



**Beyond 07/2011/TTLT from Land Rights  
to Customary Law Based Watershed Forest Co-governance:  
Case studies from Lung Sui (Hmong, Northern Vietnam),  
Hanh Dich (Black Thai, Central Vietnam),  
and Po E (H're, Central Highlands) communities.**

**COMMUNITY ENTREPRENEUR DEVELOPMENT INSTITUTE  
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## I. Background and Overviewing 2011- 2015 (NPA-SPERI/CENDI)

In 2011, SPERI and NPA initiated a cooperation under the program “**Civil Society Network Action Towards Community Ownership of Forest, Land & REDD+**”: A Pilot Customary Law Based Programmatic Approach to Forest Land Allocation under Joint Circular 07/2011/TTLT-BNNPTNT-BTNMT Dated Jan 29, 2011<sup>1</sup> and Directive 1019/TTg-ĐMDN Dated June 24, 2011<sup>2</sup>.

This program started in 2011 up to 2016 with its statement below:

*Cultural Identity, Biodiversity, Environment and Climate as well as CO<sub>2</sub> Emission are without borders. However, national politics & economics engage together to create many challenges and problems for environmental protection and Indigenous Minority Populations in the Mekong region including Vietnam. This pilot Customary Law Based Programmatic Approach towards “Community Ownership of Forest, Land & REDD+” is aimed at restructuring and de-centralizing the centralized top down approach towards forest and land allocation to consolidate stronger local traditional governance in natural resource management under Article 29 of the Forest Protection and Development Law/2004 QH-11; Decree 200/2004/ND-CP articles No.3 & 4; Joint Circular 07/2011/TTLT-BNNPTNT-BTNMT articles No 1, 2, 7 & 8 and Directive 1019/TTg-ĐMDN point 1.*

### 1. Circular 07/2011 and Directive 1019/2011 Analysis

In 2011, the Vietnam Government issued Joint Circular 07/TTLT (29 January 2011) promoting the process of transforming land-use contract titles into ownership titles, and Directive 1019/TTg (June 24, 2011) calling for this process to be completed by the end of 2012. SPERI immediately recognized the threat that these two legal papers presented for the continued ownership of forest and land by the indigenous ethnic minority peoples of Vietnam.

The problem was first, that the boundaries of land allocated for use under previous government programs (e.g. Program 327/QĐ/1992 and Decision 661/QĐ/1998 and Decision 163/QĐ/1999 which occupied nearly 9 million ha of forest in the hand of state owned forest enterprises) were never accurately surveyed, and therefore very often overlapped with each other and with land customarily owned by local communities; and second, that the accelerated process of land title certification (as per Directive 1019/TTg/2011) allowed insufficient time for the inevitable conflicts resulting from the above mentioned overlaps to be resolved. It also seriously threatened local indigenous communities with dispossession of their land (especially those communities in remote mountainous areas who would not be informed of the process) by better informed and already prepared State Owned Enterprises and Private Companies. In a word, the effect of these two legal procedures would be to ‘lock the gate’ for 16 million indigenous ethnic minority people in Vietnam from gaining ownership of their customary land. That land would pass into the hands of the growing ranks

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<sup>1</sup> Access to the Vietnamese version of the Joint Circular 07/2011/TTLT-BNNPTNT-BTNMT Dated Jan 29, 2011: [http://vanban.chinhphu.vn/portal/page?\\_pageid=578,33345598&\\_dad=portal&\\_schema=PORTAL&docid=99421](http://vanban.chinhphu.vn/portal/page?_pageid=578,33345598&_dad=portal&_schema=PORTAL&docid=99421)

<sup>2</sup> Access to the Vietnamese version of the Directive 1019/TTg-ĐMDN Dated June 24, 2011: [http://vanban.chinhphu.vn/portal/page?\\_pageid=517,34682326&\\_dad=portal&\\_schema=PORTAL&piref517\\_34682358\\_517\\_34682326\\_34682326.docid=101329&piref517\\_34682358\\_517\\_34682326\\_34682326.detail=1](http://vanban.chinhphu.vn/portal/page?_pageid=517,34682326&_dad=portal&_schema=PORTAL&piref517_34682358_517_34682326_34682326.docid=101329&piref517_34682358_517_34682326_34682326.detail=1)

of capitalist enterprises and industrial corporations to be exploited for short-term profitable gain, with the effect that the biodiversity of Vietnam's forests and the livelihoods, both spiritual and material, of 16 million indigenous ethnic minority people would be lost forever.

SPERI, because of its long and intense involvement with indigenous ethnic minority people in Vietnam, and its on-going commitment to preserve the cultural and biological diversity of Vietnam, was the only organization to recognize the danger represented by Circular 07/2011 and Directive 1019/2011; and because of its consistent focus upon land rights, the only organization that was equipped to act in defence of indigenous land ownership. And fortunately, at the time Circular 07 and Directive 1019 appeared in early of 2011, SPERI had already signed a contract with Norwegian Peoples Aid (NPA) to support its Farmer Field School in Simacai, and NPA helpfully agreed for this effort to be redirected to the more urgent problems raised by Circular 07 and Directive 1019.

## **2. The two sides of Circular 07/2011/TTLT**

There were two sides to Circular 07/2011. Ninety percent of it was in support of private and state owned companies because they were the only entities able to complete the administrative procedures in time (there were 10 annexes of instructions on the process of getting ownership title to land). Perhaps 9 percent of it was in favour of rich and knowledgeable farmers who were skilled enough to pursue claims themselves, but there was only 1 percent opportunity for indigenous ethnic minorities to apply for forest and land rights and even this one percent was reduced to zero by the Directive 1019 requiring all procedures to be completed by the end of 2012 (*it normally takes longer than two years for information on government policies to reach ethnic minority communities*). However, SPERI saw that if they could present sufficient evidence on the unworkability of the Directive 1019 deadline, the 1% opportunity provided by Circular 07 for indigenous communities to claim forest and land ownership could be effectively used. In the light of this opportunity, two pilot projects were proposed to facilitate the claims of two ethnic minority communities to community ownership of their customary forestland: the Hmong community of Lung Sui, in Simacai District, Lao Cai Province, and the Black Thai community of Hanh Dich in Que Phong District, Nghe An Province.

## **3. Hmong Group case in Lung Sui commune, Northwest of Vietnam**

Lung Sui was chosen because Simacai district is 95% deforested and the 5% of forest that remains does so because it has been preserved by the Hmong people as *Nao Long* ('Spirit') Forest. From having worked in Simacai since 1999, SPERI knew that most of this forest was under the management of the government's Watershed Management Board (WMB) and therefore likely to be claimed by them under Circular 07/2011. SPERI also knew that the WMB managed this land by contracting its maintenance to local farmers, and in this form of 'co-management' local farmers had to do with the land what the WMB instructed, such as planting commercially valuable but environmentally destructive exotic tree species. Meanwhile the Hmong customary system of natural resource management, based upon traditional cultural beliefs, is what preserved the remaining natural forests. This forest and the cultural values and identity to which it was integral was now at risk because of its overlapping boundaries with land claimed by the WMB. The SPERI project was aimed at having the overlapping/conflicts between the Hmong community and the WMB in Simacai resolved, and the forestland re-mapped, re-allocated, and re-distributed according to the customary regulations of the Hmong people. Detailed evidence of the problem of overlapping

boundaries, and guidelines for resolving this difficulty would then to be disseminated to the different provinces and regions of Vietnam as a solution to the problems raised by Circular 07/2011.

