

Vietnamese Law and policy and its impact on Biodiversity, Indigenous rights and Knowledge

Vietnam is located on the Indo-Chinese peninsula that connects the Asian mainland to Southeast Asia, making it a center for cultural exchange. A multi-ethnic country, Vietnam has 54 recognized ethnic groups, with the Kinh as the majority at 86.2 percent of the population. The other 53 are ethnic minority groups that make up around 13.8 percent of its 86 million populations. Each ethnic group has its own distinct culture and traditions, contributing to the country's rich cultural diversity.

The ethnic minority groups live mainly in mountainous and remote areas in the Northern and Central Vietnam provinces. At present, ethnic minorities are poor and suffer low living standards even though they have few populations. They are experiencing difficulties due to the change in livelihoods as a result of an increase in population and a decrease in the rate of forest area per capita, and extinctive and seriously degraded forest resources. **The increase in population due to: high birth rate, migration of the Kinh from lowland to high land and or among ethnic minorities (from north to central high land – Tay Nguyen to look for new fertile land) and new economic zone. After liberation 1954 and then 1975 government policies on new economic zones have moved big population (the Kinh) to mountainous areas and they mainly settle in . Also development of coffee, rubber ..farm and the fact that forest becomes more and more valuable leads to accumulation of forest land.**

Firstly, let's take the term "indigenous knowledge" (IK) in consideration under Vietnam circumstance. The word "indigenous" was rarely used after the liberation of Vietnam over France in 1954 as it reminds of the time Vietnam was colony of the French colonist. Except Kinh ethnic group, other 53 groups are called "dan toc thieu so" (ethnic minorities) or in other words, which seen to be kinder, "dan toc it nguoi" (groups with few population). The term "indigenous people" is not used to refer to these groups due to historical and political reasons. Up to now, there is not any term of "indigenous people" mentioned in official documents of Vietnam, sometimes it is considered as politically sensitive. Similarly, in official documents, government doesn't like to use "indigenous knowledge" and do use "traditional knowledge" instead.

However, researchers suppose that the two terms "traditional knowledge" and "indigenous knowledge" are different and they cannot be always alternated each other. That is why in recent 10 years, despites of government dislike the term "indigenous knowledge" has become widely used among researchers and social activists. In spite of the increasingly wider use of the term "indigenous knowledge, not many people can fully understand its meaning. As mentioned above, even the term "traditional knowledge" is rarely written even in newspapers, far rarely in laws, policies promulgated by the Government. In the law on biodiversity, which is expected to have provisions for

“traditional knowledge” protection, there is only a definition of “traditional knowledge” in Article 3, clause 28 of the **Law on Biodiversity**: *Traditional knowledge about gene resource is the understanding, experience, and initiatives of indigenous people in regards of gene use and preservation.* Though this definition is more specifically used for gene use and preservation, it can also be applied in other cases.

For the reasons above, to understand the impacts of existing laws and policies of Vietnam on conservation of biodiversity, indigenous people’s rights, and indigenous knowledge, an indirect analysis of policies of Vietnam on indigenous people, biodiversity, forest and environment conservation seems to be the only way. Some other laws and policies on practices of Oriental medicine, using herbal medicine, are also considered as a tool for indigenous knowledge conservation.

1. Review of existing laws and policies:

1.a. What are the existing national laws and policies that impact on or address IK and its role in biodiversity conservation?

Vietnam is a developing country in Southeast Asia. Along with the development course of the country, numbers of new laws and policies of Vietnam have been being constructed as these are vital instruments for country governance. By 2009, Vietnam has 265 laws and about 12,306 policies on most of main fields of the country, gradually meeting the demand for governing a law-governed country.

Indigenous knowledge: it can be said that there are not any specific laws or policies on conservation of indigenous knowledge (**IK**), or even traditional knowledge. These values are only protected indirectly through laws and policies on indigenous people_s in general, or through forest protection, forestry development and biodiversity conservation programs. As there has not been recognition of terminology, it is more obvious that role of **IK** in practice is not fully recognized in State documents and policies. Even though, in practice, researchers and social activists now have objective views on positive contribution of **IK** to biodiversity and ecological environment conservation. To analyze how the law protects indigenous knowledge/traditional knowledge, there must be indirect analysis of laws, policies related to the protection of forest, environment, biodiversity, culture_s, and indigenous people_s.

In article 5 of Vietnam’s Constitution, it is clearly stated that *“The Socialist republic of Vietnam is a unified country of ethnic groups living together in the country. The country has policy for fairness, consolidation, and mutual support amongst the ethnic groups, and strictly bans any action of discrimination and separation. The ethnic groups have rights to use their own languages, scripts, maintain their traditions and develop their customs and habits, and good cultures. The Government implements policy for development in every field in order to improve the physical and mental lives of ethnic groups.”* According to this Article, ethnic groups have rights to use their own languages, scripts, maintain their traditions and develop their customs, traditional practices and cultures, it means indigenous knowledge is of what they can conserve. However, **the ethnic groups have been looked down upon** **therefore** determination of **what are “decent”**

and “depraved” customs, habits, traditions and cultures are based on biased assumptions. As a result, during the last years, especially in the 20th century, many customs and habits of the ethnic minorities were supposed to be depraved ones, outdated, superstitious, and therefore were prohibited and disappeared.

