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► **To cite this version:**

Philip Hirsch, Marie Mellac, Natalia Scurrah. The Political Economy of Land Governance in Viet Nam. [Research Report] Mekong Region Land Governance. 2015, 19 p. halshs-02372282

**HAL Id: halshs-02372282**

**<https://shs.hal.science/halshs-02372282v1>**

Submitted on 20 Nov 2019

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LAND GOVERNANCE



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November 2015

With support from:



Research by:





**MRLG**  
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LAND GOVERNANCE

# The Political Economy of **Land Governance** in Vietnam

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November 2015

Front cover photo: Swiss Agency for Development Cooperation SDC

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# ABBREVIATIONS

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ADB	Asian Development Bank
ASCP	Advocacy Coalition Support Programme
CLMV	Cambodia, Laos, Myanmar and Viet Nam
CPLAR	Cooperation Programme on Land Administration Reform
DFID	Department for International Development
LandNet	Forest Peoples Land Rights Network
MONRE	Ministry of Natural Resources and Environment
NGO	Non-Government Organisation
SEMLA	Strengthening Environmental Management and Land Administration
SFC	State Forest Companies
UK	United Kingdom
UNDP	United Nations Development Program
US	United States
WB	World Bank

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# INTRODUCTION

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Land governance is an inherently political-economic issue. This report on Viet Nam is one of a series of country reports on Cambodia, Laos, Myanmar and Viet Nam (CLMV) that seek to present country-level analyses of the political economy of land governance.

The country level analysis addresses land governance in Viet Nam in two ways. First, it summarises what the existing body of knowledge tells us about power and configurations that shape access to and exclusion from land, particularly among smallholders, the rural poor, ethnic minorities and women. Second, it draws upon existing literature and expert assessment to provide a preliminary analysis of the openings for and obstacles to land governance reform afforded by the political economic structures and dynamics of each country.

The premise of this analysis is that existing configurations of social, political, administrative and economic power lead to unequal distribution of land and related resources. They also produce outcomes that are socially exclusionary, environmentally unsustainable and economically inefficient. Power imbalances at various levels of society result in growing insecurity of land tenure, loss of access to resources by smallholders, increasing food and livelihood insecurity, and human rights abuses. The first part of this analysis explains why, how and with what results for different groups these exclusionary arrangements and outcomes are occurring.

In recognition of the problems associated with existing land governance arrangements, a number of reform initiatives are underway in the Mekong Region. Most of these initiatives seek to enhance security of access to land by disadvantaged groups. All the initiatives work within existing structures of power, and the second part of the analysis discusses the potential opportunities and constraints afforded by the existing arrangements.

This country report commences with a brief identification of the political-economic context that sets the parameters for existing land governance and for reform in Viet Nam. It then explores the political-economic dynamics of land relations and identifies key transitions in land relations that affect access to land and tenure security for smallholders. Finally, the report discusses key openings for, and constraints to, land governance reform.

Viet Nam has been characterised by smallholder agriculture with relatively little private concentration of land; however, there is a new trend of growing inequality in access to land. Unlike Cambodia, Laos, and Myanmar (the other countries examined in this series), Viet Nam has seen limited development of large-scale private plantation agriculture in recent years. The loss of land by smallholders has occurred in different parts of the country in different ways and by a range of processes closely linked to the country's rapid development toward a more industrialised, urbanised market economy. In the Mekong Delta, landlessness is associated with debt, historical patterns of landlordism, and rural to urban migration. In the Red River Delta and many other areas including medium sized urban centres, land conversion to non-agricultural uses is a significant issue (Van Suu 2009; Phuc et al. 2014). In the highlands, displacement of ethnic minorities has taken a number of forms, from migration of lowlanders to the use of land by state farms. Meanwhile, rapid coastal development, establishment of industrial estates and hydroelectric projects have displaced significant numbers of smallholders from their land.

# THE POLITICAL-ECONOMIC CONTEXT OF LAND GOVERNANCE

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## HISTORY AND KEY TRANSITIONS IN LAND RELATIONS

In contrast to Cambodia, Laos and Myanmar, Viet Nam has historically been faced with scarcity of land. Land has played an important part in the country's political evolution and transitions since pre-colonial times. Long before the French arrived, the Red River Delta faced very high agricultural population density, placing land at the centre of relationships between farmers and those in authority, and also shaping social relations at the village level. Viet Nam's social structure was based on unequal land relations in which bureaucrats and landlords had a significant land management role (Kleinen 2011: 457). However, there were also safeguards for the rural poor in the form of access to marginal communally allocated alluvial lands (ibid). At a broader level, the "march to the south" (Nam Tien) marked the history of Viet Nam's pre-colonial expansion for several hundred years. Patterns of land settlement and landholding in the Mekong Delta continue to have vestiges of the quasi-military early agricultural settlements (Brocheux 1995). Sikor links these to experimental colonial settlement schemes, US hamlets as strategic resettlement and later the Communist state's New Economic Zones to settle the highlands for both strategic and agricultural purposes (Sikor et al. 2012: 2).