Another reason for choosing Simacai was that SPERI had been working in Lao Cai province since from 1994 to 1998; first in Sapa District with women handicraft and healer networks in co-managing natural resources, then shifting to working with the traditional healer and key farmer network via three thematic approaches: 1) Customary law in natural resource management; 2) Herbal wisdom in community health care and bio-cultural diversity preservation integrated with women's textile handicrafts; and 3) Ecological farming in land use planning for livelihood security from 1999 to 2004; then in 2004 opening a Farmer Field School in Simacai and up to today (2016) involving young indigenous farmer activists from different nearby districts in network action. From working with traditional healers and key farmers in different communities in Simacai SPERI was well aware of the situation of the overlapping of traditional forests with lands claimed by the WMB. The third reason for choosing Simacai was that over the time of working in Lao Cai, SPERI had developed very good relationships with the local authorities and the Ethnic Minority Council in Parliament. SPERI had also during this time developed a strong key-farmer network in Simacai. The ingredients that enabled SPERI to work effectively in Simacai were: 1) trust in the ability of the local people to define and solve problems according to their own cultural values, and 2) the trust of the local authorities that SPERI would work in the interests of all stakeholders.

To achieve the project objectives, the different local provincial, district, and communal authorities and department specialists, including WMB official staff, worked together with local elders and key farmers in identifying boundary overlaps caused by the top-down bureaucratic mapping of the government over the previous 13 years since WMB occupied the forest according to Decision 661/QĐ/1998, then re-mapped and re-classified the forest using traditional Hmong categories of “*Nao long*” spirit forest, clan forest, watershed forest, herbal forest, and community forest. This was the second time in the history of forest and land law in Vietnam that the customary categories of forest use had been legalized by district authorities for the purpose of forest mapping (the first time was supervised by TEW<sup>3</sup> in On oc village (Hmong), Muong lum commune, Yen chau district, Son la province in 2001 which was lobbying successfully the *Article. 29* of Forest Law 2004). The customary laws of Hmong were then used to develop a common set of regulations for forest monitoring. This also was the second time in Vietnam that customary laws defined by the local people had been used in this way. Finally, the forest and forestland was re-allocated to the communities and their land title procedures completed. Each step in this process involved training Conferences, conferences, and study tours in order to strengthen capacities, raise awareness and publicise the issues. The result was a wider public awareness of the problems and possibilities of the 07/2011 circular and the complete unworkability of the 1019/2011 directive.

The lessons learned from this process in Lung Sui were latter written up as “*30 unique steps<sup>4</sup> methodology in claiming forestland rights for ethnic groups*” detailing the ways the administrative process for claiming land ownership under Circular 07/2011 could be followed.

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<sup>3</sup> TEW stands for Towards Ethnic Women established in January 1994 - the grandmother of SPERI

<sup>4</sup> See 30 steps at [www.speri.org/](http://www.speri.org/) [www.cendiglobal.org](http://www.cendiglobal.org)

#### **4. Black Thai group in Hanh Dich commune, Central Vietnam**

Hanh Dich, a Black Thai community in Nghe An Province is another community with which SPERI has had a long engagement since 2000 via supervision of three thematic networks: 1) Customary law in natural resource management; 2) Herbal wisdom in community health care and bio-cultural diversity preservation; and 3) Women and credit through textile handicraft, and this enabled the same level of mutual trust and bottom-up participatory action as was possible in Lung Sui. However, circumstances in Hanh Dich were different from those in Lung Sui, and this required a slightly different approach. For the Hanh Dich community, claiming ownership of their forestland under Circular 07/2011 faced a major obstacle. Under the government's top-down "New Economic Development Policy for Youth Associations" which was applied in all mountainous areas in Vietnam in 2001, there were 6,163.5 ha of forest and land of Hanh Dich had been top-down mapped according to Decision No. 3192/QĐ-UB dated September 14, 2001 by the Nghe An provincial president in order for the Que Phong Youth Association to operate a commercial enterprise. This was done without informing the village or the Hanh Dich Communal Peoples' Committee leaders. After 3 years of conflict between the villagers and the Youth Association, from 2001 to 2004, this top-down program had failed in its enterprise, and legally the land should then have been returned to the Hanh Dich community. But instead it remained legally under the name of the now dormant "Nghe an Youth Association", and in 2011 (7 years later), under a new Industrial Development Policy, the 6,163.5 ha of forest land of Hanh Dich commune and ( included 2,232 ha of forest and land in Tien Phong commune and 1,369 ha of forest and land in Muong Noc commune, neighbouring communes of Hanh Dich) was transferred by the Decision No. 917/UBND-ĐT 02/03/2011 signed by Vice- President of Nghe an Provincial People Committee (Mr Nguyen Dinh Chi) to the Que Phong Rubber Joint Stock Company. The danger for the Hanh Dich community now was that if this land could not be recovered, by the end of December 2012 all 9765.7 ha of the three communes of Hanh Dich, Tien Phong and Muong Noc would automatically become the property of the Que Phong Rubber Company. Such would be the logical outcome of the joint operation of Circular 07/2011 and Directive 1019/2011 with direct support of Resolution No. 19-NQ/TW dated 31/10/2012 which pushed for the implementation of both Joint Circular 07/2011 & Directive 1019/2011 to hastily complete the granting of ownership titles of all remaining forest and land into the hands of big corporations which had been formed out of the original State Agriculture and Forestry Enterprises, and which now included newly registered foreign investors.

These were the circumstances in which SPERI entered into the Hanh Dich community to maximize the 1% opportunity provided by Circular 07/2011 for that community to secure ownership of its forest land. The challenge was to resolve the conflicts between 5 stakeholders: 1) the Youth Association; 2) the Rubber Company; 3) the Former President of Nghe An Province; 4) the current President of Nghe An Province; and 5) the Black Thai people of two communes.

A pilot model was begun in Pom Om village with multi-actor involvement to ensure that the process was transparent and that conflicts were resolved completely. The primary actors were local Black Thai people of Pom Om and neighbouring communities. Other actors were the district and communal authorities, technical staff and the border army station. Village meetings were held to discuss and devise a work plan and to study of local customs of forestland use. The traditional healers and key farmers, especially female healers and handicraft designers, went together with army station staff and official technical staff from Que Phong district to make transects through the different forest categories in Pom Om

bordering with other villages, especially those of Tien Phong commune. These field trips revealed astonishing mapping overlaps and cases of *land grabs dating back to Decision No. No. 917/UBND-DT* which corruptly transferred land from Hanh Dich commune to the “Nghe An Youth Association” under the New Economic Development Policy for Youth Associations in 2001.

