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**Governance and Participation**  
**A Series of Policy Discussion Papers**

**Environmental Disputes, Social Changes,  
and Distributive Justice in Viet Nam:  
Case Studies, Comparative Analysis, and  
Policy Implications**

January 2018

The series of Governance and Participation Policy Discussion Papers is commissioned by the Governance and Participation Team at UNDP Viet Nam.

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## Abbreviation

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BOO	Build, Operate, and Own
CCIA	Central Committee of Internal Affairs
DONRE	Department of Natural Resources and Environment
GDP	Gross Domestic Products
GI	Government Inspectorate
GPPs	Government Private Partnerships
NRD	New Rural Development
PAPI	The Viet Nam Provincial Governance and Public Administration Performance Index
PCI	Provincial Competitiveness Index
PPPs	Public Private Partnerships
USD	The United States dollar (currency)
VLAP	Vietnam Land Administration Project
VND	The Vietnam dong (currency)

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## Executive Summary

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This report examines the causes and possible solutions to environmental disputes in Viet Nam. Industrialization and the associated reduction in poverty have come at a high cost to the natural environment in Viet Nam. According to some estimates, industrial pollution shaves 12 percent from the gross domestic product (GDP) each year (Tran and Nguyen 2014). Air and water pollution from industrial development have steadily increased, and in 2016 Viet Nam ranked in the top 10 countries having the worst air quality, accordance to the Environmental Performance Index<sup>1</sup> (Hsu A. et al., 2016). The harm and suffering caused to individuals affected by pollution is more difficult to quantify. In the past citizens have been prepared to accept environmental pollution as a cost of economic progress, but currently there is a growing awareness about the importance of balancing economic development with environmental protection.

The imbalance between economic development and environmental protection generates disputes. Press and government reports suggest that environmental disputes concerning natural resources, and air and water pollution are now among the most common areas of social disputes. International experience shows that environmental disputes are caused by two main factors: (i) the harm caused by high levels of pollution; and/or (ii) environmental injustice, (i.e. unequal distribution of benefits and harm caused by development projects). Most policy initiatives in Viet Nam have focused on the first set of factors (i.e. levels of pollution), leaving environmental injustice under-studied. A one-sided focus on the harm caused by pollution can underestimate the sense of injustice that animates and amplifies environmental disputes. This study aims to redress this shortcoming, and advance the understanding of environmental disputes in Viet Nam by examining environmental justice. Given the rapid increase

in environmental disputes in Viet Nam, this study is both timely and will provide policy-relevant findings.

What is often absent from studies about environmental disputes is the recognition that government, industry and citizens frequently have different understandings about what constitutes an equitable balance between economic development and environmental protection. A sense of environmental injustice arises when development policies unequally distribute the benefits of, and harm generated by industrialization and modernization. Currently, there is limited accessible research in which to explore how different perceptions about what constitutes an equitable balance between economic development and environmental protection influences environmental disputes in Viet Nam. We consequently know very little about how different stakeholders conceptualize and respond to environmental disputes, how such disputes occur in practice, what drives them, how they affect citizens, and what constitutes appropriate public policy responses and dispute resolution practices. By taking a social construction approach that examines how disputes are conceptualized, this study aims to generate fresh insights into environmental disputes in Viet Nam.

This study draws on seventeen reported cases in the government database and five in-depth case studies about environmental disputes between businesses and citizens. Disputes were selected for both their relevance on business-citizen disputes, occurring within the last five years, and maturity, having proceeded through different stages of disputation including complaint, negotiation and resolution. Regional diversity and access to interlocutors, such as local officials, businesses, citizens, media and NGOs, were additional selection criteria.

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<sup>1</sup> The Environmental Performance Index, created by researchers at the Yale University, is a worldwide

ranking for 180 countries (<http://epi.yale.edu/>, accessed on 06/01/2018).

We drew four key findings from the case studies. First, the administrative management system, on its own, cannot effectively control environmental pollution. Second, citizens conceptualize pollution as environmental injustice resulting from the unfair distribution of benefits and harm from economic development. Third, when state-based dispute resolution is ineffective, citizens often resort to high-risk protest tactics. Fourth, there is currently a lack of professionally competent and independent actors who might provide technical information and mediate environmental disputes.

Drawing on international experience from China and Indonesia, we argue that state-based environmental regulation, on its own, is unable to effectively manage pollution and resolve environmental disputes. As a result, we

recommend policy measures that encourage citizen participation in every stage of the state-based environmental management system. More specifically, this would involve citizen participation in planning decisions that determine the location of polluting industries, as well as involvement in approving and monitoring environmental impact assessments (EIAs) and environmental impact statements (EISs). We also conclude that the existing state-based dispute resolution mechanisms are incapable of resolving many environmental disputes. To facilitate effective dispute settlements, we recommend allowing citizens to take class actions for environmental litigation. We also recommend policy reforms that encourage independent environmental mediation.

## Introduction

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Viet Nam's impressive industrialization and associated reduction in poverty has come at a high cost to the natural environment. According to the Environmental Performance Index,<sup>2</sup> in 2016 Viet Nam ranked in the top 10 countries with the worst air quality (Hsu A. et al., 2016). Citizens have been prepared to accept a trade-off between environmental pollution and economic progress, but currently there is a growing awareness about the importance of balancing economic development with environmental protection. When asked about trade-offs between economic development and environmental protection, in 2016, 77 per cent of respondents from nation-wide surveys, the Viet Nam Provincial Governance and Public Administration Performance Index (PAPI),<sup>3</sup> suggested the state should prioritize environmental protection even at the risk of economic growth. Although the 2013 Constitution now recognizes a right to live in a healthy environment, so far public policy has not explained how industrialization and industrializations/modernization can coexist with a healthy environment (Ortmann, 2017; MONRE 2016). This imbalance between economic development and environmental protection generates disputes.

Environmental disputes concerning natural resources, and air and water pollution are increasing in Viet Nam. Press and government reports suggest that such disputes are now among the most common areas of social dispute (MONRE 2016). International experience shows that environmental disputes are caused by two main factors: (i) the harm caused by high levels of pollution; and/or (ii) environmental injustice, (i.e. unequal distribution of benefits and harm caused by development projects) (Kagan, Thornton and Gunningham 2003; McAllister, Van Rooij and Kagan 2010). Most policy initiatives in Viet Nam have focused on the first set of factors (i.e. objective levels of pollution), leaving environmental injustice understudied. A one-sided focus on the harm caused by pollution can underestimate the sense of injustice that animates and amplifies environmental disputes. This study aims to redress this shortcoming, and advance the understanding of environmental disputes in Viet Nam by examining environmental injustice. Given the rapid increase in environmental disputes in Viet Nam, this study is both timely and will provide policy-relevant findings.

Most studies about environmental disputes in Viet Nam take a political economy perspective that seeks to link conflict with economic change and policy and legal initiatives. This macro level approach does not adequately recognize that government, industries and citizens frequently have different understandings about what constitutes an equitable balance between economic development and environmental protection. A sense of environmental injustice arises when development policies unequally distribute the benefits of, and harm generated by industrialization and modernization. Currently there is limited research on how different perceptions about what constitutes an equitable balance between economic development and environmental protection influences environmental disputes in Viet Nam. We consequently know very little about how different stakeholders conceptualize and respond to environmental dispute, how such disputes occur in practice, what drives them, how they affect citizens, and what constitutes appropriate public policy responses, and dispute resolution practices. By taking a social construction approach that examines how disputes are conceptualized, this study aims to generate fresh insights into environmental disputes in Viet Nam.

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<sup>2</sup> The Environmental Performance Index, created by researchers at the Yale University, is a worldwide ranking for 180 countries (<http://epi.yale.edu/>, accessed on 06/01/2018).

<sup>3</sup> See CECODES, VFF-CRT & UNDP (2017), p. 28

This study draws on a review prepared by MONRE (for details see Appendix 1) that explores trends in environmental disputes between businesses and citizens. The review provides preliminary insights about environmental disputes that guided the selection of five in-depth case studies about environmental dispute. The in-depth studies were chosen from environmental disputes between businesses and citizens. Disputes were selected for both their relevance, occurring within the last five years, and maturity—having proceeded through different stages of disputation including complaint, negotiation and resolution. Regional diversity and access to interlocutors, such as local officials, businesses, citizens, media and NGOs, were additional selection criteria.

To gain insights into the role that perceptions of environmental injustice played in the disputes, the key stakeholders (local officials, businesses, and citizens) were asked how they conceptualized disputes. Narratives explaining how the actors conceptualised environmental justice were then developed from the interview data. We next searched for convergences and divergences in the narratives that might point to intractable differences or possible grounds for agreement and resolution. We then examined the efficacy of the resolution processes, and searched for practices that might promote environmental justice and lasting settlements. Finally, insights from case studies were integrated with international experiences and policy reviews to offer policy relevant recommendations.

We begin with a review of how environmental disputes have been commonly viewed in previous studies and addressed in relevant international contexts. Next, we describe the methodology and present findings about environmental disputes cases from MONRE's database and our in-depth case studies. We conclude with recommendations and the way forward.

## Literature Review

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### Environmental dispute studies in Viet Nam

There are no publicly available statistics concerning environmental disputes in Viet Nam. However, the report on Viet Nam's State of Environment for the period from 2011 to 2015, issued by the Ministry of Natural Resources and Environment (MONRE, 2016), shows that economic activities have increased pressure on the environment and state-based environmental management; industries are the main source of environmental pollution that harms human health and well-being, and damages property. The report has a separate section on environmental disputes, indicating the importance of this topic. Environmental harm generated by industrial production, craft villages' activities, and unsanitary landfill sites have been a main cause of environmental disputes (MONRE, 2016).

There are few in-depth studies about environmental disputes in Viet Nam. Thang and Ha (2014) provide an overview of environmental disputes in Viet Nam. In their paper, environmental disputes were defined as disagreements between different groups over the benefits from natural resource, and the appropriate approach to environmental protection. The authors suggest that environmental disputes are generally related to the unequal distribution of the benefits and harm produced by economic development.

Six types of environmental disputes were identified: (1) disputes in agricultural production relating to the overuse of chemical fertilizers and pesticides, as well as the mismanagement of wastes from livestock production; (2) disputes between groups carrying out polluting activities and other groups in craft villages; (3) disputes in industrial production relating to air and/or water pollution from industrial zones or businesses; (4) disputes in hydropower development relating to the forest degradation and river flow management; (5) disputes in mineral resource extraction; and, (6) disputes relating to water shortage and land misuses. The paper did not discuss case studies.

Lan et al. (2013) discuss two case studies from Hai Phong and Nha Trang about the environmental harm caused by port developments. The discussion focused on physical changes in the environment caused by infrastructure developments, but does not consider the social harms (e.g. negative effects on livelihoods).

Hanh et al. (2014) provide some general ideas and approaches for dealing with environmental disputes arising during (i) the application for business operational certificates; (ii) project implementation. They discuss disputes in (i) resource extraction, (ii) import-export activities, (iii) compensation for environment damages, and, (iv) compensation for health effects. The report examines three cases of environment pollution caused by industrial production (i.e. Vedan, Nicotex Thanh Thai company and Tho Quang industrial zone in Da Nang).

Focusing on extra-judicial mediation, a report prepared by the Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE) (2013) proposed a procedure for mediating environmental disputes. This process was applied successfully to settle a dispute between a stone quarrying firm and local communities in Da Nang. ISPONRE (2013) suggests the procedure be piloted in other cases to improve the mediation process.

## International experience

International experience sends a clear message about environmental disputes—although a well-designed regulatory system can reduce environmental conflicts—top-down state regulation cannot eliminate disputes. A consensus has emerged over the last twenty years that state-based environmental regulation requires bottom-up support from citizens to achieve optimal effectiveness (Kagan, Thornton and Gunningham 2003; McAllister, Van Rooij and Kagan 2010). Studies conducted in both advanced industrial, and newly industrializing countries, consistently show that no single agency, actor, or institution possesses the knowledge or capacity to effectively regulate complex and multifaceted areas, such as environmental disputes.

Research has revealed some inherent problems with the top-down (command and control) approach to environmental regulation:

- Governments lack detailed information about local environmental problems.
- Governmental regulation is often slow in responding to environmental problems.
- Officials often lack the skills and capacity to effectively monitor and control behavior that harms the environment.
- If government owns/controls key polluting industries than conflicts of interest arise.

Environmental regulation in China reveals the shortcomings with placing too much emphasis on top-down regulation. Although China has made significant advances in environmental protection, from an institutional design and policymaking point of view, water and air pollution are responsible for a growing number of disputes (van Rooij 2010; van Rooij, Stern and Fürst 2016; Yi Liu et al. 2016). Although the Chinese economy is 54 times larger than the Vietnamese economy, the Chinese government lacks the resources to adequately monitor and enforce environmental standards (see discussion in Appendix 2). The government understands the inherent limitations with top-down command approaches to controlling pollution, but remains ambivalent about allowing citizens to play a more important role in monitoring pollution and resolving environmental disputes (Stern 2013). Studies also show that various forms of citizen participation contribute to positive environmental change in China (Turiel et al. 2017).

The Indonesian government does not share the same political reservations as China, and has successfully combined top-down state regulation with extensive collaboration between state and non-state actors (Nicolson 2009; McCarthy and Zen 2010) (for details see Appendix 2). For example, the government has combined state regulation with non-state codes of practice and accreditation schemes, and more significantly it has encouraged non-state mediation (see discussion in Appendix 2). A hybrid model of local level mediation has developed in Indonesia that flexibly mixes customary norms, expert evidence and state laws in ways that promote dialogue and citizen participation in dispute resolution.