The colonial period in Viet Nam saw a strengthening of the bureaucratic land management and growing land inequality in the Red River and Mekong Deltas (Kleinen 2011). At the same time, in northern Viet Nam up to 20 per cent of agricultural land was kept under communal management at the village level to provide a safety valve for the rural landless or near-landless. During the colonial period, large areas of communal land found its way into the hands of French colonists or local landlord elites (Kleinen 2011; Van Suu 2007: 311). In the midlands and highlands, large tracts were alienated to French planters for cultivation of rubber and coffee. Do & Iyer (2008: 534) maintain that more than half (52 per cent) of the agricultural land in Viet Nam was owned by three per cent of the population by the 1940s, and rates of

landlessness reached 60 per cent, although the sources of these dramatic figures on land inequality are not given. These figures are exaggerated by the existence of large plantations. The level of concentration in rice growing areas was considerably less but still significant. Unsurprisingly, peasant unrest during the latter part of the colonial period played an important part in the anti-colonial independence movement, although "patriotic" landlords were kept onside by the Viet Minh.

Following the defeat of the French at Dien Bien Phu in 1954, there was an immediate and rapid re-allocation of land away from landlords to landless or land-short peasants in the communist land reform of northern Viet Nam. However, violent excesses, particularly against village elites, led to the abrupt cessation of the reform in 1956, following which collectivization was progressively launched (Van Suu 2007: 311). This involved a rapid transfer of land from farm households to cooperatives. By the late 1960s collectivization was 90 per cent complete, albeit in a country at the brink of war. The South took a different path, supported by the United States. Increasing recognition of the agrarian base of support for the Viet Cong led the southern regime to institute its own land reform with reallocation of land away from larger landholders. However, it was mainly the middle rather than poorer peasants who benefited from Nguyen Van Thieu's land reforms (Van Suu 2007: 312). Poorer peasants in the Mekong Delta were allocated land by the National Liberation Front in liberated areas, helping to garner support for the Communist armed struggle. Meanwhile, in the North during the post-independence period, large numbers of lowland farmers were sent to clear land for farming in the north-western highlands.

Following the end of the war in 1975 and reunification in 1976, collectivisation was intensified in the north and extended across the whole country, with disastrous results in both cases. The experiment was abandoned after just a few years in most places, and legislation tended to follow practice with the establishment of the household responsibility system that saw progressive

“THE MOST RECENT DEVELOPMENT TO IMPACT ON LAND RELATIONS IN VIET NAM HAS BEEN THE HEAVY PUSH TO MODERNISE AND INDUSTRIALISE.”

[PHOTO CREDIT: SDC]



movement back to smallholder agriculture across the country. Cooperatives retained residual functions in irrigation and plant protection.

With the advent of the policy of Doi moi, or Renovation, after the sixth Party Congress in 1986, Viet Nam moved toward a “socialist-oriented market economy”. In 1988, Politburo Resolution No 10 provided for individual land holdings within cooperatives. This was in part in recognition of the fact that, up to that time, production on the five per cent of land that was allowed to be worked as individual plots was producing up to 40 per cent of all food and other agricultural products. This commitment to smallholder based agriculture saw individual plots allocated on a longer and fixed term basis under the 1993 land law, as “red books” (Land Use Rights Certificates). Red books were allocated to farmers for a 20 year period for annual crops and a 50 year period for perennials. Land remained under the nominal ownership of the people as a whole and management of the state, but exchange, transfer, lease, inheritance and mortgaging were all now allowed, moving the status of “red book” land closer to secure land title. From 1993 to 2006, about 80 per cent of all agricultural land plots were allocated to households (Tran Nhu Trung et al. 2006). Under the 2013 revised land law, the terms of the allocation were extended to 50 years for annual cropland

and the principle of automatic reallocation to individuals was definitively recognised if land is used according to regulations.

Another important development in land relations after 1976 was the establishment of New Economic Zones in the Central Highlands and other mountainous areas. About six million mainly farmers moved to these areas during the following two decades, placing significant pressure on the lands and cultivation systems of the ethnic minorities who had historically dominated this area. Most of these were Kinh, but according to Fortunel (2008), the number of ethnic groups in the Central Highlands increased from seven to 50, suggesting significant in-migration from non-Kinh areas as well. Conflicts erupted into serious unrest during the early 2000s, and while the government in Hanoi blamed this on religious issues, agrarian pressures associated with land conflicts were generally recognised to be the key issue.

The most recent development to impact on land relations in Viet Nam has been the heavy push to modernise and industrialise. This has resulted in widespread land conversion, particularly in heavily populated peri-urban areas, taking some of the country’s most fertile agricultural land out of production.



## GEOGRAPHICAL CONTEXT OF LAND USE AND LAND RELATIONS

As in the other Cambodia, Laos, Myanmar, Viet Nam (CLMV) group countries, the political economy of land relations in Viet Nam is partly marked by a sharp contrast between the uplands and lowlands – a feature remarked upon by the French geographer Pierre Gourou in the 1930s. The densely populated and intensively cultivated delta and coastal areas, contrast with the more extensive patterns of settlement and cultivation in the mountainous interior. The demographic makeup of the interior has, until recently, been dominated by ethnic minorities, while the deltas and coastal areas have been dominated by the ethnically dominant Kinh – with exceptions in the Khmer and Cham areas of southern and central Viet Nam.

There are also significant differences within each of these broad agro-ecological zones. The Mekong Delta has about half the population density of the Red River Delta and its frontier history has led to a much more scattered pattern of settlement and more individualised social structure than the historically more collectively oriented Red River Delta. The frontier aspect of the Mekong Delta has continued until very recently, with the clearance of extensive areas of mangroves for shrimp cultivation and swamplands for extended rice cultivation.