The question then arose as to how SPERI was to deal with this. At this point the key actor that should have been involved was Tien Phong Commune, which had lost 2.232 ha to the Que Phong Rubber Company; so to decide what to do SPERI had an informal meeting with some progressive local authority members, one the Vice-Chairman of Que Phong District responsible for agriculture and forestry and another the head of natural resource management, to get their advice. There were two options: 1) if SPERI was to go ahead and involve Tien Phong Commune in kicking out the Que Phong Rubber Company in order to get back their land for the farmers it would be very dangerous. One possibility would be that SPERI would be kicked out of the area because Que Phong is an area of political, economic and strategic sensitivity because of it bordering with Laos; 2) if SPERI ignored the 2.232 ha of land grabbed under Decision *No. 917/UBND-DT* and continued to supervise Hanh Dich, at least the pilot of applying Circular 07 for recovering land for indigenous ethnic minorities could go ahead and its achievements contribute to the policy making process. These are the type of difficult decisions SPERI is often faced with, and after careful consideration and analysis SPERI decided to give up the Tien Phong commune in order to concentrate on Hanh Dich.

The next step was to call for a series of meetings for healers, key farmers and female handicraft specialists to connect directly with local authorities and professional staff at different levels of government for constructive open dialogue on the historical journey of Hanh Dich since 2001 up to today under the three thematic networks. Forests and field were surveyed and measured and training was provided in resource management for communal and village leaders; mapping conflicts were resolved and community regulations set up for forest management. A land allocation profile was then submitted to the district authority. This was approved by the Que Phong District people’s Committee in June 2012 and land certificates were granted to the Pom Om community in September. The project was then replicated in four other villages in Hanh Dich commune.

One very important outcome of these meetings was that after a survey and training courses Que Phong local authorities fully supported the return to Hanh Dich of about 4,7 ha of spirit forest named Tang Bia and Nhoi Hoc located at the top of the mountain which had been grabbed by the Que Phong Rubber Company. This was duly returned legally by the Que Phong District authorities to Hanh Dich commune as ‘spirit forest’ of the Pom Om community.

After this Pom Om called a meeting for all traditional healers, key farmers and handicraft specialists to come together over three days to map and document all of their customary laws for categorising their spiritual landscape, pointing out that Tang Bia and Nhoi Hoc spirit forests should be regarded as ‘religious land’ according to Article 160 of Land Law 2013. SPERI submitted to the Prime Minister, the Minister of Natural Resource management, Agriculture, Justice, the President of Vietnam, the President of Parliament calling for a change in Article 160 according to which religious land was defined only as land on which there were temples, graves and houses of worship. This definition caters only for the majority Vietnamese Kinh population and discriminates against the 16 million indigenous ethnic minority population for whom mountains, forest, rivers, streams, rocks and stones are

respected spiritually as they are found existing naturally in the environment without any alteration by human hands

## **5. Wider impacts to central highland of Vietnam**

### **5.1 National discourse on forestland rights**

By holding forums and Conferences at communal, district and central government levels with the interactive involvement of multi-stakeholders such as villagers, local authorities, technicians, researchers, activists, Parliamentarians, General Rubber Corporation<sup>5</sup> and media/press, the actions of SPERI in Lung Sui and Que Phong created a critical national discourse on forestland rights of ethnic minorities in upland areas of Vietnam. At the grassroots level, there was a movement to request the government to re-allocate forest and land to ethnic minorities. At the local authority level, requirements were being placed to improve the formal processes, guidelines and procedures in forestland allocation and mapping through 30 unique steps applied 07/2011 to the indigenous ethnic community in order to figure out the overlapping, especially for resolving conflicts between local residents, companies and the state in a transparent, fair and peaceful way. At the central level there was lobbying for amendments to the 2013 law on land (*Draft Version 2012*) via co-conferences with legislative committee of national parliament and Ho Chi Minh National Political Academy. The latter concentrated on *Article 43*. Point 2 Directory a), b) and c) on Grassroots Participation in Master Land Use Planning; *Article 137*. Special Forest Category where sacred/spirit forests belonging to indigenous communities for a hundred years must be integrated with *Article 160* Religious Land<sup>6</sup> (*Draft Version February 2013*). This article defines religious land only for Vietnamese Kinh as land on which Temples and Churches are built, ignored the sacred trees, rivers, stream and mountains which indigenous people have voluntarily preserved for a hundred years. Nationwide, there was involvement of media/press in broadcasting these issue of forestland rights for ethnic minorities.

### **5.2. Grassroots movement for community forestland and Customary Law Rights**

Because of the linkages, sharing and exchanging between pilot communities and existing networks on customary law in watershed forest governance earlier facilitated by SPERI, the issue of community forest land rights became expanded to other localities, resulting in 96 villages in Simacai district and 87 villages in Que Phong district asking their district authorities to re-allocate forest land from state and economic entities to local communities. Ethnic minority groups in other provinces (Quang Binh, Kon Tum, Lang Son) also successfully requested local authorities to grant title over community spirit and productive forestland, or to return productive land occupied by companies or taken for development programs

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<sup>5</sup> See SPERI's *Seven Recommendation* on behalf of Indigenous Ethnic Minority at the Landless Conference "Resident Land and Farming Land for Indigenous Ethnic Minority People in Mountainous Area" (La Thanh hotel, Hanoi, November, 1<sup>st</sup>, 2012) No.128/CV/November 1<sup>st</sup>, 2012 sent direct to Chairman of National Assembly of Vietnam; Chairman of Nationality Council of National Assembly; Members of National Assembly, 4<sup>th</sup> Session, 13<sup>th</sup> Term, 2012. (Annex 1).

<sup>6</sup> See SPERI's critical Analysis No. 100/CV/March 1<sup>st</sup>, 2013 towards Land Law's Drafting version article 5,6,7,26,34,35,36, 43,57, 130,131,132,154 sent direct to Compiling Board of 2013 Land Law and Division of Policy and Justice, Ministry of Natural Resources and Environment (Annex 2).

### 5.3. Systems of co-management

As a result of SPERI's action in Lung Sui and Que Phong the practices of customary institutions in the two pilot communities are now better recognized by the communal and district authorities and have been integrated with government policy to set up co-governing systems for forest management which are designed to overcome the weakness of both the customary and state systems taken separately; especially in the area of conflict resolution. Further advancements in co-management were achieved when SPERI shifted its work to Kon Plong District, Kontum province, central highland of Vietnam in 2013-16.

## 6. Kon Plong District

Building on the experiences gained from working in Lao Cai and Nghe An (and also in Luang Prabang, Laos), SPERI was able to pursue further forestland re-allocation projects in Kon Plong District, Kon Tum Province in the Central Highlands of Vietnam. There the circumstances were different again, but this time favourable to achieving a deeper level of customary law-based co-management. In the H're village of Vi Olak, both the local people's culture and natural environment were still largely intact, having been well preserved by the uninterrupted practice of their customary laws, and this called for a different approach. CENDI (Community Entrepreneur Development Institute) is a new organization established in January 19<sup>th</sup>, 2015 (SPERI's sister organization managing the project) began by giving total freedom to village leaders to explain their own indigenous system of knowledge and belief in nature spirits. It was learnt that according to these beliefs, nature is unmanageable by human intervention: No one can have control over it. Rather, it is a gift to be nurtured voluntarily by both individuals and the community as a whole. The elders were then asked to demonstrate their wisdom and norms for governing and managing their natural resources and were given the opportunity to map their own land according to their own land-use categories and spiritual names. They were then asked to formulate their own solutions, strategies and initiatives for overcoming the problems caused by unwanted government interventions into their system of land management.