This mixed approach to regulation corresponds to international research that shows that top-down command regulation is most effective when combined with bottom-up citizen participation (Thornton and Gunningham 2003; Benbear and Cary Coglianesse 2012). Studies show that regulatory pluralism—rather than a system of hierarchically imposed and uniformly enforced rules—generates the mechanisms that interact with market and civil society pressures to generate environmental improvement (Kagan, Thornton and Gunningham 2003; van Rooij, Stern and Fürst 2016). Non-state regulation is not a substitute for top-down state regulation, but rather it augments and expands the reach of state regulation. The goal of mixed state and non-state environmental regulation is the continuous improvement in the

behavior of the regulated entity or individual. Regulation does not aim for mere adherence to rules or minimum standards, but in addition musters community resources to encourage businesses to move beyond statutory standards and environmental impact assessments.

The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (2001) enshrines this principle of regulatory pluralism. The Convention was drafted to increase the opportunities for citizens to access environmental information and promote transparent and reliable environmental regulation. The key idea underlying the Convention is that governments can best regulate the environment in partnership with non-state environmental organizations and individual citizens. The Convention provides rights to access information about environmental regulation, enables citizens to participate in decisions that influence the environment (such as EIAs), and gives citizens judicial and administrative recourse to challenge decisions that impact the environment. The Convention provides a 'best practice' model for enabling citizen participation in environmental regulation.

In summary, this literature review reveals the lack of research about environmental justice in Vietnam. International experience shows that environmental disputes are invariably connected to the social and economic activities that cause environmental damage. This experience suggests some policy responses: (1) procedural justice, which refers to the participation of citizens in environmental regulation, rebalances power asymmetries, and ensures effective negotiation between stakeholders that results in effective settlements; (2) distributive justice<sup>4</sup> (literally meaning a just distribution of goods) should be considered a key principle governing the fair distribution of the harm and benefits generated by economic development. Therefore, it is expected that new research into environmental disputes should focus on public participation and distributive justice.

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<sup>4</sup> For a substantive discussion about the term "distributive justice", see <https://plato.stanford.edu/entries/justice-distributive/>

## Methodology

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### Theory and Research Objectives

The objective of this project is to understand the role that environmental justice plays in environmental disputes, and offer actionable recommendations. We define environmental disputes as ‘disagreements among stakeholders in a range of public disputes which involve environmental quality or natural resource management’ (Susskind and Secunda 1998:160-95). Our study advances current understandings of environmental disputes by providing the first in-depth analysis of how key stakeholders in disputes conceptualize environmental justice and injustice. This study offers insights into the types of policy actions that might reduce the causes of dispute, such as public participation in planning and EIAs. It also offers insights into the types of dispute resolution that might bridge perceptual differences, and promote a more equitable distribution of the harm and benefit of industrial development.

There are two fundamentally different theoretical approaches to environmental disputes. Most research examines how environmental harm impacts social life (Khan et al. 2013). Studies following this approach focus on finding causal relationships between environmental harm and disputes. This research focus has been used widely in studies examining how environmental degradation undermines environmental security and generates disputes. It relies heavily on technical data to demonstrate causal links between human activity and environmental degradation, and then uses this information to guide environmental policy (Stepanova and Bruckmeier 2013). As this approach does not examine human interactions, it does not directly address the underlying causes of disputes, and, as a consequence misses much of the environmental dispute story.

The second major theoretical approach treats environmental disputes as social constructions. In contrast to the scientific causation approach, social construction theory argues that views about what constitutes environmental harm depends upon contextual factors, especially the social and institutional perceptions or perspectives of different social actors, such as aggrieved citizens, businesses and government officials. According to Homer-Dixon (1994), environmental disputes arise from three different sources: one differences in social norms and perceptions about the environment, two unequal power relations, and three because of rational decisions—to maximize material benefits.

Turning to the first source of conflict, environmental disputes are communicative processes where perceptual incompatibilities have evolved into a struggle among two or more parties over environmental resources (Peterson and Feldpausch-Parker 2013). This social construction approach suggests that solutions to environmental disputes not only lie in adopting clean technology and scientific planning (the scientific causation approach), but also in finding ways to reconcile perceptual differences regarding the appropriate distribution of environmental benefits and harm. Much social construction research has focused on mediation as a method of resolving or managing environmental disputes (Dukes 2004). Studies have identified the utility of consensus building (Susskind, McKernan, and Thomas-Larmer 1999), collaboration (Dukes and Firehock 2001), collaborative learning (Daniels and Walker 2001), collaborative planning (Innes and Booher 1999), collaborative natural resource management (Conley and Moote 2001), community-based collaboration, and community-based conservation. A unifying aspect of this work is the importance of public participation in environmental planning, which can reduce the risk of disputes, as well as public participation in mediation, which can balance power asymmetries between aggrieved citizens and corporate polluters (Dukes 2004).

A key working assumption underlying a social construction approach is that environmental disputes place people from different social and economic backgrounds into direct contact and competition for the same resources. Even if disputing groups share common values, which is rarely the case, disputes are likely to occur when the groups cannot agree on the appropriate way to allocate environmental resources (Peterson and Feldpausch-Parker 2013). The social construction approach to environmental disputes argues that differences in world-views regarding the proper relationship with the environment are the root cause of most environmental disputes. Put differently, disputes arise when environmental harm affects material interests, and when it interferes with the social values and practices ordering families, businesses and communities. The incidence and intensity of disputes corresponds to differences in how the disputing parties (businesses, state officials and citizens) conceptualize disputes.

The working assumptions suggest some core research questions:

1. How do different stakeholders conceptualize environmental disputes and environmental justice?
  - What are the key areas of agreement and disagreement?
  - Has the conceptualization of environmental justice changed over the course of a dispute? What factors influence this change?
  - What external regulatory factors, such as EIAs, might have more equitably distributed the harm and benefit of industrial development?
2. What are the potential impacts of environmental disputes?
3. What are possible dispute resolution channels and processes to ensure environmental justice?

## Research Methods

We started with an analysis of environmental dispute incidents in the database provided by the Ministry of Natural Resources and Environment (MONRE). Reports about seventeen cases were analyzed to shed light on the key themes and guide our in-depth case studies.

For five in-depth case studies (see Table 1), interviews were conducted with provincial, district, and commune officials, business, and concerned citizens and other related parties from 12 September to 13 October 2017. Interviewees were identified through a combination of purposive and snowball sampling (Lofland 1995). In total a hundred and five interviewees participated in the study. Semi-structured interviews were used to develop narratives that explained how the interviewees conceptualized the disputes. Interviewees were encouraged to describe how economic development and environmental pollution affected their material interests, and in addition, interviewees reflected on their normative understandings about what constitutes a just balance between economic development and environmental protection. These narratives were then cross-checked against written sources, such as research reports and newspaper articles, and also against supplementary interviews with government officials, lawyers, and journalists. Most interviews were conducted on the condition of anonymity.

**Table 1. Five case studies and fieldwork schedules**

<b>Province</b>	<b>Case</b>	<b>Fieldwork time</b>
Hung Yen	Environmental dispute with firms around Cau Luong River	12–16/9/2017
Nghe An	Environmental dispute with Song Lam Sugar Company	20–30/9/2017
Dong Nai	Environmental dispute with SONADEZI Long Thanh Industrial Zone	2–7/10/2017
Binh Duong	Environmental dispute with Tan Dong Hiep Stone-pit Quarrying	2–7/10/2017
Thai Binh	Environmental dispute with Thuy Hai Food Processing Co.	9–13/10/2017

## The Legal and Regulatory Context

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The 2014 Law on Environmental Protection (LEP) provides a legal framework for managing environmental issues in Viet Nam. The LEP was firstly promulgated in 1993 and was revised twice in 2004 and 2014. Although environment-related disputes were mentioned in the first version of the 1993 LEP (Article 48), there is no clear definition of what constitutes environmental disputes. In both the 2005 LEP (Article 129) and the 2014 LEP (Article 161), environment-related disputes are identified as (i) disputes concerning rights and responsibilities for environmental protection in exploitation and use of environmental components; (ii) disputes concerning determination of causes to environmental pollution, degradation and problem; and (iii) disputes concerning responsibilities for handling and remedying consequences, compensating for losses caused by environmental pollution, degradation and problems.

According to the 2014 LEP, the resolution of environmental disputes “shall be undertaken in accordance with the law on non-contractual civil dispute settlement and regulations of relevant laws” (Article 129.3 in the 2005 LEP, and Article 161.3 in the 2014 LEP). In relation to the role of government agencies, the 2014 LEP requires people’s committees at all levels to settle written complaints and petitions that might arise from environmental disputes; and the people’s committees of communes are responsible for mediating environmental disputes in accordance with the law on reconciliation. There are no concrete timeframes for handling environmental disputes

Environment-related disputes in Viet Nam are regulated as a type of non-contractual civil dispute. Procedures for resolving environmental disputes can follow the regulations on the settlement of non-contractual civil disputes, such as (i) settlement through negotiations, (ii) arbitration, and (iii) resolution through courts. The settlement through negotiations and/or arbitration and mediation are classified as “out of court” dispute resolution. Normally, negotiations, mediation, arbitration are followed before any court action, because litigation is invariably complex, time consuming and expensive (ISPONRE, 2013).

A number of laws on specific environmental resources also contain regulations governing disputes settlement using the “out of court” approach. The 2012 Law on Water Resources regulates the settlement of disputes over water resources, in Article 76, by focusing on mediation between related stakeholders; and claims for compensation are also determined and managed using regulations on civil relationships. In the case of land disputes, the 2013 Land Law encourages the related parties to negotiate and reconcile land disputes by themselves (Article 202).

In settling environmental disputes, a key issue is compensation for damages caused by environmental pollution and/or degradation. The 2015 Civil Code states: “Agencies who pollute the environment, causing damages, have to pay compensation in accordance with current legal regulations, even in the cases that the agencies have make no fault” (Article 602). This article is one of several provisions governing compensation for non-contractual damages (as provided in Chapter XX of the Civil Code 2015). It creates legal responsibility for environmental pollution without a prior legal foundation (such as contractual relations). Compensation can be claimed for any damage caused by environmental pollution without prior agreement or a contract between involved stakeholders. The 2014 LEP contains five articles (Articles 163–167) providing a legal framework for identifying and assessing environment-related damages, and appraising claims for compensation. Decree No. 03/2015/ND-CP of the Government of Viet Nam was promulgated on 6 January 2015 to

provide regulations on responsibilities on claims and assessment of damages to water, land, and the ecosystem. Such regulations have created a basic legal framework for managing environmental disputes and protecting victims of environmental pollution.

Environmental Impact Assessments (EIAs) are suggested not only an approach to preventing environmental disputes (Phuong et al., 2013), but also a key information source for dispute resolution (Tuan et al., 2012). EIAs are scientific processes that evaluate the potential environmental impact of development projects before making decisions about undertaking the projects. Governments use EIAs to identify and manage the effects of economic development on the natural environment. In Viet Nam, EIA reports provide a legal basis for environmental management agencies to approve project investments. The LEP 1993 was the first Vietnamese legislation to regulate EIAs. The current EIA framework in Viet Nam is regulated by the 2014 LEP; Decree No 18/2015/ND-CP of Government dated 14 February 2015 on environmental protection planning, strategic environmental assessment, environmental impact assessment and environmental protection plan; and Circular No. 27/2015/TT-BTNMT 29 May 2015, issued by MONRE on strategic environmental assessment, environmental impact assessment and environmental protection plan. The 2014 LEP has revised and updated EIA regulation, and has 11 articles ((Articles 18-28) dealing with EIAs, compared to 6 articles (Articles 18-23) in the previous LEP. For example, there is a new article (Article 21) about consultation with organizations and communities affected by proposed projects. The EIA policy system has also improved, and MONRE has issued guidelines on EIA for specific project types, such as the development of industrial zones, urban development, breweries and beverages, thermal power plants, textile factories – dyeing, cement plants, hydropower, pulp and paper plant, for example (Tuan, 2017).

There remain some shortcomings in the regulation of environmental disputes in Viet Nam. In particular, there is a lack of detailed regulations and guidelines for handling environmental disputes. Most importantly, there are no detailed guidelines for establishing non-state mediation of environmental disputes. As the ISPONRE (2013) report shows, these shortcomings produce many problems in resolving environmental disputes. For example, in relation to damage compensation, Decree No. 03/2015/ND-CP on claims and assessment of damages does not cover harm to air quality nor current and future issues of human health. In addition, MONRE has not yet issued a circular providing detailed instructions/guidelines about implementing Decree No. 03/2015/ND-CP.

Furthermore, there are no detailed mechanisms allowing socio-political organizations and communities to participate in environmental planning, regulation and dispute resolution. The participation of local communities and parties, other than state agencies, to support local people affected by environmental pollution would be an important factor in facilitating dispute resolution. According the 2014 LEP, socio-political organizations and socio-professional organizations can “engage in activities of investigation into environmental protection at production, business and service entities in relation to its functions, duties and authorities” (Item d, Section 2, Article 145); and “representatives of residential communities in the area under environmental effects of production, business and service entities have the right to ask state management agencies concerned to supply the results of investigation, inspection and handling of the entities” (Section 2, Article 146). However, there is no legislative document providing detailed instructions for translating these general provisions into reality.

Although EIAs have the potential to prevent environmental disputes, EIA practices in Viet Nam still reveal many inadequacies and weaknesses in both the quality of EIA reports and implementation processes (Clausen et al., 2011; Tuan et al., 2012). Meaningful public participation and information disclosure are important to ensure effective EIAs (Clausen et al., 2011). A key problem is the lack of meaningful public consultation. For example, Commune

Peoples Committees are only required to call a formal meeting with community representatives during the EIA process (Item 6, Article 12, Decree No 18/2015/ND-CP of the Vietnamese Government). There is no requirement for open public involvement and no requirement or guidance provided about effective consultation methods. During project appraisal, there is also no mechanism for authorities to receive public feedback.