Meanwhile, the different political histories of the north-western highlands, where the Viet Minh drew much of its support in defeating the French, and the Central Highlands, where many montagnards fought alongside the Americans during the 1960s and 1970s, means that the settlement of ethnic Kinh in the Central Highlands has a greater sense of internal colonisation. The agro-ecology is also different. The Central Highlands have been cleared more recently for cash crops, notably coffee. The north-western highlands have also seen

conversion of land to rubber cultivation and other cash crops, in many cases involving land appropriation from smallholders in favour of commercial investors. Coercive means have been used to get smallholders to contribute their land in return for shareholding in large rubber enterprises (Lamb et al. 2015; Dao 2015). State forest enterprises and state farms operate in both upland zones, and their occupation of large tracts of land, combined with low levels of land productivity, have led to calls for reallocation toward smallholders.

## STRUCTURES OF POWER AND PATRONAGE IN LAND RELATIONS

The State is the manager of all land in Viet Nam, and to date there have not been large concessions to private landholders. Most large land and forest enterprises in Viet Nam's uplands are run by state enterprises. However, these have become increasingly corporate in character as state subsidies are removed in a market based economy. They have thus taken on characteristics similar to private investors, having a significant impact on power and control over land, particularly in ethnic minority areas.

Land is a fundamental issue in Viet Nam and therefore the drafting and implementation of land legislation has input from the highest level. The Politburo has ultimate say in the direction of land policy. However, as noted by Kerkvliet and others, the Party has been quite pragmatic and responsive in the past to grassroots actions and concerns (Kerkvliet 2005). From a Central government and Party perspective, social stability needs to be put alongside mainstream economic policy, and there are clear tensions between the two in the case of agricultural land conversion. Added to this mix are concerns over food security, corruption, and Party legitimacy, keeping land issues at the centre of policy concerns and public debate.

State-society relations in Viet Nam are complex and have been the subject of much research and analysis. Much of the research problematises the notion that in Viet Nam's single party state with Confucian tradition, central authority is paramount, and rather suggests a longstanding dialectic between everyday practice and bureaucratic rule (Kerkvliet 2001). Viet Namese language and culture is imbued with terms and proverbs concerned with the relationship between distant authority and local peasants or villagers, often invoking ancient royal authority and conflating it with the current rule of the Party/State (for example the well-known "phap vua thua le lang: royal authority defers to the custom of the village"). Conflicts occur in various ways and over various issues. Nguyen Van Suu provides a detailed and insightful analysis of the differences in ways farmers and state officials see land in the Red River Delta, based on conflicts in the areas of land use rights, land law violation, compensation and corruption (Van Suu 2007). Gillespie has written extensively on the need to recognise legal pluralism and what he terms a "syncretic blend of statutory law, state policies, and community norms and practices" with regard to land and land disputes in Viet Nam (Gillespie 2013: 104; see also Gillespie 1998 and 2011).

Devolution of authority over land and related resources is a key issue in relations between central authority and local autonomy in land relations. Various forest land allocation programs have been carried out in north-western Viet Nam and more recently in the Central Highlands. However, the ability of such programs to reach or otherwise benefit the poorest of the poor has been questioned. This is partly because of the new exclusions that formalisation and regularisation impose on local property relations (Sikor & Nguyen 2007), and partly because of the need to address issues beyond property rights (Phuc 2008).

Patrilocal residence traditions (where a newly married couple settles in the husband's home or community), patrilineal inheritance practices, and the low percentage of red book documents that register women's joint ownership of land, all mitigate against women's empowerment within the rural household in Viet Nam. Compared with the other three CLMV countries, Viet Nam has the most patrimonial culture, including a tradition of patrilocal residence by newly married couples. Superimposed on this is a formal system of landholding that disadvantages women. One of the most immediate actions that can be taken to redress this inequality is to increase the proportion of red books that include women as joint landowners (Scott 2003; Bélanger & Li 2009). Gender based tensions within households are not only related directly to land policy, but also to new agricultural practices associated, for example, with new hybrid rice seed varieties in upland areas (Bonnin & Turner 2013). Negotiation within the Viet Namese rural household by women has been shown to be enhanced where land is held solely or jointly in women's names (Menon et al. 2014).

## PUBLIC AND PRIVATE INTERESTS IN LAND

Public and private land tenure in Viet Nam is less clearly demarcated than in many other countries. Under the 2013 Constitution, land remains under the "ownership" of the people as a whole. Yet land legislation since 1993 has vested not only use rights, but also rights of sale, inheritance and mortgaging of such rights in individuals to the point where they resemble private property in many important respects. Meanwhile, the State retains the role of managing land allocation, including rights of appropriation that go beyond what is normally assumed in market economies.

One of the recurring themes in property relations in post-socialist states is the set of ambiguities and grey areas between public and private interests in land and other resources. Culas et al (2010: 97) write of the “fuzziness” with respect to interaction between people and authorities in dealings over land in the Red River Delta. Phan Trung Hien explores public and private interests in land acquisition in terms of finding an appropriate “balance” (Hien 2007). Others write of unresolved contradictions and tensions in the transition from a socialist state that maintains ultimate rights in management of land on behalf of “the people” as a whole, and a system of individualised land use rights which were promulgated under the 1993 Land Law. Individualised land use rights are increasingly being encroached on by larger private as well as public interests associated with the country’s modernisation and industrialisation (Hansen 2013). These contradictions continue to be reflected in different schools of thought within Viet Nam, and inform active debates on land as a simple marketable commodity, land as an individual asset, land as socialised property or land as a community resource (Kerkvliet 2006).