In recent years, the Government expresses its encouragement to the maintenance and development of national cultural identity through the Resolution No.5 of the Central Communist Party. Therefore, ethnic festivals and cultural practice are gradually recovered. However, a lot of them were already lost as many elders are passing away. Other reasons for those indigenous knowledge being faded away are economic development situation, application of new highbred seeds and new farming methods which require the use of chemical pesticides, the use of modern medicine, etc.

In Annex 1, there are laws and policies in which IK is indirectly mentioned. We can take some examples of laws and policies which we think have influence on IK through protection of forest, environment and biodiversity.

Being aware of the disappearance of biodiversity and in accordance with the Convention on Biodiversity, Vietnam has issued the Law on biodiversity in 2008. That is the only law of Vietnam regulating the conservation and sustainable development of biodiversity, rights and obligations of organizations, households and individuals in the conservation and sustainable development of biodiversity.

Main provisions of the law are: (i) the conservation and sustainable development of biodiversity is the responsibility of the State and any organizations and individuals. (ii) Harmonization between conservation and exploitation and reasonable usage of biodiversity; between conservation, exploitation, reasonable usage of biodiversity and hunger eradication and poverty reduction. (iii) On-site conservation is main point, combining with off-site conservation. (iv) Organizations, individuals benefiting from the exploitation and using of biodiversity must share the benefits with relevant parties, ensuring the harmonization between the State’s benefits and organizations and individuals’ benefits.

(v) Assure the management of risks caused by genetically modified organisms and genetic samples of GMOs to biodiversity. Organizations, individuals benefiting from the exploitation and using of biodiversity must share the benefits with relevant parties, ensuring the harmonization between the State’s benefits and organizations and individuals’ benefits (article 4). There are regulations on the policy of the Government on conservation and sustainable development of biodiversity (article 5) which ensure the participation of local villagers in the process of developing and implementing plan on biodiversity conservation; Encourage and ensure rights, legal benefits of organizations, individuals who invest in and apply advanced technologies, traditional knowledge in the conservation and sustainable development of biodiversity. Prior informed Consultation with communities legally living in the area which is planned to be or bordered with a conservation area (article 22).

Article 61 of the Law clearly stimulates how to share benefits from access to genes between a) the State, b) Organizations, households, individuals who are assigned to manage gene sources; c) organizations, individuals who are licensed to access gene source, and the benefit sharing is done in accordance with the contract of gene source access and benefit sharing, and other related provisions of law. The Law on biodiversity has reached issues related to rights of people living inside the conservation area such as right to participate in process of planning and implementing the conservation, sharing benefits earned from gene source protection. However, in the Law, there are not any provisions specifically mention indigenous people. It is understood that indigenous people is part of „organizations, households, individuals”. Thus, in the view of UNDRIP, indigenous people and their such basic rights as Free, Prior Informed Consent (FPIC), benefit sharing and self-determination are not specifically mentioned.

The Law on forest protection and development issued in 2004 stipulates the manangement, protection, development, and usage of forest (hereinafter referred to as forest protection and development); rights and obligations of forest owners. In article 5, indigenous peoples who are recognized forest owners are in land households, individuals whom the Government assigns forest, lend forest and land for forest development, or recognize the forest use right, ownership right of planted forest, and who accept transfer of forest use right and ownership of planted forest for production. One of principles of this law is to ensure that working on forest can ensure the life of people who consider forest their livelihood source. Similar in the Biodiversity law, this Law only mentions general forest owners, there are not any specifical provisions mention of indigenous peoples or their traditional lands. Neither there is any provision regulating the application of traditional knowledge in protecting and developing forest.

Law on environment protection. In article 6, section 8, conservation and development of indigenous genes; hybriding and importing genes with high economic values and good for envorinment, which are supposed to be one of activities help protect environment, are encouraged. Article 29 about natural conservation regulates the investigation, evaluation and conservation plan in form of sea conservation area, national garden, natural conservation area, biosphere reserves, Species preserves. Article 30 about *Biodiversity protection* regulates (i) Biodiversity protection can only be executed on the basis that ensures rights and legal benefits of local communities and other relevant parties; (2) The State established gene banks to preserve and improve rare and valuable genes; encourage the importe of high valued genes. Article 34 stipulates the investigation, evaluation and determination of a regime for sustainable development of natural forest ecosystem. Similarity to the Law on forest protection and development, this law only mentions environment protection in general, not specifically indigenous people or their traditional forests. There is not any provision about the application of indigenous knowledge in protection and development of natural forest ecosystem, gene sources and biodiversity.