In summary, the legal framework lacks concrete guidance in the areas of non-state dispute resolution; citizens' participation in environmental planning and regulation; and the establishment of environmental organizations that can monitor pollution, and assist citizens in taking action to prevent environmental harm. Meanwhile, these are critical to minimizing and resolving environmental disputes, as international experience suggests.

## Findings

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### Analysis of dispute incidents in MONRE's database

The research team had access to reports of seventeen environmental disputes in Viet Nam from MONRE. Among the 17 cases the team reviewed, three involving environmental pollution relating to accidents in waste management system, and 14 concerned the disposal of untreated waste into the environment. Appendix 1 presents detailed information about the examined cases.

The cases indicate that high intensity environmental disputes usually arise when persistent pollution has not been resolved. Citizens first made complaints to local state agencies, who generally inspected the problems, and (if appropriate) then requested polluters to rectify the pollution. In 8 out of 14 cases, state processes were ineffective and the violating acts continued, adversely affecting the local population. A sense of environmental injustice often triggered fiercer protests, where local people block roads and prevented the polluters from carrying on their usual operations. Although some environmental disputes arose from disagreements about compensation, this issue did not cause fierce protests, which concerned disagreements about environmental justice.

Interestingly, state agencies were involved in the resettlement of all the examined cases. While MONRE was only involved in some settlements, local state agencies played the key roles in identifying causes, undertaking inspections, making decisions about administrative penalties, and requesting polluters to pay compensation and/or to reduce pollution.

Notably, in 16 out of 17 examined cases, representatives of the local citizens did not play an active role in reaching settlements. This may indicate a lack of participation from local people in determining outcomes, which raises questions about procedural justice in handling environmental disputes in Viet Nam.

This analysis shows that environmental dispute resolution requires reliable scientific evidence that links environmental pollution to social harm, and methods of accurately calculating the monetary value of damages caused by environmental pollution. Research institutes capable of carrying out these functions were only involved in two of the fourteen cases. The case studies strongly point to the need in Viet Nam for more independent technical expertise on environmental disputes.

The next section introduces our insights into five cases that were selected from the MONRE's list of in-depth cases suggested for this research project. The five cases include Tan Dong Hiep Quarry in Binh Duong, the Sonadezi Long Thanh Industrial Zone in Dong Nai, Song Lam Sugar Company in Nghe An, Cau Luong River in Hung Yen, and Thuy Hai Food Processing Co. in Thai Binh.

### Findings from five in-depth case studies

#### Environmental Dispute with Tan Dong Hiep Stone-pit Quarry

##### *Background of the dispute*

This dispute occurred near the Tan Dong Hiep quarry, which is located in Tan Dong Hiep ward, Di An town, Binh Duong province. The quarry has operated since 1993 excavating top-quality construction stones. The dispute arose because the quarry is located close to residential areas such as Dong An and Tan An communes.

Binh Duong is one of the most industrialized provinces in Viet Nam with 28 industrial parks and 11 industrial clusters. Over the past few years, Binh Duong has been among the top ranked provinces in the Provincial Competitiveness Index (PCI). As of 2016, there were about 28,000 domestic and 3,000 foreign direct-investment enterprises operating in Binh Duong.

#### *Evolution of the dispute*

Although local citizens had long complained about the noise, dust, and residential road damages, local government officials had not attempted to resolve the complaints until a petition was lodged in 2014. Dozens of households also complained about the daily tremors causing cracks in their houses. The local media reported on the dispute.

Under the direction of the provincial government, the quarrying firms then attempted to find solutions by providing financial support to nearby households. The firms also agreed to provide 2,000 cubic meters of stones to build local roads within Dong Hiep ward. In response, the local government granted an extension for the quarry, and authorized increased production.

After the settlement, the dispute continued to simmer. In early 2017, 21 households submitted complaints about cracks in their houses to the district government. No solutions have been reached. Recently, the firms have sent letters to the aggrieved households seeking consent to extend the quarry's operation for an additional two years, until 2019. Approval had not been given at the time of this study.

#### *Perceptions about benefit and harm*

From the local citizen's perspective, the quarry operation pollutes the surrounding area with noise, vibration, and dust. Our interviewees showed cracks in their houses. Dust from the quarry operation was also considered harmful to the health of nearby residents. The firms and local government, however, confirmed that all national environmental standards have been strictly observed; and, modern noise reduction technology is used.

Also, local citizens thought that the quarrying firms have received benefits without paying adequate support for the local impacted citizens. Even, they suspected that the firms and the local government have been colluding to continue the quarry operation for two more years.

#### *Resolving the dispute*

Initially, under pressure from the local government, the firms developed a list of affected households they had agreed to support. However, there was no clear basis for the support. Party chiefs of residential quarters in Dong An and Tan An then called upon the heads of residential groups to participate in discussions. The firms then agreed to support more households than the initial number proposed, and decided to base compensation payments on the distance impacted households were located from the quarry.

Despite these initiatives, 21 letters of complaint had been submitted to the district authority in 2017 claiming compensation to repair house cracks. No clear answers or solutions have been provided.

This case thus remains unresolved. Although affected households have received support money for three years and the quarrying firms have promised to increase support payments, they remain unsatisfied. They have lost trust in the willingness of the firms to take measures that will mitigate the environmental harm. More importantly, some local citizens have lost trust in the government system.

## **Environmental Dispute with Sonadezi Long Thanh Industrial Zone**

### *Background of the dispute*

This dispute under study occurred in Long Thanh Industrial Park, which is managed by Sonadezi Long Thanh, a joint stock company with 51% state ownership. The park has a total area of 488 hectares, and accommodates 105 enterprises from different countries, including Korea, Taiwan, Japan, and Germany with approximately 19,000 workers. Citizens of Tam An commune have been conducting agriculture business in close proximity to the park and the Dong Nai River.

Dong Nai is one of the most industrialized provinces in Viet Nam with 32 industrial parks. In 2016, Dong Nai was among the top ranked provinces by the PCI. Dong Nai was also the location of one of Viet Nam's worse instances of water pollution, the Vedan case of 2008<sup>5</sup>.

### *Evolution of the dispute*

Discharges of untreated wastewater may have been occurring since 2005. The local governments at all levels had not acted on complaints until August 4<sup>th</sup>, 2011 when the provincial environment police caught the company discharging untreated wastewater into the Ba Cheo canal. More than 9,300 cubic meters of untreated wastewater with toxic metals was discharged through different sewers to the canal. Following the incident, more than 200 local households lodged letters of complaint asking for compensation for harms to agricultural crops.

The provincial government invited the Institute for Environment and Resources, Viet Nam National University (Ho Chi Minh City) to evaluate the damage. More than three months later, in March 2012, the institute reported that the pollution affected more than 100 out of 600 hectares of agricultural land bordering the canal. The firms were fined more than VND 400 million for the illegal discharge and directed to pay compensation for polluting agricultural lands. The total payments to the impacted citizens exceeded VND 16 billion.

The dispute, however, was not settled entirely, and in 2016 aggrieved citizens lodged further complaints. Currently, many local citizens still disagree with results from the technical evaluation conducted by the Institute and have rejected the settlement. In interviews, they also claimed that the company is continuing to make illegal discharges and has not completed the compensation payments.

### *Perceptions about benefit and harm*

From the local citizens' perspective, which is supported by media reports, for a long time the park has discharged waste causing pollution. Moreover, the treatment capacity, as publicly announced by the park managing firm, is well below the total amount of wastewater discharged by the enterprises in the park. Contradicting this account, the firm argued that there was a one-off incident caused by a mechanical failure. The firm has not disputed the claim that the park lacks treatment capacity.

Furthermore, the local citizens believed that firms in the industrial park intentionally discharged waste to reduce costs at the expense of the environment and local citizens' livelihoods and health. In addition to the direct impact on agriculture, the local citizens believed they have faced long-term health problems caused by chemical pollutants in the wastewater including skin and respiratory diseases.

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<sup>5</sup> See <http://vietnamnews.vn/environment/194958/vedan-admits-to-polluting-parts-of-thi-vai-river.html#sll93tXG4f4hRzhl.97> for more information about the case.

The local citizens insisted that Sonadezi Long Thanh accept responsibility for the consequences, because it built the park infrastructure to attract investment and gained profits. In contrast, the firm argued that the government has approved treatment systems separately for each individual enterprise so the park management cannot control and monitor all discharge systems in the park. Sonadezi Long Thanh also emphasized its contribution to the economy in attracting foreign and domestic investments. They said they contributed to the state budget, and helped create jobs for workers and local citizens. However, in the interviews, local citizens did not seem to consider this wider economic impact. Instead, the citizens only, focused on how pollution impacts their lives and livelihoods and thus claimed for compensation.

#### *Resolving the dispute*

The local citizens have been dissatisfied with the resolution processes. First, they challenged the evaluation report prepared by the independent institute. They thought the impacted area should be increased to include land on both sides of Ba Cheo canal, and should also take into consideration the water flows in Ba Cheo canal. The institute claimed that it used an objective scientific software model, with data collected from the actual scene.

In addition, the local citizens alleged that the compensation was unfair. Some households that were located far from canal were compensated more than others located close to the canal. The institute did not respond to this claim. The park-management and the local government determined the compensation.

While local citizens claimed damage for agricultural crops, the management firm argued that the harms could have been caused by other factors, such as floods. At first, Sonadezi Long Thanh used this argument of contributing causes to reduce their liability by two thirds. Later, they agreed to compensate up to 50% of the total damages claimed. It should be noted that while the citizens said they claimed for '*compensation*', the firm and local government considered the payments '*loss support*' and did not admit liability.

From a procedural justice perspective, the local citizens did not have opportunities to genuinely participate in the negotiation process. There were open discussions with the institute, but no agreements were reached. Local citizens also claimed that delegates from local government and firms visited them, not to negotiate, but only to assess crop and animal damages. The local governments of all levels, on the other hand, argued that the case was resolved fairly with that an independent institute calculated the compensation payments. They attributed the additional claims made by the citizens to opportunism.

#### *After the dispute*

The district government argued that the case was resolved in 2016, when the impacted households received the support money. According to a report prepared by Sonadezi Long Thanh and the district government, the wastewater treatment plant inside the industrial park has been fixed and is fully operational. Additionally, an online monitoring system is now in place to test wastewater discharges. This data is sent online to the Provincial Department of Natural Resources and Environment, and any violations should be identified.

The local citizens disputed this account and claimed instead that the illegal discharge of wastewater has continued. They said they still can smell and see the discharge in the Ba Cheo canal. They also disbelieved that the local government would act if there is an excessive discharge, because they thought the local government and Sonadezi are on the same side. Many local citizens seem to have lost trust in the state environmental regulation system.

## **Environmental Dispute with Song Lam Sugar Company**

### *Background of the dispute*

The Song Lam Sugar Company was founded in 1958 and moved to Anh Son district in 1998. It was equitized (privatized) in 2005 and is now a joint stock company. During 2009-2010, its capacity was doubled to process 1000 tons of sugarcanes per day, to produce 2000 tons of fertilizer per day, and 1 million liters of alcohol annually. It was this increase in production that gave rise to complaints about environmental pollution among local citizens.

### *Evolution of the dispute*

Initially, the local citizens complained about air and water pollution. They said that the smoke directly discharged in the air has made air pollution reach up to a distance of 1.5km, while sewage was directly discharged into the Lam River. Pollution became more serious once the production capacity of the firm doubled and fertilizer and alcohol-producing plants commenced production. These plants have been blamed to have created a terrible smell and polluted nearby areas.

Also, the local citizens blamed air and water from the plant for negatively affecting their health. They were certain about the causation as they could see dirty air and polluted water coming from the company's plants. From the company's perspective, however, producing alcohol from molasses is inherently a smelly process, and they were unable to reduce the smell. Moreover, the company said their environment-monitoring results confirmed that they did not violate environmental protection standards.

Local citizens patiently sent their complaints to the district government and Provincial Peoples' Council members, but did not receive timely responses. In May 2014, they protested at Dinh Son Commune Peoples' Committee and then blocked the main entrance gate of the company. Local government officials calmed the angry protesters by promising that environmental inspectors and the police would ensure that the company would comply with environmental protection regulations. Environmental inspectors and the police found that the company had violated environmental protection regulations and fined the firm for 155 million VND. They also required the company to build a new sewage-processing system and install smoke-mitigating systems.

### *Perceptions about benefit and harm*

The Song Lam Sugar Company have positively benefited many local people, but environmental pollution would have negatively affected local residents. The company also argued that they have promoted local development. They have created jobs and incomes for local citizens, because about 4,250 households grow sugarcane for the company, and their income is relatively high compared to other farming activities, and sugarcane offers a pathway from poverty. In addition, the company has employed 180 permanent and 150 seasonal jobs for local people, and hundreds of households that supply services for the businesses have benefited. If production is reduced or suspended, there would be a significant impact on the living standards of many local citizens. Also, the company argued that they have contributed to the district state budget of 5.5 billion dong through paying taxes and to social welfare and local development of nearly 1 billion dong annually by supporting destitute students, constructing community halls and repairing roads.

From the citizens' perspective, there is a need to balance the benefits of industrial production with the harms caused by pollution. Those who benefit from the operation of the company believed that the company has worked assiduously to protect the environment. Those who are negatively affected by pollution strongly claimed that the company has polluted the river and air due to dust and awful smells, and as a result harmed their health. They often asked

why some should suffer pollution for the benefit of the others. They also believed that the local government has turned a blind eye to the discharged pollutants.

#### *Resolving the dispute*

According to interviews, the district government became a reluctant mediator to the dispute. It inspected environmental protection compliance of the company and ordered improvements to the sewage-processing system, the building of a new tank for molasses storage, and the strict compliance with environmental protection requirements. The company invested in new equipment aiming to mitigate the smell and reduce sewage discharges. It also provided clean water, free of charge, and entered discussions with households living near the factory about resettlement to a new residential area.

