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## Vietnam's "Entire People Ownership" of Land: Theory and Practice

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# VIETNAM’S “ENTIRE PEOPLE OWNERSHIP” OF LAND: THEORY AND PRACTICE

Phan Trung Hien\* & Hugh D. Spitzer\*\*

## ABSTRACT

The Constitution of Vietnam declares that “[t]he Socialist Republic of Vietnam State is a socialist rule of law State of the People, by the People, and for the People.” It also states that land is “under ownership by the entire people represented and uniformly managed by the State.” This means the entire people of Vietnam are collective landowners and the Vietnam State is their “representative.” Given that, how might the public execute its real ownership—rather than treating “people’s ownership” as just a slogan? This article analyzes the gaps in theory and practice in Vietnam, a country with a robust market economy where land user rights are marketable despite the lack of private land ownership rights. It reviews current Vietnamese land law and makes recommendations for reducing uncertainty about “entire people ownership,” and increasing the transparency and overall legitimacy of the legal regime governing private use of land. Specifically, the authors recommend that Vietnam grant lawful land users the status of “secondary owners” of land, effectively as co-owners with the State and with protected property ownership rights.

**Keywords:** *Vietnamese land ownership; public land management; private land ownership; comparative property law; land use tenure and rights; government transparency.*

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## 1. INTRODUCTION

Vietnam is a nation that has experienced political struggles and war in its recent history.<sup>1</sup> This history has had a direct impact on the current system of land ownership in the country. The 1954 Geneva Agreement divided the country into two nations: the Republic of Vietnam (the South) and the Democratic Republic of Vietnam (the North).<sup>2</sup> Under the auspices of the United States, the South developed a system of private ownership of land.<sup>3</sup> In contrast, following the socialist trend, the North implemented a system of

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<sup>1</sup> *Vietnam History Overview*, VIET NAM GOVERNMENT, <https://vietnam.gov.vn/history-68964> [perma.cc/9WER-V7PN] (last visited Nov. 13, 2023).

<sup>2</sup> See Agreement on the Cessation of Hostilities in Viet-Nam, July 20, 1954, <https://history.state.gov/historicaldocuments/frus1952-54v16/d1035> [perma.cc/3BGV-TK2L] (detailing the specifics on how Vietnam would be divided).

<sup>3</sup> See CIVIL CODE, art. 383 (1972) (Viet.).

public ownership of land.<sup>4</sup> Since 1975, Vietnam has been reunified and established as the Socialist Republic of Vietnam.<sup>5</sup> Since the Constitution of 1980 was promulgated, all land has been treated as owned by the entire people, but represented by the State.<sup>6</sup> Based on this constitutional provision, no one in Vietnam can own land as private property. A dozen years later, the Constitution of 1992 adopted a market economy, including privately-owned businesses, but with the overall economic system guided by central planned policies.<sup>7</sup> Although the 1992 Constitution represented a radical change in the economic system, public ownership of land remained substantially in place.<sup>8</sup>

Both the 1992 Constitution and the current 2013 Constitution<sup>9</sup> have provided, in part, that all “[t]he land, water resources, mineral resources . . . and property invested and managed by the State are public properties, coming under ownership by the entire people represented and uniformly managed by the State.” However, from a practical standpoint, how can the land, as a kind of property under the ownership of the People, be managed and governed effectively by the State? How can the “entire people” be assured that the State, as representative of the people, reflects the public’s interests in making decisions related to property and land use? This article briefly reviews ideologies of public and private ownership, analyzes Vietnamese land law in comparison with countries with roots in both

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<sup>4</sup> THE WORLD BANK, COMPULSORY LAND ACQUISITION AND VOLUNTARY LAND CONVERSION IN VIETNAM: THE CONCEPTUAL APPROACH, LAND VALUATION AND GRIEVANCE REDRESS MECHANISMS 11 (Ha Noi, 2011).

<sup>5</sup> 30.4.1975—Ngày độc lập thống nhất - kỷ nguyên mới của Việt Nam [April 30, 1975—Independence Day – a new era for Vietnam], BÁO ĐIỆN TỬ ĐẢNG CỘNG SẢN VIỆT NAM [COMMUNIST PARTY OF VIET. ELEC. NEWSPAPER] (Apr. 29, 2020), <https://hochiminh.vn/tin-tuc/30-4-1975-ngay-doc-lap-thong-nhat-ky-nguyen-moi-cua-viet-nam-2596> [perma.cc/Z3TE-3CDJ].

<sup>6</sup> HIẾN PHÁP [CONSTITUTION] Dec. 18, 1980, art. 19 (Viet.).

<sup>7</sup> HIẾN PHÁP [CONSTITUTION] Apr. 15, 1992, art. 15 (Viet.).

<sup>8</sup> Compare *id.* art. 17 (establishing that land and other property defined by law as belonging to the State under the ownership of the entire people), with HIẾN PHÁP art. 19 (1980) (Viet.) (establishing that land and other property defined by law as belonging to the State under the ownership of the entire people).

<sup>9</sup> HIẾN PHÁP art. 17 (1992) (Viet.); HIẾN PHÁP [CONSTITUTION] Nov. 28, 2013, art. 53 (Viet.), translated in International IDEA’s Constitution building Programme, *Viet Nam 1992 (rev. 2013)*, CONSTITUTE PROJECT [https://www.constituteproject.org/constitution/Socialist\\_Republic\\_of\\_Vietnam\\_2013](https://www.constituteproject.org/constitution/Socialist_Republic_of_Vietnam_2013) [perma.cc/Y7EQ-KVGS].

public and private ownership approaches,<sup>10</sup> and attempts to address those questions. Specifically, this article recommends that Vietnamese law increase land rights transparency and both clarify and enhance the rights of land users.

*1.1 How the Ideology of Public Land Ownership Affects Land Ownership, Use and Management in Vietnam*

While private land ownership is the norm in most of the world, countries with a socialist heritage remain ambivalent about private control of property—particularly property suitable for production.<sup>11</sup> Karl Marx contended that private property was inherently harmful.<sup>12</sup> His ideas have had a large influence on property ownership and control in socialist countries,<sup>13</sup> many of which maintain the concept that properties needed for production must belong only to the State.

Vietnamese law is socialist code-based law, reflecting its Marxist-Leninist ideology.<sup>14</sup> Accordingly, land law in Vietnam is driven by an important statute—the Land Law<sup>15</sup>—which lays out the basic features of land ownership and use. This Marxist-Leninist heritage impacts the most basic features of property and ownership in Vietnam. While improvements to land can be privately-owned, private property in the form of Vietnamese land itself is today nonexistent.<sup>16</sup> Indeed, it would be rare to see a notice stating private

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<sup>10</sup> See JOHN G. RIDDALL, INTRODUCTION TO LAND LAW 50 (5th ed. 1993) (holding England as an example where there is no legal absolute ownership of land but where the holder is held practically as the equivalent to the owner of the land).