Regulations on the practices of Oriental Medicine issued in 1975 and Resolution on private medical practice issued in 2003. Before that the practice of oriental medicine was not a point of attention, even banned. The Resolution is seen an important policy for promotion of not only the practice of oriental medicine, but also the conservation of

indigenous knowledge/traditional knowledge, though the Resolution is not specifically issued for indigenous peoples and the indigenous knowledge.

In article 3 of the Resolution, there are specific provisions on individuals' practice of medicine. According to this article, hospitals, medical centers, medical resort and function recovery centers, drug store and center for application of oriental medicine are eligible to practice oriental medicine in accordance with the law. Clear regulations on the practice of traditional medicine has created favorable conditions for doctors, particularly healers who are ethnic people from remote areas, to be more confident in performing their practice. According to article 38 of the Resolution, the healers will be granted a practice certificate. Follow up the Resolution, a Circular on medical practice, practice of traditional medicine, and equipments for private medical centers No. 07/2007/TT-BYT, dated 25 May, 2007, instructing the issuance of practicing certificates to doctors, and that indigenous healers are given preferential conditions in the issuance of practicing certificates. For example, they can be issued with a certificate even though they have not joined any official academic courses.

Recent policies on ethnic minority peoples. Most of target subjects of programs on forest planting and regenerating, protection of biodiversity and forest ecosystem are ethnic minority groups. Besides programs on forest planting and regenerating as mentioned above, there are special programs related to poverty reduction in the communities of ethnic minority groups as follows:

Decision No. 07/2006/QĐ-TTg, dated January 10, 2006, of the Prime Minister, approving the Socio-economic development program in extremely poor communes in areas of mountainous and ethnic people in the period 2006-2010.

Program on Forest for Livelihood Improvement in the Central Highlands (FLITCH). The program is to improve livelihood of ethnic minorities by using forest.

Program 2945-QĐ-BNN-KL, dated October 5, 2007 on supporting sustainable development of agriculture and forestry in mountainous areas in the period 2008-2010.

Resolution No.30a/2008/NQ-CP, dated December 27, 2008, on Program for Rapid and sustainable poverty alleviation in 61 extremely poor districts, with certain target is to make faster change in physical and mental lives of the poor, ethnic minorities in the poor districts, reaching same level as in other districts by 2020.

Such programs as FLITCH and Program 2945-QĐ-BNN-KL, dated October 5, 2007 on supporting sustainable development of agriculture and forestry in mountainous areas in the period 2008-2010 have assisted the minorities in hunger eradication and poverty alleviation, helped them to improve their livelihood based on forests. For more detailed information given to the localities of the minorities, such Decision No. 2188/QĐ-UBND of Son La province, dated September 8, 2008, approving the Planning of forest conservation and development in Son La to 2015, with vision to 2020, should be referred.

Though it is a decision made by a mountainous province authority, there is not any provision specifically mention the roles and participation of indigenous peoples, nor the application of traditional knowledge/indigenous knowledge in forest protection and development.

When the general target of the National targeted program on poverty reduction in the period 2006-2010 under the Decision No.20/2007/QĐ-TTĐ, dated February 5, 2007,: “push up the progress of poverty reduction, minimize the potential of being poor again; consolidate results of poverty reduction, create opportunities for households escaped from poverty to have better life, improve living standards and production conditions in poor communes, extremely difficult communes; improve quality of life for poor households; limit the gap between incomes, living standards between urban and rural areas, between the Delta and mountainous areas, rich households and poor households groups” only mentioned the economic development, hunger eradication and poverty reduction in the whole nation in general, whilst Resolution 30a specifically issued for indigenous peoples, mentioned socio-economic development more comprehensively.

The general target of the Resolution 30a is “Create a faster change in the physical and mental life of the poor, the ethnic minorities in poor districts, reaching same level as in other districts by 2020. Assist the sustainable development in agriculture and forestry towards the production of agricultural goods, making use of advantages of the localities. Build up socio-economic infrastructure appropriate with conditions of each district; build a stable rural area rich in national cultural identity; intellectual level of villager gets improved, environment is protected; ensuring defense security”. In this target, we can think about an outlook of a stable mountainous areas which are rich in national cultural identity, where environment is protected and intellectual level of villagers is improved. However, in the content of the target, there are neither regulations nor methods to build a mountainous area which is both stable and rich in national cultural identity.

Policy and program on permanent settlement – DCDC. During the current years, Vietnam government has issued numerous policies aiming at encouraging the minorities in mountainous areas to permanently settle down - DCDC. These policies have proven effective in transforming many aspects of the ethnic people’s life, among those is the installation and improvement of the infrastructure system for manufacturing and services such as transportation, water resources, water supply, dwelling, medical centres and schools etc. Ethnic people’s knowledge and education have been improved significantly as a result of the exposure to new farming practices [I think it will be good to mention briefly the negative part here also even though it is already there in the paragraph below] and exchange information with the Kinh people as well as other ethnic groups. Nevertheless, it must be recognised that the DCDC results have not yet met the expectations due to reasons such as the community’s consciousness, psychology and traditions are hard to change, the ethnic people’s customs and habits are not well understood and their involvement in the resettlement process is still limited since the barriers in language and culture has resulted in them being passive and less adaptive. In the next years, together with the 135 program and other poverty reduction programs for the minorities, DCDC objectives will be further reinforced. Although the ethnic groups in

the remote areas would still continue shifting cultivation practice, this will be deemed as illegal by the law.