The next step, rather than immediately seek land rights, was to first gain legalization of the village customary law so that when land right titles were given they would be given on the basis of those laws. This was a reversal of the previous method of land allocation applied by SPERI where land was first allocated and then customary law legalized, and it was found to have some important positive impacts. In the first place, the new methodology brought the H're discourse of land management directly to the consciousness of the local authorities, causing them to change their views of indigenous ethnic minorities, from one of 'backwardness' in need of guidance from the more 'advanced' Kinh to one of respect and support for local customary law.

Further positive impacts were achieved when the approach adopted in Vi Olak and Vi Klang 2 was broadened to involve other two neighbouring H're villages (Vi K'oa and Vi Po E 2). Here, the methodology was to utilize key-farmers from Vi Olak as speaker, trainers and facilitators of H're people in other villages. By this time, one key farmers from Vi Olak who had helped pioneer the transformation of land titles in their own village had moved up into the positions of Vice-President of the Po E Commune. Multi-stakeholder meeting were held involving representatives from the different villages (traditional and official village leaders), representative of mass organizations (Youth, Farmers' and Women's Unions), Commune and District People's Committees, local authority staff (of the Watershed Management Board,

District Forestry Dept, Justice Department), and the local television media. At these meeting, H're from Vi Olak and Vi Klang 2 described to H're from other villages their experiences of working with CENDI, and shared their own customary law and local knowledge. The effect of this was to build confidence, strengthen solidarity between the villages, and enliven their determination to preserve their culture of living harmoniously with nature. When H're people had other H're speak to them it built trust between the villages and confidence in their own culture, and when they saw H're people sitting alongside local authority staff and officials from Hanoi and speaking out about their own beliefs and values they felt proud of themselves and gained confidence to themselves speak out at these meetings. This was the outcome of the CENDI methodology of having the local people speak for themselves.

There was also a change of attitude on the part of the local authority staff and other outsiders who attended the meetings. It was a big shock for local authority staff to sit and listen to the ethnic minority farmers presenting their wisdom and practices of natural resource management and their knowledge of the environment. When local authority staff went together with the village elders to the field to conduct field surveys they saw with their own eyes how areas of the forest where spirits of nature were living were very well preserved, and how effective the customary law of the H're were for natural resource protection. They were also surprised when they came back to the village and saw young females and males enthusiastically describing how they perceived nature and the landscape and describing the different spirits, their locations and the rituals associated with them. It was a big shock especially for Watershed Management Board staff to see that H're people, young and old, male and female, knew far more about the natural environment than they did, telling them the names, identity and location of native trees. These shocks made them change their attitude and thinking about the H're people, and to see them not as 'backward' but as very knowledgeable. The local television media who were invited to these meeting also said they had never before seen a meeting where ethnic minority people were instructing government staff about natural resource management, pointed out the errors in government maps, and speaking out about the value of their own spiritual beliefs and customary law. This outcome from the various inter-village multi-stakeholders meetings confirmed for CENDI the effectiveness of their methodology of leaving the people to speak for themselves. The effect was that the local authority had complete confidence in the ability of H're people to manage the natural environment effectively according their own local knowledge and customary law thereby facilitating the easy transfer of land titles to the communities.

## **7. Customary law-based Co-governance**

The experience in Kon Plong also led to a new conceptualization of natural resource co-management. CENDI now recognizes three different conceptualizations of co-management: 1) 'Government directed Co-management'; 2) 'Customary law-based Co-management', and 3) '*Customary law-based Co-governance*'. The latter is a new concept formulated to fit the situation encountered in Kon Plong.

**7.1. Government directed Co-management:** Under this system, the government decides everything. Co-management is a concept implemented by the government at the insistence of Overseas Development Aid organizations and simply involves the delivery of some percentage of benefit from natural resource management to the local people. It gives no recognition to the customary laws or spiritual beliefs of the people. It is a 100% top-down system and its consequences are costly – economically, socially, culturally and ecologically. First, the government appoints and pays the salaries of a group of people – normally from 5

to 7 – who on behalf of a WMB manage an area of at least 5000 ha. For this they are given an amount of money with which to contract local people to manage a certain number of hectares – from 30 to 50 ha per household – for which the household receives VND 200,000 per hectare per year. This procedure has had seriously adverse effects upon indigenous ethnic minority communities. In areas where *SPERI has worked since 1998*, the most important values of the ethnic minority groups (whether they be Hmong, Red Dzaio, Thai, Malieng or H're) are their community values in terms of which they share everything voluntarily with each other – including the forest. But when a WMB contracts with one household to manage the forest, those households who do not receive a contract view the forest as taken over by others and as no longer belonging to the community. They then attack the forest to get what they can out of it while they can. *This leads to conflict between households, the breakdown of community solidarity and the destruction of the forest. It also kills the customary laws of the community through which they previously protected the forest communally through their ritual and ceremonial practices.* It is this destructive system that SPERI/CENDI has been working against by providing viable alternatives based on customary law.

**7.2. Customary Law-based Co-management:** In Luang Prabang District in Northern Laos, but also in Lao Cai and Nghe An province in Vietnam (as described above), SPERI/CENDI has been successful in getting customary law-based co-management of natural resources legalized. In this process SPERI/CENDI began by first lobbying the local authorities using established land law and policy to point out in conferences, Conferences, seminars, and to the media, the cost to all concerned of the breakdown of local customs and the moral foundations of village life in ethnic minority villages caused by them losing their land, livelihoods and identity. This was done to gain political support for a change in policy and the reallocation of land to ethnic minority communities. After this, legalization would be sought for the community's customary law for managing that land. Under this model of co-management of natural resources the ratio of customary law to government regulations is about equal, in that the customary law regulations need to be compatible with those of the government. In Kon Plong the opportunity arose to extend this model toward full 100% customary law governance.

**7.3. Customary Law-based Co-governance:** When SPERI (via CENDI) moved to Kon Plong District they found a situation where the culture and natural environment of the local H're people was still largely intact. All the villages in the project area were of the same H're ethnic group, living in the same ecosystem, sharing the same belief in spirits of nature, and governing their natural resources according to their own customs and norms. The wishes of the people were to have their customary system of natural resource governance legalized by the government so they could share in the monitoring of the forest, alongside the Watershed Management Board and the Commune People's Committee, but according to their own ritual schedule of '*visiting the forest*'. Under this system the ratio of customary to government involvement natural resource management is nearly 100% customary, with the government needed only to legalize the customary law and to intervene as legal arbiter in the case where there was conflicts over land with outsiders. SPERI/CENDI describes this system of land management as 'Co-governance' rather than 'Co-management' and has been successful in getting it accepted in Vi Olak and its three neighbouring H're villages. It has now been asked by the Kon Plong district authorities to implement similar customary law-based co-governance systems in other communes in the district with other ethnic groups.