The district officials also convinced local citizens to accept a trade-off between the economic benefit and harm produced by the company. In recognition of its contribution to local economy, the company was permitted to continue operations. From the district officials' perspective, the company and local citizens reached a fair outcome. The citizens need the company and vice versa. The local citizens asked the company to strictly follow regulations on environmental protection, and the company complied. The district government has kept monitoring what the company and provides information to the public.

#### *After the dispute*

The dispute was successfully resolved. The company mitigated the pollution, while local citizens were prepared to accept the reduced levels of pollution. Based on notions of distributive justice, the citizens were prepared to accept modest harms with compensation as the trade-off.

### **Environmental Dispute with Firms Around Cau Luong River**

#### *Background of the dispute*

Cau Luong River runs through the middle of the most industrialized area (My Hao district) in Hung Yen province. It irrigates and drains nearly 2000ha of agricultural land in both Van Lam and My Hao districts, and receives sewage from residential areas, from over 20 enterprises located along the river, and from upstream sewage. Sewage is considered the most important cause of pollution in the river.

Located in the dynamic economic triangle of Hanoi, Hai Phong and Quang Ninh, Hung Yen province attracts industrial development. According the 2016 PAPI, the province was one of the places where citizens were concerned about environmental harms. Also, according to the 2016 PAPI, the province was believed to be the second worst place for air quality and the third worst place for water quality in Viet Nam.<sup>6</sup>

#### *Evolution of the dispute*

Cau Luong River has been polluted for over 10 years. The three-kilometer segment that flows between Xuan Duc and Ngoc Lam communes is the most seriously polluted. Before 2008, a few small-sized factories operated and discharged waste into the river, but did not create a serious problem because the river's biological system could deal with this level of pollution. Following the investment boom in Hung Yen, factories producing plastics, packaging printing, rubber recycling, etc. created and discharged more waste than the river system could handle.

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<sup>6</sup> These figures are calculated by using questions D610A (for air quality) and D610D (for water quality) in the 2016 PAPI questionnaires across provinces.

Citizens living along the river complained about toxic smells and polluted water, which kills fish in the river. They saw pollution worsen on sunny days and during the dry season. Local citizens petitioned the district government and members of the Provincial People Council, but did not receive satisfactory responses. Their core complaint related to distributive justice: citizens suffered the burden of pollution but received few of the benefits of industrialization.

In protest over the lack of action by the polluting firms and local governments, more than 200 people from Vo Ngai village (Ngoc Lam commune) demonstrated outside the Ngoc Lam Commune People Committee on December 23<sup>rd</sup>, 2013. They demanded two responses: (i) shutting down and/or removing firms that caused water pollution, and (ii) stopping the waste discharge and then restoring the river to its natural condition. On the same day, protestors went to the firms that they believed were responsible for severe pollution, blocked their gates, and demanded that the firms stop discharging sewage and other wastes into the river. The polluting firms did not respond to the protestors.

After the protest, the Provincial DONRE, District People Committee, and Ngoc Lam Commune convened a meeting to reconcile the dispute between the local citizens and the firms. Environmental agency officials, District officials, and Environmental Police were sent to inspect compliance with environmental protection plans, and waste processing and discharging standards. Offending firms were fined and ordered to comply with sewage/wastes disposal standards.

#### *Perceptions about benefit and harm*

This case raises the question whether the benefit and harm caused by industrialization were fairly distributed. Local citizens blamed the firms for damaging the natural environment. The firms reduced production costs by discharging wastes into the natural environment, but transferred the environmental costs onto local citizens and the community. Polluting firms negatively affected the health of citizens, harmed livelihoods by reduced crop yields, and reduced biodiversity in the polluted areas. Local citizens demanded a reduction in sewage/waste water discharge.

From the firms' perspective, industrialization drives economic growth and local development. The firms contribute to the local state budget by paying taxes and funds are re-allocated for infrastructure development. While emphasizing the contribution made to economic development, the firms acknowledged the need to strictly comply with environmental protection standards against seriously harming the environment.

From the local government officials' perspective, firms significantly contributed to industrialization in the district. Environmental pollution in Cau Luong River is a complex issue. Both firms and residents pollute the water, so it would be unfair to close the polluting firms. At the same time, it is unfair to expect the citizens to live in a polluted environment in fear of incurable diseases. Because of this dilemma, district government sought compromises between the citizens and the firms. To date this action has been ineffective and pollution in Cau Luong River persists.

#### *Resolving the dispute*

What action was taken to resolve the dispute? Firstly, the district government held a meeting to reconcile local citizens and pollution-generating firms. It also convinced both sides to work toward local sustainable development. Secondly, polluting firms were fined and required to process their sewage and wastes in accordance with the current standards and were required

to report environment-monitoring results twice a year.<sup>7</sup> Thirdly, the local government used the Ngoc Lam pumping station to move polluted water from Cau Luong River into Bac Hung Hai River to mitigate pollution. Fourthly, firms located along the river actively contributed to social work, infrastructure development, and donated to the local community and citizens. These contributions were considered *de facto* compensation.

It was hard to resolve environmental disputes in this case because of the firms' proximity to the Cau Luong River. The provincial government cannot close these firms, even if the firms have violated environment protection regulations. The reasons, as explained, vary. First, the firms were licensed and monitored legally. Although environment monitoring confirmed violations, the pollution was not sufficiently serious to justify closure. Second, it is not possible to identify the extent to which individual firms are responsible for the pollution, making it difficult to determine which firms should be closed. Additionally, the local citizens did not have sufficient scientific evidence to determine which enterprises polluted the river.

#### *After the dispute*

Even though the dispute has subsided, pollution of the Cau Luong River is hard to resolve. A significant gap can be found between the views of involved stakeholders. The district government has unintentionally become a mediator, as it attempted to reconcile differences between citizens and firms. It sought to convince citizens and firms to accept a trade-off: firms should improve their sewage and wastes processing systems, while local citizens should acknowledge environment-monitoring results that satisfy the current environmental protection requirements.

However, local citizens believed there has been no significant change. They still see waste discharges, polluted water, and increasing health problems. They also believed that the local government colludes with firms and ignores citizens, and that what the local government has done is to protect polluting firms. Because of differences in perspectives, the dispute continues, putting Cau Luong River communities in a "highly sensitive area".

### **Environmental Dispute with Thuy Hai Food Processing Co.**

#### *Background of the dispute*

Thuy Hai is a coastal commune in Thai Thuy District, Thai Binh Province. The commune has 1,500 households living in a high-density settlement of 324ha. Most of the households work in fishing and/or aquaculture. In 2003, Thuy Hai Food Processing Co. was established and located in Tan Son fishing port, about 100m away from the nearest residential area. Citizens could not recall being asked to comment on whether the location of the company was appropriate for the area.

The company is owned and managed by people from outside the area. The company purchases fish and processes them for sale. The presence of the company has raised the prices of raw fish, benefiting local fishermen on the one hand and but also intensifying competition for raw fish on the other hand. Air pollution also became a problem after the company expanded its operation from one to two process assembly lines. The dispute fermented for years and surfaced in 2011–2012.

#### *Evolution of the dispute*

When the company added the second assembly in 2007, air pollution increased, and so did the competition for raw fish. Citizens voiced their complaints to local government through

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<sup>7</sup> At the time of interviewing, a factory-leasing company was building a sewage processing plant with initial investment of 30 billion dong. This sewage processing plant will fully operate in 2018.

meetings and/or direct discussions with officials. They also sent complaint letters to communal and district governments. The company promised to solve problems, and the community waited for four years without a solution.

On August 8th, 2011, hundreds of citizens from the nearest village poured a concrete wall in front of the gate, blocking the company's business. Provincial and district government sent different forces to persuade citizens to remove the wall and return home. The Department of Natural Resource and Environment (DONRE) tested the air pollution and found no serious risk to people's health. This evidence did not calm the angry and determined citizens.

By April 1st, 2012, the protest had lasted for 8 months without any resolution. The company hired some people to remove the cemented wall. This triggered another wave of protests. Hundreds of citizens rushed to the company's front gate to prevent the removal of the cement wall. Military and police forces were sent to prevent violence.

#### *Perceptions about benefit and harm*

The distribution of benefits and environmental harms was complex. On the one hand, the presence and development of the company brought benefits for many groups, including local fishermen, transporters, and workers. The company's social activities contributed to the community's development. On the other hand, the presence and development of the company also put pressure on local businesses, since it raised the price of raw fish and other seafood. More importantly, the neighboring communities suffered harm from pollution. The smell affected their lives and health, and the sewage damaged the ecosystem, upon which fishing depends.

The formal complaint process was long and ineffective. Citizens sent their complaints through different levels of government. It took a very long time (months and years) to receive any informative response from the government. Citizens believed that "formal complaints alone would not lead us anywhere." A feeling of bitterness and distrust escalated as time went by, without any "meaningful reactions" from the company and the government.

There were large discrepancies between citizens' perceptions of pollution and government technical reports. While DONRE explained that the pollution did not pose notable health risks, citizens insisted that the smells were 'unbearable' and the sewage destroyed their fishing livelihood.

There was no room for reasoning and/or deliberative discussions among parties. The company and the government tried hard to 'persuade' citizens to withdraw their requests. In contrast, citizens maintained one position throughout the negotiation: "the company has to move out". The interactions between citizens, the company, and the government were emotional and confrontational. It was fortunate that no violence or destruction of property happened, but the risk for disputes was high. Also, there was no participation of NGOs, socio-professional organizations (e.g., lawyer associations) in the dispute resolution process. Newspapers reported the protests, but did not report the dispute resolution process.

#### *Resolving the dispute*

On April 4<sup>th</sup>, 2012, the Provincial People Committee (PPC) issued a decision requiring the company to stop its second assembly line. The company complied with the decision 10 days later. Once the second assembly-line stopped, the company believed it could resume the first assembly-line. On April 18<sup>th</sup> 2012, the company sent 23 full-time workers and 6 temporary workers to remove the cement wall. This triggered another wave of protest in which more than 500 citizens rushed to the company's front gate to protect the 'cemented wall' and encircled the workers inside the company. Again, armed forces were sent to the site to free the workers.

During 2012, citizens sent many delegations to provincial and central government to voice their complaints. After a year of protest, the Provincial People's Committee of Thai Binh asked the company to move to a new location. The new factory is now located further away from residential areas. The company invested in new sewage and an odor-control system, and resumed its operation in 2014. During our field visit, both the company and Thuy Hai citizens were happy with the move.

## Lessons Learnt

Upon reviewing the five case studies, four key lessons emerge.

*Learning point 1: The state-based administrative management system, on its own, cannot control environmental pollution.*

The government uses a combination of spatial planning and administrative licensing to manage the emission of pollution, (i.e. the government sets and monitors compliance with emission standards). This approach is only partially effective in controlling pollution for several reasons. Firstly, the government lacks sufficient resources, knowledge and skills required to effectively monitor and enforce standards. Most provinces have approximately 15 environmental police and about the same number of environmental inspectorate officials (Ortmann 2017). As provinces have about 20,000 to 30,000 firms, each environmental police officer is required to monitor 1,000 to 2,000 firms. Secondly, trust in local government varies greatly among localities. Citizens that were interviewed in the five case studies, for example, concluded that the government did not always rigorously enforce environmental standards or act independently from polluting firms.

What is missing in Viet Nam is citizen engagement in environmental management. Effective citizen participation requires organization and support from non-state and professional organizations. In the cases studied, citizens lacked access to independent and technically competent expertise. Media, social network, and business codes of conduct also played a peripheral role.

*Learning point 2: Citizens conceptualize environmental harm as a violation of procedural and distributive justice*

Citizens conceptualized environmental harm in terms of procedural and distributive justice more than infringements of personal/subsistent or property rights. They believed that polluters disproportionately benefited from environmental resources, while citizens disproportionately endured the burden of environmental harm. Citizens rarely perceived the harm caused by environmental pollution as infringements of legal rights to persons and property. Although the case studies considered damage to rural communities, it is possible that urban citizens, who were not considered in this study, might deploy rights-based understandings of environmental harm.

*Learning point 3: Citizens take direct action when state-based dispute resolution fails*

The case studies show that when state-based methods of dispute settlement fail, citizens turn to high-risk protesting tactics. For example, citizens use collective protests and direct action, such as blocking access to polluting industries as negotiating tactics. A key reason for direct action is that citizens lack the support services needed for deliberative approaches to dispute resolution, such as fair discussions with involved actors and access to legal and technical assistance. The other reason is that direct action is often more successful in attracting responses from local governments than the use of state-based institutions like the mainstream media or courts. Finally, based on the case studies, it is clear that citizens' lack of trust in political authorities may obstruct even sincere attempts from local government and

firms at resolving the disputes. This points to the need to involve non-governmental and/or quasi-governmental mediators, which might help generate trust.

*Learning point 4: Lack of non-state and professional mediators*

Although the 2014 LEP recognizes the Viet Nam Fatherland Front (VFF) as a potential mediator for environmental disputes, in practice, VFF and its mass organization members play a peripheral role. In the selected case studies, local government officials acted as mediators, but citizens lacked access to organizations (e.g. state-supported local lawyers' associations and legal aid services) that were capable of providing legal and technical assistance, and acting as impartial mediators. The need for neutral actors, with experience in resolving environmental disputes, is especially pertinent where citizens do not trust local governments to act neutrally.