These DCDC program in certain extent has caused negative effects on the conservation of biodiversity and traditional knowledge/indigenous knowledge of indigenous people. The alternative farming practice is no longer existed; instead they apply intensive cultivation using new seeds and chemical pesticides, resulting in the disappearance of indigenous seeds. Agricultural land would get deprived due to the alternation and over use of chemical pesticides. The permanent settlement will change the minorities' customs and habits, their reactions and harmonization with nature, then they will gradually lose their instinct of living together with nature.

1.b. Are there any specific laws and provisions on indigenous peoples (IPs) or in the national laws and policies that provide for the protection and preservation of IK

As mentioned above, only in the Law on biodiversity and Law on intellectual property can we expect to find the term of IK.

In Law on biodiversity, article 64 about intellectual property rights of traditional knowledge of gene source states that:

1. Vietnamese Government subsidizes the copyright of traditional knowledge of gene source, encourages and assists organizations, individuals register copyright of traditional knowledge of gene source.
2. Ministry of Science and Technology presides and cooperates with other relevant ministries, ministerial level agencies in instructing the registration of copyright of traditional knowledge of gene source.

According to this Law, organizations and individuals have rights to register copyright of traditional knowledge about gene source in accordance with the Intellectual property Law. Intellectual property Law mainly comprises of regulations on author rights of art pieces, industrial designs, and also includes regulations on intellectual property of seeds. However, in the law, there is not any provision on copyright of traditional knowledge or indigenous knowledge.

1.c. Which are the laws on biodiversity conservation? Do they make any reference to IPs and in particular to IK and indigenous traditions?

At present, to implement CBD and UN FCCC, and later REDD, Vietnamese Government promulgated laws, policies and programs related to protection of forest and biodiversity. Especially when Vietnam joins UN-REDD program, biodiversity protection and participation of indigenous people attracts more attention. People have more concern about biodiversity owing to documents related to CBD and climate change which mentioned more frequently in daily live. As mentioned above, except the Law on biodiversity has a section, though very short (2 clauses) specifically about traditional knowledge, in most of other documents there is not any mention of traditional knowledge, far not indigenous knowledge.

l.d. Which national laws and policies took account of international laws (eg. Articles 8 j and 10c of the CBD, ILO conventions 111, 169, UNDRIP)

In Vietnam there are two laws related to IK: Law on Biodiversity and Law on Intellectual Property rights were made on the account of international laws.

l.e. List international conventions, declarations (relevant for indigenous peoples' rights, IK, IPs' culture, traditional occupation, biodiversity conservation,)

The following are the conventions and declarations signed/voted by the Socialist Republic of Vietnam:

- Declaration on indigenous people's rights
- Convention on biodiversity and Cartagena Protocol on bio safety
- UN Framework on climate change
- Kyoto Protocol under UN Framework Consitution on Climate Change
- International Convention on civil and political rights, 1966.
- UN Annoucement of human rights
- Annoucement of indigenous people's rights
- Global strategy of indigenous people and REDD
- Convention on protection and promotion of cultural diversity
- ILO Convention 111 on Discrimination in Respection for job and occupation (1958)
- Convention 138 (1973) on minimal working age
- Indigenous and Tribal peoples Convention 169, 1989.

2. Review of Implementation:

2.a. Are there any concrete projects and programs through which the laws and policies reviewed have been or are being implemented?

All above mentioned laws and policies, programs are currently being implemented in Vietnam. However, the same situation happened as in the cause of implementation of other laws and policies, people who implement the policies, don't fully understand those laws and policies. The practice of "following instructing circulars" has become main way of authorities at commune level. If there has not been any instructing circular, local authorities will wait, they are afraid of "doing wrong". So, the safest way is to follow instructions in circulars. That is a big reason why initiatives at local level are not improved.

The circumstance that local authorities keep waiting for circulars has become a long-year disease which is difficult to cure. In addition, the people may face difficulties caused by the fact that the circulars are insufficient, difficult to understand and even not in accordance with laws and policies. Circulars, instructions are often promulgated long after the promulgation of laws and policies. Financial and human resources needed for implementation of policies are also barriers, causing the policies less effective. In regard of finance, most of policies are often incorporated in other existing programs of the localities when they are delivered there. Moreover, there is limitation in both number and qualification of commune cadres, who directly implement the policies. To conclude, it cannot be said that the good policies and programs are being effectively implemented.