Corruption is one of the most fraught issues regarding land in Viet Nam (Wells-Dang 2013: 7). Public officials are often in positions as gatekeepers that allow them to reap benefit from private investors who gain access to smallholders’ land at low rates of compensation. Corruption takes many forms, most of which involve use of public office for private gain (World Bank et al. 2011; Culas et al. 2010; Van Suu 2007). Transparency is identified as a key requirement to reduce the potential for abuse of power by corrupt officials and for efficient working of the land market and land administration more generally (Anh et al. 2010). At one level, dealing with corruption requires a combination of local mobilisation and the strong hand of central authority.

However, in another interpretation, disciplining corrupt local officials is seen as a means by which the central state has continued to maintain its control over local cadres (Sikor et al. 2012: 4). At a micro-level, studies suggest that even low level political connections play a significant part in affecting land improvement through investment (Markussen & Tarp 2014).

Another grey zone between public and private interests is the changing role of state corporations, for example state forest companies (SFCs). In a study of SFCs, Phuc Xuan To et al show that what was once the face of the State for upland farmers, and had some legitimacy as a public corporation (bringing with it infrastructure and services, as well as making demands on land and resources), has become a corporate actor and is seen as a “new landlord”. This threatens the legitimacy not only of the SFCs themselves, as they are felt to have constraining and exploitative relations with local farmers and forest users, but also the public sphere that they continue to purport to represent (To et al. 2014).

Under the 2013 Land Law, land acquired for public purposes such as national defence or public infrastructure, or land required for 100 per cent foreign direct investment, can be acquired by compulsory purchase. In principle, land required by domestic private investors for commercial purposes is to be acquired by voluntary conversion, through negotiation between the investor and landholder. In practice, compulsory acquisition has been applied in a number of cases of domestic private investment for commercial purposes. Public authorities play an important part in negotiating and sometimes coercing agreements even in nominally “voluntary” arrangements (World Bank 2011). The line between public interest and private benefit is thus somewhat blurred, particularly as state officials are often understood to be serving the interests of investors vis-à-vis landholders (Han & Vu 2008).

# POLITICAL-ECONOMIC DYNAMICS OF LAND RELATIONS

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## ACTOR DYNAMICS IN DECISION MAKING AND CONTESTATION AROUND LAND

Land administration reform in Viet Nam has taken place in three stages which correspond with the enactment of key legislation. In 1979, the first cadastral survey was undertaken by the newly created General Department of Land Management (GDLM) and individual tenure within cooperatives was recognised for the first time. In 1994, GDLM merged with the National Department of Surveying and Mapping to create the General Department of Land Administration (GDLA). Land departments were established at all administrative levels. At that time, there was no overarching policy or long-term plan for land reform, and the State was still largely a centralised system. GDLA was responsible for allocating land and issuing land certificates, as per the 1993 Land Law. Those who knew the administration at that time describe it as powerful, impenetrable, and in possessing substantial resources. In 2002, the GDLA was incorporated into the Ministry of Natural Resources and Environment (MoNRE), a new body that drew together various departments and agencies. In addition to institutional restructuring of land administration, a full set of land policies were launched in 2002. The policies included a 15-year programme and strategy for modernising land administration (Mellac et al. 2010).

The incorporation of GDLA into MoNRE was widely seen as an effective means of reducing the power of the land administration. In the process, the department of land administration also lost control and influence over the Ministry of Agriculture and Rural Development (MARD), which had played a crucial role in the previous stages of the land reform. Officers within MARD still complain of not having enough autonomy to draw up agriculture land use plans and having to deal with the powerful MoNRE. Another important institution involved in the first stages of land allocation was the Ministry of Forestry. When the Ministry of Forest was incorporated as a department within MARD in 1997, it became more distant from

decisions concerning land. These changes were all consistent with the new priority given to industrialisation during the 9th National Congress of the Communist Party of Viet Nam (2001) and with the enactment of the third Land Law in 2003, which legally enabled the mobilisation of private investment in agriculture. This period marked the beginning of increasing land contestation by rural households dispossessed of their land.

The ten years in between the enactment of the third and fourth land laws are characterised by high levels of contestation. Provincial officers were officially encouraged to finance their development plans by renting land to investors, which resulted in the creation of many economic and industrial zones and opening up of spaces for construction. To attract investors, some provinces completely changed their city plan in favour of oversized zones and infrastructure (Mellac 2014). Residential houses were expropriated with very low compensation rates paid (and sometimes no compensation paid at all) to make way for luxury condos and other lucrative developments. In some cases, disputes erupted to such a level that the central level government (for instance the Prime Minister) was forced to intervene directly, sometimes at the expense of local officials.

Accessing justice on land-related issues is usually dependent on the intervention of the executive power and its “invisible” hand, the Party. Together with increasing pressure from donors and foreign NGO, worsening land disputes has led to some adjustments from the government. These are reflected in the most recently enacted 2013 Land Law. The 2013 Land Law establishes a new (partially private) body at the provincial level which is in charge of defining land prices and approving land appropriations. It is too early to say whether this body, under the direction of the Chairman of the Provincial Peoples Committee, will play its role as independent decision maker and not fall subject to political interference.

