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Legal frameworks for land conservation in Vietnam and Cambodia leave room for community-based conservation

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Vietnam

Country overview

Vietnam is long and slender, stretching across 15 latitudes, and boasting over 3,000 km of coastline.¹ It is a quilt of ecosystems and biodiversity hotspots. Forests, grasslands, inland wetlands, dunes, inter-tidal mudflats, estuaries, sea grass beds, coral reefs, and marine areas teem with life, both common and endemic.² The value of Vietnam's natural resources is reflected in their exploitation. Illegal private and commercial resource use and animal trading have driven many species to near extinction. These challenges, paired with climate change impacts and other threats increase the urgency of conservation in Vietnam.

Legal framework

The legal context for private land protection in Vietnam is unique, as the country has no privately-owned land.³ All land belongs to the state, which has autonomy to manage and allocate land-use rights. Legislation has also evolved significantly over the past two decades to recognize the importance of biodiversity.

One particularly influential change came when The Biodiversity Law of 2008 created a legal basis for local community involvement in natural resource conservation through collaborative management and benefit sharing.⁴ Several other laws with ties to environmental protection, which were created in the 1990s, were amended in the early 21st century to more clearly regulate environmental activities. These include the Forest Protection and Development Law, amended in 2004; the Land Use Law, most recently amended in 2013; and the Fisheries Law, amended in 2003.

¹ Ministry of Natural Resources and Environment. 2015. Vietnam National Biodiversity Strategy to 2020, Vision to 2030. P. 63. <https://www.cbd.int/doc/world/vn/vn-nbsap-v3-en.pdf>.

² "EASEACCN HUB Newsletter"

³ The National Assembly, Socialist Republic of Vietnam. 2013. Land Law, Law No. 45/2013/QH13.

<http://vietnamlawenglish.blogspot.com/2013/11/vietnam-land-law-2013-law-no-452013qh13.html>.

⁴ "EASEACCN HUB Newsletter"

While there are no private landowners in Vietnam, the state does have several mechanisms to allow temporary private control over land. The most comprehensive of these is the Red Book Certificate (RBC) program.⁵ An RBC grants the right to use, mortgage, transfer, lease, and inherit a parcel of land for 50 years. Another common type of land-use agreement is a contract. Contracts give organizations, households, or communities certain land rights on state property forests for a period of five years.⁶ In exchange, the land user agrees to protect and sustainably manage the area.

A Forest lease is another conservation tool that shares characteristics with both RBCs and contracts. When the state issues a forest lease, it gives a private entity permission to use land in a designated way for 50 years. In exchange, the land user agrees to either pay an annual rent or compensate the state upfront.⁷ Unfortunately, forest leases are often used to allow development and other exploitative industry, but they have also been leveraged to enable conservation and sustainable land management and resource use.

These mechanisms for dispersing land use rights are popular, though most land is still managed by the state. In 2005, just over three-quarters of forestland was owned and controlled by the state, while the remainder was state-owned but privately controlled.⁸

Conservation mechanisms

The 2004 Law on Forest Protection and Development created three classifications for forest land in Vietnam.⁹ Production forests are managed to supply commercial products; Protection forests maintain the integrity of land and water; and Special Use Forests are leveraged to conserve nature.¹⁰

Of these three forest types, Special Use Forests are the most clearly defined and well regulated. These areas are overseen by forest management boards and are further categorized based on the extent of their protected status. Types of Special Use Forests include national parks, nature conservation zones, landscape protection zones, and forests for scientific research and experimentation. These areas account for 2,265,754 ha and represent 7.2 percent of national territory.¹¹

Vietnam does not have a central unit for managing its protected areas. Except for six national parks that are managed by the Ministry of Agriculture and Rural Development, the task of overseeing protected areas falls to provincial agencies or district people's committees.¹² There is also no formal definition in Vietnam law for Privately Protected Areas (PPAs), due partly to the lack of private land ownership.

Government action and community conservation

⁵ Quang Tan, Nguyen. 2005. Trends in Forest Ownership, Forest Resources Tenure and Institutional Arrangements: Are they contributing to better forest management and poverty Reduction? - The Case of Vietnam. P. 4. <http://www.fao.org/forestry/10582-08d5469cf92f69afa4aa73e8843aff998.pdf>.

