

Improving Policies, Processes and Practices of Forest and Forestland Allocation in Viet Nam



Key Messages

- Forest Allocation and ForestLand Allocation (FA/FLA) have generally had positive results on forest conditions and on the livelihood of forest dependent communities in Viet Nam. The provision of clear and secure tenure was a critical factor, contributing to tangible economic benefits for local people.
- There is good potential for further FA/FLA to households and communities. The allocation process so far is mainly limited to plantation forests and to natural forest areas under the production forest category. However, there would be benefits in extending FA/FLA practices to protection forests.
- The process of FA/FLA has not been applied consistently across all provinces in the country. Some provinces are without forests, and those that are forested exhibit a wide variety of environmental conditions and land management contexts.
- FA/FLA is well-aligned with national REDD+ objectives and should therefore be integrated into Viet Nam's National REDD+ Action Programme (NRAP) and Provincial REDD+ Action Plans (PRAPs).

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Introduction

Since 1990, Viet Nam has been implementing a policy of Forest and Forestland Allocation (FA/FLA) in most of its provinces to ensure better management of land and forest resources. FA/FLA policy refers to the practice of allocating forest and forestland to different potential recipients, including:

- State forest entities such as Forest Management Boards (FMBs), State-owned Forest Companies (SFCs), and Commune People's Committees (CPCs)
- Individuals / households
- Group of households / communities

The Government of Viet Nam aims to allocate at least 75% of production forest and 30% of protection forest for households and local communities. At provincial level, several State institutions are authorized to engage in FL/FLA such as Provincial People's Committees, Provincial Authorities and State Forest Entities.

The UN-REDD Viet Nam Phase II Programme (July 2013 to December 2018) aims to address issues related to forest and land tenure in six pilot provinces as part of a strategy to motivate forest sector stakeholders to protect and manage their forest resources for long-term socio-economic and environmental benefits. Secure forest and land tenure is generally considered to be an enabling condition for successful and sustained implementation of REDD+. Clear and secure tenure rights can provide incentives for actors to manage forests sustainably since rights are protected and long-term benefits are more assured. This Policy Brief summarizes the key findings and recommendations from the assessment of FA/FLA in six provinces, and from a national level policy study through the Technical Cooperation Programme of the Food and Agriculture Organization (FAO) in 2015 to identify gaps in laws, policies, processes and practices.

Legal and Policy Framework in relation to FA/FLA

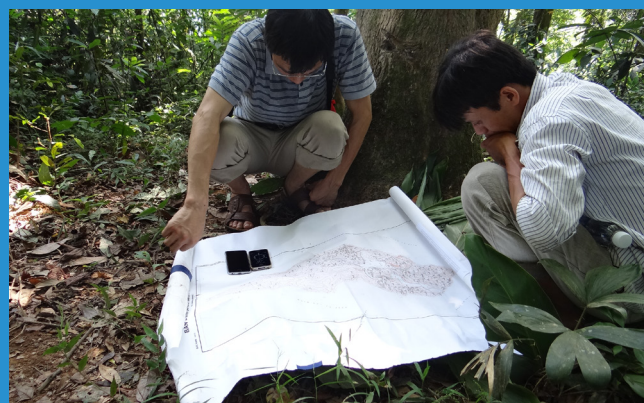
In terms of Viet Nam's legal and policy framework, the Government has issued laws, policies and guidelines, and established the necessary institutional structures at provincial and lower levels to implement various forest tenure models. At present, forest tenure in Viet Nam is governed primarily by two laws: the Forest Protection and Development Law (2004) and the Land Law (2013). These laws and subsequent decrees focused on their implementation, sanction the management of forests by local people and the private sector and allow legitimate title holders to lease, exchange, inherit, mortgage and transfer titles. Rights and limitations associated with FA/FLA are relatively precise. There are defined provisions related to compensation mechanisms, land valuation, and Payment for Forest Ecosystem Services schemes. Nevertheless, the study highlighted some of the shortcomings in the legal and policy framework with regard to FA/FLA, as follows:

1. Decision 178 on a **benefit sharing mechanism under FA/FLA** only addresses the distribution of the benefits from production forests but not from protection forests and is therefore insufficient.
2. There is **no clear policy to extend continued technical and financial support** required by holders of Forest Land Use Rights Certificates.