<sup>11</sup> Pham Van Vo & Nguyen Hoang Thuy Trang, *Các mô hình sở hữu đất đai và những vấn đề pháp lý đặt ra đối với Việt Nam* [*Land Ownership Models and Legal Issues for Vietnam*], 3 VJLS 45, 45–47 (2012).

<sup>12</sup> KARL MARX, PART *One: The Early Writings 1837–1844*, in SELECTED WRITINGS 87 (D. McLellan ed., Oxford Univ. Press 1977).

<sup>13</sup> See HIẾN PHÁP pmb. (1980) (Viet.) (stating that the successes of the Vietnamese revolution were due to the application of Marxism-Leninism); HIẾN PHÁP art. 17 (1992) (Viet.) (establishing that land and property belongs to the State and under the ownership of the entire people).

<sup>14</sup> See PETER DE CRUZ, COMPARATIVE LAW IN A CHANGING WORLD 38 (2d ed. 1999) (defining socialist laws as developing from Marxist-Leninist ideas and relying on codification).

<sup>15</sup> So far, Viet Nam has Land Law 1987, Land Law 1993, Land Law 2003, and Land Law 2013, and many amendments among these laws. On August 4, 2020, the Prime Minister issued Decision No. 1188/QĐ-TTg approving the plan and progress of developing the revised Land Law, expected to be submitted to the National Assembly in 2022.

<sup>16</sup> See HIẾN PHÁP art. 53 (2013) (Viet.) (establishing that ownership of all land falls belongs to the entire people).

car park or private property in Vietnam.<sup>17</sup> There is a great deal of concern expressed about *public* interests and *common* interests in public notices and advertising throughout the country.<sup>18</sup> This focus is reflected in the legal concept of real property, which can be owned only by the State.<sup>19</sup>

From the year of independence in 1975 to 1992, Vietnam followed the policy of a planned subsidized economy.<sup>20</sup> There was considerable collectivization of land against the will of the previous landowners,<sup>21</sup> leading to certain practical problems. Because the people who worked the land had limited rights with respect to that property, they were less invested in the long-term care of the assets for which they were responsible. The Peruvian economist Hernando De Soto has asserted with some justification that where there is no private ownership, no one cares about the property or is willing to invest in the factors of production.<sup>22</sup> In Vietnam, there is an old saying: “common father dies, no one cries.” (“cha chung không ai khóc.”) With an extreme public property regime implemented without sufficient buy-in, there was increased risk that no one would care for public property, and this would have an adverse impact on economic development. There was a lack of security of land use rights, and a lack of mechanisms that allowed for smooth transfer of land parcels at market value.<sup>23</sup> Land has not been fully recognized for its importance as a factor of production nor as a factor in maximizing economic output.

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<sup>17</sup> Huynh Thien Tu, *Quyền riêng tư và văn hóa Việt* [*Privacy and Vietnamese Culture*], TẠP CHÍ TIA SÁNG [SPARK MAGAZINE] (May 3, 2022), <https://tiasang.com.vn/dien-dan/quyen-rieng-tu-va-van-hoa-viet/> [<https://perma.cc/ARX8-826R>].

<sup>18</sup> Hoang Yen, *Băn khoăn việc xác định lợi ích công cộng khi thu hồi đất cho dự án kinh tế* [*The confusion about determining the public interest when acquiring land for economic projects*], THỜI BÁO TÀI CHÍNH VIỆT NAM [VIET. FIN. TIMES] (June 21, 2023), <https://thoibaotaichinhvietnam.vn/ban-khoan-viec-xac-dinh-loi-ich-cong-cong-khi-thu-hoi-dat-cho-du-an-kinh-te-130447.html> [<https://perma.cc/Q2B7-CM2P>].

<sup>19</sup> HIẾN PHÁP art. 53 (2013) (Viet.).

<sup>20</sup> See HIẾN PHÁP [CONSTITUTION] Dec. 31, 1959 (Dem. Rep. Viet.) (stating that economic activities are led by the State under a unified plan); HIẾN PHÁP (1980) (Viet.) (establishing the role of the State as guiding the economy while establishing plans for certain sectors).

<sup>21</sup> PHAN TAN, XUNG ĐỘT XÃ HỘI TỪ LÝ LUẬN ĐẾN THỰC TIỄN NÔNG THÔN VIỆT NAM [VIET NAM SOCIAL CONFLICTS OVER LAND IN RURAL AREAS IN THE REFORM PERIOD] 48–49 (2009).

<sup>22</sup> HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL* 15 (2000).

<sup>23</sup> NGUYEN VAN SUU, ĐỔI MỚI CHÍNH SÁCH ĐẤT ĐAI Ở VIỆT NAM: TỪ LÝ THUYẾT ĐẾN THỰC TIỄN [RENOVATING LAND POLICY IN VIETNAM FROM THEORY TO PRACTICE] 52 (2010).

The problems described by De Soto seem to have occurred in practice in Vietnam because of the uniform public ownership of land. After promulgation of the Constitution of 1980, which solidified strong public ownership,<sup>24</sup> the motivation for hard work dissipated. Every individual was expected to labor for the community on the principle that “everyone will get the same benefit” no matter how hard one works. Productivity decreased, which, we observe, caused an increase in tensions between the people and government officials.<sup>25</sup> At the time, around 80% of the people in Vietnam were farmers.<sup>26</sup> Without sufficient motivation, most rice fields were thinly sown and average yields were diminishing.<sup>27</sup> The economy had weakened substantially.<sup>28</sup> Without change, the Vietnamese economy would have been in peril. Therefore, the internal economic crisis of Vietnam in the 1980s required the Government to quickly adjust this policy. The Resolution VI (1986) of the Communist Party and the promulgation of the 1992 Constitution were great successes in adapting to a market economy with socialist direction.<sup>29</sup> But land itself remained in public hands.

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<sup>24</sup> Pham & Nguyen, *supra* note 11, at 45.

<sup>25</sup> Vietnam Communist Party, *Báo cáo chính trị của Ban Chấp hành Trung ương Đảng khóa V trình tại Đại hội đại biểu toàn quốc lần thứ VI của Đảng* [Political report of the 5th Party Central Committee submitted at the sixth National Congress of the Party], BÁO ĐIỆN TỬ ĐẢNG CỘNG SẢN VIỆT NAM [COMMUNIST PARTY OF VIET. ELEC. NEWSPAPER], <https://tulieuvankien.dangcongsan.vn/ban-chap-hanh-trung-uong-dang/dai-hoi-dang/lan-thu-vi/bao-cao-chinh-tri-cua-ban-chap-hanh-trung-uong-dang-khoa-v-trinh-tai-dai-hoi-dai-bieu-toan-quo-lan-thu-vi-cua-1491> [<https://perma.cc/4XPM-75WD>] (last visited Aug. 24, 2023).