## II. Conclusion

The above details provide a brief summary of the activities of SPERI/CENDI from 2011 to 2016 in protecting the rights of indigenous ethnic minority peoples to their customary owned forest land following the issuing of Joint Circular 07/2011 and Directive 1019/2011. The successes achieved have been built upon a long engagement with indigenous ethnic minority communities in Vietnam since 1992 and a methodology of full participatory engagement by the local people.

Unfortunately, in the activities described above, SPERI has been unsuccessful in its lobbying for a change to the Land Law 2013, *Article 43*. Point 2 Directory a), b) and c) on Grassroots Participation in Master Land Use Planning; *Article 137*. Special Forest Category where sacred/spirit forests belonging to indigenous communities for a hundred years must be integrated with *Article 160* Religious Land, but has been successful practically in achieving official recognition of sacred spirit forest areas in Lung Sui, Que Phong, and Kon Plong (also at Sai duan village in Bat xat district of Lao cai in 2014), and in having this land returned legally to those communities to be nurtured by them according to their own customary law, indigenous categories of land use, wisdom, and knowledge. Hopefully, in the coming years, as the benefits of these achievements become more widely recognized, SPERI/CENDI and the LISO Alliance will achieve the required changes as the policy level, and eventual the re-writing of Article 160 on Religious Land so that 16 million indigenous people living in the mountains of Vietnam can fulfil their yearning to live in spiritual harmony with their natural environment and not be in constant conflict with the government.

This is the motivation that drives SPERI/CENDI and the LISO Alliance (CODE and CIRUM) to continue to concentrate on sacred spirit forest and defend the rights of the indigenous people to their sacred land and forest by continuing to present their wisdom, customary law, and community knowledge as providing the best solution to the problems of natural resource protection and management in the mountainous areas of Vietnam. The truth is that nature needs to be nurtured, it cannot be controlled. This is the belief of all indigenous peoples and it is also the belief of SPERI, CENDI and the LISO Alliance as represented in their logos and mission statements - Nurturing Nature. And it is the principle according to which these organizations monitor themselves in their journey of working and inter-acting with indigenous people wherever they are, in Vietnam, Laos, Thailand, Cambodia and Myanmar, and in the future in Himalayas, Amazon and the Pacific.

## III. NPA-CENDI's project expanded via CENDI 012016 contract

### Achievement Indicator from January to May 2016:

**1. *H're Customary Law in Forest Management Vi Klang 2 village was legalized*** under *Decision 81/2016/QĐ-UB dated 26 January 2016*.

**2. *The 26 individually held land right titles (Granted on 11 October 2013) were transformed into community land title for their continuation of forest co-management*** and protection based on the Vi Klang 2's customary law" *Decision 261/2016/QĐ-UB dated 22 April 2016 on forest and land allocation to the Vi Klang 2 village*. The total area of **215.3 ha** had been voluntarily returned by 26 households for *community*

*management according to the village customary law and Decision 81/2016/QĐ-UB dated 26 January 2016.*

**3. A profile of Mapping under H're categories**, with all different spirit names of forests, streams, land and rice fields, is to be legalized by Kon Plong District Authority with measurements by GPS technique which was practiced by 25 key farmers as well as to clarify the border between Vi Klang 2 and Thach Nham WMB.

**4. A network of 25 key farmers among 4 neighboring villages** (including Vi Po E and Vi K'oa) to further develop the project achievements has been established officially by Po E Commune People Committee. Especially, two action plans for the inter-village forest governance regulation have been developed: one detailed for the second six month of 2016, and the other as strategic planning for 2017-2018.

**5. A network of customary law-based forest management and development linking** four villages (Vi Olak, Vi Klang 2, Vi Po E and Vi K'oa) with the Thach Nham WMB and Po E CPC. The parties have made commitments in writing that have been approved by the Kon Plong Office of Agriculture and Rural Development.

**6. Initially established four native tree nurseries.**

Additionally, the project has also achieved some other outcomes, such as: forest planning maps have been published including the H're's spiritual names for locations; names of spiritual forests have been legalized in the official maps; a regulation on protection forest co-governance has been approved by the Kon Plong DPC; a fund for nurturing forest has been set up in each village and come into operation; 25 young key farmer (including 7 females) have been trained in GPS technique in measuring forest volume and quality, clearly identifying boundaries between forest types and forest owners so that they will be able to explain to anyone who comes to check. These young people have shown themselves very confident when making presentations on rare and valuable sacred trees. This group has continued to be trained for future leadership toward the strategy of forest co-governance among the forest owners in Po E commune as well as to further re-train the local people from the neighboring villages in terms of Party and State policies and guidelines for Po E commune.

7. A two trust (in Vi Olak and Vi Klang 2) of 50 million VND/village to be established for key selected women for maintaining native nurseries and for enriching ecological environment movement on native species and nursery 2016-2018;

8. A Trust of inter-linkage among stakeholders (4 villages, Thach Nham Watershed Management Board and Po E Communal People Committee) hand in hand in Co-Management of Natural Resources 2016-2018 based on H're Customary Laws and legalized by Kon Plong District Authority.

9. Vi Klang 2 Village is ongoing to complete “Community Forestry Board and will present detail map and regulation” publically in coming weeks.

### Map of Vi K Lâng 2 village, PỜ Ê commune



Vang Gung K Rin	Sacred Forest –POE Commune Manage
Vang Gung Khắt	Production Forest - POE commune Manage
Vang G Rong	Vang G Rong – 232 ha Forest allocated to 26 households private - asked for Re-allocate to Vi Klang 2 community rights title
Vang G Rong	Casava Plantation for Factory in Quang Ngai
Vang G Rong	Vi Tỏi – Rice Field

-  Loang Preo - Sacred tree - female - as wife
-  Loang Preo - Sacred trees - make - Husband
-  Loang Chi Ri – Mother Tree

## **IV. Konplong District Basic information**

Kon Plong district is the richest in primary forest (82% of primary forest cover) in Kon Tum province, and is one of the most ethnically and culturally diverse, containing 4 ethnic groups: H're, Xo Dang, M'Nam and Ka Dong. The traditional cultures and practices of these groups are at risk of being eroded by a number of external causes, such as: 1) the cultural spaces to practice their religions associated with forest, namely sacred forest, have been shrinking due to expansion of commercial plantations and infrastructures; 2) disturbance of the ethnic composition caused by the rapid increased of ethnic Kinh majority migrants coming from other provinces (up from 17,210 in 2005 to 24,364 people in 2014 - Konplong district official reviewed 2014) who have had a negative impact on the social cohesion and community structures of the indigenous ethnic groups; 3) promotion of commercial tourism in this area having a negative impact on local communities' traditional values; 4) the top-down imposition of cultural criteria by the government which contradict with the local beliefs and customary law causing them to become vulnerable; 5) pressure from a cassava processing factory from neighbour Quang Ngai province which is promoting indigenous ethnic minority farmer to grow cassava by advancing loans and thereby pushing villagers to encroach on the forest in order to get to land for cassava plantations. Economic and ecological conditions in the area are vulnerable due to the long-time impacts of top-down government policies to encourage commercial plantations (i.e. cassava, rubber, coffee), and welcoming business companies to invest in and run modern style tourism. The area is also subject to land grabbing and pressure from outsiders such as State Owned Enterprises, business companies, and especially the ethnic Kinh majority migrants from lowland provinces, and speculators in forest and land since the district was certified as the tourism district by the decree 298/ND-TTg/ 2012 of the Prime Minister.