## AGRICULTURAL MODERNISATION

In Viet Nam, the push for modernisation affects agriculture at two main levels. First, government at all levels has long sought to improve the efficiency and productivity of farming. Second, the push for modernisation, industrialisation and accompanying urbanisation of the economy has resulted in substantial areas of land being taken out of agriculture altogether (Van Suu 2009; Le Duc Think 2009).

There has been a subtle shift in policy to improve productivity of farming away from a mainly land-based productivity concern, where land has long been the scarce resource in a labour-abundant country, toward a more recent interest in achieving better labour productivity in agriculture. This is in part due to the movement of young people in particular out of farming and toward higher paid and, in the eyes of government, more productive occupations. This policy shift gives an endorsement to farm consolidation, based on assumptions about economies of scale and the non-viability of exceedingly small farms. It is reflected in the 2013 Land Law that increased ceilings on individual use of land, allowing micro-accumulation at village level by better off farmers and, by implication, micro-dispossession of smaller farmers. However, as a study of farm fragmentation in northern Viet Nam points out, the economic return to consolidation may be marginal in the absence of significant opportunity costs for labour (Van Hung et al. 2007).

The push for modernisation through industrialisation and urbanisation of the economy is part of a policy shift that saw the revised 2003 Land Law make expropriation for national development purposes become easier (Wells-Dang 2013: 5). An important political-economic issue in such expropriation is the fuzzy line between expropriation for public benefit and expropriation for private interest. Since 2004, the procedure for land expropriation is in two steps, with the state as intermediary. The first step is acquisition by the state with compensation, resettlement and associated support

based on existing use. The second step is the allocation or leasing of the land to the developer and collection of the relevant land use fee or rental based on its new use. This on-leasing of land compensated at low agricultural rates by the State where developers then receive much higher real estate returns for the same land is a particular point of disaffection among those whose land has been expropriated.

As the gap in the value of land for agriculture and its value for industry and real estate has widened, so conversion has accelerated, particularly in peri-urban areas. Between 2001 and 2010, it is estimated that about ten per cent of Viet Nam's agricultural land, or one million hectares, were converted to non-agricultural purposes. This raises concerns over food security as well as inequality, as relatively poor farmers see wealthy individuals, officials and companies benefiting from the land being resumed. It also accelerates social differentiation between poorer and better off groups (Dien et al. 2011). As a result, the issue has received widespread attention in the media and in government.

## FOREIGN DIRECT INVESTMENT, LAND GRABBING AND DISPOSSESSION

There is relatively little foreign direct investment in land in Viet Nam, but indirectly foreign investment is behind some types of land dispossession. In particular, industrial investment drives the resumption of land for industrial estates near the big cities. There is also considerable foreign investment in the hotels sector in coastal areas, which has led to expropriation of land from farmers as well as loss of access to beach areas by fishers.

Nevertheless, land dispossession is a major source of disputes and grievances in Viet Nam, based largely on state acquisition of land for domestic investors. In the decade following the 2003 Land Law, about 70 per cent of 1.6 million complaints, petitions and denunciations officially recorded concerned land issues (Gillespie 2015; Kerkvliet 2015). Many of these cases involved the dispossession of poor farmer near urban centres for the purposes of converting agricultural land to residences,

industry and infrastructure. The disputes that have become commonplace frequently end up stalling or delaying the conversion process. In the Mekong Delta, accumulation of land by wealthier farmers from poorer neighbours is leading to growing inequality. In mountainous areas, the main issues are around hydro-power development, mining and acquisition of land for forestry and perennial crop plantations that involve state intervention in negotiations between land users and investors. There are other cases where conversion works more smoothly and equitably, for example in the Van Quan development in Ha Tay where a more enlightened developer worked relatively openly and benignly with local government and affected farmers to negotiate agreeable compensation arrangements and where there have been incentives on all sides for the development (Bui 2009).

In contrast to the other CLMV countries, Viet Nam is remarkably free of large scale land grabs based on foreign direct investment for tree plantation projects. Domestic private investment in rubber in most north-western mountainous provinces has, however, expanded dramatically. At the same time, smallholders have also been engaged in tree plantation projects over the past two decades. Sikor explains the smallholding pattern of fast growing tree production as relating to what he terms the “politics of possession” in Viet Nam, which in turn relates to ongoing state formation and the inclusion of rural subjects in state property projects. Various iterations of such projects, from the state enterprises as rural development nodes to the 1993 Land Law as a pre-emptive response to potential erosion of state authority, reflect continuity through the transitions the country has undergone (Sikor 2012).

Rubber appears to be an exception to the smallholding pattern, with average plantation sizes of over 500 hectares (Phuc & Nghi 2014: 17). Phuc and Nghi identify four different models, namely state companies, private companies (mostly in the Central Highlands), collaboration between state-owned companies and

smallholders (mostly in north-western Viet Nam), and state-private partnerships (ibid: 22-32).

In ethnic minority areas, particularly in the Central Highlands, large swathes of land have been historically expropriated for state farms, dam construction, bauxite and other mining and for national defence purposes. The sensitivity of the Central Highlands has made grievances more difficult to express and publicise than those of lowland Kinh people in peri-urban areas, but the media, NGOs and others have taken such grievances to higher levels (Wells-Dang 2013:10). The severe unrest of the early 2000s was closely linked to land dispossession issues.