<sup>26</sup> Bui The Cuong, *Nghiên cứu cơ cấu giai tầng xã hội Việt Nam thập niên 1980* [Social Stratification Research in Vietnam in the 1980s], 12 TẠP CHÍ KHOA HỌC XÃ HỘI [J. SOC. SCI.] 16, 26–36 (2019).

<sup>27</sup> See Nguyen, *supra* note 23 (noting the misuse and wasteful use of land in agriculture); *Những đêm dài thiếu đói trước Đổi mới* [The Long Nights of Hunger before Reform], VN EXPRESS (Dec. 15, 2016), <https://vnexpress.net/buoc-pha-rao-song-con-truoc-doi-moi-3513653.html> [<https://perma.cc/Q2GR-JYDY>] (telling anecdotes of famine due to sparse agriculture yields).

<sup>28</sup> *Kinh tế Việt Nam 40 năm qua dưới góc nhìn quốc tế* [Vietnam’s Economy Over the Past 40 Years from an International Perspective], TẠP CHÍ TÀI CHÍNH ĐIỆN TỬ [J. FIN.] (Apr. 20, 2015), <https://tapchitaichinh.vn/nghien-cuu-trao-doi/Kinh-te-viet-nam-40-nam-qua-duoi-goc-nhin-quo-te-97459.html> [<https://perma.cc/EV6R-WGK3>].

<sup>29</sup> HIẾN PHÁP (1992) (Viet.).

## 1.2 *Legal Recognition of Public and Private Land Ownership*

In contrast with Vietnam's land ownership system, land in a majority of countries is privately owned.<sup>30</sup> This is true both in civil law jurisdictions whose laws are rooted in the civil law tradition of strong property rights under Roman law<sup>31</sup> and in English common law countries. In common law jurisdictions, particularly the United States, private ownership is treated as a natural, inviolable right, following John Locke's philosophy that individual control and use of private property is to be strictly respected, with the legal system existing in large part to protect natural property rights.<sup>32</sup>

Interestingly, in the United Kingdom itself, the State (i.e., the Crown) is technically the underlying owner of land, with land holders possessing interests in land rather than absolute suzerainty.<sup>33</sup> We develop the potential relevance of this to Vietnam below. It is important to remember that in the U.K., a public authority is technically the ultimate landowner, with the private individual holding a "bundle of rights."<sup>34</sup> This approach effectively provides that user with privileges close to those of an absolute landowner. In the U.K., these land holders are called 'land freeholders,' whose rights are similar to the rights from ownership of other property.<sup>35</sup> A freeholder's tenure is subject to certain conditions:

- Freeholders (or landowners) must keep their land in good condition.<sup>36</sup> This was expressed that ownership has a social control and has never been absolute, such as prohibition of harmful use, liability to execution, taxation, expropriation,<sup>37</sup>

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<sup>30</sup> Pham & Nguyen, *supra* note 11, at 46.

<sup>31</sup> JOHN CROOK, *LAW AND LIFE OF ROME* 139–40 (1967).

<sup>32</sup> *See generally* JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

<sup>33</sup> Phan Trung Hien, *The Law of Compulsory Acquisition of Land in Vietnam and the United Kingdom – Striking the Right Balance between Public and Private Interests*, at 69 (Jan. 19, 2009) (Ph.D. dissertation, University of West of England, Bristol) (VDM).

<sup>34</sup> *See* A. M. Honoré, *Ownership*, *OXFORD ESSAYS IN JURISPRUDENCE* 113–23 (Dec. 15, 1961) (providing a list of rights that come with the ownership of land).

<sup>35</sup> *See id.* (providing a list of rights that come with the ownership of land).

<sup>36</sup> *See, e.g.*, Access to Neighboring Land Act 1992, § 1(7) (UK) (allowing inspections of land for the purpose of ascertaining works that may be necessary for the preservation of that land).

<sup>37</sup> Honoré, *supra* note 34.



- When freeholders (or landowners) want to change the purpose or use of the land, they need the consent of the local planning authorities. This means that State regulations limit property rights;<sup>38</sup>
- When freeholders (or landowners) sell a piece of land, they need to announce that fact through the local land registry;<sup>39</sup> and
- The person who wants to purchase a piece of land must satisfy the legal conditions of a certain landowner or freeholder (such as: age, conditions to use the land with the right purpose, etc.).<sup>40</sup>

As mentioned above, in the socialist legal model, land is to be owned by the State (whether by the State itself or on behalf of the People)<sup>41</sup>. In this case, public ownership is completely recognized, and private ownership is limited. In socialist countries, where only public ownership is recognized, an individual typically can own forms of property *other than* land.<sup>42</sup> Vietnam is a good example. In Vietnam, the theory is that because an individual cannot create land, an individual cannot own the land.<sup>43</sup> Thus, it needs to be held by a collective organization which serves as the representative of all individuals as a whole.<sup>44</sup> Only the State or a cooperative can serve that role.<sup>45</sup> Thus, the land must be owned by the people, as represented by the State. Consequently, private ownership in land in those countries is defined and limited by permits or similar land use rights.<sup>46</sup> In fact, the idea of a land “user” rather than a land “owner” is not only found in Vietnam. Other nations with socialist regimes have used a public ownership model in which state ownership always

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*; *Registering land or property with HM Land Registry*, U.K. GOVERNMENT, <https://www.gov.uk/registering-land-or-property-with-land-registry#:~:text=You%20must%20register%20your%20land,have%20not%20mortgaged%20it%20since> [https://perma.cc/WL2E-VQ3N] (last visited Nov. 13, 2023).

<sup>40</sup> *See* Land Registration Act 2002 (UK) (establishing the processes and requirements for land registration).

<sup>41</sup> HIẾN PHÁP art. 17 (1992) (Viet.).

<sup>42</sup> Katherine Verdery, *The Property Regime of Socialism*, 2 CONSERVATION & SOC’Y 189, 191–92 (2004).

<sup>43</sup> TRAN QUANG HUY, TEXTBOOK OF LAND LAW 34 (2018).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* *See also* JÁNOS KORNAL, THE SOCIALIST SYSTEM: THE POLITICAL ECONOMY OF COMMUNISM 83 (1992) (providing evidence of state farms in the Soviet Union and in China).