## **V. Vi Klang 2 village**

### **Social economic and natural resource**

Vi Klang 2 village is located to the Southeast of Po E commune about 38 km away from Kon Plong town, and 89 km away from Kontum toward the west. The village population is 100% H're Indigenous minority people who have been living in this area hundreds of years.

There is a total population of 421, of which 200 are female, in 97 households. There are 102 people who are of working age. There are 11 households, equivalent to 12% of the village, still living in difficult conditions.

There are 35 households without buffalo and cow. There are 35 children at kindergarten, 46 pupils and 31 at ordinary school and 2 teenage at high school. Totally 114 pupils in schooling.

The total natural area is 1,200 ha, of which 800 ha is forest, 50 ha is wet rice field, 46 ha is for cassava planting, 1,5 ha for corn planting, 1,5 ha for potato; and 3,5 ha for planting coffee. The village has a total of 197 buffalo and 88 cow under rotational ways of raising by 16 groups communally./.

## Annex 1

<b>Social Policy Ecology Research Institute (SPERI)</b> ----- <i>Number: 128/ c/o recommendations on Resident Land and Farming Land for Indigenous Ethnic Minority People in Mountainous Area</i>	<b>Socialist Republic of Vietnam</b> <b>Independence-Freedom-Happiness</b>  <i>Hanoi, dated Novembre 1<sup>st</sup>, 2012</i>
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- To:
- Chairman of National Assembly of Vietnam;
  - Chairman of Nationality Council of National Assembly;
  - Members of National Assembly, 4<sup>th</sup> Session, 13<sup>th</sup> Term, 2012

### **Recommendation from the Landless Conference**

*Resident Land and Farming Land for Indigenous Ethnic Minority People in Mountainous Area (La Thanh hotel, Hanoi, November, 1<sup>st</sup>, 2012)*

On November 1<sup>st</sup> 2012, the Social Policy Ecology Research Institute (SPERI), the Consultancy on Development (CODE), and Culture Identity and Resource Use and Management (CIRUM), co-organized a Conference on ‘*Resident Land and Farming Land for Indigenous Ethnic Minority People in Mountainous Area*’. Participants consisted of 1) representatives of farmers who face serious shortages of land coming from mountainous ethnic communities of Northern, Central and Central Highland regions, provinces of Lao Cai, Son La, Bac Can, Lang Son, Nghe An, Ha Tinh, Quang Binh and Kon Tum ; 2) communal and district officials coming from Hmong, Thai, Tay, Nung, Van Kieu, Bana, Ro Ngao and Kinh ethnic communities; 3) representative from the National Assembly office; 4) representative from the Nationalities Council of the National Assembly, 5) the Economic Committee of the National Assembly, 6) the Committee for Education and Propaganda of the Party’s Central Committee, 7) the Government Office, 8) the Bureau of Forestry, 9) the Land Research Institute of the Bureau of Land Management, 10) the Fund for Participation and Accountability, 11) the Department of Policy and Legality, Bureau of Land administration, 12) Vietnam Paper Corporation, 13) Vietnam Forestry Corporation, 14) Representative from Ministry of Agriculture and Rural Development, 15) Representative from Ho Chi Minh National Academy of Politics and Public Administration, 16) representative from Norwegian People's Aid (NPA), 17) Bread for the World (BfdW), 18) Website of Vietnam Communist Party, 19) Politics and Social television - VTV1, and 20) the media, television, Radio of Vietnam.

The following main contents and recommendations of the Conference are collected by the organizers and sent to the ongoing 4<sup>th</sup> Session of 13<sup>th</sup> Term National Assembly regarding Resolution No. 438/NQ-UBTVQH 13 dated January 12<sup>th</sup>, 2012 and Detail Plan No. 152/KH – DGS dated May 25<sup>th</sup>, 2012 of the Standing Committee of the National Assembly on the

supervision of ‘the implementation of policies, legal document on residential land, production land for ethnic minority peoples’:

**Firstly,** Shortage of residential land and production land.<sup>7</sup> Ethnic minority peoples of some localities even do not have production land, lose sacred forests for worshipping their ancestors, and lose land for practicing management, worshipping, and nurturing nature according to belief system of ethnic groups. Losing spiritual forests, herbal forests, and clan forests means losing existence spaces for multi-generational traditional culture of ethnic peoples. Shortage of production land signifies insufficient vital foundation for maintaining livelihood security of mountainous ethnic peoples, and its outcome contradicts the orientations of the Party, such as Guideline No. 29 in 1983, Resolution No. 26 of the 7<sup>th</sup> Plenum of 9<sup>th</sup> term Party Central Committee in 2003, and the 6<sup>th</sup> Plenum of 11<sup>th</sup> term Party Central Committee in this October. Though mountainous areas contain vast areas of land, there remains land distribution inadequacy, low use efficiency, and messy exploitation. This phenomenon causes serious degradation of bio-diversity of land and forest and the erosion of cultural identity of ethnic groups, that becomes an unacceptable paradox for the country’s current development process;

**Secondly,** this paradox has been a focal point causing contradictions and conflicts reaching the level of complaints, denunciation and insecurity in mountainous society, and potential social unrest. If there is no sufficient synchronous measures, there will explode spontaneous selection of state power by the people;

**Thirdly,** since 1983, Guideline No. 29, then Resolution No 26 the 7<sup>th</sup> Plenum of 9<sup>th</sup> term Party Central Committee in 2003, and the most recent 6<sup>th</sup> Plenum of 11<sup>th</sup> term Party Central Committee, all reflect highly the political will for solving problems. Political will is the most significant foundation for implementing solutions and pilot models dealing with ethnic peoples’ shortage of residential and production land. The remaining issues are the realization of this will in the entire political system and attitude in implementation on the basis of people, community participatory democracy, co-responsibility with involvement of local people, so as to stabilize soon peoples’ spiritual and material life;

**Fourthly,** It is necessary to revise land law towards : 1) Provide specific policy to ethnic minority peoples ; 2) seeing that specialized-used and protection forests are not only allocated to subsidized salaried state management boards, but also to local ethnic communities for their own protection and management under a specific, suitable policy, which has regard to and is based upon ethnic people’s land and forest valuing perception and practice of voluntary ‘natural worship’ without government salary payment. For instance, traditional water protection forests, herbal forests, clan forests should be considered as

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<sup>7</sup> Inadequacy, inequality of residential land and production land between farmers and officers/ worker of enterprises: each officers/ worker of enterprise has 113.36 ha of forestland. Each mountainous farmer household has only 0.62 ha of production land. Average land per resettled household is merely 400 m<sup>2</sup> of land.