3. The recent **revision of forest categorization** at the provincial level has resulted in changes in the size and location of areas under the three forest management categories (special-use, protection, and production forest), potentially undermining existing FA/FLA arrangements mainly, while changing production forests to protection category.
4. The **customary tenure arrangements of ethnic minorities are not recognized** by law, leading to confusion and overlapping claims over land and forests.
5. Existing **community forestry management guidelines are too academic and complicated** to enable application by communities and do clearly define rights regarding the harvest, use and sale of forest products.
6. **Circular 58/2009 of the Ministry of Agriculture and Rural Development (MARD) allows conversion of well-stocked forest plots under 3ha** (defined as forests with a higher timber volume than the maximum allowed for conversion into rubber) to other land use

Key Findings

In Viet Nam, the policies, laws and regulations related to tenure of land and forests are not consistent across the country and vary considerably between provinces. Furthermore, the process of FA/FLA has not been applied consistently across all provinces in the country. Forest cover and land management contexts differ significantly across provinces as well.



The study in six provinces found that the area of forestland that has been allocated to households and communities is considerably smaller than that allocated to State entities. Allocation of forestland to households and communities has been more widespread in Lao Cai, Bac Kan and Ha Tinh provinces (Northern and North Central regions), while less extensive in Lam Dong, Binh Thuan and Ca Mau provinces (Central Highlands, South Coastal, and Mekong regions).

The assessment also revealed the impacts of FA/FLA on forest conditions, on the livelihoods of forest dependent communities, the types and severity of conflicts, and other risks and challenges associated with the FA/FLA process. The assessment showed that inclusion of FA/FLA, particularly with emphasis on allocation to households and communities, could be an integral component of the Provincial REDD+ Action Plans (PRAPs) in Viet Nam. The summary of key findings is divided into those related to the legal and policy framework, to FA/FLA processes, and to FA/FLA practices.

purposes. This provision has sometimes been abused, resulting in significant forest loss, particularly when such plots are located adjacent to each other.

7. Decree 113 gives **no limit to the size of forest areas that can be allocated for forest plantation** while the Land Law (2013) sets an upper limit for allocation to households of 30ha. Furthermore, Decree 135 gives first priority for FA/FLA to the staff of State entities and their relatives, leading to **unfair allocation**.
8. **Taxes** on the timber trade are excessive, disincentivizing timber business and sustainable management.
9. **Payments** for forest protection (usually ranging from VND 50,000 to VND 200,000/ha/year) **are too low** to effectively incentivize protection, resulting in localized forest degradation and clearance.

FA/FLA Practices

The study found that forest conversion and illegal logging were reduced significantly in the areas where communities and groups of households are involved in FA/FLA. Furthermore, participation in patrol teams enhanced community cohesion, responsibility and accountability. Good practice was also observed in FMBs' facilitation of consensus within local communities on forest protection initiatives. Where these initiatives included the provision of longer-term forest contracts (of 15 years or more), they encouraged households to invest in forests. The issuance of Land Use Right Certificates was also shown to enhance secure tenure rights. In some provinces, communities also benefited from Government-supported projects, providing technical and financial assistance on forest and plantation development. In general, non-State entities, including private companies, are more effective in mobilizing external resources for forestry, and increasing efficiency of land use (e.g. forest tree plantation, tourism, etc.).

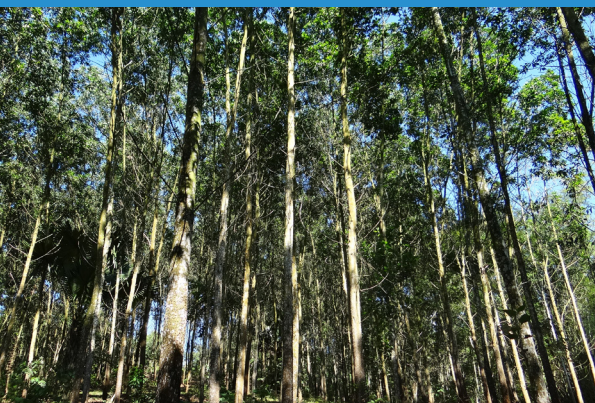


FA/FLA Processes

At present, the Forest Protection and Development Law (2004), and the Land Law (2013) define the process of FA/FLA, as well as leasing and contracting in Viet Nam. In addition, MARD and the Ministry of Natural Resources and Environment (MONRE) have a number of guidelines and procedures related to FA/FLA (e.g. MARD Circular 38, Inter-ministerial Circular 07, and MONRE Circular 06). These guidelines help in the implementation of FA/FLA by clarifying the steps to identify legitimate tenure rights holders of forestland. Many provinces, including Bac Kan and Ha Tinh, have also issued local implementation guidelines regarding FA/FLA.