<sup>46</sup> Gregory M. Stein, *Acquiring Land Use Rights in Today’s China: A Snapshot from on the Ground*, 24 UCLA PAC. BASIN L.J. 1, 15 (2006). *See also*, XIONG BINGWAN, DOMINANT PLANTS RELOCATIONS AND PROPERTY RIGHTS IN CHINA’S SOCIALIST DEMOCRACY 16–17 (2013) (stating that private ownership of property is tied to freedom and individualism).

superimposes.<sup>47</sup> China is a good example of the use of “land use rights.” Paragraph 4, Article 10 of the 1982 Constitution (Amendment 2018) of China, entitles land users to transfer “*the right to the use of land*” (as opposed to private land ownership rights). According to Chinese law, only land use rights can be transferred in the market, and land ownership continues to belong to the State.<sup>48</sup>

Although these individuals and entities are legally deemed mere “land users” in socialist systems, these users typically have the right to transfer land to other persons through land user right transactions.<sup>49</sup> In Vietnam, land use rights (though not land ownership) are essentially a market commodity.<sup>50</sup> In this respect, land use rights deeply implicate economic issues far beyond the simple concept of “use.” Thus, land use rights in Vietnam have become a special type of property that can be shifted among users, and, from a practical standpoint, this makes land use rights something akin to land ownership.<sup>51</sup>

## 2. A PRACTICAL VIEW OF THE PUBLIC OWNERSHIP LAND REGIME IN VIETNAM

### 2.1 *Relevant Details of Vietnam’s Land Law*<sup>52</sup>

Under Article 53 of 2013 Vietnam’s Constitution, land is held as “public property, owned by all the *people*, and *represented and*

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<sup>47</sup> See generally RENEE GIOVARELLI & DAVID BLEDSOE, LAND REFORM IN EASTERN EUROPE (WESTERN CIS, TRANSCAUCUSES, BALKANS, AND EU ACCESSION COUNTRIES) (2001), <http://www.fao.org/3/AD878E/AD878E00.htm> [<https://perma.cc/L5R9-THGA>] (discussing the land ownership policies and rights in eastern European countries).

<sup>48</sup> Decree No: 90/2013/ND-CP, Art. 3(1) (2013) (Viet.); see also XIONG, *supra* note 46, at 16–17.

<sup>49</sup> KORNAL, *supra* note 45, at 85. For example, Article 167 Vietnam Land Law regulated eight rights of the land users called: “The Right to Exchange, Transfer, Lease, Sublease, Inherit, Donate, Mortgage land use rights or Contribute land use rights as capital.” LAND LAW, art. 167, 13/2003/QH11 (2003) (Viet.).

<sup>50</sup> See Cent. Comm. Res. 18-NQ/TW, art. 2 (June 16, 2022) (Viet.) (“Land use rights is classified as a special type of property and commodity, but not ownership right; the right to use land and land-attached property is protected by law. Land users have the rights and obligations to use land as prescribed by law . . .”).

<sup>51</sup> Phan, *supra* note 33, at 82–84.

<sup>52</sup> This section draws heavily upon the authors’ research previously presented in Hien Trung Phan & Hugh Spitzer, *The Constitutionality of Compulsory Land Acquisition in Vietnam: Issues and Recommendations*, 15 L. DEV. REV. 147 (Jan. 10, 2022).

*uniformly managed by the State.*”<sup>53</sup> Therefore, in order to be a lawful land user, the one who is or has been using land must be allocated land use rights by a state authority.<sup>54</sup>

Vietnam’s Marxist-Leninist heritage impacts the most basic features of the country’s laws, especially the Land Law. Instead of private land ownership, each citizen or family has a constitutionally-imbedded right to use the land.<sup>55</sup> The Vietnamese State delegates the authority to determine and allocate land uses to provincial and local committees.<sup>56</sup> Those committees decide on the allocation or lease of land to individuals and businesses, as well as to public users.<sup>57</sup>

Land in Vietnam is classified into various types, and land user rights and periods of use vary depending on the type of use. Land is classified into various categories: (i) agricultural and productive forest land; (ii) non-agricultural land, including residential, office, business, and industrial land; and, (iii) unused land.<sup>58</sup> According to Articles 125–128 of the 2013 Land Law, land use terms are different for land used for long terms and for limited terms.<sup>59</sup> For long-term land use (including residences),<sup>60</sup> the land user will use it

<sup>53</sup> HIẾN PHÁP art. 53 (2013) (Viet.).

<sup>54</sup> LỆ LÃNG [LAND LAW] 2013, art. 17 (Viet.).

<sup>55</sup> See HIẾN PHÁP art. 54 (2013) (Viet.) (stating that “[o]rganizations and individuals are entitled to land assignment, land lease, and recognition of the land use right by the State. Land users have the right to transfer the land use right, and practice related rights and duties in concordance with the law. The land use right is protected by the law.”).

<sup>56</sup> See LAND LAW 2013, *supra* note 54, art. 21 (stating that “[t]he Government and People’s Committees at all levels shall exercise the rights of the land owner representative according to their competence prescribed in this Law.”).

<sup>57</sup> See *id.* art. 59 (stating that “1. Provincial-level People’s Committees may decide on the allocation or lease of land, and permit change of land use purpose in the following cases: . . . 2. District-level People’s Committees may decide on the allocation or lease of land, and permit change of land use purpose in the following cases: . . . ; 3. Commune-level People’s Committees may lease land from the agricultural land fund for public purposes in their communes, wards or townships.”).

<sup>58</sup> See *id.* art. 10 (“Agricultural land includes: a) Land for cultivation of annual crops, including paddy land and land for cultivation of other annual crops; b) Land for cultivation of perennial trees; c) land for production forest . . . Non-agricultural land includes: a) Residential land, including rural residential land and urban residential land; b) Land for construction of offices; c) Land for national defense or security purpose . . . Unused land, including land of types for which land use purposes have not been determined yet.”).

<sup>59</sup> *Id.* arts. 125–28.

<sup>60</sup> See *id.* art. 125 (“Land users may use land for long and stable term in the following cases: 1. Residential land used by households or individuals . . . 6. Land used for national defense or security purpose . . . 8. Land used by religious practices . . . 10. Land for cemeteries or graveyards . . .”).

permanently unless the State decides to “recover” the land.<sup>61</sup> Meanwhile, land used for limited terms (e.g., agricultural and forestry) includes uses with different land tenures, such as fifty years<sup>62</sup> or seventy years.<sup>63</sup> At the expiration of the term, if the land users desire to continue the same uses, the State must consider an extension which cannot exceed the term of the initial allocation.<sup>64</sup>

If a land user desires to change the dedicated use of land, the land user must carry out specified procedures for changing the land use purpose at the land management agency.<sup>65</sup> Based on the applicable long-term master plan and yearly plan on land use,<sup>66</sup> the land management agency may allow or disallow the change of land use purpose. In the case of changing the land use purpose from agricultural to non-agricultural, the land user must pay a fee.<sup>67</sup> The fee is substantial, even higher than the value of the land plot before the change.<sup>68</sup>

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<sup>61</sup> *See id.* art. 16 (regulating three cases where land recovery is applied: due to defense and security purposes and socio-economic development for national and public interests, but there are also cases of land recovery due to land users’ violations of regulations on land use).