⁶ Vietnam Ministry of Agriculture and Rural Development. 2013. "UN-REDD Viet Nam Phase II Programme: Operationalising REDD+ in Viet Nam." p. 9. <http://vietnam-redd.org/Upload/CMS/Content/REDD%20projects/UN-REDD%20VN%20Phase%202/PD-signed.pdf>.

⁷ National Assembly of the Socialist Republic of Vietnam. 2013. Land Law (Law No. 45/2013/QH-13).

http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/mldocument_view/?set_language=en.

⁸ Luong, Thi Hoan. 2014. "Forest resources and forestry in Vietnam." Vietnamese Journal of the Environment, 6(2): 171-177. <https://oa.slubdresden.de/ejournals/ive/article/download/192/171>.

⁹ National Assembly of the Socialist Republic of Vietnam. 2004. Law on Forest Protection and Development (No. 29/2004/QH11). https://theredddesk.org/sites/default/files/law_on_forest_protection_and_development_-_vietnam_2.pdf.

¹⁰ Quang Tan, 2005. P 23

¹¹ Ministry of Natural Resources and Environment, 2015. p. 59

¹² Ministry of Natural Resources and Environment, 2015.

In its 2015 National Biodiversity Strategy and Action Plans, Vietnam calls for an increase in financial resources for biodiversity conservation.¹³ It identifies several financial incentive mechanisms that leverage carbon markets as potential tools to complement private-sector investment.

The government already employs some financial incentives to promote forest protection. In the past, it has used Payments for Forest Ecosystem Services, provided through the Forest Protection and Development Fund and the Five Million Hectare Reforestation Program, to fund conservation activities. The government also allows ecotourism in Special Use Forests if the ventures comply with relevant forest laws and decrees.¹⁴ Ecotourism has increased significantly in Vietnam since about 2010. As such, tourism is now a major contributor to GDP, employment and economic development have improved, and natural resources are better protected.¹⁵

In the past two decades, emerging legislation has opened new doors to community participation in land and biodiversity conservation. The country's 2003 Management Strategy for a Protected Area System in Vietnam to 2010 highlighted community participation as being integral to implementing national policies. In 2008, Vietnam's Biodiversity law was updated to create the legal basis for local community involvement to simultaneously promote economic and natural-resource prosperity.

One of the best illustrations of successful community conservation in Vietnam began in 2011 when the People Resources and Conservation Foundation (PRCF) piloted a program to protect François' Langur, also known as leaf monkeys.¹⁶ The pilot used community-conservation techniques to support François' Langur and other endangered species that rely on habitat in Lam Binh and Sinh Long. These karst-forest landscapes in the Tuyen Quang province of northern Vietnam are critical to the primate population as well that of Chinese pangolin, lesser leaf-nosed bat, parti-colored flying squirrel, and a host of endangered amphibian, reptile, and plant species.

PRCF provided training to teach local, mainly ethnic minority, communities to patrol and monitor forests. It also gave participants the necessary facilities and equipment to take on the work. The program helped establish 11 village self-help groups and a revolving fund to support economic development and reduce pressure on forest resources. From 2018 to 2020, the program had a measurable impact on biodiversity. In two years, the François' Langur population grew from 88 individuals to 134.

Ongoing initiatives and emerging legislation

Over the past decade, Vietnam has maintained momentum in its environmental work and has continued to innovate its legal structure to enable collaborative conservation mechanisms. These include:

- The New Law on Environmental Protection¹⁷: adopted in 2021, the New Law brings Vietnam into line with international rules and practices, provides detailed guidance for implementing laws, and introduces new environmental requirements and procedures;

¹³ Ministry of Natural Resources and Environment, 2015.

¹⁴ Decision No. 186/2006/QĐ-TTg Promulgating the Regulation on Forest Management.

¹⁵ Ministry of Natural Resources and Environment, 2015.

¹⁶ "EASEACCN HUB Newsletter"

¹⁷ "Vietnam: Major changes in the new Environmental Protection Law," Global Compliance News, June 21, 2021, <https://www.globalcompliancencnews.com/2021/06/21/vietnam-major-changes-in-the-new-environmental-protection-law-07062021/>.