According to these guidelines, stakeholders should be allowed to take part in most of the steps of the FA/FLA process, including field measurement and demarcation. At district level, information about FA/FLA should be publicly displayed so that people can assess their eligibility for allocation and follow the necessary processes accordingly. Similarly, the terms and conditions of contracting for forest plantations should be shared with concerned households and communities. Nevertheless, though the administrative processes are in place for issuance of FA/FLA, there remain various process-related shortcomings and gaps identified as follows:

- Despite having good **collaboration between MONRE and MARD** in principle, there is still potential for improved collaboration in practice, particularly while formulating land use plans.
- Circular 38 stipulates the involvement of local communities in decision-making on forest allocation. There is, however, still a **lack of participation of local communities and households** in most of the stages of reviewing, approval and verification of FA/FLA proposals. As a result, a number of disputes related to boundaries and overlapping claims are still outstanding at the local level.
- Criteria to select recipients of forestland through FA/FLA processes have sometimes **excluded poor households** due to requirements of permanent housing and sufficient labor to carry out forest protection / plantation duties.
- In the contracting model for forest plantation or protection, **poor households and women-led households** were not considered as priority recipients.
- There is a **lack of an effective mechanism to monitor** the implementation of FA/FLA to ensure that due process is followed.





The study also identified a number of inconsistencies and gaps in practices of FA/FLA as follows:

- FA/FLA has **limited financial benefits for households and communities**. Natural forests allocated to households and communities, whether production or protection forests, are usually of poor quality, so there is no possibility of timber harvesting for several years. Further, there are **limited incentives to motivate households to enter into forest protection contracts with SFCs and FMBs**. In most provinces, the income from forest protection contracts is too low (about USD 8 per ha per year). The contracts confer no rights over forest resources or to a share of income from forest products or services. Even in the case of Payment for Forest Ecosystem Services, recipients did not always understand well the basis for payments and **sustainability of payments was unclear**.
- Households and communities managing

forests face challenges in terms of **access to credit and to markets for forest products**, as well as the **availability of high quality seedlings** for forest enrichment or replanting.

- In some provinces (i.e. Ca Mau, Lam Dong and Binh Thuan) **most of the forestland has already been allocated** to SFCs/FMBs, and then contracted out to households. Priority has been given to the employees of SFCs and FMBs, which has led to inequitable outcomes. Some households have been contracted for protection of relatively large areas (6ha to 30ha), exhausting the supply of eligible land. There is no remaining land available for interested low-income households.
- In some cases, **higher-income households with alternative livelihood options are not investing** in forests and forestland allocated to them, resulting in degradation and effectively preventing lower-income households who have limited livelihood options from accessing forest resources.

and contracting processes followed the principles of **“quick allocation”** (trying to allocate maximum areas of forest to as many recipients as possible). Thus, in many cases forest measurement was not conducted in the field and geo-referencing of the allocated plots was poor, resulting in a common problem of **overlapping boundaries and associated conflicts**. Conflicts have also arisen when **leasing procedures were not properly followed**, mainly because relevant agencies did not conduct field measurement of forest areas or did not consult adequately with local Government or state forest entities.

- Although annual investment in forest protection has been increasing in recent years, mainly due to the introduction of Payment for Forest Environmental Services, the **continuity of this investment is uncertain**.
- Lease agreements for forestland to non-State companies are not properly administered or monitored**, resulting in deforestation and forest degradation. In some instances, lessors have cleared areas that have been prioritized for conservation. Conflict between these companies and local people, based on overlapping land claims, is still a problem in many provinces.
- Institutional weaknesses highlighted include **lack of human resources, facilities, and financial support** to manage forest land (e.g. by CPCs), lack of resources for accurate cadastral mapping, poor **availability of land tenure data**, and **inconsistent forest data** (MONRE and the Department of Natural Resources and Environment, called DONRE) due to different forest classification systems and inventory methodologies.