<sup>62</sup> *Id.* art. 126(2):

(i) The term for land allocation, recognition of agricultural land use rights for households and individuals is 50 years. (ii) The term for land allocation or land lease to organizations for the purpose of agriculture, forestry, aquaculture or salt production; to organizations, households or individuals for the purpose of trading and services or for non-agricultural production establishment; to organize for implementing investment projects; to overseas Vietnamese and foreign-invested enterprises for implementing investment projects in Vietnam, shall be considered and decided on the basis of the investment projects or applications for land allocation or land lease, but must not exceed 50 years. For large investment projects with slow recovery of capital, projects in areas with difficult socio-economic conditions or with especially difficult socio-economic conditions which require a longer term, the term of land allocation or land lease must not exceed 70 years.)

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *See id.* art. 14 (stating “[t]he State shall decide on land use purposes through land use master plan and plans, and permit the change of land use purposes.”).

<sup>66</sup> *See id.* art. 45(3) (“district-level People’s Committees shall submit annual land use plans to the provincial-level People’s Committee for approval. Provincial-level People’s Committees must submit to their People’s Councils for adoption the lists of projects for which land needs to be recovered before approving the district level annual land use plans.”) Generally, the master plans governing the use of property within districts must be approved by provincial People’s Committees and are effective for ten years. These master plans are broadly comparable to general land use and zoning plans in many countries. Local use plans are revised yearly at the district level and list individual projects approved for development.

<sup>67</sup> *Id.* art. 114(2).

<sup>68</sup> *See* Khắc Niêm, *Chuyển mục đích sử dụng đất: Hồ sơ, thủ tục và tiền phải nộp* [Change of Land Use Purpose in 2021: Documents, Procedures and Money to Be Paid], LUAT VIETNAM (Aug. 7, 2021), <https://luatvietnam.vn/dat-dai-nha-o/chuyen-muc-dich-su->

Under the 2013 Land Law and the 2014 Housing Law, there are at least seven classes of land users (in contrast to statutory classes of land uses).<sup>69</sup> The rights and obligations allocated to each group differ. For example, ethnic Vietnamese residing overseas are entitled to buy apartments or other types of units in commercial housing development projects.<sup>70</sup> But overseas Vietnamese may not purchase and receive transfers of land use rights for agricultural purposes or residential land not included in housing development projects.<sup>71</sup> As a result, Vietnamese residing abroad have very limited rights compared to Vietnamese citizens living in Vietnam, who can purchase a wide variety of land use rights. The differences are in which kind of land a particular land user can access, and when and in what instances the land was granted (noting that policies and laws keep changing from time to time). Foreigners who are not of

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dung-dat-567-19539-article.html [https://perma.cc/8CAP-92QX] (stating that the fee is different in each case).

<sup>69</sup> LAND LAW 2013, *supra* note 54, art. 5 (“land users may be allocated land or leased land, have land use rights recognized by the State, or acquire land use rights in accordance with this Law, including:

1. Domestic organizations, including state agencies, people’s armed forces units, political organizations, socio-political organizations, economic organizations, socio-politico-professional organizations, social organizations, socio-professional organizations, public non-business organizations, and other organizations as prescribed by the civil law (below referred collectively to as organizations);
2. Domestic households or individuals (below referred collectively to as households or individuals).
3. Communities, including Vietnamese communities residing in the same village, street quarter or similar residential area sharing the same customs and practices or the same family line.
4. Religious establishments, including pagodas, churches, oratories, shrines, monasteries, abbeys, religious schools, head offices of religious organizations, and other religious institutions.
5. Foreign organizations with diplomatic functions, including diplomatic representative missions, consulates, other foreign representative agencies with diplomatic functions recognized by the Vietnamese Government, representative missions of organizations of the United Nations, inter-governmental agencies or organizations, and representative missions of inter-governmental organizations.
6. Overseas Vietnamese as prescribed by the nationality law.
7. Foreign-invested enterprises, including 100 percent foreign-invested enterprises, joint-venture enterprises, Vietnamese enterprises in which foreign investors purchase shares, merge or acquire in accordance with investment law.).

<sup>70</sup> VIETNAM LAW ON HOUSING art. 8 (2014).

<sup>71</sup> *Việt kiều có được sở hữu đất nông nghiệp ở Việt Nam?* [Can overseas Vietnamese own agricultural land in Vietnam?], *Luật Vietnam* (June 16, 2022), <https://vietlawonline.com/vn/viet-kieu-co-duoc-so-huu-dat-nong-nghiep-o-viet-nam--gdpl40733.html> [perma.cc/CY9B-5D2S].

Vietnamese origin are even more restricted in their access to land rights for both residential and commercial purposes.<sup>72</sup>

Those who hold land use rights under the Land Law have the ability to exchange, transfer, lease, sublease, inherit, donate, and mortgage land use rights, and contribute land use rights as capital.<sup>73</sup> All transfers of land use rights are supposed to be recorded in public land registries.<sup>74</sup> From a practical standpoint, land users may buy and sell parcels of land on the open market, and land (or at least the rights to use land) can be valued in money.<sup>75</sup> According to Article 703 Vietnam Civil Code:

The contract of land use rights means the agreement between the parties that the land user convert, transfer, lease, sublease, donate, mortgage and contribute land use rights as capital or exercise other rights to the other party as prescribed in the Law on land; and the other party shall exercise rights and perform obligations according to the contract to the land user.<sup>76</sup>

In parallel, the transfer of land use rights, or rights to use land and attached assets, are handled at the State notary public office or a private notary office located within the province or city where housing is located.<sup>77</sup> The transferor of land use rights must have a certificate of land use right and relevant papers.<sup>78</sup>

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<sup>72</sup> Nguyen Huynh Anh & Bui Thi My Huong, *Quyền sở hữu nhà ở của người nước ngoài tại Việt Nam—Một số vấn đề cần hoàn thiện* [House Ownership of Foreigners in Vietnam—Some Issues to be Completed], TẠP CHÍ CÔNG THƯƠNG [VIET. TRADE & INDUS. REV.] (Aug. 14, 2019), <https://tapchicongthuong.vn/bai-viet/quyen-so-huu-nha-o-cua-nguoi-nuoc-ngoai-tai-viet-nam-mot-so-van-de-can-hoan-thien-64545.htm> [<https://perma.cc/77CJ-JMSP>].

<sup>73</sup> LAND LAW 2013, *supra* note 54, art. 167.

<sup>74</sup> *Id.* arts. 5, 17.

<sup>75</sup> *See id.* art. 167 (providing that “land users may exercise the rights to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and to contribute land use rights as capital in accordance with this Law.”).

<sup>76</sup> BỘ LUẬT DÂN SỰ [CIVIL CODE], art. 703 (2005) (Viet.).