- The Strategy for Sustainable Agriculture and Rural Development for the 2021 - 2030 period, with a vision to 2050¹⁸: published in 2022, the strategy details several environmental goals, such as reducing greenhouse gas emissions by 10 percent, keeping forest coverage stable at 42 percent, and expanding coastal and marine protected areas to cover 3 to 5 percent of the natural national marine area;
- The National Biodiversity Strategy to 2030, with a vision to 2050¹⁹: approved in 2022, this master plan creates measurable conservation targets for the coming decade. It reiterates the goals in the bullet above and challenges the country to increase nature reserves to cover nine percent of land area, ensure at least 70 percent of nature reserves and natural heritage sites are effectively managed, restore at least 20 percent of degraded ecosystems, and restore and conserve at least 100,000 wild genetic resources and species; and
- The National Action Plan for Conservation and Sustainable Use of Wetlands²⁰: approved in 2021, the plan centers on recovering degraded wetlands. It sets out goals to create a national wetlands database and increase the number of internationally recognized wetland sites from 13 to 15. These goals will be accomplished using models of co-management and benefit sharing.

Cambodia

Country overview

Cradled by Vietnam's southern curve, Cambodia is one of the most forested and biodiverse countries in South Asia.²¹ Its forests, which cover 54 percent of its land area are home to threatened species, such as the Siamese crocodile and Asian elephant, which are no longer found in neighboring countries.²² It is also crossed by seven ecoregions and has a rich collection of plants, amphibians, reptiles, fish, and birds. Its unique landscape makes it particularly important to sustain, but a complicated history of land tenure, policy, and practice challenges conservationists.

Legal framework

There are several models of land ownership in Cambodia, defined by the Land Law of 1992. Collective ownership types include monastery land, held by Buddhist temples, and indigenous community land, which is typically used for agriculture. State-owned land can be public or private, with the former consisting mainly of infrastructure and natural resources, while the latter is held by the state but can be obtained for private title or used as concession land. Private land is fully owned by Cambodian nationals.

¹⁸ United States Department of Agriculture Foreign Agricultural Service, Vietnam Issues Sustainable Agriculture and Rural Development Strategy 2021-2030 Vision to 2050, Sarah Gilleski and Nguyen Linh. VM2022-0010, Hanoi, Vietnam: USDA.gov, 2022.

¹⁹ "National biodiversity strategy to 2030 approved," VietnamPlus, Vietnam News Agency, February 21, 2022, <https://en.vietnamplus.vn/national-biodiversity-strategy-to-2030-approved/222302.vnp>.

²⁰ "Issuing national action plan on conservation and sustainable use of wetlands 2021 – 2030," Project Office for Sustainability Research in Vietnam, FONA, September 24, 2021, <https://www.vd-office.org/en/issuing-national-action-plan-on-conservation-and-sustainable-use-of-wetlands-2021-2030/>

²¹ Kingdom of Cambodia. 2016. National Biodiversity Strategy and Action Plan - February 2016. <https://www.cbd.int/doc/world/kh/kh-nbsap-v2-en.pdf>.

²² "EASEACCN HUB Newsletter," January 2021.

Cambodian land can only be acquired through sale or transfer, as the 2001 Land Law established more stringent requirements for land ownership and use. Article 8 of the 2001 Land Law also stipulates that land can only be held by Cambodian citizens and legal entities.²³

Law and policy regarding land protection in Cambodia remains vague. There is no definition for PPAs and no formal mechanism for creating these areas within its legislation. Its 2016 National Biodiversity Strategy and Action Plan does not reference privately protected areas either, but it does include a call for stronger and more diverse governance, participation, and resource allocation toward biodiversity conservation.²⁴

Conservation mechanisms

Significant portions of Cambodia are already protected through a variety of conservation mechanisms. The Ministry of Environment (MoE) manages 62 natural protected areas, covering over 6,200,000 ha. These areas are divided into four zonal categories that determine how land can be used based on the sensitivity and importance of its habitat (see figure 1).²⁵ This ranges from complete restrictions on human contact to allowing agricultural production. Responsibility for natural protected areas has been increasingly returned to local governments, which supports community livelihood but often leaves areas understaffed and underfunded.²⁶

Cambodian Protected Area Zones			
Core Zone	Conservation Zone	Sustainable Use Zone	Community Zone
Most restricted	Adjacent to core zone; acts as buffer	Less protected	Least protected
Fragile Ecosystem	High ecological value	Resource use allowed for local and Indigenous communities	Prioritizes socioeconomic development of local & Indigenous communities
Critically endangered species	Access allowed only with gov. consent	Access widely permitted	Solely for local use
Access prohibited except by officials	Some exceptions for to promote community livelihood	Certain activities prohibited	Can house CPAs

Biodiversity conservation corridors are a complementary mechanism used to connect existing protected areas and promote safe species migration. A 2017 sub-decree designated nearly 1.5 million ha to be

²³ Kingdom of Cambodia. 2001. Royal Kram NS/RKM/0801/14 on the promulgation of the Land Law. Article 8. faolex.fao.org/docs/texts/cam27478.doc.