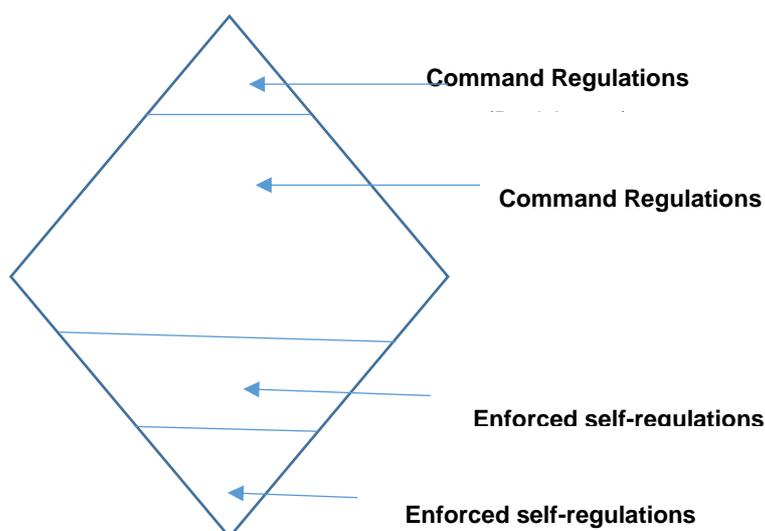
Before discussing policy implications and the way forward, we caution readers on the limitation of the study. The analysis and findings have been based on MONRE's documents of seventeen disputes and our five in-depth case studies. The information and analysis have not adequately address the roles of media and social network in environmental movement. Future research should address this issue to shed light on relevant policy and legal reforms.

## Policy implications and the way forward

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As *Leaning Point 1* shows, Viet Nam relies primarily on top-down command and control regulation, and underutilizes the regulatory potential of public participation in environmental governance. Environmental regulation in Viet Nam resembles a diamond, with command and control regulation but limited monitoring at the top, a large amount of discretionary regulation in the middle, and limited self-regulation at the bottom. This regulatory approach relies primarily on the state (especially local governments) to promote distributive justice and determine who should benefit most from the environment.

**Figure 1: Environmental Regulation in Viet Nam**



International experience suggests three ways to strengthen environmental regulation in Viet Nam. Firstly, it is possible to rectify procedural problems with top-down regulation. Secondly, it is possible to minimize the risk of environmental disputes by encouraging bottom-up citizen regulation and increasing regulatory pluralism. Thirdly, neutral and impartial mediation has the potential to resolve many environmental disputes.

### Rectifying problems with top-down regulation

Much of the regulatory burden for approving and monitoring environmental impacts in Viet Nam falls on central bodies that lack sufficient resources to rigorously verify claims made in license applications (Article 23 of the 2014 LEP), and ensure that local authorities monitor and enforce EIAs and EISs (Ortmann 2017, Chapter 3).

### ***Problems with monitoring compliance***

The 2014 LEP focuses on developing, rather than monitoring compliance with EIAs. Article 26 makes project owners responsible for compliance with EIAs, while article 28 makes local authorities responsible for ensuring that pollution abatement has been completed. But surprisingly, there are no concrete provisions requiring monitoring after EIAs have been granted. Article 121 only requires on-going monitoring for firms designated at risk of harming the environment.

International experience shows strong monitoring and enforcement from both state and non-state actors is required to give the law authority. Low levels of compliance and weak enforcement are mutually reinforcing, creating a chain reaction with potential to undermine the 2014 LEP.

It is recommended that the 2014 LEP be amended to stipulate continuous monitoring of EIAs and EISs by state and non-state actors. In addition, EIAs and EISs should be made publicly available to encourage monitoring by non-state actors. The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (2001)<sup>8</sup> provides a best practice model regarding public access to environmental information. The China Pollution Map project also provides a possible model of citizen monitoring.<sup>9</sup>

### **Problems with EIA and EIS processes**

Once investment licenses are granted (Ortmann 2017, chapter 3), an expectation arises that EIAs will also receive official approval (VIR 2016). The Indonesian Environmental Protection and Management Law (2009) avoids this problem by requiring the approval of EIAs before business licenses are issued.

It is recommended that the 2014 LEP be amended so that investment/business licenses can only be issued after EIAs have been approved. In addition, the 2014 LEP 2014 should be amended to provide a less technically complex processes governing the issue of EIAs for small and medium sized enterprises (Ortmann 2017).

### **Encouraging bottom-up citizen regulation**

*Learning Point 4* shows that citizens in Viet Nam have few opportunities to participate in state-based environmental regulation. A key consideration in encouraging public participation in state environmental regulation is whether citizens can detect and respond to environmental harm. Citizens, for example, can play a vital role in identifying environmental harm because they often have daily information concerning on-the-ground pollution. However, mere access to information does not automatically result in effective control and prevention of environmental risks. International experience shows that citizens need the assistance of professionally capable social organizations to effectively monitor and pressure polluting industries (see the Indonesian example in the Appendix 2).

### **Court actions**

There is considerable scope for citizens to take direct action to curb environmental harm. *Leaning point 2* shows that many citizens do not conceptualize environmental harm as infringements to legal rights that protect personal health and property. As a result, they rarely consider litigation as a possible remedy. Negative perceptions about the competency and impartiality of courts also limits the scope for litigation (see UNDP 2016; Ortmann 2017). Despite these barriers, environmental litigation is recommended as a long-term measure for protecting people's rights and ensuring environmental justice. Capacity building for the collection of environmental evidence for litigation is also recommended.

Under the existing LEP, citizens affected by pollution may sue polluters, and ask courts to determine whether and how such harm should be remedied. However, Vietnamese citizens

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<sup>8</sup> See the Convention at <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>9</sup> See China Pollution Map project

[http://ccnmtl.columbia.edu/projects/caseconsortium/casestudies/135/casestudy/www/layout/case\\_id\\_135\\_id\\_983.html](http://ccnmtl.columbia.edu/projects/caseconsortium/casestudies/135/casestudy/www/layout/case_id_135_id_983.html)

rarely, if ever, consider court action as a viable cause of action in environmental disputes. In 17 environmental disputes reported in MONRE's database, affected citizens filed a lawsuit against polluters in only one case. This concerned pollution in Cha Va River in Ba Ria - Vung Tau Province. Another major constraint to environmental litigation is that environmental pollution usually affects many people and is technically complex, but affected citizens lack the knowledge and skills required to compile the evidence needed to support litigation. International experience (discussed in Appendix 2) shows that litigants need to mobilize resources for complex environmental litigation. For example, the 2009 Environmental Protection and Management Law of Indonesia gives citizens the right to take class actions, and the Environmental Protection Law 2015 in China allows NGOs to mount environmental litigation on behalf of communities.

The Law of Denunciation 2011 (Article 19) allows class actions. It is recommended the 2014 LEP and related legislative documents be amended to allow class actions in environmental litigation, and allow NGOs and/or independent institutions to mount environmental litigation on behalf of affected communities. NGOs and independent institutions can support affected communities in compiling the evidence required for environmental litigation.

### ***Public participation in environmental regulation***

Studies show that the current regime in Viet Nam does not facilitate meaningful citizen participation in environmental regulation (O'Rourke 2003; Thang and Ha 2014; Ortmann 2017). Citizens have few opportunities to influence the spatial planning that determines the location of polluting industries, or opportunities to influence the standards used in EIAs and EISs. For example, although article 21 of LEP 2014 requires project owners to consult with 'communities that are directly affected by the project', it does not require public meetings that might allow transparent and meaningful deliberation that informs licensing decision-making. In many cases, concerned citizens are notified after licensing decisions have been made, reducing the possibility of meaningful participation in decision-making.

International experience (discussed in Appendix 2) shows that public participation can expand the policymaking circle to include the interests of those most directly affected by developments (McCarty and Zen 2010). It can change how the environment is conceptualized and how businesses respond to public interest concerns. Participation shifts the role of citizens from end-users, who are consulted in a tokenistic manner, to active stakeholders and development partners. Recognizing the importance of public participation, the 2009 Environmental Protection and Management Law of Indonesia requires public hearings during the preparation of EIAs, and before environmental licenses are granted. The 2001 Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters provides a "best practice" model for public participation in environmental decision-making.

It is recommended that LEP 2014 and related laws be amended to give concerned citizens the right to participate in public hearings and influence the spatial planning of polluting industries and the preparation of EIAs and EISs. Government authorities should not only have a duty to record and publicly disseminate transcripts of public hearings and the recommendations made by citizens, but also to base environmental planning and licensing decisions on recommendations made at public hearings.

### ***Promoting citizen participation in environmental decision-making***

Studies further show that even if citizens are given access to public meetings, they often lack the knowledge and skills required to evaluate project proposals, and assess how projects might harm the environment and their interests (see *Learning Point 1*). International

experience (discussed in Appendix 2) suggests that citizens need institutional support to mobilize resources, and draw on accumulated organizational skills and knowledge. In China, the state has created 'deliberative design' institutions that give citizens the resources to make evidence-based recommendations regarding the location of polluting industries. The Indonesian government has liberalized the establishment of community-based and national environmental NGOs, and it is these organizations that have promoted citizen participation in environmental decision-making.

It is recommended that Chapter 15 of the 2014 LEP (and associated legislation) be amended to allow the formation of community-based and national environmental NGOs with the right to mobilize resources to monitor and enforce compliance with the law and represent the public in defending the environment.

### ***Deliberative Designs***

The Chinese experiment with deliberative designs offers a promising way to increase public participation in environmental decision-making (see the Appendix 2 for details). Policymakers who want to consult the public directly face a dilemma. If they consult the public, the opinions they receive are largely uninformed (He 2011). Most citizens lack the knowledge and skills to analyse complex environmental issues. But if policymakers do not directly consult the public, and allow organized interests to speak for the people, then environmental planning becomes unrepresentative.

Deliberative designs have been developed to enable policymakers to conduct public consultation directly and bring a wide range of well-informed voices into the policymaking loop. Deliberative designs aim to:

- mobilize citizens by providing the resources and expertise required to analyze environmental projects;
- provide opportunities to question stakeholders and experts (such as fiscal experts, environmental scientists, planners and academics);
- encourage reasoned communication between policymakers and citizens that conveys new and possibly controversial views; and,
- develop a set of written recommendations that inform the policymaking process.

The assumption underlying deliberative designs is that in a cooperative and well-informed environment, individuals are less adversarial and self-interested, and more prepared to reflect upon different views and reach negotiated compromises.

It is recommended that a pilot deliberative design be trailed to guide the planning and development of a large-scale industrial project with the potential to harm the environment.

### ***Enhancing responsible business sector***

This recommendation relates to building an innovative, responsible, and integrated business sector. Environmental disputes will only be sustainably prevented and/or resolved when businesses voluntarily and responsibly engage in environmental protection and attend to environmental justice. To foster this sense of social responsibility, we offer three recommendations. Firstly, social responsibility in general, and environmental responsibility, should be included as a key content in university business studies curricula. In addition, there should also be integrated short-course training in this area for businesses. Secondly, financial institutions should consider using environmental performance as a condition for granting funding. Thirdly, firms with better environmental performance (based on historical records and environmental management certificates such as ISO14000) should be put in fast-track for administrative issues so that firms would be able to save time and improve their productivity

## Meditating Environmental Disputes

*Learning point 2* shows that Vietnamese citizens conceptualize environmental conflicts in terms of procedural and distributive justice, rather than legal rights. International experience shows that mediation is the most appropriate means of resolving this type of conflict. Indonesia's experience demonstrates the usefulness of narrative mediation in resolving environmental disputes (for more details, see the Appendix 2). Mediators using narrative mediation to encourage disputants to share stories about the conflict, and find points of agreement that can bridge conceptual differences. They do not attempt to assess the truth behind stories, rather they focus on understanding how different parties conceptualized the dispute. They aim for a solution based on the narratives the disputants tell, rather than upon some external framework, such as laws and state policies.

This approach is well suited to environmental disputes because it provides a non-blaming approach that reduces the emotional temperature of disputes, and increases trust. It also generates a joint understanding about how past events have generated disputes and the solutions required to move forward. This approach helps to overcome the power asymmetries between businesses and citizens.

As the five case studies reveal, there are many different, often contradictory, perspectives about the problems underlying environmental disputes. Mediators can reconcile differences and then shift the discussions about how disputes harm personal interests to consider what can be done to resolve the situation.

International experience shows that the selection of well-trained and neutral mediators is vital for successful environmental mediation. Mediators need to attract the respect of the disputants. Also, they must be energetic and enthusiastic, knowledgeable about local customs and the environmental issues, and, most importantly, unbiased and impartial about the community's interests. Well-resourced environmental NGOs have played an active role in mediating environmental disputes in Indonesia, as have specialized university environmental institutes (see Appendix 2 for details).

It is recommended that the 2014 LEP and related legislation (such as the 2012 Law on Water Resources) be amended to establish a clear framework for non-state mediation of environmental disputes. Indonesia's 2009 Environmental Protection and Management Law provides a useful model (see also ISPONRE 2013).

In addition, consideration should be given to funding and training environmental mediation. With appropriate training, university-based environmental institutes could act as centers for environmental mediation in Viet Nam. Alternatively, retired state officials, such as environmental police or members of the Viet Nam Lawyers Association, might prove suitable environmental mediators.