<sup>77</sup> LAND LAW 2013, *supra* note 54, art. 167(3).

<sup>78</sup> *Id.* art. 168.

## 2.2. *The Land Law's Complexity and Extra-legal Customs*

It is important to observe that land law in Vietnam is public law—a form of administrative law—rather than private law.<sup>79</sup> Land is seen as State property that the State holds for the public. The State may grant the use of the land or recover it if the land user violates the legal terms of use.<sup>80</sup> This fundamental idea both explains why land law is public rather than private law and may also explain the consensus among Vietnamese academics that application of the Land Law is one of the most complicated areas of law in Vietnam.<sup>81</sup> The concept of State-owned land and the complexity of that statute has also affected the transparency of land title and uses and other procedures relating to land.

Despite, or perhaps because of, the complicated nature of Vietnamese land law, in Vietnam there continues to exist many extra-legal and irregular uses of land. In the southern part of the country, there is an old saying: “*Need much for eating, not need much for accommodation.*” (“*ăn thì nhiều, chứ ở bao nhiêu.*”)<sup>82</sup> Unregistered accommodations are built almost anywhere and everywhere, even on the banks of natural or man-made waterways.<sup>83</sup> For example, thousands of houses are built along the Doi Canal in Ho Chi Minh City, spreading across sixteen wards of District Eight; most of them are shacks, with thin wooden stakes, roofs, and walls covered with temporary and precarious corrugated iron.<sup>84</sup> Many houses are so

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<sup>79</sup> See, e.g., *Department of Administrative Law*, SCHOOL OF LAW—CAN THO UNIVERSITY, <https://sl.ctu.edu.vn/en/unit-of-law-school/11-department-of-administrative-law.html> [<https://perma.cc/GDA6-JCAQ>] (last visited Oct. 3, 2023) (offering courses on land law in the department of administrative law).

<sup>80</sup> LAND LAW 2013, *supra* note 54, art. 3(11).

<sup>81</sup> See Dezan Shira & Associates, *Land Rights in Vietnam—What They Are and How You Can Acquire Land*, VIETNAM BRIEFING (June 25, 2019), <https://www.vietnam-briefing.com/news/land-rights-vietnam-what-they-are-and-how-you-can-acquire-land.html/> [<https://perma.cc/B83Y-N7WD>] (providing a guide on ways to lease land in Vietnam).

<sup>82</sup> Compared to the north of the country, the weather in south of Vietnam was less extreme and more amenable to fruit production; so originally there were more fruits in the south. This causes the way of thinking that leads people to have much less consideration for their accommodations.

<sup>83</sup> Le Anh, *Xử lý nghiêm công trình không phép, trái phép ven kênh rạch* [*Strictly Handling Unlicensed and Illegal Construction Along Canals*], GREAT SOLIDARITY (June 17, 2021), <http://daidoanket.vn/xu-ly-nghiem-cong-trinh-khong-phet-trai-phet-ven-kenh-rach-5654449.html> [<https://perma.cc/P5EY-AQ7S>].

<sup>84</sup> The Quang, *Hơn 12.300 căn nhà tạm ven kênh rạch ở TP.HCM chờ được chỉnh trang* [*More than 12,300 temporary houses along canals in Ho Chi Minh City waiting to be*

precariously built that they can collapse at any time.<sup>85</sup> In other cases, some land dwellers live on land for which their fathers or other relatives hold the land certificate.<sup>86</sup> In most instances, the certificate holders and the land users are not willing to share the formal rights to use of the land.<sup>87</sup> Problems surface only when the land is compulsorily re-acquired by a government agency.<sup>88</sup> Resettlement land provided to the formal certificate-holder whose land was taken is usually not large enough to be shared among all the users of the lost property.<sup>89</sup> According to the law, resettlement is only considered for people whose legal residential land has been recovered by the government and have no other place to live within the commune, ward, or township.<sup>90</sup> But often the formal land user has another place to live already, while the informal user is without resettlement rights. In other instances, the resettlement areas provided to displaced land users have been abandoned due to poor quality. For example, Hanoi City approved an investment policy in 2010 to provide for the site clearance for the Capital Youth Park.<sup>91</sup> According to the investment

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*refurbished*], VTC NEWS (Oct. 20, 2020), <https://vtc.vn/anh-hon-12300-can-nha-tam-ven-kenh-rach-o-tphcm-cho-duoc-chinh-trang-ar576108.html> [<https://perma.cc/B8P9-8D32>].

<sup>85</sup> Ha Tuan, *Thành phố Hồ Chí Minh: Chính trang diện mạo đô thị ven kênh, rạch* [*Hanoi City: Revamping urban appearance along canals and canals*], NEW HANOI NEWS (Nov. 19, 2021), <http://www.hanoimoi.com.vn/tin-tuc/Kinh-te/1017810/thanh-pho-ho-chi-minh-chinh-trang-dien-mao-do-thi-ven-kenh-rach> [<https://perma.cc/R4TR-Y8BP>].

<sup>86</sup> Nguyen Nhung, *Xây nhà ở trên đất người khác đứng tên có được cấp quyền sở hữu không?* [*If I build a house on someone else's land, will I be granted ownership rights?*], MINH GIA, <https://luatminhgia.com.vn/xay-nha-o-tren-dat-nguoi-khac-dung-ten-co-duoc-cap-quyen-so-huu-ngoi-nha-do-khong-.aspx> [<https://perma.cc/F57F-9N2U>] (last visited Nov. 13, 2023).

<sup>87</sup> Kim Quynh, *Giải quyết tranh chấp đất đai, đòi đất cho mượn, cho ở nhờ* [*Settlement of Land Disputes, Asking for Land to be Lent, for Accommodation*], TẠP CHÍ TÒA ÁN NHÂN DÂN ĐIỆN TỬ [PEOPLE'S COURT MAGAZINE] (June 3, 2019), <https://tapchitoaan.vn/giai-quyet-tranh-chap-dat-dai-doi-dat-cho-muon-cho-o-nho> [<https://perma.cc/Z9FH-6KRG>].

<sup>88</sup> Thu Ha, *Người dân đặc biệt quan tâm vấn đề thu hồi đất, bồi thường khi thu hồi đất* [*People are especially concerned about the issue of land recovery and compensation when land is recovered*], BÁO ĐIỆN TỬ ĐẢNG CỘNG SẢN VIỆT NAM [COMMUNIST PARTY OF VIET. ELEC. NEWSPAPER] (Feb. 21, 2023), <https://dangcongsan.vn/phap-luat/nguoi-dan-dac-biet-quan-tam-van-de-thu-hoi-dat-boi-thuong-khi-thu-hoi-dat-631988.html> [<https://perma.cc/4ZZF-2PTW>].