protection forests. Sacred forests, spiritual forests should be seen as special-use forests. The state should enact policy that accepts various distinctions and respects every ethnic customs and their perception of forest and land. Specifically, legal framework should be provided to enable ethnic people to maintain their religious practices towards this type of land and forests. 3) Rearrange and withdraw major portions of the most favourable production land from state enterprises and companies to allocate to ethnic peoples. The system of state forestry and agricultural enterprises should be reformed towards services for inputs and outputs of forestry production. Responsibilities and obligations of forestry enterprises should be as equal to those pertained to the mountainous households. This is the most efficient measures for utilization of land and forest resources, while at the same time promoting the strength of 15 million mountainous people. Ethnic people should have rights to pay taxes direct to state budget instead of through such intermediaries as forest enterprises or companies. Do not allow the existence of disguised land renting and getting taxes from that. This is a critical issue in the transitional period, whenever a considerable amount of forest enterprises and companies become intermediary actors to separate authorities from peoples and make people misunderstand the nature of a state of the people. 4) Reorganize the forest protecting force to become an actual force of the people, to combine people's forest protection to the ethnic people's monitoring and supervision, so as to ensure holistic efficiency of forestland use;

**Fifthly**, regarding state management: 1) Strengthen and build up communal administration to be strong enough with sufficient personnel and resources to deal with strict and effective local land management. 2) Readjust and complete communal land use planning with a strategy of implementation, supervision, management of land use planning in a disclosed, transparent and democratic manner. 3) Soundly implement democracy principles which have regard to respecting customs, traditional cultures, and perceptual values of each ethnic identity. 4) Strengthen people's supervision capacity at communal level, enhance forest and land management and administration skills for people and community after land allocation, so as to assure the build-up of a forestry society of self-reliance, self-responsibility, civilization, stability, and charms of cultural identities of each ethnic group;

**Sixthly**, Administrative power of all levels should become a central position to assemble social forces to involve in a solution to the mentioned paradox, of which communal level should be a foundation for initiations;

**Seventhly**, Respect resolutions of land overlapping, recalling adjacent forests and land from management boards of protection forests on the basis of ethnic people's ethics and participation; replicate and extend successful pilot models of community customary law-based land allocation in combination with forest allocation according to Joint-circular No. 07/TTLT/2011 in provinces of Son La, Lao Cai, Lang Son, Nghe An, Ha Tinh, Quang Binh. Special attention should be paid to pilot models of 'community rights towards spiritual forests, herbal forests, traditional clan forests, watershed forests' on the basis of integration between customary laws and statutory laws with advice from Social Policy Ecology Research Institute (SPERI) and Culture Identity and Resource Use and Management (CIRUM). Their efforts in land allocation in combination with forest allocation have been made upon 38,000

hectares of community forestland, production land, based on customary laws, Decree 163/1999/ND-CP and Joint Circular 07/TTLT/2011 and the instructions of land use planning towards ecological farming by the mentioned organizations in the above mentioned provinces;

We wish for the National Assembly members good health and would express our deep sincere appreciation of your interests for the sake of secure, sustainable livelihood sovereignty of mountainous ethnic minority peoples in Vietnam.

<p><b>c/o :</b></p> <p><i>1. National Assembly, 4<sup>th</sup> Session, 13<sup>th</sup> Term, 2012 ;</i></p> <p><i>2. Drafting team of Land law 2013 ;</i></p> <p><i>3. Ministry of Natural Resources and Environment ;</i></p> <p><i>4. Ministry of Agriculture and Rural Development ;</i></p> <p><i>5. Storage at offices of SPERI, CODE and CIRUM.</i></p>	<p><b>Social Policy Ecology Research Institute (SPERI)</b></p> <p><b>Director</b></p> <p><i>Signed and Stamped</i></p> <p><b>Professor.Dr.Khong Van Dien</b></p>
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## Annex 2.

Social Policy Ecology Research Institute  
(SPERI)  
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THE SOCIALIST REPUBLIC OF VIETNAM  
Independence – Freedom – Happiness

No.100/CV- SPERI

*Sub: Contribution opinion to the draft Land  
Law (amended)*

*Hanoi, 1 March 2013*

To: - **Compiling Board of 2013 Land Law;**  
- **Division of Policy and Justice, Ministry of Natural Resources and Environment**

Pursuant to Article 2, 3 &4 of Resolution 563/NQ-UBTVQH13 dated 21 January 2013 of the National Assembly's Standing Committee on organization of public opinion on the draft Land Law (amended);

Pursuant to Decision 239/QĐ-TTg dated 28 January 2013 on enacting a plan of organization of public opinion on the draft Land Law (amended) including I: Objectives and Requirements, and II. Contents, Forms and Subjects of public opinion.

The Social Policy Ecology Research Institute (SPERI) would like to contribute our opinion on amendments to the draft Land Law (amended) as bellows:

### **1. Clause 3, Article 5 (Land users):**

“3. Residential communities, including Vietnamese communities residing in the same village, street quarter, or similar residential area and **independent residential area** sharing the same customs and practices or clan”.

### **2. Clause 3 of Article 6 and Clause 4 of Article 7 (Persons taking responsibility before the State for land use and allocated land for management)**

”Representatives of residential community” in Clause 3 of Article 6 and Clause 4 of Article 7 should be ammended that: **”Village head, Deputy village head and village elder”** shall be representatives of the community. Because, the nature of the representatives and their functions prescribed by law exists permanently and they shall be responsible legally before the community.

### **3. Article 26: Responsibilities of the State for residential and agricultural production land applicable to ethnic minorities**

The term “agricultural production land” should be replaced by **“agricultural land”** and delete the words “forestry land” in Article 53, 55, 76, 80, 137...

b. To affirm the responsibilities of the State for land to the ethnic minority groups, should replace the word “facilitate” by “secure” in Clause 2.

Therefore, Article 26 should be amended as bellows:

Article 26: Responsibilities of the State for residential and **agricultural land** applicable to ethnic minorities

1. To adopt policies on residential land for ethnic minorities in conformity with their customs, practices, cultural identities and practical conditions of each region.

2. To adopt policies to **secure** ethnic minorities who are directly engaged in agricultural production in rural areas to have **agricultural land** for production.

**3. To adopt policies to secure ethnic minorities to be allocated land attached to forest for management and use in accordance with their customs and practices, including land with sacred forest, spiritual forest, forest for water resource protection and traditional socio-cultural forest.**

#### **5. Article 34, 35 & 36 regarding formulation of master plans and plans on land use**

a. The absence of communal-level master plans and plans on land use is not reasonable and contradicts Clause 6 of Article 34 (principles of formulation of master plans and plans for land use are to be democratic and public), violates the 1992 Constitution and the Draft on new Constitution as well. Because communal level is prescribed as an administrative unit in Article 118 of the 1992 Constitution and Article 115 of the Draft on new Constitution.

The communal level with its administrative office represents the State authority in the locality. According to Article 119 of the 1992 Constitution and Article 116 of the Draft on new Constitution, ‘People’s Councils are State authorities at respective localities, representing people’s will, aspirations and rights as masters in their localities; they are elected by the local population and are responsible to the local population and to the higher State authorities’. People’s Council at communal level represents the communal population in land ownership, and has competence to implement land ownership in the commune. Therefore, in order to create foundation for its representation and competence in land ownership implementation in the commune, communal-level master plans and plans on land use must be made.