## FORMALISATION, TITLING AND TENURE SECURITY

The red book system of issuing land use rights certificates since 1993 has differed from other countries in the region. The process in Viet Nam has been domestically driven and has not been supported by development assistance programs such as the World Bank-supported land titling programs in Thailand, Laos and Cambodia. The conditions and processes of formalisation in Viet Nam are home-grown, and have responded to the largely smallholder pattern of agriculture. The issuing of red books also reflects the constitutional ownership of land “by the people” as a whole and its management by the State. The program achieved a rapid coverage of about 90 per cent of all households within less than ten years of its first operation (Do & Iyer 2008: 546). There has been donor involvement in land administration, notably through the SIDA-funded Strengthening the Environmental Management and Land Administration (SEMLA) project 2006-2010. However, this was largely technical in scope and oriented at improving the efficiency and performance of land administration, as well as linking it to environmental considerations in land use planning, rather than driving the land formalisation process as a whole.

Formalisation has experienced problems with the relatively short periods of allocation for land used for annual crops. The 20 year allocation established in 1993 expired in 2013, and the new Land Law has extended the period of allocation to 50 years. The allocation term for land used for perennial crops has been kept at 50 years. With an active land market in most parts of Viet Nam, the allocation period has, on the one hand, meant that farmers have a degree of security and control over land. On the other hand, it has led to rapid social differentiation in more commercialised areas as poorer families have often made distress sales (Gorman 2010).

There is concern over land use rights certificates and the relatively low percentage of red books that are registered either in the sole name of women or in the joint names of men and women. Compared to Laos, for example, where a majority of titles are registered either in women's or joint ownership, fewer than half of red books are registered in the name of a female household member (Scott 2003; Sang et al. 2013; Bonnin & Turner 2013).

## LAND CONCENTRATION, LANDLESSNESS AND DISTRIBUTION

Land shortage is a longstanding issue in Viet Nam, and it has deep historical roots. The very low per capita availability of land has resulted in land shortages and landlessness, with the average farm size being well under half a hectare. Of even greater concern is the social distribution of land and the forces for land concentration (Wells-Dang 2013). Landlessness and associated land struggles have a history in Viet Nam that is closely connected with the country's political transitions. Land justice in the anticolonial and

revolutionary movements has long associated land with Party legitimacy. As a result, landlessness and the more general concentration of land in contemporary Viet Nam, is a highly volatile and sensitive issue.

Inequality in access to land takes different forms in different parts of the country. In peri-urban zones, expropriation for industrial estates, housing and infrastructure has resulted in land loss by smallholders. In the Mekong Delta, the re-emergence of landlessness as a result of distress sales associated with debt is a reversion to longstanding inequality in landholding in this part of the country that was temporarily ameliorated following de-collectivisation and the allocation of land based on household size. In the Red River Delta, it is closely connected with processes of land conversion linked to modernisation and industrialisation policies (Nguyen 2004). In the Central Highlands, ethnic minorities have lost land over the past several decades. This is partly due to state enterprises encroaching on fallows previously used for shifting cultivation, land encroachment by Kinh settlers in and near New Economic Zones, and land sales as certificates facilitated the buying and selling of land. These displacements also contribute to further encroachment on forest lands by shifting cultivation as poor families are displaced by those encroaching on, or otherwise acquiring, land to grow coffee (Meyfroidt et al. 2013). More recently, dams on the upper Se San, Srepok and Sekong Rivers have flooded large areas of fertile valley land, requiring resettlement. This is particularly significant given the much higher rates of rural poverty among ethnic minorities, and the lack of livelihood alternatives for those who lose access to land.

# CONSTRAINTS AND OPENINGS IN LAND GOVERNANCE

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## LAND AND RELATED POLICY AND LAW REFORM

There have been four land laws in Viet Nam, passed in 1987, 1993, 2003 and 2013 respectively. The most recent revision of the Land Law was passed in 2013, which means that whatever advocacy and policy reform is carried out for the immediate future will need to work within the framework of that law. There was an extensive process of consultation over this law, which represents an opening of legal and policy drafting processes in Viet Nam relative to earlier land legislation (Wells-Dang 2013: 11-12). Several key areas of reform lay behind the most recent version. The World Bank sums these up in a policy advice document to the Viet Name government as: enhancing agricultural land effectiveness by prolonging the term of land allocation and raising the land ceiling; creating more equitable and transparent land acquisition processes to address the multitude of accumulating grievances over expropriation; strengthening the land use rights of vulnerable groups including ethnic minorities, women and the rural poor; and improving accountability and transparency in planning and governance processes (Pham et al. 2012).

## POSITIONS, AGENDAS AND INTERESTS BEHIND LAND GOVERNANCE REFORM

Advocacy coalitions are being supported on a range of issues in Viet Nam, perhaps none more pressing or more complex than that concerned with access to land (Wells-Dang 2013: 4). There are still very limited successes in engaging the private sector.

Advocacy coalitions have taken advantage of new civil society spaces to work closely with progressive government, academic and other actors, for example through LandNet, to press for forestland use rights and other issues related to livelihoods associated with land access (LandNet 2014). Foreign NGOs have been instrumental in the establishment of these coalitions.

Consultation on legal reform is a recent innovation, and there was quite widespread discussion ahead of the 2013 Land Law (Oxfam 2013). Questions remain, however, on the depth and openness of such consultation processes.

Resistance to land conversion and negotiation over compensation have become ubiquitous in Viet Nam. There is limited political space for organising and confronting authority directly, so innovative and effective means of resisting the more blatant abuses and dispossessions have to be developed. They include the use of cultural and political nuance to draw on particular ideological tropes (Labbé 2011; Labbe & Musil 2013).