- collaborative management of protected areas in the country

No.	Form	Number	Square area (ha)
1	National parks	30	1.041.956
2	Natural protected forest	60	1.184.372
2a	Natural reservation areas	48	1.100.892
2b	Species/ preservation areas	12	83.480
3	Landscape protection Areas	38	173.764
	Total (Preserves)	128	2.400.092

Other conservation forms:
 5 Biosphere reserves recognized by UNESCO: Can Gio (Ho Chi Minh City), Cat Tien (Dong Nai, Lam Dong and Binh Phuoc provinces), Cat Ba (Hai Phong city), marine areas in Red River Delta (Nam Dinh and Thai Binh provinces) and Kien Giang.

2 world natural heritages: Ha Long Bay (Quang Ninh province) and Phong Nha-Ke Bang (Quang Binh province);

4 Asean natural heritages: Ba Be national park (Bac Can province), Hoang Lien (Lao Cai province), Chu Mom Ray (Kon Tum province), and Kon Ka Kinh (Gia Lai province).

- 2 Ramsar areas: Xuan Thuy national park (Nam Dinh province) and Cat Tien national park.

- community protected areas based on IK, indigenous institutions
 - At present, Vietnamese Government is implementing the policy to pilot assigning forest to ethnic communities in such provinces as Dien Bien, Son La, Lang Son, Thua Thien Hue, Quang Tri, etc.
 - Complete the project on building a cultural village of all Vietnam ethnic groups.
 - Has been implementing the project on preservation of typical intangible cultures of some ethnic communities.

- agro-biodiversity conservation: eg seed banks, in situ conservation of biodiversity

- ***Ex-situ conservation (off-site conservation)***

- i) *Forests for experiments and scientific research*

- Forests for experiments and scientific research include plantation, garden of collected forest plants and forest stands preserving genes of forest plants.
 - There are 17 forests for experiments with total square area of 8,516 ha.
 - Some typical experiment stations are: Trang Bom wood plantation (Thong Nhat district, Dong Nai province) with 155 species of 55 families, and 17 types of

bamboo and Neohouzeaua; Sai Gon botanic with more than 100 types of plants, etc.

(ii) Medical gardens

- In Vietnam, there are 3,800 species of medical plants of about 270 families.
- Among 848 species of medical plants, there are only 120 species and subspecies are determined needed to be preserved.
- Some existing medical gardens:
 - Sapa medical garden: there are 63 species which are preserved at the height of 1,500m.
 - Tam Dao medical garden: 175 species are preserved at the height of 900m.
 - Van Dien (Hanoi) medical garden: 294 species.
 - Medical garden at Hanoi Medical school: 134 species.
 - Medical garden at Vietnam Military Medical School: 95 species.
 - Da Lat seed center: there are 88 species collected and preserved at the height of 1,500m.
 - Vietnam gingseng center: 6 species preserved, etc.

(iii) Seed banks

- There are 4 bodies of Vietnam agriculture have cold storages, namely Center for plant resources, Institute for Agricultural Science and Technology in the South, Can Tho University and Institute for Cereals and foods.
- Plant gene bank is preserving more than 14,300 seeds of 115 species, including 3 gene banks as follows:
 - Bank of seed genes: 12,500 seeds of 83 seeded plant species
 - Bank of field plants' genes: 1,720 seeds of 32 plants which have asexual reproduction.
 - Bank of gene in vitro: is preserving 102 seeds of taro, idian taro.

2.b. To what extent do these programs promote or include IK

So far, neither indigenous knowledge nor traditional knowledge has been applied in implementation of projects such as conservation of biodiversity, gene source and forest ecosystem. People have not had opportunities to approach knowledge about biodiversity conservation (regulated in Convention on biological diversity) and roles of forests in the life of communities and humankind in general. They exploit forests badly and make use of any forest products, thinking that "if I don't take this, others will do". That is a consequence of weak management. Not only the villagers, but also cadres at commune level are not aware of the danger of losing biodiversity.

With such trend, it is likely that some gene sources of plants and animals were permanently lost in many forests, particularly forest in the northern bordering areas. At present, livelihoods of many ethnic communities in the northern mountainous area and

some middle part provinces cannot depend on forest any more, or forest is just a very limited source of income. Forest is no longer main source for the life of the villagers. After being exploited badly by both logging and land use transformation, natural forests are now in form of small bushes and get slow regeneration. In addition, the traditional farming methods on terraced field by creating holes on fields to put seeds off, which can prevent erosion, is no longer in use. Rapid and not planned hydropower and irrigation development causes not only negative effect on forest but it seriously affects on biodiversity and water resources.

The farming method on terraced fields has currently been changed. The sloping land is plowed in the same way as in plain land, causing strong erosion. Forest exploitation in periods which once proposed by communities is also no longer existed. Moreover, forest land are divided into 3 types (biodiversity conservation areas or national park; catchment areas and productive forest), leading to remarkable decrease in the square area villagers have rights to use and collect products. The culture of friendly reaction to nature is no longer existed, instead they chase profit without re-enriching land and gene source, causing the forest degraded in every aspect. Market demand leads to over-exploitation of forest production. For example: people collect medical plants and hunt rare animals to trade to business men at not high price.