## References

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- Agyeman, J. (2005) *Sustainable Communities and the Challenge of Environmental Justice*, New York: New York University Press.
- Bakker, L. (2012) 'Which Authority Whose Land: Access to Land in Paser East Kalimantan', Leiden University Working Papers available at <http://media.leidenuniv.nl/legacy/a2j-working-paper-laurens-bakker-paser-final.pdf>
- Bell, D. (2004) 'Environmental justice and Rawls' difference principle', *Environ. Ethics* 26: 287–306.
- Bell, D. (2016) *Justice on One planet; Oxford Handbook of Environmental Ethics* ed S Gardiner and A Thompson, Oxford: Oxford University Press.
- Benbear, L. and C. Coglianese (2012) 'Flexible Approaches to Environmental Regulation,' in Michael E Kraft and Sheldon Kamieniecki (eds), *Oxford Handbook of US Environmental Policy*, Oxford: Oxford University Press.
- Brettell, A. (2013) 'A Survey of Environmental Deterrence in China's Evolving Regulatory Framework'. In *Chinese Environmental Governance: Dynamics, Challenges, and Prospects in a Changing Society*, ed. Bingqian Ren and Huisheng Shou, 21–81. New York: Palgrave Macmillan.
- Dhiaulhaq, Ahmad et al. (2014) 'Transforming conflict in plantations through mediation: Lessons and experiences from Sumatera, Indonesia' 41 *Forest Policy & Economics* 22–30.
- Falkner, R. (2003) 'Private Environmental Governance and International Relations: Exploring the Links', *Global Environmental Politics* 3(2): 72–87.
- Gunningham, N. and D. Sinclair (2002) *Leaders & Laggards: Next-Generation Environmental Regulation*, Greenleaf Publishing.
- Han Fuguo et al. (2015) 'Making Democracy Practicable in China: The first Deliberative Polling® on Urban Governance in Shanghai', *The Paper* June 10.
- Hạnh, V.T., Thủy, V.T.D., Đức, N.M., Sơn, Đ.H., Hằng, N.T., Phương, N.V., 2014. Kỹ năng giải quyết xung đột trong lĩnh vực môi trường tại Việt Nam Đề tài cấp trường, Trường Đại học Luật.
- He, Baogang (2006) 'Participatory and deliberative institutions in China' in: Leib, E. J. and He, B. ed. *The Search for Deliberative Democracy in China*, Basingstoke: Palgrave Macmillan, 175–196.
- ISPONRE, 2013. Nghiên cứu về giải quyết tranh chấp môi trường ngoài tòa án ở Việt Nam và kiến nghị các giải pháp hoàn thiện Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE), MONRE.
- Jackson, L.S., Pradubraj, P., 2004. Introduction: Environmental conflict in the Asia-Pacific. *Asia Pacific Viewpoint* 45, 1-11.
- Kagan, R., D. Thornton and N. Gunningham (2003) "Explaining Corporate Environmental Performance: How Does Regulation Matter?" *Law and Society Review* 37(1): 51–90.
- Li, V. and G. Lang (2010) 'China's 'Green GDP' Experiment and the Struggle for Ecological Modernization', *Journal of Contemporary Asia* 40(1): 44–62.
- Lofland, J.: 1995, 'Analytic Ethnography', *J. of Contemporary Ethnography* 24, 30–67.

- Lora-Wainwright, A. (2010) 'An anthropology of "cancer villages": villagers' perspectives and the politics of responsibility', *Journal of Contemporary China* 19(63).
- Lora-Wainwright, A., Yunmei Wu, A. Zhang and B. Van Rooij (2012) 'Learning to live with pollution: how environmental protesters redefine their interests in a Chinese village' *The China Journal* no. 68 (July): 106–124.
- McAllister, L., B. Van Rooij and R. Kagan (2010) 'Reorientating Regulation: Pollution Enforcement in Industrializing Countries', *Law & Policy* 32(1):1–13.
- McCarthy, J. and Z. Zen (2010) 'Regulating the Oil Palm Boom: Assessing the Effectiveness of Environmental Governance Approaches to Agro-industrial Pollution in Indonesia', *Law & Policy* 32(1): 153–79.
- McGuire, W. (2014) 'The Effect of ISO 14001 on Environmental Regulatory Compliance in China', *Ecological Economics* 105: 254–264.
- MONRE (2016) National State of Environment in the period of 2011–2015. Ministry of Natural Resources and Environment, Hanoi (in Vietnamese).
- Nicholson, David (2009) *Environmental Dispute Resolution Indonesia*, Leiden: KITLV Press Brill.
- O'Rourke, D. (2003) *Community-Driven Regulation: Balancing Development and Environment in Vietnam*, Cambridge, Mass.: MIT Press.
- Ortmann, S. (2017) *Environmental Governance in Vietnam: Institutional Reforms and Failures*, New York: Palgrave Macmillan.
- Peluso, N., A. Suraya and Fauzi Rachman (2008) 'Claiming the Grounds for Reform: Agrarian and Environmental Movements in Indonesia', *Journal of Agrarian Change* 8(2) 377–407.
- Roth, R., 2004. On the colonial margins and in the global hotspot: Park–people conflicts in highland Thailand. *Asia Pacific Viewpoint* 45, 13-32.
- Slaats, H. and K. Porter (1992) *Traditional Decision Making: Institutions and Process in an Indonesian Context*, Jakarta: Gadjah Mada University Press.
- Thang, Tran Phuc and Le Thi Thanh Ha (2014) "Vấn đề xung đột môi trường ở nước ta hiện nay", *Triết học* 7(7-2014): 9–17.
- Clausen, A., Vu, H.H., Pedrono, M., 2011. An evaluation of the environmental impact assessment system in Vietnam: The gap between theory and practice. *Environmental Impact Assessment Review* 31, 136-143.
- Hanh, V.T., Thủy, V.T.D., Đức, N.M., Sơn, Đ.H., Hằng, N.T., Phương, N.V., 2014. Kỹ năng giải quyết xung đột trong lĩnh vực môi trường tại Việt Nam Đề tài cấp trường, Trường Đại học Luật.
- Hsu A. et al., 2016. 2016 Environmental Performance Index. New Haven, CT: Yale University. Available: [www.epi.yale.edu](http://www.epi.yale.edu).
- ISPONRE, 2013. Nghiên cứu về giải quyết tranh chấp môi trường ngoài tòa án ở Việt Nam và kiến nghị các giải pháp hoàn thiện Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE), MONRE.
- MONRE, 2016. National State of Environment in the period of 2011 - 2015. Ministry of Natural Resources and Environment, Hanoi (in Vietnamese).
- Phuong, N.H., Thủy, T.T.T., Dũng, N.V., 2013. Đánh giá tác động môi trường ở Việt Nam: Cải cách chính sách để góp phần giảm xung đột và tranh chấp môi trường. Trung tâm Con người và Thiên nhiên.

- Thang, T.P., Ha, L.T.T., 2014. Vấn đề xung đột môi trường ở nước ta hiện nay. *Triết học* 7 (7-2014), 9-17.
- Tuan, C.A., Co, H.X., Lien, N.T.H., 2012. Potential Uses of Environmental Impact Assessment Report for Environmental Dispute Resolution in Vietnam. *VNU Journal of Science, Natural Sciences and Technology*, 64-73.
- Tuan, N.S., 2017. The recent revision of the EIA system in Vietnam. *Environmental Impact Assessment Network* ([https://www.env.go.jp/policy/assess/Article3\\_PECC2.pdf](https://www.env.go.jp/policy/assess/Article3_PECC2.pdf), accessed: 8 Jan 2018).
- Turiel, J., Ding, I., and Liu, J.C. 2017. *Environmental Governance in China*, Brill Research Perspectives, DOI 10.1163/24519227-12340002
- Tran Khanh Hung, and Nguyen Duc Hung. 2014. State Financial Transfers in Environmental Protection: The Case of Vietnam. *Journal of Economics and Development* 16(2): 93–120.
- van Rooij, B., R. Stern and K. Fürst (2016) 'The Authoritarian Logic of Regulatory Pluralism, Understanding China's New Environmental Actors', 10 *Reg. & Governance* 3.
- VIR (2016) 'Unclear Laws Contribute to Environmental Crisis', Vietnamnet Oct 1, <http://english.vietnamnet.vn/fms/environment/164584/unclear-laws-contribute-to-environmental-crisis.html>.
- Wiener, J. and D. Ribeiro (2016) 'Impact Assessment: Diffusion and Integration' in F Birnami and D Zaring eds. *Comparative Law and Regulation*, Cheltenham UK: Edward Elgar, 159–189.
- Zazali, A. (2012) "The Importance of Mainstreaming Alternative Dispute Resolution (ADR) in Tenurial Conflict Resolution in Indonesia," Scale-up website, February 20, available at <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2012/02/importance-mainstreaming-alternative-dispute-resol>.
- Zhou, W. (2012) "In Search of Deliberative Democracy in China", *Journal of Public Deliberation*: 8(1): 4–16.

## Appendices

### Appendix 1: Summary of typical environmental violations in 2013–2017 from MONRE’s Inspectorate

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
1	Incident of broken waste tank of Nghe Tinh non-ferrous metal JSC	Nghe An Province	2017	Water pollution	Fish deaths in ponds of 20 households. Negative effects on 300ha of rice paddy field	Local people informed local state agencies about fish death phenomenon. People's Committee of Quy Hop District investigated the fish death phenomenon, determined the cause of broken waste tank and suspended the operation of Nghe Tinh non-ferrous metal JSC. The case was reported to Ministry of Natural Resources and Environment (MONRE)	MONRE, Ministry of Trade and Industry Nghe An Province's state agencies: The People's Committee, Department of Natural Resources and Environment (DONRE), Environmental Police People's Committee of Quy Hop District	Compensation for fish deaths of 20 households (24 million VND). Administrative penalties for several violations of environmental regulations (1,07 billion VND and 3-month suspension of operation)
2	Incident of broken wastewater pipes of CKC Company	Cao Bang Province	2016	Water pollution	Fish deaths. Negative effects on water supply for local people	DONRE of Cao Bang Province requested the company to resolve the incident and compensate the damages	Cao Bang Province's state agencies: The People's Committee, DONRE The people's committee of Bao Lam District (Cao Bang Province); of Bac Me District (Ha Giang Province)	The company compensated households living in the surrounding areas: 28 million VND

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
3	Incident of broken dams for collecting titanium in Tan Quang Cuong Company	Binh Thuan Province	2016	Water pollution	Contaminated water ran into local households and the nearby road, causing traffic jam	DONRE of Binh Thuan Province requested and instructed the company to resolve the problem The case was reported to MONRE	MONRE Binh Thuan Province's state agencies: The People's Committee, DONRE, Environmental Police People's Committee of Ham Thuan Nam District	Penalty of 1.1 billion VND Compensation for damage: 700 million VND Repairing the road DT 719
4	Mass fish deaths in Buoï River	Thanh Hoa Province	2016	Water pollution	Fish deaths in Buoï River. Negative effects on water supply for people living in Thach Thanh District, Thanh Hoa Province	Local people informed local state agencies about fish deaths. DONRE of Thanh Hoa Province in cooperation with DONRE of Hoa Binh Province investigated the fish deaths. The case was reported to MONRE	MONRE, Thanh Hoa Province's state agencies: The People's Committee, DONRE DONRE of Hoa Binh Province	Tan Hieu Hung Company: penalty of 1,926 billion VND, 12-month suspension of operation Hoa Binh Sugar JSC: penalty of 1,783 billion VND, 6-month suspension of operation, compensation for fish deaths 1.4 billion VND Nguyen Ngoc Sang's pig farm: penalty of 194 million VND
5	Direct disposal of wastewater from A Cuong mineral JSC into Cam Dan River	Bac Giang Province	2014–2016	Water pollution	Metal contaminated wastewater from copper workshop	In 2014, local people informed local state agencies about the direct disposal of wastewater from the copper workshop. DONRE of Bac Giang Province, in	MONRE, General Department of Geology and Minerals Bac Giang Province's state agencies: The People's	Penalty of 210 million VND Suspension of operation

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
					polluted Cam Dan River	cooperation with local state agencies, inspected the company twice on 24 April 2015 and 31 March 2016. MONRE also inspected the operation of the company	Committee, DONRE People's Committee of Son Dong District	
6	Dust pollution from Vinh Tan Thermal Power Plant	Binh Thuan Province	2014–2016	Air pollution	Negative effects on local households living in the surrounding area	Since 2014, local people have complained about the dust pollution from the ash storage of the plant. Provincial government agencies have requested the plant to properly manage the storage, but the problem hasn't been resolved. Local people blocked the national road 1A for two days (14 and 15 April 2015) to protest about the problem.	MONRE Binh Thuan Province's state agencies: The People's Committee, DONRE, Environmental Police People's Committee of Tuy Phong District	Employing local people to work for the plant. Supporting local households living nearby the ash storage to resettle in other areas. Managing dust pollution from the storage
7	Direct disposal of wastewater from Hapeco Hai Au Company to Lach Tray River	Hai Phong Province	2010–2016	Water pollution	Wastewater from paper production polluted Lach Tray River	Since 2010, local people have made several complaints about the direct discharge of wastewater from the company, but the problem has not been resolved. In August 2016, DONRE of Hai Phong Province decided to move the plant to another place	Hai Phong Province's state agencies: The people committee, DONRE The people's committee of An Duong District	Penalty of 400 million VND. Moving the plant to another place
8	Pollution from Dong Tien Steel Company	Vung Tau Province	2014	Air pollution	Negative effects on local people living in the surrounding areas	Since 2010, local people have made several complaints about the air pollution from the company, but the problem has	MONRE Vung Tau Province's state agencies: The People's Committee, DONRE,	Penalty of 670 million VND 3-month

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
						not been resolved. In November 2014, local people protested at the front gate of the plant. MONRE and DONRE inspected the operation of the plant in November 2014	Environmental Police People's Committee of Tan Thanh District and Hac Dich Commune	suspension of operation
9	Pollution in Cha Va River	Vung Tau Province	2015	Water pollution	Cha Va River has been polluted by wastewater from seafood processing companies, causing fish deaths in fish cages of local people on Cha Va River	Local people have made several complaints about the fish death phenomenon, but the problem has not been resolved. On 6 September 2015 when facing a mass fish death, local households used the dead fish to block gates of seafood processing companies. Institute for Environment and Resources determined the cause of fish deaths is wastewater from 14 seafood processing companies. The People committee of Vung Tau City supported the mediation between local households and seafood companies, but it has not been settled. 33 local households filed a lawsuit to the court against 14 seafood processing companies	The people's committee of Vung Tau Province, of Vung Tau City, of Tan Thanh District, and of Tan Hai Commune Fish farming association, Lawyer Association of Vung Tau City	Seafood processing companies compensated 18.1 billion VND for local households' damages The people's committee of Vung Tau Province suspended operation of 5 companies, penalised with 6 month suspensions for 5 companies, and the others had to pay fines.