Land belongs to the entire people. All land users are co-owners. The representative of the entire-people owner of land – the State should listen to the land users in the process of formulating master plans and plans on land use. If communal level master plans and plans on land use are waved, the direct land users lose chances to contribute their opinion in the process of formulating and implementing master plans and plans on land use which shall result in bureaucracy, lack of democracy, non-transparency causing law suits, conflicts and corruption.

The communal level having directly implemented master plans and plans on land use by following the district-level master plans and plans on land use rather than its own shall not ensure their feasibility and do cause the discrepancies. Having communal-level master plans and plans on land use shall facilitate the land users to register their land rights and the local people to monitor the process of changing land use purpose and users.

Therefore, communal-level master plans and plans on land use should be considered as an essential part of the system of national master plans and plans on land use.

**Therefore, Article 35 should be amended as follows:**

Article 35: System of master plans and plans on land use

1. National master plans and plans on land use.
2. Provincial-level master plans and plans on land use.
3. District-level master plans, plans on land use

#### **4. Communal-level master plans, plans on land use**

**Article 36 should be amended as follows:**

Article 36: Periods of master plans and plans on land use **and time for formulating** master plans and plans on land use

1. Periods of master plans and plans on land use
  - The period of master plans on land use is ten (10) years with vision of twenty (20) years.
  - The period of land use plans at national and provincial levels is five (5) years. District-level and communal-level land use plans must be made every year.

#### **2. Time for formulating master plans and plans on land use**

**Time for formulating master plans and plans on land use shall start in the second half of the last year of the previous period of master plans and plans for land use and finish by the second half of the first year of the next period of master plans and plans for land use.**

#### **6. Article 43: Competence to decide and approve master plans and plans on land use**

As already analyzed above, it is necessary to formulate communal-level master plans and plans on land use, and not necessary to formulate master plans and plans on land use for national defence and security. Therefore, Article 43 should add the communal-level's competence to decide and approve master plans and plans on land use as follows:

1. The National Assembly shall decide on national master plans and plans on land use;
2. The Government shall decide on provincial-level master plans and plans on land use;

#### **3. Provincial-level People's Committees shall approve communal-level master plans and plans on land use;**

4. Provincial-level, district-level and **communal-level** People's Committee shall submit their master plans and plans on land use to their respective People's Council for adoption before submitting them to the competent State agencies for approval as stated in Clause 2 and 3 of this Article. In case of not having the district-level People's Council in the locality, the district-level People's Committee shall submit to the provincial-level People's Committee for approval.

Provincial-level People's Committee, before approving district-level annual land use plans, shall submit to its People's Council for adoption of its annual land recovery plan to implement socio-economic development projects in the province.

#### **7. Article 57: Competence to change land use purpose**

Protective forest land and special-use forest land significantly effect socio-economy, landscape ecology and environment on a large scale. If the competence to change purpose of these forest land is delegated to locality, it shall not ensure the objectiveness, easy to be abused for development or dominated by interest groups...

Therefore, it is necessary to supplement to this Article **Clause 5: Change of land use purpose from special-use forest land and concentrated protective forest land must be decided by the Government.**

#### **8. Article 130: Production forest land**

Clause 1 of Article 130 that prescribes only allocation of production forest land being natural forest to the forest management organizations is unreasonable.

Therefore, Clause 1 of Article 3 should be amended that: The State shall allocate production forest land which is the concentrated natural forest located far from residential areas to the forest management organizations for management, protection and development; **allocate production forest land which is the natural forest located near residential areas in combination with protection of community water source, and production forest land which is the scattered natural forest to households, individuals and community for management, protection and development in combination with agro-forestry production and conservation and promotion of the national cultural identity.**

#### **9. Article 131: Protective forest land**

Clause 1 of Article 131 that prescribes only allocation of protective forest land to forest management organizations is unreasonable, because:

(i) Protective forest land has previously been allocated to the households, individuals and communities. If this Clause is applicable, how to handle the allocated areas?

(ii) Allocation of protective forest land to only the forest management organizations, not households, individuals and communities is not fair and practical (since some households and communities have been allocated protective forest land);

(iii) This Clause contradicts Clause 3 of Article 124 prescribing that households are entitled to be allocated protective forest land;

(iv) This Clause contradicts Clause 3 of Article 126 stating that: „agricultural land allocated to communities by the State are for protection and preservation of their cultural identity attached to their customs and practices”. This type of land often covers the natural forest and may be inside the protective forest;

(v) This clause contradicts Clause 5 of this Article (Article 131) stating that: „The Government shall prescribe in detail the allocation and contracting of forest land; rights and obligations of organizations, households and individuals having been allocated and contracted with the protective forest land”;

(vi) In the residential areas that are located in the protective forest without production land (these areas often lack cultivation land for production), local people need to be allocated with protective forest land to combine agro-forestry production with benefiting of forest products for their livelihood;

Therefore, Clause 1 of Article 131 should be amended that: The State shall allocate concentrated protective forest land to management and scientific research on protective forest organizations for forest management and protection; **allocate scattered protective forest land near residential areas to households, individuals and communities for forest**

**protect and develop in combination with agricultural production for preservation and promotion of the national cultural identity, and maximizing social responsibilities in mangement and protection of natural resources of the protective forests .**

#### **10. Article 132: Special-use forest land**

Clause 1 of Article 132 should be ammended that: The State shall allocate special-use forest land to special-use forest management organizations for management and protection in accordance with master plans and plans on land use approved by competent State agencies; **allocate scattered special-use forest land near residential areas to households and individuals for protection in combination with agro-forestry production, preservation and promotion of the national cultural identity.**

#### **11. Article 154: Land used for belief practices**

Clause 1 that prescribes land used for belief practices including communal houses, temples, shrines, hermitages, ancestral worship houses and ancestral temples is applicable only for the Kinh majority people. It means that more than 13 millions of ethnic minority people shall not have spaces for belief practices as prescribed in the Clause 1. These ethnic people have been practicing their rutuals to worship Natural Spirits (Stream Spirit, Forest Spirit, Moutain Spirit,...) who reside in the natural landscape surrounding them. Customary law on worshipping the Natural Spirits of the ethnic minority groups plays an extremely important role in their preservation and promotion of the national cultural identity, protection of land, forest and water resources.

Therefore, this Clause should be ammended as below:

Clause 1: Land for belief practices includes communal houses, temples, shrines, hermitages, ancestral worship houses and ancestral temples; **land used for spiritual ritual and ceremony purposes of the indigenous ethnic minority minorities.**

The Social Policy Ecology Research Institute would like to recommend the above-mentioned amendements, and looking foreword to your careful consideration in the Draft Land Law to help the ethnic minority groups and people living in the mountainous areas equally benefit from the Land Law to promote the its effects and maximize the social responsibilities for forest and land resources through the Land Law.

Yours sincerely,

**On behalf of Director of SPERI**

**To:**

- As mentioned above;
- Office for filling

**Tran Thi Lanh**  
**(signed and stamped)**