- In some provinces, part of **allocated forestland in production and protection forest areas is being converted for shrimp ponds and rice fields**, particularly in Ca Mau province where it is permitted to convert up to 20% of an allocated forest area for other non-forestry purposes. Since the allocated forestland tends to be of poor quality, there are low economic returns from keeping it as forest, leading to conversion. This indicates that the current arrangement and practices under FA/FLA are inappropriate.
- Significant areas of **forest in Bac Kan, Lao Cai and Ha Tinh provinces still remain unallocated as the process is too slow**, and thus under the management responsibility of CPCs, but the management of these areas is poor and in many cases forest degradation and deforestation are rampant.
- In the 1990s, many forestland allocation

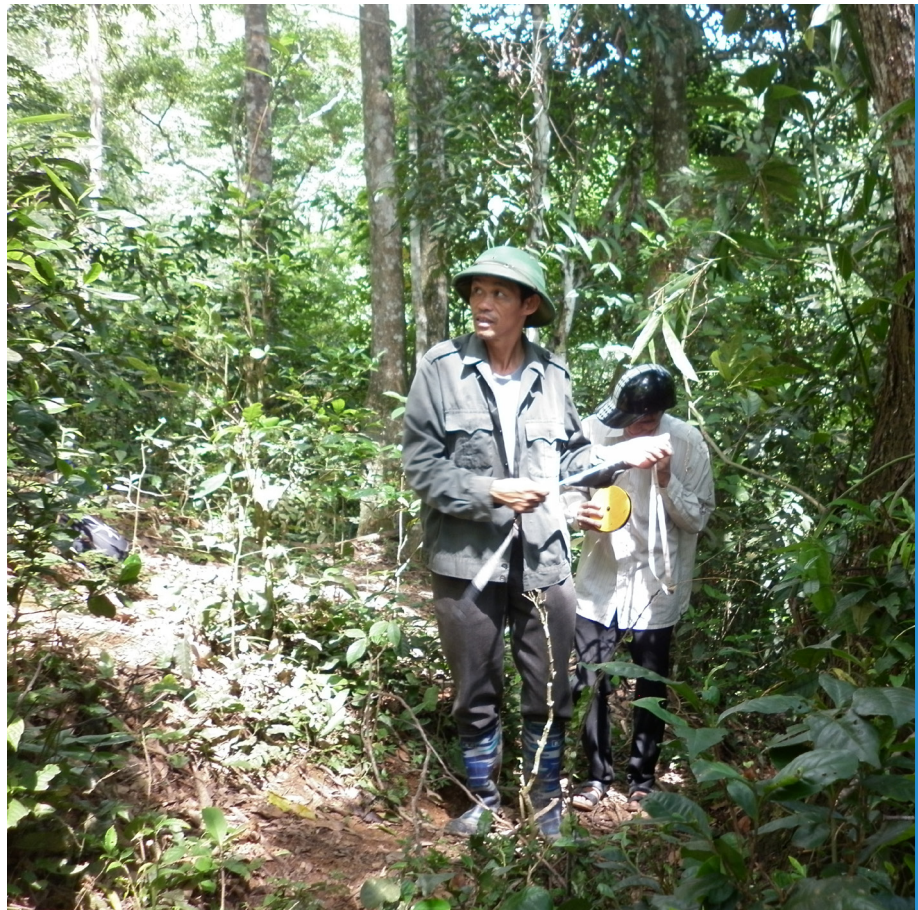
Key Recommendations

1. Increase cooperation and collaboration between MONRE/ DONRE and MARD/Department of Agriculture and Rural Development (DARD):

MONRE and MARD should prepare joint guidelines for cadastral mapping of forests to reduce costs, speed up the process, and increase participation. Suitable accuracy standards should be put in place based on the principle that land administration should be 'fit for purpose'. DARD and DONRE should agree on the division of responsibility for mapping the forest boundaries of households and state organizations in their districts. DONRE should supply digital cadastral maps and software for joint forestland mapping, while both agencies should collaborate in producing forestland statistics, maintaining a database, and releasing results.