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
10	Pollution from Phuong Ngoc Tram Packing Manufacturer	Kon Tum Province	2017	Water pollution Air pollution	Negative effects on local people living in the surrounding areas	Local people have made complaints about environmental pollution from the production of the company. Kon Tum Province's DONRE and environmental police inspected and confirmed the production polluting the surrounding areas	DONRE of Kon Tum Province, The people's committee of Kon Tum city and of Le Loi Commune Centre for development of industrial zones of Kon Tum City	The company had to close and move to another area
11	Pollution from Phuong Nam Company	Ha Nam Province	2014	Air pollution	Air pollution from rare-earth processing activities affected paddy fields of local households	Local people complained about the activities of the company causing damage to their paddy fields and blocked the front gate of the company. Institute of Criminal Science (Ministry of Public Security) confirmed the cause of damage was air pollution from the activities of the company	MONRE Ha Nam Province's state agencies: The people's committee, DONRE, Environmental Police	Compensation for damage of 233 households: 237 million VND. Suspension of operation until the environmental pollution is managed
12	Pollution from Italy Dana Steel Company and Australia Dana Steel Company	Da Nang City	2016	Air pollution	Negative effects on local people living in the surrounding areas	Local people have made several complaints about the air pollution from the companies, but the problem has not been resolved. On 14 December 2016, local people blocked the gates of the plants to protest about the pollution. The people's committee of Da Nang City mediated between local people and the companies	Da Nang City's State agencies: The people's committee, DONRE, Environmental Police, Department of Trade and Industry, Department of Construction The people's committee of Hoa Vang District, of Hoa Lien Commune	Suspension of operation until the environmental management is appraised by the relevant state agencies

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
13	Pollution from Phuong Hoa Company	Kon Tum Province	2017	Underground water pollution	Wastewater from cassava starch processing activities penetrated into underground water, causing negative effects on water supply of local people	Local people made complaints about degraded quality of underground water since the operation of the company. DONRE confirmed the underground water pollution and inspected the company's operation	Kon Tum Province's state agencies: The people's committee, DONRE The people's committee of Dak Glei District, of Dak Kroong Commune	Penalty of 20 million VND. Providing clean water to local households
14	Pollution from Long Huy Hung Company	Dak Nong Province	2016	Water pollution	Wastewater from the production of wooden products polluted the nearby streams	DONRE inspected the operation of the company to identify environmental violations	Dak Nong Province's state agencies: The people's committee, DONRE The people's committee of Dak Glong District	Penalty of 440 million VND and 3-month suspension of operation
15	Pollution from Tay Nguyen Building Material Plant	Dak Nong Province	2017	Air pollution	Dust pollution from cement production	Local people made complaints about air pollution from the operation of the company In May 2017, The People's Committee of Dak Nong issued a penalty for violations for the company	Dak Nong Province's state agencies: The people's committee, DONRE The people's committee of Krong No District	Penalty of 210 million VND and 3-month suspension of operation
16	Nicotex Thanh Thai	Thanh Hoa Province	2013	Burying out-of-date pesticides into land	Negative effects on land, underground water	Local people made complaints about the act of burying agricultural chemicals inside the company's area, but the problem was not resolved. In August 2013, local people blocked the gate of the company to protest about the environmental pollution.	Thanh Hoa Province's state agencies: The people's committee, DONRE, Department of Public Security The people's committee of Cam Thuy District, of Yen Dinh District	Penalty of 421 million VND. The company had to treat the contaminated land in accordance with the relevant regulations

No.	Case	Place	Year	Type of pollution	Effects	The resolution process	Parties involved in the resolution	Results
						At the end of August 2013, Thanh Hoa Environmental Police suspended the operation of the company for the investigation		
17	Disposal of wastewater from Long Viet MDF Wood Production Plant	Dak Nong Province	2009–2017	Water pollution. Air pollution	Negative effects on local people living in the surrounding areas	Since 2009, local people have made several complaints about the environmental pollution from the companies, but the problem has not been resolved. On 15 May 2017, local people blocked the gates of the plants to protest about the pollution. DONRE of Dak Nong Province inspected and confirmed the pollution caused by the company's operation	Dak Nong Province's state agencies: The people's committee, DONRE The people's committee of Dak Song District	Penalty of 150 million VND. The company has been requested to install the appropriate treatment system with deadline of 30 October 2017

Source: MONRE's Inspectorate

## Appendix 2: International Best Practices in Environmental Governance

### Introduction

International experience sends a clear message about environmental conflicts—no system of governance can eliminate disputes. However, a consensus has emerged in studies over the last twenty years, regarding the optimal mix of regulatory approaches (Kagan, Thornton and Gunningham 2003; McAllister, Van Rooij and Kagan 2010). This work evolved from the realization that no single agency, actor, or institution possesses the knowledge or capacity to effectively regulate complex and multifaceted areas, such as environmental conflicts. We have called this optimal mix of top-down command and control and bottom-up citizen participation—regulatory pluralism.

Research has revealed some inherent problems with the command and control approach to environmental regulation:

- Central controls apply uniform responses to complex and diverse regional environmental problems.
- Governments lack detailed information about local environmental problems.
- Governmental regulation is often slow in responding to environmental problems.
- Officials often lack the skills and capacity to effectively monitor and control behaviour that harms the environment.
- If government owns/controls key polluting industries than conflicts of interests arise.
- 

### ***What is regulatory pluralism?***

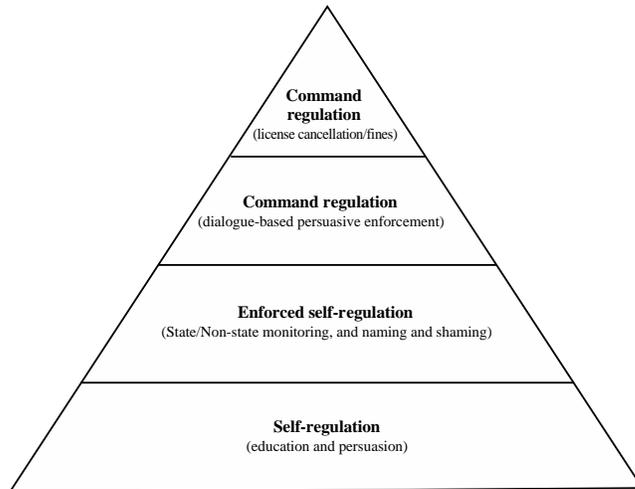
Rather than a solely top-down state activity, regulatory pluralism is understood as a collaboration between state and non-state actors (Gunningham and Sinclair 2002; Kagan, Thornton and Gunningham 2003; Bennear and Cary Coglianesi 2012). It is given effect not only through law and policy measures, but also through private agreements, the implementation of non-government standards, accreditation schemes and a multitude of other non-state control mechanisms.

Studies in both advanced industrial and industrializing countries show that regulation pluralism that involves a mix of regulatory approaches; provides the most effective form of environmental governance. Studies show that top-down command regulation is most effective when combined with bottom-up citizen participation (Thornton and Gunningham 2003; Bennear and Cary Coglianesi 2012). The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (2001) enshrines the principle of regulatory pluralism in environmental regulation.

Over the last twenty years, environmental policymakers have increasingly turned to policy instruments to provide incentives for achieving environmental standards. In addition to compulsory top-down instruments that permit little room for private discretion, governments have applied a range of “mixed instruments” involving varying levels of state and non-state regulation. Governments and business groups have promoted self-regulatory approaches to environmental management—a process that crystalized with the global Environmental Management System or ISO 14000 series (Falkner 2003).

Studies show that regulatory pluralism—rather than a system of hierarchically imposed and uniformly enforced rules—generates the mechanisms that interact with market and civil society pressures to generate environmental improvement (Kagan, Thornton and Gunningham 2003; van Rooij, Stern and Fürst 2016). Non-state regulation is not a substitute for top-down state regulation, but rather it augments and expands the reach of state regulation. Top-down and bottom-up environmental regulation is mutually supportive. In combination, they create hybrid forms of regulation that tackle the multi-faceted issues,

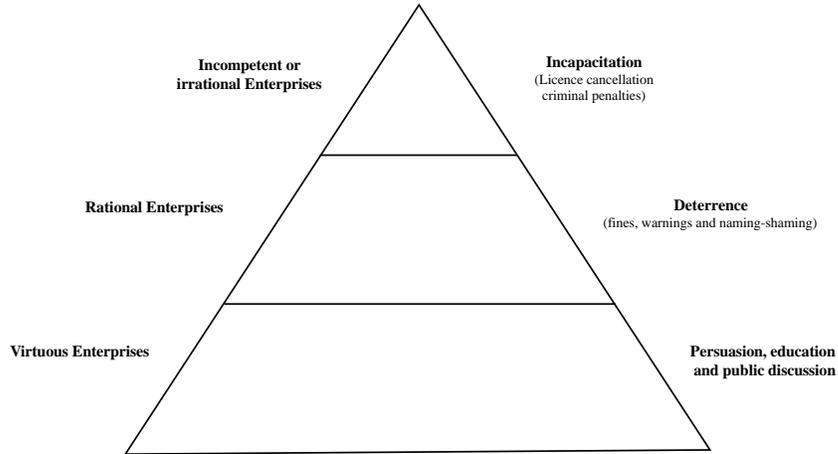
and problems of scale connected with environmental regulation. The goal of regulatory pluralism is the continuous improvement in the behavior of the regulated entity or individual. It is not confined to mere adherence to rules or minimum standards, but also includes mechanisms that encourage companies to move beyond statutory standards and environmental impact assessments.



### **Environmental Governance Pyramid**

**The Environmental Governance Pyramid aims to nurture virtuous enterprises:**

- Inform and support firms that want to improve the environment
- Encourage continuous improvement in environmental standards,
- Promote innovative practices not merely minimum compliance with standards
- Deter unprincipled companies that do not care about the environment
- Secure compliance with minimum standards (EIAs and EISs) and
- Incapacitate “irrational” or dangerously incompetent companies that lack knowledge or skills to protect the environment.



### **Regulatory Assumptions about Enterprises**

The following sections explore how two Asian industrializing countries approach environmental regulation (ie: China and Indonesia). They show that although China possess a substantial regulatory capacity, by pursuing a largely top-down approach to environmental regulation it has not captured the benefits of regulatory pluralism.

#### **Country Studies**

The country studies explore and contrast the different approaches that China and Indonesia have adopted to deal with environmental conflicts. In both countries, environmental conflicts have proliferated as citizens gain awareness about the health threats of pollution, and acquire the means of organizing opposition to polluters. Although the data is difficult to quantify, research studies suggests that the Indonesian approach, which has embraced regulatory pluralism more than China, has been more successful in curbing conflict (Nicholson 2009; van Rooij, Stern and Fürst 2016).

#### ***China: Ambivalence toward regulatory pluralism***

China has made significant advances in environmental protection, from an institutional design and policymaking point of view. Regulation emphasizes central plans and compliance mechanisms to protect the environment. Although environmental protection currently enjoys a much higher priority than in previous development cycles, central planning priorities still heavily favor the economy over the environment (Li and Lang 2010; Yi Liu et al. 2016). Central regulation takes the form of laws designed to manage environmental harm, as well as subsidies paid to promote clean technologies, such as solar energy and electric cars.

#### ***Regulatory framework***

China has enacted a comprehensive set of environmental protection laws, including the Environmental Protection Law 2015, and has established the Ministry of Environmental Protection at the central level, and enforcement agencies at the provincial and city levels (van Rooij 2010; Lora-Wainwright 2010). In addition to licensing environmental pollution with environmental impact assessments (EIAs), the new Environmental Protection Tax Law 2017 aims to reduce environmental harm by taxing pollution. To encourage clean technology, firms that reduce environmental discharges are eligible for tax exemptions. Although the legislative framework for environmental regulation has been significantly improved, studies

show that existing rules continue to contain weak, unfeasible, unclear, and incomplete elements that limit citizen rights, and offer scope for polluting enterprises to avoid liability (van Rooij 2010; Lora-Wainwright 2010; Brettell 2013).

A key problem with over reliance on top-down regulation is that polluters with political connections often resist the enforcement of environmental protection laws by either ignoring environmental rules entirely or only selectively complying with them (van Rooij 2010; van Rooij, Stern and Fürst 2016; Yi Liu et al. 2016). Local governments directly control the local environmental and legal institutions. This is problematic because local governments are difficult to monitor and maintain close ties to local enterprises involved in pollution, in part because of the historical legacy of the planned economy, and in part because of the importance of for local revenue and job opportunities (van Rooij 2010).

Although the state recognizes the inherent limitations with top-down command approaches to controlling pollution, there is political ambivalence toward adopting regulatory pluralism that might allow citizens to play a more important role in monitoring pollution and resolving environmental conflicts (Stern 2013). Many officials understand that new actors can assist the state in monitoring pollution, pressuring polluters, helping to enforce the law, and mediating environmental conflicts. Nevertheless, they are concerned that social organizations and environmental activism could evolve into broader political complaint. This tension shapes the balance between top-down and bottom-up environmental regulation.

Despite the political ambivalence, there have been some important shifts toward bottom-up environmental regulation. For example, court procedures have been changed to allow citizens to bring environmental violators to court. It is now easier to use expert opinions as evidence to show casual links between environmental discharges and public harm. In an important recent reform, NGOs can now mount environmental litigation on behalf of affected communities.

Specialized environmental courts take criminal action against serious environmental polluters. In addition, the fines for non-compliance were raised, targets were clarified and expanded, and techniques of enforcement were improved (Lora-Wainwright 2010; Brettell 2013). The government still prohibits the use of class actions, but NGOs can mobilize community resources in taking environmental actions.