<sup>89</sup> Doan Hong Nhung, *Mở rộng quyền cho người sử dụng đất được hưởng chính sách bồi thường, hỗ trợ tái định cư khi nhà nước thu hồi đất trong Dự thảo sửa đổi Luật Đất đai năm 2013* [*Expanding land users' rights to receive compensation and support for resettlement in the case of land recovery in the draft amendment of the Land Law 2013*], 5 VIET. STATE MGMT. REV. 96, 98–99.

<sup>90</sup> Decree No. 47/2014/ND-CP, art. 6 (2014) (Viet.).

<sup>91</sup> Nam Viet, *Hà Nội: Người dân thiếu nhà ở, nhiều nhà tái định cư xây xong bỏ hoang* [*Hanoi: People lack housing, many resettled houses have been built and abandoned*], GIAO



policy approval in 2010, the project has a total cost of 761 billion VND with the expected construction of four clusters of high-rise apartment buildings with accompanying infrastructure.<sup>92</sup> According to a June 2021 report of the Department of Construction of Hanoi, only four buildings have been constructed after ten years.<sup>93</sup> According to the observations of the Traffic Newspaper PV, two of those apartment buildings had been basically completed for use, but were still uninhabited.<sup>94</sup> The entrance to the building area was closed and the grass was overgrown, but the former land users had long been removed from the site.<sup>95</sup>

### 2.3. *The Dominant Position of the State in the Land Recovery Process*

The mentality that emphasizes public ownership of land affects legislative thinking and executive actions.

First, the Civil Code of Vietnam regulates all property in Vietnam *except land*.<sup>96</sup> Rather than being covered by the Civil Code, Vietnam's separate Land Law regulates land management and use.<sup>97</sup> Land Law covers, among other things, the legal-administrative process and the relationship between land users and competent State administrative agencies, such as Provincial People's Committees and Local People's Committees.<sup>98</sup> The dominance of administrative agencies under the land statute results in an unequal relationship of power in favor of the competent State agencies and limited rights for land users. When a disagreement occurs in the process of land allocation, land lease, or land recovery, the land user cannot go to an independent civil court; instead, land users can only go to a State administrative agency or an administrative court.<sup>99</sup> Administrative courts in Vietnam are governed by the Law on Administrative Court

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THÔNG (June 20, 2021), <https://www.baogioithong.vn/ha-noi-nguoi-dan-thieu-nha-o-nhieu-nha-tai-dinh-cuxay-done-bo-hoang-d512578.html> [<https://perma.cc/ADX8-SN9L>].

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> BỘ LUẬT DÂN SỰ [CIVIL CODE], art. 105(1) (2015) (Viet.).

<sup>97</sup> LAND LAW 2013, *supra* note 54, art. 1.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* art. 204.

Procedures, which is unrelated to the Civil Code.<sup>100</sup> Even when land use rights are violated, the courts will not invoke the Civil Code and the land user may not turn to the rights entrenched in the Civil Code to protect their interests.<sup>101</sup>

Second, land acquisition in Vietnam is regulated by the Land Law, but the compensation, support, and resettlement process when the State recovers land is governed mainly by decrees guiding the implementation of the law (i.e., administrative regulations).<sup>102</sup> This illustrates a lack of balance of rights and obligations between the State and those using the land. In addition, land acquisition and use activities do not relate solely to land itself. The damage caused by government land acquisition and construction can include land loss and damage to crops, livestock, houses, and buildings.<sup>103</sup> Because of this diversity of compensable impacts, the guiding documents of the Land Law are not enough to regulate compensation, support, and resettlement activities when the State recovers land, including through land valuation activities. According to the Land Law and its administrative regulations, land valuation when the State recovers land is carried out by the Council under the Chairman of the Provincial People's Committee President, a specialized agency under the Provincial People's Committee.<sup>104</sup> The consulting entity determines the land price without the participation of land users, who are legally allocated land by the State.<sup>105</sup>

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<sup>100</sup> LAW ON ADMINISTRATIVE PROCEDURES, art. 1 (2015) (Viet.).

<sup>101</sup> See LAND LAW 2013, *supra* note 54, art. 204 (establishing that Art. 1 of the Vietnam Law on Administrative Procedures 2015 is applied in this case).

<sup>102</sup> See e.g., Decree No. 47/2014/ND-CP, *supra* note 90 (ordering that the Government provides compensation, support and resettlement when the State recovers land).

<sup>103</sup> Nguyen Duc Thang, *Nguyên tắc bảo đảm dân chủ, khách quan, công bằng, công khai, kịp thời và đúng quy định của pháp luật trong bồi thường về đất khi nhà nước thu hồi đất* [On the Principle of Ensuring Democracy, Objectivity, Fairness, Publicity, Timeliness, and Lawfulness of the Law with Regard to Land-related Compensation in Cases of the State's Land Recovery], 2 NHÀ NƯỚC VÀ PHÁP LUẬT [STATE & L. REV.] 71, 72 (2022).

<sup>104</sup> LAND LAW 2013, *supra* note 54, art. 114.

<sup>105</sup> Phan Trung Hien & Nguyen Duc Thang, *Đảm bảo sự cân bằng lợi ích giữa nhà nước và người dân trong quá trình xác định giá đất tính bồi thường* [Ensuring the balance between the State's and citizens' interests in the process of identifying land prices for calculating compensation], 253 HANOI L. REV. 17, 25 (2021).

#### 2.4. *Lack of State Accountability for Land Management on Behalf of the People*

Although public land ownership has applied to the entire country since 1980, land disputes in Vietnam have steadily increased.<sup>106</sup> The current Land Law provides for responsibilities of the State to the entire people on land management and use.<sup>107</sup> However, there has been inadequate attention to the principles of State accountability as the representative of the entire people as collective landowners.<sup>108</sup> In practice, there is no universally accepted working definition of the notion that the “entire people are the landowners” and “the State is the representative.”<sup>109</sup> As a result of this vagueness, the “entire people ownership” of land in Vietnam has effectively brought about an absence of any real landowner at all.<sup>110</sup> Every government agency, especially a provincial or local committee, acts as a *de facto* owner of the land rather than as a trustee of the land for the general public.<sup>111</sup> The unfortunate outcomes are, among other things, both public confusion and a degree of corruption in land management.<sup>112</sup> According to the survey results on the Provincial Governance and Public Administration Performance Index in Vietnam (“PAPI”) 2018, the percentage of people who have paid bribes for a land use right certificate (or “red book”) was 15%, down 2% compared to 2017.<sup>113</sup> With more than fourteen thousand people in all sixty-three provinces surveyed, the PAPI report showed that 17.86% of the people surveyed in 2015 and 21.61% of the people surveyed in 2018 knew about land use planning, and less than one-third of the people surveyed in either year said they had the

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<sup>106</sup> To Van Hoa, *Improving provisions on land dispute resolution of the Draft of the Land law (amended)*, 275 HANOI L. REV. 103, 103–04 (2023).