2. Review, map, and demarcate the areas of production, protection and special-use forest

This process should begin with the preparation of criteria for the review of three forest categories including guidelines for resolving disputes that could arise between State organizations and households or communities. A survey should be conducted of historical and current forest and forestland holders involving fully participatory community meetings to disseminate and clarify the policy of forest planning and re-zoning. Information on rights, responsibilities and benefits of the related parties should be clearly provided, and the principles of Free, Prior and Informed Consent should be applied. Households, organizations, commune cadastral officers and forest rangers should together carry out forest demarcation in the field, engaging in dispute resolution when needed, and installing permanent or temporary boundary markers / posts.



3. Review leased forestland to identify misused areas to be reallocated or re-contracted, prioritizing poor and disadvantaged households and communities

A field review should be conducted on the conformity of private companies' management of forestland or plantations under lease or contract. Where forestland has been misused or where interventions to develop and protect forest areas have not been carried out, agreements should be revoked and sanctions applied. The withdrawn areas should be allocated or contracted to local communities or households, prioritizing poor and ethnic minority communities living close to the withdrawn areas. The process should involve consultation with all related parties (e.g. Governmental authorities, forest rangers, companies, village leaders, and households). A monitoring mechanism should be collectively developed and mutually agreed among the parties.

4. Build forest co-management models for the benefit of all stakeholders, emphasizing participation and benefit sharing with local people

The study identified three priorities in

relation to co-management models:

a. Institutionalize and replicate community forestry and co-management arrangements

After reviewing the three forest categories, small areas of natural forest (both protection and production) near villages should be allocated to communities or groups of households for Community Forest Management. Furthermore, capacity building for community leaders and members should be conducted to ensure better forest management. Decision 178 should be revised to allow communities to harvest timber from natural forests, in accordance with Sustainable Forest Management plans, and the Prime Minister's Decision on Community Forest Management (in draft) and the simplified Community Forest Management guidelines (in draft) should be passed. On the basis that the alternative is continued lack of incentive for co-management and Sustainable Forest Management on the part of local communities, and therefore continued encroachment and / or unplanned extraction.

b. Allocate forestland under CPC management to households and communities

Forestland currently under CPC management should be allocated to households and communities with priority given to poor and disadvantaged

households near the area. All relevant parties should participate in the field survey and demarcation, and consultations should be organized with communities adjacent to the forest, applying the principles of Free, Prior and Informed Consent. Once forestland is allocated, funds should be mobilized from different sources to support forest management.

c. Continue Forest Protection Contracts (FPCs) with priority for poor households

State organizations should sign additional FPCs with village communities and groups of households based on Decree 75/2015/ND-CP. Provincial People's Committees should increase the payment rate for FPCs to encourage local communities to protect forests, by using several different budgets or funding sources if necessary. Existing FPCs between State organizations and local communities should be upgraded to co-management status in which State organizations, local communities and authorities share the benefits and obligations based on their contributions. Under these contracts, households should be allowed to carry out some low-impact livelihood activities in designated locations to be approved and monitored by the FMBs.

5. Review leasing of forestland to companies and limit further leases, while local people still have a shortage of production forestland

Only forestland that has not been used effectively should be leased to private companies, while land managed well by communities should not be leased. Private companies wishing to acquire forestland should be required to have: a) an office within the province, b) a sound financial situation, c) an investment plan for forest plantation development and wood processing, d) approval from Provincial People's Committees, and e) a commitment to use local labor.

6. Amend policies and procedures for FA/FLA so that local communities are able to participate fully in all steps

Circulars of MARD and MONRE should be amended to include the necessity for community participation in the selection of households for FA/FLA. These amendments would require participation in the appraisal committee, disclosure of selected households for public comment, boundary demarcation in the field with participation of all affected households and State forest owners including signature of all parties, disclosure of land and environmental information on the websites of MONRE / DONRE and MARD / DARD including costs for cadastral mapping and Land Use Rights Certificates. A more comprehensive assessment of procedures could provide additional suggestions to the Government on revision of policies and regulations related to FA/FLA.

7. Post-allocation policies to support long-term investment by forestland owners

Some of the options to increase investment could include a) increasing the financial support available for FPCs, b) introducing preferential terms for households and communities to access credit through Government mechanisms, c) allowing households and communities with FA/FLA or FPCs to harvest timber for local uses according to forest management regulations, d) encouraging smallholders to form associations to improve access to markets with reduced regulatory burdens, and e) supplying good quality seedlings and training for commercial timber

production.