²⁴ Kingdom of Cambodia. 2016. National Biodiversity Strategy and Action Plan - February 2016. p. 26.

²⁵ Kanyara Sath et al., Community Protected Areas in Cambodia: Analysis of legal framework, practice and recommendations. (ClientEarth, 2022), https://www.clientearth.org/media/cbzoeazp/clientearth_cpa-report-cambodia_en.pdf.

²⁶ John Charles Eames OBE, BirdLife Indochina, Executive Director. Personal Communication. July 12, 2017

managed under this category, though it is unclear whether the corridors are officially part of the national natural protected lands network.²⁷

Community-based forestry is used to address discrepancies between local demand for and access to land and resources. The framework can also promote conservation interests and for-profit concession-based resource extraction. Community forests are overseen by the Ministry of Agriculture, Forestry, and Fisheries, which determines how locals can use these areas to simultaneously promote prosperity and sustainability. Over 300 community-managed forests exist on state public property.

Community Protected Areas (CPAs) are another form of community-based forestry, overseen by the MoE.²⁸ CPAs can be established within the sustainable-use and community zones of natural protected areas.²⁹ In 2021, the MoE had established 182 CPAs, covering over 300,000 ha.

Financial incentives and community action

Cambodia's government does not provide direct financial incentives for private land protection, but it does participate in three international programs. The UN-REDD Program facilitates the sale of carbon credits to promote conservation, which was first used in Cambodia to protect the Keo Seima Wildlife Sanctuary.³⁰ Cambodia has also leveraged the Critical Ecosystem Partnership Fund and the World Bank's Forest Carbon Partnership Facility, both of which engage foreign governments, private investors, and international carbon markets to help protect forested areas. Some private organizations have also been integral to conservation efforts by establishing long-term funding programs to support sustainable management of protected areas.

Where government protection falls short in Cambodia, private protection initiatives have begun to fill in the gaps.³¹ Veun Sai-Siem Pang Conservation Area is part of the largest block of intact forest in southeast Asia. It buffers the Virachey National Park and extends into Laos and Vietnam, housing a variety of critically endangered species and other species that are threatened by illegal logging, poaching, wildlife trafficking, and population pressure. Some native species have already been pushed to extinction. Despite rampant exploitation of the area and its high biodiversity value, Veun Sai-Siem Pang lacks protected status from the state and Indigenous people do not have state-recognized legal access to its resources.

In 2009, Non-Timber Forest Products—a Non-Governmental Organization based out of northeastern Cambodia—stepped in.³² The organization partnered with the MoE and the Provincial Department of the Environment to establish a community forest patrol. It recruited, trained, and facilitated the work of 208 community wardens who surveilled areas of the forest to remove snares, rescue animals, report

²⁷ Sokham, Touch. 2017. "Newly protected areas to span 1.5 m hectares." Phnom Penh Post, January 30, 2017. <https://www.phnompenhpost.com/national/newly-protected-areas-span-15m-hectares>.

²⁸ Kingdom of Cambodia. 2017. Guidelines on the Procedure and Process of Community Protected Area (CPA) Establishment. Ministry of Environment No. 066

²⁹ Open Development Cambodia. 2018. "Community protected areas (2006-2017)." Accessed November 18, 2018. https://opendevdevelopmentcambodia.net/dataset/?id=community-protected-areas-2006-2017&search_query=P3M9Y29tbXVuaXR5K3Byb3RlY3RlZCthcmVhcw==.

³⁰ Wildlife Conservation Society. 2016. "Cambodia's Keo Seima Wildlife Sanctuary Sells First Carbon Credits." WCS News Release, July 22, 2016. <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9125/Cambodias-Keo-Seima-Wildlife-Sanctuary-Sells-First-CarbonCredits.aspx>.

³¹ "EASEACCN HUB Newsletter"

³² "EASEACCN HUB Newsletter"

illegal activities, and monitor the landscape. The results of the infrastructure showed up in lower crime rates, reduced threats to native species, more robust economic prospects for communities, and increased awareness of biodiversity value among stakeholders.

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