3. Identify gaps:

3.a. Identify the gaps and needs for improvement in national laws and policies in ratification of international instruments and the harmonization of the former with the latter.

In general, policies for agricultural and rural development, biodiversity conservation, and specific policies for indigenous peoples have not shown a focal point, and have not got tight connection in implementation cause, so they have not had positive effects on the conservation and development. There are some general weaknesses in such policies as follows: (1) metaphysics, have separate views on everything, do not realize the dialectic relationship between them, for example: separate urban and rural area, do not realize the relationship between the two areas, and that they have to depend on each other for their development; isolate agriculture, forestry and non-agriculture industry, meanwhile that is only relative difference; together with development process, agriculture, forestry and non-agriculture industries are having tighter mutual dependence.

(2) Incomprehensive, in those policies, it is seen that there is only, or mainly agriculture in rural area; in practice, rural area as a comprehensive economy, or has been discovered, or has potential to be discovered; see that in rural areas all people work in only or mainly agricultural field, meanwhile there are many non-agriculture industries in there which are existing and will be improved to meet the demand of economic activities and the life of rural citizen, particularly indigenous peoples. In most of the development programs it is seen that their objectives and activities focusing only on economic development not in

resolving of social issues. And ethnic minority identities are not considered in their approaches.

The villagers have ability to protect forests by using their indigenous knowledge and experience, but there is not any mechanism to promote this process to a success.

Participation of indigenous peoples has not been encouraged. Roles of people living near or in forest, especially indigenous peoples whose traditional knowledge about biodiversity and forest ecosystem have not been clearly identified. Although ethnic minorities in Vietnam have received great assistance from the Government for hunger eradication and poverty reduction and social development, in most of programmes, they are likely objects, not subjects of the programmes. The participation of the villagers are mostly as an execution of program activities as required by others. The Law on biodiversity is the only law mentions that the villagers have rights to participate and are consulted for ideas in process of establishing preservation forest. Other laws, policies do not have clear regulations on the participation and decision making of the villagers.

Top-down policy making process excludes the participation of villagers, cultures and customs of relevant communities are not taken into account sufficiently or not stressed in this process. This is also one of reasons cause policies impractical. In addition, there is not any mechanism to encourage villagers to effectively take part in activities. Waiting for directions or support from higher authorities is still deeply stuck in their mind. The villagers are often not confident to take initial to implement, or apply their traditional experience and values in community activities, including the conservation of forest, biodiversity and their indigenous knowledge. Besides, there is not any mechanism to encourage the voluntary participation of villagers in public activities, as a consequence there is not any initiatives from communities in regard of biodiversity conservation.

Vietnam has faced a lot of difficulties in encouraging and attracting local people whose livelihoods depended on forests to participate in activities for forest protection and development, hunger eradication and poverty reduction. Some of difficulties faced due to the lack of propaganda, dissemination of information, legal documents to local communities. The assignment of responsibilities among management authorities at local level is not clear and sometimes overlap, etc. The Government's investment in management, protection and development of forest, biodiversity, is limited, not meeting the need.

Not fully understand and recognize significance of IK in conservation and development in mountainous areas. The significance and roles of IK/TK of indigenous peoples are not fully evaluated. Therefore, only in Law on biodiversity where IK is mentioned, whereas it is mostly not mentioned in any other documents.

The prejudice supposing that customs and habits of indigenous peoples are depraved and outdated; the prohibition of practices of indigenous knowledge, have faded away a number of special cultural values, and valuable knowledge about farming on terraced fields, abouts seeds, medical plants, architecture, etc. Such long-lasting prejudice causes indigenous peoples lost their confidence in their traditional knowledge passed by their ancestors through generations. Gradually they forget their knowledge as a result of being self-pity.

Traditional custom of indigenous peoples are forgotten because the communities were not permitted to practice for years, especially since forest land was allocated to individuals. For example, in Van Kieu Bru ethnic group tradition, if someone cuts a tree in the forest, he will be fined a 50 kg pig by the village. Local rice seeds were also lost as there was not any mechanism for preserving indigenous seeds, in addition new highbred seeds were used in haste through programmes for productivity increase, without careful selection. Indigenous communities are not yet aware of their roles in sustainable development of humankind, in forest protection, biodiversity and IK. Being stuck with the thinking of “beg-give”, together with being self-pity, indigenous people do not have any initiative for IK conservation and development and conservation of biodiversity and eco-environment.

Lack of mechanism for policy feedback. The mechanism of policy feedback is not really functioning, thus indigenous peoples do not have forum to speak out their ideas to policy makers. The traditional relationship in protecting and using forest and natural resource in general was broken. There has been legal framework for community conjunction, however there need to be more detailed, reasonable, careful and creative instructions on the assistance from outsiders, and the enthusiastic of cadres working directly with communities. Once that is done, the participation of communities will be improved.