There has also been an increase in environmental self-regulation. According to an ISO survey, more companies now comply with ISO 14001 Green Certification in China—up from 510 in 2000 to 117,758 in 2014 (McGuire 2014). Interest in environmental self-regulation is attributed to the growing number of Chinese companies seeking customer approval in overseas markets. The buying preferences of environmentally conscious consumers in advanced industrial countries drives most environmental self-regulation, such as the Forest Stewardship Council certification or the Fair Trade certification.

Despite government reservations regarding citizen involvement in environmental regulation, Chinese citizens are creating cooperative links among protest movements around the country, and proactively mobilizing opposition to projects with potentially serious environmental consequences (van Rooij, Stern and Fürst 2016; Yi Liu et al. 2016). The Internet, especially social media, has played a crucial role in allowing citizens to spread information about the environment. It has not only enabled the mobilization of opposition to projects with potentially harmful environmental consequences, it has also placed pressure on the state to more rigorously enforce environmental regulations. But commentators have concluded that social protests over environmental issues have been relatively ineffective in preventing or controlling pollution because of the intervention of local party-state agencies (van Rooij, Stern and Fürst 2016; Yi Liu et al. 2016).

Regulatory pluralism involving social protests has evolved within a political space that is tightly controlled by the state. This does not mean that the state has been unresponsive to environmental concerns. The

state has to balance the competing demands of providing citizens sufficient space to prevent unrest, but at the same time controlling them so that they do not cause social unrest. Currently this process is largely top-down and does not provide effective mechanisms for the resolution of environmental conflicts. There is a lack of effective intermediary institutions (mediators, lawyers, technical experts, informal legal aid) to support citizens in taking action against environmental polluters. But more importantly, there is an unsupportive socio-political environment. Polluters are often backed by government agencies creating a power imbalance with aggrieved citizens (van Rooij, Stern and Fürst 2016).

### ***Public participation in spatial planning***

For many years, city officials in China were criticized for allowing developers to set the planning agenda without attending to public concerns, such as fully compensating people affected by industrial pollution (Zhou 2012; He 2006). To restore public trust, some city officials have trialed deliberative designs—a type of citizen participation in environmental planning pioneered by James Fishkin and Baogang He (He 2006).

For example, in 2005 officials in Wenling City randomly selected 257 citizens to decide how to spend the city budget and minimize environmental harm to the city (Han Fuguo et al 2015; He 2006). In 2012, the 18th Chinese Community Party Congress endorsed deliberative democracy (*Xieshang Minzhu*) as a key mechanism to increase citizen participation in planning, enhance state capacity and reduce environmental harm (Han Fuguo et al. 2015). Subsequently, hundreds of small cities and districts have trialed different types of deliberative designs to increase public participation in planning and environmental protection. For example, in 2015, the Pudong New District in Shanghai invited residents to decide how to allocate the development budgets in some sub-districts (Han Fuguo et al. 2015). With support from the Centre for Comparative Urban Governance at Fudan University, citizens were randomly selected to prioritize land and industrial developments in sub-districts. This project used Deliberative Polling®—a deliberative design that involves supplying technical and balanced information, random sampling, moderated small group discussions, and pre- and post-deliberation surveys.

Studies suggest five reasons why deliberative designs have increased public participation in China (Zhou 2012; He 2006):

- Facilitators were trained in university-based centers that specialize in deliberative designs.
- Facilitators allowed participants to deliberate issues with relative equality.
- Participants were given comprehensive briefings and time to conduct sustained deliberation to develop informed and “rational” decisions.
- The deliberative forums operated outside the influence of the city planning and budget departments.
- Independent monitoring ensured compliance with deliberative priorities.

Although deliberative design experiments have shown promising results, so far they have not become a core method of regulating the environment. The state recognizes the need for distributive justice that fairly allocates environmental benefits among companies and citizens. However, the state still predominately relies on top-down command and control regulation, coupled with incentives to adopt green technology, to achieve this objective (van Rooij, Stern and Fürst 2016).

If China, with its immense regulatory capacity, struggles to implement top-down environmental regulation, it is pertinent to ask whether this approach is suited to Viet Nam. China has 15 times Viet Nam’s population and a GDP that is 54 times larger than the Vietnamese economy. The next case study considers Indonesia, which has a similar regulatory capacity to Viet Nam. The Indonesian state has recognized the limitations

with top-down regulation and embraced regulatory pluralism, where resources outside the state are harnessed to control environmental harm and resolve environmental conflict.

### *Indonesia: Promoting regulatory pluralism*

Before President Suharto was removed from power in 1998, environmental regulation in Indonesia resembled the top-down approach followed in China. The state discouraged citizen participation in environmental disputes and actively suppressed regulatory pluralism. By the early 1990s environmental conflicts began to increase in number and complexity, forcing the state to acknowledge the limitations of top-down environmental regulation. In 1993 the state began to cautiously experiment with environmental mediation. Following the far-reaching political and legal reforms that have occurred after 1998, and the emergence of well-resourced and highly skilled environmental NGOs, mediation has become an important mechanism in resolving complex environmental conflicts.

#### **Regulatory framework**

Work on developing a regulatory framework to control environmental harm followed Indonesia's participation in the 1972 United Nations Conference of the Human Environment (Nicolson 2009; McCarthy and Zen 2010). The government developed a National Environmental Policy in 1973, which declared that: "In the implementation of development, Indonesia's natural resources should be rationally utilized. The exploitation of natural resources should not destroy the human environment and should be executed by a comprehensive policy which takes into account the needs of future generations."

The first Environmental Management Act (EMA) was enacted in 1982. It established the "right of every person to a good and healthy living environment", and the principle that polluters must pay compensation to those harmed by their activities. It also set up a system of environmental impact assessments. This top-down, regulatory approach has been refined in the most recent Law on Environmental Management 2009.

Despite progress in strengthening environmental agencies, laws, policies, and regulations, the government increasingly encountered difficulties in enforcing environmental laws (Nicholson 2009; Peluso, Suraya and Rachman 2008).

- Regulatory agencies were weak, and lacked clear mandates, enforcement mechanisms (especially at the local governmental level), and had limited staff and resources. For example, a key challenge for enforcing EIAs is finding personnel with the required knowledge and commitment to evaluate environmental issues (McCarthy and Zen 2010).
- Many large industries believed that they could avoid sanctions because environmental agencies were either incompetent or corrupt.
- There was a general lack of understanding about environmental laws and regulations on the part of industries, governmental agencies, and the wider public. Many officials believed that license cancelations and fines were inappropriate responses to violations, and more educational and problem-solving procedures were needed to redress environmental harm.
- Many companies argued that non-compliance resulted from a lack of resources to adopt advanced technology and subsidies.
- Enforcement, especially through the courts, was time consuming and expensive.
- Adversarial processes resulted in public shame and entrenched resistance by companies.

Recognizing the capacity limitations to top-down regulation, the state has increasingly encouraged bottom-up, environmental regulation.

### ***Encouraging distributive justice and citizen participation***

One area where the state has been especially effective in encouraging bottom-up regulation is environmental mediation. The first Environmental Management Law in 1982 recognized the right of every person to participate in the environmental management process. Acknowledging the inherent limitations with top-down regulation, the Environment Minister, Sarwono Kusumaatmaja, in 1993 ordered the Ministry and the Environmental Impact Management Agency to develop a mixed regulatory approach that combined both command enforcement mechanisms and bottom-up citizen involvement. This initiative aimed to integrate traditional values and approaches to decision-making and conflict management with new methods of mediation developed in Asian and western countries.

Disputes in Indonesia were historically handled by consensual deliberative procedures mediated by authoritative leaders, who facilitated discussion between disputants (Nicholson 2009; Slaats and Porter 1992). Traditional dispute resolution aimed for *musyawarah*, a group deliberative process that worked toward *muafakat* (consensus)—a solution that the disputing parties find acceptable, and which can attract mutual support.

Voluntary environmental mediation has gained momentum as the post-Suharto state has gradually come to accept that the state cannot impose distributive environmental. Recognizing the need for citizen participation, article 85 of the Law on Environmental Protection and Management 2009 gives citizens the right to pursue environmental dispute resolution in courts or outside of courts, through informal methods of dispute resolution such as mediation. Article 1 defines environmental disputes as conflicts between two or more parties, with the potential to impact on the environment. In a significant change, article 86 now recognizes the right of communities to establish “independent and impartial institutes for settling environmental disputes”.

Citizens may sue polluters in the courts, if mediation is unsuccessful. Disputants also have the right to mount class actions (article 90 LEM 2009), which are necessary in complex disputes. In practice Indonesian citizens rarely litigate, because courts are widely regarded as lacking the skill and impartially required to resolve complex cases.

### ***Developing Environmental Mediation***

In the post-Suharto period, citizens began to express their discontentment about environmental harm (Peluso, Suraya and Rachman 2008; Bakker 2012). They wanted distributive justice that gave them more say over future development projects that might harm the environment, and the right to revisit existing projects that had already harmed the environment. As it turned out, the Suharto Government’s failure to consult fairly with citizens pushed environmental grievances underground, where they intensified and became increasingly violent and difficult to resolve.

Two key reforms that began during the *Reformasi* era in the late 1990s have dramatically improved the opportunities for citizens to mediate environmental conflicts (Bakker 2012). Firstly, grass-roots democracy reforms have decentralized administrative powers to provincial and district level governments—increasing democratic accountability, and secondly, the state has relaxed controls over community organizations and the formation of nation-wide NGOs.

NGOs now play a much more active role in the mediation of environmental disputes (Nicholson 2009; Dhialulhaq, et al. 2014). Law No. 30 on Arbitration and Alternative Dispute Resolution 1999 provides the legislative basis for mediation. NGOs have sprung up to represent many different aspects of social life in

Indonesia, including the interests of communities in environmental conflicts. Some of these NGOs are closely connected to particular communities and play an effective role in promoting consultation and mediation.

Well-resourced organizations such as the Indonesian National Forum for the Environment (WALHI), the Indonesian Centre for Environmental Law (ICEL), and the Indonesian Legal Aid Foundation (YLBHI) have been especially active, providing neutral advice that counters the self-interest of industry (Nicholson 2009; Zazali 2012; Dhiaulhaq et al. 2014). Increasingly, the ability of citizens to mobilize support through mass, and especially social media, has played a key role in redressing power imbalances and bringing otherwise reluctant companies to mediation. Mediation can overcome power asymmetries and allow the parties to converse on a relatively equal basis. Reflective unmediated discussion during mediations can reduce the intensity of conflicts, promote compensation and settlements and improve the relationships between the conflicting parties (Nicholson 2009; Zazali 2012; Dhiaulhaq et al. 2014).

### ***Lessons learned from environmental mediation in Indonesia***

Most disputes involve conflicts arising from forests that are cleared for industrial agriculture, or from pollution generated by industrial processes (Nicholson 2009). When petitioning fails, citizens take direct action through public protests or block roads to prevent developments. In most environmental conflicts, the provincial government has tried and failed to reach a settlement. It is possible to distil some key features from case studies that produced successful outcomes (Nicholson 2009; Bakker 2012; Dhiaulhaq et al. 2014).

#### *One: Neutral and impartial mediators*

Mediators not only need to be politically and economically independent, but also possess the skills needed to facilitate communication between the disputants on complex and often highly technical matters. In addition, a process is required in which organizations representing aggrieved citizens can participate in the selection and monitoring of mediators. In most successful cases, mediators were either drawn from local universities (e.g. University of Riau) and/or from national environmental NGOs (such as scale-Up, the Indonesian National Forum for the Environment (WALHI), and the Indonesian Centre for Environmental Law and Forest Trust).

#### *Two: Pre-mediation processes*

To gain support from the disputants, mediators need to develop collaborative processes that determine how decisions are made. Mediators first conduct a conflict analysis, which aims to develop insights into the conflict (e.g. the history, the causes, the stakeholders). Then mediators negotiate with the disputants to develop the rules governing the dispute resolution process.

#### *Three: Mediators perform multiple roles*

The complex and dynamic nature of environmental problems requires flexible dispute resolution processes. Effective mediators identify common interests, and demonstrate the mutual benefits of “win-win” solutions to both parties, as well as the costs of not pursuing mediation. Collaborative mediation processes are experimental and open to adaptation and change.

Mediators perform the following roles:

- Advisors who provide guidance, options or potential solutions for the parties.

- Capacity developers. Since disputing parties come from different backgrounds, with different understandings and views regarding the conflict issues, effective mediators try to address differences in knowledge by providing capacity development activities.
- Motivators. This role is particularly important because mediation is time consuming, and mediators need to combat boredom, cynicism and apathy in the disputants.

*Four: Appropriate science and technology*

Mediators should bring the best and most complete substantive environmental information into the discussions, and ensure that discussions are based on sound environmental data. This may involve the participation of third party experts in the mediation process. University expertise is generally required. The most appropriate science and technology is not always the latest and most advanced. It must be suitable for local conditions, and receive community support.

*Five: Post-mediation phase and the outcomes*

Studies show that mediation can produce positive outcomes: such as a reduction in the tension between the parties, and improved social relationships between companies and communities. For local communities, the main benefits are compensation and controls placed over continued environmental harm. For companies, the main advantages include a reduction in conflict, leading to increased profits. More intangible benefits include a restoration of public reputation and image.

Although case studies show clear advantages in encouraging companies and communities to mediate environmental conflicts, so far there has not been a systematic attempt to standardize mediation mechanisms—leading to considerable variation in the quality of mediation across the country. Since mediation is voluntary, companies sometimes refuse to comply with settlements. Social media is playing an increasingly important role in naming and shaming recalcitrant companies, and forcing them to comply with settlements.

Although Indonesia lacks the resources and regulatory capacity of China, by prompting regulatory pluralism, the Indonesian government has been able to limit environmental conflicts. Despite a high economic growth rate and rapid industrialization, the number and complexity of environmental conflicts has stabilized over the last decade (Nicholson 2009; Bakker 2012; Dhialhaq et al. 2014). The Indonesian experience with mediation has some clear lessons for Viet Nam.