In addition, the Government should consider tax policy revisions to encourage investment in the forest sector, e.g. tax cuts for natural forest timber originating from regenerated natural forest, woodchips, and sawn timber. Insurance should be made available for forest plantation investments.

Conclusions

Overall, the assessment revealed that FA/FLA has had generally positive results on forest conditions and on the livelihoods of forest dependent communities. It identifies potential gaps where FA/FLA might have counterproductive effects for REDD+ and helps improving the FA/FLA process to mitigate deforestation risks including by introducing innovative approaches such as payments upon performance, across sectoral collaboration on land use planning etc. The study also highlights the multiple benefits potential to FA/FLA processes, by strengthening the practice of promoting vulnerable groups, promoting high quality forestry practices with enhanced environmental benefits. The provision of clear and secure tenure was a critical factor, contributing to tangible economic benefits for local people. Nevertheless, to take full advantage of potential benefits, it will be necessary to revise several policies and regulations, solve remaining disputes over boundaries, and provide additional technical support and resources. Varied experience with FA/FLA in the six pilot provinces provides useful contextual information to inform national-level decision making that is likely to have positive impacts throughout the country. The objectives and results of FA/FLA are largely consistent with those of Viet Nam's national REDD+ Strategy. Implementation of REDD+ could strengthen FA/FLA through provision of additional financing (e.g. for FPCs), technical know-how on sustainable forestry management, and strengthening of environmental and social safeguards.

FA/FLA by itself will not necessarily result in reduced deforestation, degradation or improved management. These outcomes depend on the application of appropriate processes and practices on the ground. A fundamental problem for forest protection and development remains that there is still generally low economic incentive for the recipients of allocated forests to manage them sustainably, particularly in the situation of protection forests. Viet Nam should explore the combination of FA/FLA with identification and promotion of sustainable and profitable models of forest management, particularly for natural forests.

The Programme has already taken several initiatives to address the recommendations of the study. It has shared the key findings to the relevant stakeholders, prioritized forest tenure related activities of PRAPs for implementation, and revised forest contract conditions to provide enhanced rights to the contract holders. Meanwhile, the Programme is planning to engage with DARD and DONRE to strengthen their collaboration for a smooth and transparent forest allocation process.



Initiatives taken by UN-REDD Viet Nam Programme to improve forestland tenure

1. Collaborated with FAO Technical Cooperation Programme project to review national level policy on FA/FLA and forest land tenure and organized national workshops to share and discuss the findings of both the national and provincial-level studies
2. FA/FLA-related activities in PRAPs have been prioritized for implementation on condition that they incorporate the recommendations of the study summaries of the key recommendations have been sent to the provinces for consideration and incorporation in FA/FLA processes
3. The Programme has given the highest priority to community or group of households (HHs) approach to protect and manage forests and to implement other REDD+ activities. A feasibility study has been conducted and intervention packages have been finalized. The Programme will implement HH group forest management models in Bac Kan and Ha Tinh in 2016 and 2017.
4. The Programme has supported the review of forest categorization in Bac Kan, Lam Dong and Lao Cai, resulting in increased area of forestlands available for allocation to communities and households.
5. The Programme has revised the template of forest contracts to allow for longer contract periods and more access rights for households. Ca Mau and Lam Dong provinces have already applied this template in revised contracts.
6. Through REDD+ Implementation Agreements, the Programme has standardized the amount of payment for forest protection contract and enforced conditionality for performance based payment.

Province	Forest Area (ha)	Forest Area Allocated to Date (ha / %)	Forest Area Allocated to Households & Communities (ha/%)	Forest Protection Contracts (FPCs)	% of ethnic minorities
Bac Kan	423,170	n/a	n/a	n/a	n/a
Lam Dong	621,780	571,011	10,712 (1.8%)	395,330 allocated to 17,538 HH	n/a
Ca Mau	164,587	n/a	0	n/a	n/a
Lao Cai	417,281	n/a	62,000 (14.6%)	180,000	64%
Binh Thuan	292,868	222,868 (76%)	0	175,806 allocated 128,000 ha to HH	7.4%
Ha Tinh	364,483	307,384 (84%)	n/a	185,000 covered 940 HHs participating	n/a

Table 1: FA/FLA by Province



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