## GOVERNMENT

Together with Chinese territorial problems and public enterprise management, land is one of the most prominent and conflictual questions facing those in power. Land issues face authorities at every level, from local arenas to the core of the Party and the State. Over the past decade, various scandals and judicial affairs concerning land involving government officers have been widely discussed at a societal level and have posed a threat to the power equilibrium. This was the case, for example, in 2010 when a controversial bauxite mine project in the Central Highlands put the Prime Minister under pressure when he was accused of favouring Chinese interests and selling off Viet Name interests in environment and land. This affair, along with other scandals, nearly cost the Prime Minister his position during the 11th Congress of the Communist Party of Viet Nam in January 2011. One year later, the same Prime Minister was accused of favouring his daughter in the eco-park affair in Van Giang and was forced to rapidly intervene in the Doan Van Vuon affair in order to demonstrate Hanoi's concern about land abuses by local authorities. This was insufficient to allay popular dissatisfaction, despite local officers being sentenced. Prison sentences were considered too lenient and missed higher officials involved in the case. There was also public anger at a sentence reduction for the Vuon family.



Internal dissension was particularly visible during 2013, when the new Land Law was under discussion at the National Assembly. The law was the first not to pass the National Assembly after its first reading. Officially this was because some amendments were no longer consistent with the Constitution, which meant it had to wait for promulgation of the new one. It is, however, hard for many to believe that such a problem was not anticipated. The delay, which was used to organise an internal consultation (six million comments were counted on the National Assembly website), was the occasion for many officials, NGOs and donors, to express their concern for the country's future. Technically, the discussions concerned issues such as the procedures and scope of land recovery by the State, land categories (agricultural and non-agricultural land) and the amount of land allocated to State Forest Enterprises. Behind these technical points, however, a more detailed analysis shows that officials within the government were divided over the role to give the State in land management (Mellac et al. 2010). On the one hand, some officers of the Ministry of Agriculture and Rural Development considered that State intervention and maintaining the protected agricultural land category were still necessary to sustain small farm production during transition. On the other, Ministry of Natural Resources and Environment (MoNRE) officers or ex-officers, such as Dang Hung Vo, had a much more progressive discourse that emphasised technical aspects of management and gave titles and individual tenure (not to say property) in a free and transparent market a key role in developing the country. In 2013, the discussions ended up with few changes in the approved law compared with the initial version, revealing the domination of the conservative (and non-liberal) wing of the Party and its will to keep State control over land.

## PRIVATE SECTOR

The conservative position on property rights in relation to the 2013 Land Law was of concern to the private sector, which was hoping for easier access to land and property. Under the law, private developers obtain better facilities to transfer project land to other investors, and foreigner investors are allowed to access land by land allocation in the same way as domestic companies. But all have to face what professionals called "new harsh requirements" (Nguyen Quoc 2014) to lease and obtain land allocation by the State.

In 2015, foreigners benefited from the 40th anniversary of the final US retreat from South Viet Nam (in the context of tensions with China and Viet Nam's rapprochement with the US) and the boom of the Southeast Asia property market, with a partial opening up of ownership. The newly amended Housing Law allows overseas nationals to buy up to 30 per cent of a condominium or up to 250 houses in a ward for a maximum of 50 years and to enjoy the same rights to lease, transfer or sell the property as Viet Namese citizens. These new dispositions were positively received by the private sector. But the weight of the State is still considered as a serious disincentive to investment in land and housing.

Along with the main donors and NGOs, the private sector, notably represented by the Viet Nam Business Forum (an NGO formed by different national and foreign chambers of commerce and business associations) has been invited to join discussions organised under ministerial supervision in order to prepare new legislation such as the Land Law (2013) and the Housing Law (2015).

## DONORS

In their lobbying for further liberalisation and less State intervention in the land market, private guilds and investors have been strongly supported by some of the donors, notably the World Bank and Asian Development Bank (ADB). Their stated arguments and aims are nevertheless slightly different to those of the investors. The World Bank and ADB both recognise that land allocation and red book distribution are one of the main achievements of the State since Doi Moi (World Bank 2002). However, they also assess that the State is still too corrupt and too interventionist, and that its intervention creates market distortions that disadvantage the poor. A study by the ADB suggests that increased efficiency, greater transparency and reduced costs in the formal land market may benefit the poor more than traditional “protective” interventions aimed at restricting market transactions (Asian Development Bank 2004).

Market opening (as a synonym of economic development) and poverty reduction are the two main motifs of donors when intervening on land. As they are relatively neutral and difficult to contradict, they are used to legitimise intervention, making them effective in a context where land has long been considered by the State as an internal and strategic domain which is impossible to study, comment or intervene. Donors were traditionally kept at a distance from land matters, and cooperation, when approved, was mainly restricted to technical aspects of land management. This was the case for the United Nations Development Program (UNDP) in the early 1990s and later on for the Swedish International Development Agency (and its successive CPLAR and SEMLA programs), which both benefited from being historical partners of Viet Nam (Mellac and al. 2010).

During the same period (1994-1997), the World Bank approached the General Department of Land Administration at different times to offer its help in land

management modernisation, but the government rejected its offer and preferred to use its own budget to fund projects (Dang Hung Vo & Palmkvist 2001). The approval of the first land project funded by the World Bank, the Land Administration Project, in 2008, was a symbolic but important shift in land management. It reflected rapprochement with the US and progressive adoption of the main principles of a liberal economy (Mellac and al. 2010). Land choices are now publicly discussed and donors are able to express their views on subjects as crucial as land, the content of the Constitution, and the role of the Party (as was the case in December 2013 after the new Land Law and Constitution were passed). Land has thus been at the core of donor engagement in wider political-economic affairs that was previously off-limits to outsiders.

