approved forest type conversion options have to be made public. However, this regulation needs to be accompanied by:

- supplementing of meeting minutes and opinions of public and private forest owners;
- accountability of the People's Committees at all levels for the opinions of the people;
- and requiring investment projects to include a report on environmental and social impact assessment.

2.3. For the content on timber legality assurance system and forest product trade management.

a. Article 66 of the Law regarding forest product processing and development policy shall be implemented in accordance with the regulations of the Government. However, the draft decree does not specify this content. Forest product processing is a very broad industry that can be divided into (1) Timber processing: in which, the production of wooden furniture and particle board have the highest added value; and (2) Processing of non-timber forest products, focusing on bamboo and medicinal plants. Therefore, the decree should further guide the contents such as the criteria for determining the beneficiaries of support, the form of assistance, how to support training in forest product processing; and priority forms of supporting industries.

b. The guidelines in paragraph 1 of the draft Decree on legal timber in Vietnam are quite abstract and difficult to apply to those engaged in commercial forest products. Therefore, the decree should guide some important contents as follows: The concept of timber legality assurance system, the development and operation of a timber legality assurance system in Vietnam, the promulgation of criteria, competence, and procedures for classifying timber and wood product exploitation, transportation, consumption, processing and export enterprises.

c. The content of the forest product market development policy as stipulated in Article 70 of the Law has many important contents, but has not been specifically guided in the draft Decree. The drafting committee should study and supplement some guidelines for this article including (1) Criteria on organizations and individuals cooperating and partnering in buying and selling forest products that can be provided with preferential credit; (2) How the Government supports brand building, trade promotion, market development, market information provision (domestic and international); (3) Support to build trade infrastructure for forest products.

d. Part 3 of the draft decree on forest product trade management only includes guidance regarding one item, but there are four important points that are very important in the trade management of forest products nowadays. Currently, there is only guidance regarding item c, Article 72 of the Forestry Law, regarding market forecast and development orientation for forest product trade and processing.., However, the four additional points are (1) development of market development strategies (domestic and foreign); (2) trade defense in

forest product trade; (3) dispute settlement in forest product trade; and (4) At present, the specialized management agencies for timber and forest product processing at the central and provincial levels are not clear among Ministry of Agriculture and Rural Development, Ministry of Planning and Investment, Ministry of Industry and Trade. Thus, which agency manages the forest product processing industry and which agency monitors and publishes market forecasts? Even in the agriculture sector, it is not clear whether the forest management or trade management body is responsible for processing, trading and marketing of agricultural products at both central and local levels (Vietnam Administration of Forestry or the Department of Processing, Trade and Market Development of Agricultural Products).

2.4. Some provisions of the draft decree detail the lead or implementing agency in some issues, such as the Forest Protection agencies with regards to legal timber. Such regulation also depends on the Decree on regulations on Forest Protection agencies, regulations on sectoral management organization; on the other hand, it ignores the role of the province, the Department of Agriculture and Rural Development, which is the superior level agency of Forest Protection Sub-Department, leading to difficulties in direction and management. So, it is recommended to be revised as follows: At the central government, assign the Ministry of Agriculture and Rural Development; at the provincial level, assign the Department of Agriculture and Rural Development; at the district level, assign district People's Committee.

2.5. Regarding the rights and obligations of forest owners stipulated in the Law, due to no assignment to the Government for provision of further guidance; nonetheless, in the process of development of the Law, there had been many comments on this issue; practical implementation of the 2004 Law has arisen some issues: Rights and obligations of forest managers being forest owners; Rights and obligations of forest managers only having the right to manage and use forests; The relationship between the forest manager not being the owner and the forest manager being the owner (in the case of allocation, lease, co-management ...), which could lead to misunderstandings of rights, obligations and disputes or violations. This issue, if not regulated separately, should be integrated into the provisions of the Decree as the basis for implementation to ensure the feasibility and effectiveness of the Law.

2.6. In Article 6. Criteria for special use forests; section 6. National Botanical Garden: The term "number of species of 500 or more" should be replaced by "number of woody plants of 500 or more". Because the existing description results in too small a number of species; any national park can become a national botanical garden, while in fact there is only one national botanical garden.

2.7. Clauses d or c, item 2 of Article 14. *To conduct scientific research, teaching and practicing in special-use forests*; Article 23. *To conduct scientific*

*research, teaching and practicing in protection forests*; and Article 33. *Scientific research, teaching and practicing in the production forests* need to supplement more stringent regulations to foreigners for the collection, transportation and preservation of specimens and gene sources of our flora and fauna.

2.8. Article 74. *Payment levels and determination of the amounts of payments for forest environmental services*. This need not be as lengthy as in the draft Decree and there should be no fixed numbers. Brief regulations on payment levels and amounts of payments for forest environmental services should be issued in accordance with the current Decree (Decree 147/2016/ND-CP dated 02 November 2016 replacing the Decree No. 99/2010/ND-CP

These are a number of recommendations prepared on the basis of summing up the presentations, research papers, and face-to-face discussions at the workshops organised by Forest Land Coalition (FORLAND) and other relevant agencies. As these are only initial comments this document only comments on the policy and broad direction. In the coming time, Forland and related organizations will coordinate with the Vietnam Administration of Forestry to continue to organize consultations on the draft decree in different regions and will hold a national workshop in Ha Noi to discuss, contribute detailed and specific comments for the draft decree, and the remaining 03 decrees and 07 circulars.

We hope these comments will contribute to clarifying the remaining issues in the draft decree (the latest version as uploaded on the Government website), and we ask the drafting committee and related agencies to study and consider them.

Hanoi, April 14, 2018

**Coordinator of the Forest Land Coalition**

*Signed*

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