As in current implementation, indigenous peoples are more like beneficiaries, not subjects of the programmes. They have not positively participated in programmes, not given their ideas to plan making process, not participated in supervising process. Actually supervising mechanism is not really effective at the moment. There has not been any channel for ideas, complaints of villagers to be reported officially and timely. When the communities have not really cooperated and participated with all their enthusiasm in forest management process, the forest cannot be protected and improved. A good management regime of forest and biodiversity will be a math need to be solved, and will decide the situation of forest in the future. Organized communities in traditional way with village patriarch and village head in the past played its effectiveness in protecting forest and other resource, as well as adapting to abnormal natural phenomenon. However, such structure and this is rarely applied now in communities of ethnic minorities. It is difficult to regenerate old community conjunction model and traditional rules without an appropriate approach, a creative application of policies in practice, and enthusiastic cadres for community development.

4. Make recommendations for advocacy works to address the gaps:

In process of policy making and program design, there are some principles to follow:

Participation of relevant parties, particularly communities. To make policies, programmes related to forest, biodiversity, etc., there need to be participation of relevant parties, specially communities, and must be on basis of FPIC and benefit sharing. Therefore, the positive participation of beneficiary group/communities based on FPIC should be one of prerequisite conditions of the Program.

Right and legal benefits of local people in access to forest land must be well executed. At local level (village and commune), rights and legal benefits of local people in regard of

access to forest land for production must be well executed. FPIC in process of allocating land, forest is an important factor for the success of biodiversity conservation and maintenance of IK. Therefore, it is necessary to evaluate the current situation of forest land using, with participation of villagers, or push up the progress of allocating forest land to communities and villagers in each place before developing programmes on forest protection and biodiversity.

Consider traditional rules and practices of communities in using and managing forest land, and protection of biodiversity and IK. In process of developing programmes and making relevant policies, it is necessary to take into account traditional rules and practices of communities in using and managing forest, consultation for villagers' consensus before developing any related activities. To achieve this, there need to have a professional workforce who are rich in experience and enthusiastic in working with community, and have working skills appropriate with villagers' awareness.

Give consideration to 2-way information system at the locality which is easy to create, easy to understand, so that the community can access information related to biodiversity and forest ecology, IK. This is also considered a mechanism to ensure corruption prevention and control.

Need to:

1) Conduct specific policies and program on conservation of indigenous people's knowledge in the relation with conservation and development of biodiversity, economy (agriculture, forestry), political- social live taking into consideration about indigenous peoples rights and their issues as well as livelihoods and culture aspect.

2) Re-organize Government bodies in charge of ethnic issues, biodiversity and have more cooperation among policies. Need to establish a body under the Government specialized in agricultural development for mountainous area and indigenous community, biodiversity, be responsible to tabulate all policies, programmes, and projects for indigenous peoples and biodiversity. This body will also be responsible for community development, as together with development, industrialization process, it is more necessary to promote community development, save family cultural value, and cultures of each ethnic group.

3) The Government needs to review all policies related to indigenous peoples and biodiversity to ensure the consistency about target, content, and time for implementation of such policies and avoid overlap in implementing those policies and program. And ensure that there is only one coordination body at central level, and only one body at local level to cooperate implementation of such policies and programs.

Review to re-organize administrative structure of authorities who are directly work with indigenous people, biodiversity, aiming to remove the middle level; give more responsibilities, rights, and improve abilities and facilities for authorities that nearest to community and conservation areas. Thus, if still maintain such authority, it should be a

support authority at provincial level, and not necessary to have at all localities; simultaneously improve responsibilities, rights, and obligations of authorities at commune level. Especially, improve capability of commune authority, as most of villagers, particularly who live in rural area, live and do their economic activities in a commune, and community of indigenous people. Only by doing so can we avoid the situation that they wait for circulars and instructions made through many authorities.

4) *Build advocacy ability* Encourage to develop associations, self-governing bodies of villagers who participate in indigenous policies, improve national cultural traditions, biodiversity conservation; ensure that associations, organizations can self control their activities, cooperate with each other and members (villagers in the indigenous communities); encourage to develop enterprise, co-operatives, and other forms of economic organization, as well as non-profit organizations to improve cooperation, economic strength and competitiveness of members, political stand, social stand of indigenous communities. Build network of communities participating in biodiversity conservation, forest ecosystem...Through the network, voice of villagers will be collected, and reported more sufficiently and in a system to policy makers. Also, organizations of communities can share information and experience, and cooperate with each other through the network.