## CIVIL SOCIETY

Media discussion on issues previously deemed too sensitive to air in public has increased significantly in recent years. Civil society coalitions have also emerged. However, it would be wrong to overstate the level of freedom of expression in Viet Nam on sensitive issues, among which land ranks very high.

In contrast with Cambodia, civil society in Viet Nam is still in its very early formative stage and land is still one of the more critical and dangerous subjects to intervene. In 2013, the rejection of the Land Law by the National Assembly served as an occasion for NGOs to express their opinion on land and to organise themselves to influence State decisions. Such expression has been facilitated by the diversification of the media. *Nhân Dân*, for instance, has an internet publication in English, and more recently in French, that are at much greater liberty than the Viet Nameese official print. Public discussion on land and other issues was also enhanced by the Government decision in 2012 to organise popular consultation on legislation and other government actions. This relative space of freedom was appreciated and has actively been occupied by big foreign NGOs such as Oxfam.

The embryonic civil society land network was reinforced by the creation of new organisations such as the Forest Peoples Land Rights Network (LandNet) officially formed in April 2013. Yet, there are discordant voices within civil society itself as some local NGOs are uncomfortable with the methodology and philosophy of foreign ones. This is the case with LandNet, which was created to differentiate local NGO initiatives from those of Oxfam, which was in charge of implementing the Advocacy Coalition Support Programme funded by the United Kingdom's (UK) Department for International Development (DFID). LandNet created a very active Land Alliance later known as Landa. The main criticism from Landa concerned the role given to State agents within the advocacy coalitions and what they saw as Oxfam's overly conciliatory approach which involved overlooking State violation of laws and discretionary use of power in order to foster dialogue on land issues. For their part, Oxfam and its partners emphasised the efficiency of multi-stakeholder initiatives and the necessity to transcend the standard state-society dichotomy, bringing together activists and officials, non-state and state actors, to have a chance to influence discussion and decisions on complex issues around land (Wells-Dang and Pham, 2014). The same partners considered that their report and the pressure they exercised were crucial to the National Assembly decision to postpone voting on the Land Law by five months (*ibid*). Both local and international NGOs advocate for less State and more secure individual land use rights in a more democratic and liberal political regime giving little place to either customary land regimes or collective intervention in resource redistribution. As such, the conservative response of the government can be understood as a remaining manifestation of socialist ideology opposed to the broad context of liberalism.

The tradition of Party control and its fear of losing power explain the tardy emergence of civil society and the strong State resistance to broader policy opening and freedom. This is evident in the way major land conflicts

have been managed and resolved since enactment of the Land Law in 2003. On the one hand, Hanoi has been more and more concerned with attenuating the poor reputation that comes from local corruption and abuses associated with land, by regularly sacrificing some local leaders. On the other hand, land activists, irrespective of their direct connection with land problems (such as inhabitants or lawyers) have faced sharp political reprimand such as violent repression of demonstrations and/or prison sentences largely disproportionate to their actions.

#### RESEARCH INSTITUTES

Land questions were for a long time in Viet Nam impossible to study and discuss in public. This has created a big gap in historical data, for example on the 1950s land reform or more recently on de-collectivisation. The situation is less critical now, but data is still missing or very difficult to gather and verify. Some Viet Nameese research institutes are now strongly invested in research on land, for example, IPSARD (Institute of Policy and Strategy for Agriculture and Rural Development) and some forest institutions. But it is still difficult to criticise State actions, and the more critical academic work comes from outside Viet Nam, such as Forest Trends or Viet Nameese students conducting their theses abroad. An important question is whether this will progressively increase the critical edge of local research.

One question that is crucial in all the countries of the region is the difficult distinction between research, advocacy and political position. This question arises in part because of the declining practical and financial separation between the different domains: Viet Nameese (but also foreign) students being paid and working for foreign NGOs; NGO members positioning themselves as researchers; and of the inherently political nature of research on an issue that for so long has been kept out of the public domain as pressures continued to mount.

# CONCLUSION

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Land has always been an important issue shaping relations between central and local authority, between state and society, and between the rural poor and stronger economic and political players in Viet Nam. Land has been embroiled in the social and political upheavals of the country, and it continues to be a highly charged issue in the country's development. With Viet Nam's industrialisation and urbanisation, land issues go well beyond agriculture and food production. One of the key dilemmas facing Viet Nam is the maintenance of fertile agricultural land to underpin the country's food security versus the conversion of such land to other uses demanded by the rapid economic development of the country. The way in which this dilemma is resolved will affect different groups in quite different ways. The continuing politically charged issues around land are

heightened by small openings for public discussion, research and progressive reform, but there are also many forces that continue to militate against progressive land policy reform. Pressures for reform come from different directions: some more oriented to a rapidly growing domestic private sector and international business that would like to see a freeing up of the land market, and some more out of concern for the social marginalisation produced by state appropriation of land. Donors and foreign civil society organisations have found increasing spaces in which to operate, but land questions in Viet Nam will ultimately be addressed mainly by domestic players. Such players involve significant private sector and civil society voices as well as the still dominant State.

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