Annex : Referent laws and policies, Programs

04/2004/QĐ- BTNMT	Decision on Action plan of Sustainable conservation and development for water land period 2004-2010
Decision 158/2008/QĐ – TTg date 2/12/2008	National target program for CC adaptation period 2009-2015 – NTP/CCR
35/2005/CT-TTg	Order on Implementation of Kyoto Protocol – UNFCCC
Decision 2730/QĐ-BNN-KHCN date 5/9/2008	Framework of Action Plan of CC adaptation period 2008-2020 to strengthen capacity against mitigation and adaptation, alleviate CC consequence and ensure sustainable development of rural areas and agriculture
No 79/2007/QĐ-TTg	Decision on National action Plan of Bio-diversity until 2010 and orientation to the year 2020 for implementation of CBD and Cartagena Protocol on bio-safety
No 07/2006/QĐ-TTg date 10/ 01/2006	Decision on Socio-economic development plan for extreme difficult ethnic minority and mountainous communes period 2006-2010
No 78/2008/QĐ-TTg date 10/ 6/2008	Decision on Policies on implementation of settlement of population according 193/2006/QDD-TTg dated 24/8/2006 of priminister
No 134/2004/ QĐ-TTg 20/ 7/2004	Decision on policies on allocation of cultivation land and housing and clean water for poor ethnic minority households
No 193/2006/QĐ-TTg date 24/8/2006	Decision on Program resettlement for population in the areas of: disaster, extremely difficult, border, island,

	protected forest, special forest period 2006-2010 and orientation to the year 2015
No 198/2007/QĐ-TTg date 31/12/2007	Decision on amend men for No 134/2004/QĐ- TTg dated 20/7/2004 on Decision on policies on allocation of cultivation land and housing and clean water for poor ethnic minority households
No 289/QĐ-TTg date 18/3/2008	Policies on support ethnic minority household – poor, nearly poor, fishery households
No 33/2007/QĐ-TTg date 05/3/2007	Policies on support resettlement and fixed cultivation and settlement for ethnic minority people period 2007-2010
No 102/2009/QĐ-TTg date 07/8/2009	Policies on direct support for poor households in difficult areas
No 33/2007/QĐ-TTg date 05/3/2007	List of Administrative units belong to extrem difficult areas
No 52/2008/TTLT-BNN-BTC	Instruction for subsidiary of rice for ethnic minority to do afforestation instead of shifting cultivation
No 525/TTg date 02/11/1993	Instruction on means of socio-economic development in mountainous areas
No 99 /2007/TT-BTC date 10/ 8 /2010	Instruction for financial mechanism of fixed settlement and cultivation for ethnic minority according to decision 33/2007/QĐ-TTg dated 05/3/2007
No 39/1998/CT-TTg date 3/12/1998	Decision on promotion of culture and communication promotion in ethnic minority areas
No 4687/VPCP-KTTH, date 10/07/2009	Amendment for decision 289/QĐ-TTg - Policies on support ethnic minority household – poor, nearly poor, fishery households
No 334/CT-TTg date 10/ 3/2009	Decision for strengthen methods of implementation Program 5 ha afforestation
Số 146/2005/QĐ-TTg ngày 15 tháng 6 năm 2005	Decision on reclaiming cultivation land of state farm to allocate to the poor ethnic minority households
No 147/2007/QĐ-TTg Date 10/ 9/ 2007	Policies on development of cultivation forest period 2007-2015
No 304/2005/QĐ-TTg date 23/ 11/ 2005	Decision on pilot on hand over forest to ethnic minority household and community for conservation purpose in Tay Nguyen highland
No 05/2008/NĐ CP date 14 / 01/2008	Decision on establishment of Forest conservation and development
No 30a/2008/NQ-CP, date 27/ 12 /2008	Decision on Rapid Poverty alleviation for 61 poor districts

No 01/2008/QĐ-UBND date 11/01/2008	Decision on List of extremely difficult hamlets and inclusion of these in 135 program phase II
No 135/1998/QĐ-TTg date 31/7/1998	Decision on Socio-economic development Program for extremely difficult communes in remote areas
No 1592/QĐ-TTg date 12/10/2009	Policies on continuing support ethnic minority household – poor, nearly poor, fishery households until year 2010
No 1342/QĐ-TTg date 25/08/2009	Decision on Plan of fixed cultivation and settlement for ethnic minority people until year 2010
No 18/2007/QĐ-TTg Date 05/2 /2007	Decision on Forestry Development Strategy for Vietnam period 2006-2020
No 29/2004/QH11, date 03/ 12 / 2004	Law on Forest conservation and development
No 13/2003/QH11 date 26 / 11/ 2003	Land law
So 52/2005/QH 11 ngày 29/11/2005	Law on Environment Protection
No 20/2008/qh12 date 13/11/ 2008	Law on Bio-diversity
No 50/2005/QH11 date 29/11/ 2005	Law on Intellectual Property Rights
No 184/BYT-QĐ date 6/5/1975	Instruction on Oriental medicine and treatment
No 07/2003/L/CTN date 13/3/2003	Ordinance on Private Oriental medicine and treatment
No 07/2007/TT-BYT date 25/5/2007	Instruction for Private Oriental medicine and treatment and medicine facilities