<sup>107</sup> LAND LAW 2013, *supra* note 54, arts. 4, 23.

<sup>108</sup> Phan Trung Hien, *Accountabilities of Land-ownership’s Representative in Vietnam*, 37 VNU J. SCI.: LEGAL STUD. 43, 43–51 (2021).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See, e.g., Xuan Hung, *Di dời nhà dân, dành đất cho doanh nghiệp làm biệt thự* [Relocate Residential Housing to Make Way for Business to Build Villas], LAODONG (Mar. 25, 2016), <https://laodong.vn/archived/di-doi-nha-dan-danh-dat-cho-doanh-nghiep-lam-biet-thu-667614.lido> [<https://perma.cc/VP73-L3YH>] (finding that the public opinion was not in approval of the government’s decision to revoke people’s land and houses).

<sup>113</sup> Centre for Community Support and Development Studies, et al., *The 2018 Viet Nam Provincial Governance and Public Administration Performance Index (PAPI): Measuring Citizens’ Experiences*, U. N. DEV. PROGRAM 20 (2019).

opportunity to contribute ideas to local master plans and plans on land use.<sup>114</sup> This demonstrates that although there has been a slight increase in the publicity and transparency of land use planning and plans over the years in localities, public understanding remains at a very modest level. In particular, in 2018, the percentage of people who had to “pay extra money” when applying for a red book was 15%.<sup>115</sup>

Further, land-related rights of many individuals and entities are insufficiently recognized and protected.<sup>116</sup> This is a cause of concern because the Vietnamese government has poured substantial time, effort, and financial resources into improving the Land Law through careful study and a series of amendments.<sup>117</sup> Yet the evidence suggests that the positive results it expected have not been delivered in practice.<sup>118</sup> In particular, the compulsory acquisition of land—ostensibly for public purposes—has been the source of many complaints.<sup>119</sup> Evidence exists from a central body which suggests that site clearance usually takes a huge amount of time and building projects are often subject to inordinate delays.<sup>120</sup> Further, there is

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<sup>114</sup> *Id.* at 14.

<sup>115</sup> Hung Vo, *Năm 2018, tỷ lệ người dân phải “lót tay” khi xin cấp sổ đỏ là 15%* [In 2018, the percentage of people who had to “pay extra money” when applying for a red book was 15%], ĐÀU TƯ ONLINE (Apr. 13, 2019), <https://baodautu.vn/batdongsan/nam-2018-ty-le-nguoi-dan-phai-lot-tay-khi-xin-cap-so-do-la-15-d98571.html> [<https://perma.cc/3FBR-H4WE>].

<sup>116</sup> Hải Liên, *Bảo đảm quyền lợi của người sử dụng đất và hiệu quả sử dụng đất* [Ensuring the rights of land users and land use efficiency], TRANG TIN ĐIỆN TỬ ĐẢNG BỘ TP HỒ CHÍ MINH [HO CHI MINH CITY PARTY NEWS] (May 1, 2021), <https://www.hcmcpv.org.vn/tin-tuc/bao-dam-quyen-loi-cua-nguoi-su-dung-dat-va-hieu-qua-su-dung-dat-1491877360> [<https://perma.cc/5BST-52GW>].

<sup>117</sup> See Lê Minh Công, *Tổng Hợp Các Văn Bản Luật Đất Đai Qua Các Thời Kỳ* [Summary of Land Law Documents Through the Ages], CÔNG TY TƯ VẤN LUẬT DFC [DFC LAW CONSULTING CO.] (Oct. 25, 2019), <https://phapluat24h.org/tong-hop-cac-van-ban-luat-dat-dai-qua-cac-thoi-ky/> [<https://perma.cc/HK46-MAXU>] (showing Vietnam Land Law has been changed four times so far: Land Law 1987, Land Law 1993, Land Law 2003, and Land Law 2013).

<sup>118</sup> Dang Van Cuong, *Luật Đất đai hiện hành có những bất cập nào?* [What Are the Shortcomings of the Current Land Law?], PHAPLUAT VIET. (June 1, 2021), <https://baophapluat.vn/bds/luat-dat-dai-hien-hanh-co-velvet-bat-cap-nao-post396595.html> [<https://perma.cc/2TZC-KQAN>].

<sup>119</sup> See Hien & Spitzer, *supra* note 52, at 166 (numerous complaints).

<sup>120</sup> See e.g., Thu Ha, *Hà Nội: 350 dự án chậm triển khai, vi phạm Luật Đất đai* [Hanoi: 350 projects are delayed in implementation, violating the Land Law], BÁO ĐIỆN TỬ ĐẢNG CỘNG SẢN VIỆT NAM [COMMUNIST PARTY OF VIET. ELEC. NEWSPAPER]. (Aug. 12, 2021), <https://dangcongsan.vn/phap-luat/ha-noi-350-du-an-cham-trien-khai-vi-pham-luat-dat-dai->

much anecdotal evidence about numerous complaints from private individuals who have been adversely affected by planned developments. The main source of complaints is against compulsory acquisition decisions, and in particular grievances about the level of the compensation set by the acquiring authorities.<sup>121</sup> Those complaints, which have reportedly been growing, tend to be increasingly prolonged and, in some instances, have negative impacts on security and the social order.<sup>122</sup>

In these circumstances, the Vietnamese government introduced many policies aimed at restoring confidence in the legal order and implementing land clearance and development projects more effectively.<sup>123</sup> In practice, those policies and solutions have been effective in pushing both public and private construction projects forward, lowering the barriers to meet time schedules, and saving costs without detracting from the quality of development.<sup>124</sup> However, Vietnam will likely face problems ahead because the country will be pursuing more large-scale construction projects contemplated by the government; the higher the rate of development Vietnam pursues, the more demand for land acquisition Vietnam will have to handle. Against the background of these pressures, the policies, solutions, and some legal regulations from the government raise questions about the prospect that these evolving arrangements will work effectively in practice.

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587936.html [<https://perma.cc/DY7T-5T5R>] (showing 350 projects are currently delayed in implementation in Ha Noi).

<sup>121</sup> PHAN TRUNG HIEN, NHỮNG ĐIỀU CẦN BIẾT VỀ BỒI THƯỜNG, HỖ TRỢ, TÁI ĐỊNH CƯ KHI NHÀ NƯỚC THU HỒI ĐẤT [THINGS TO KNOW ABOUT COMPENSATION, ASSISTANCE, AND RESETTLEMENT] 256 (2018).

<sup>122</sup> Khanh Thi, *Khiếu nại trong lĩnh vực đất đai chiếm 98%* [*Complaints in Land-related Issues Occupy for 98%*], BÁO ĐIỆN TỬ ĐẢNG CỘNG SẢN VIỆT NAM [COMMUNIST PARTY OF VIET. ELEC. NEWSPAPER] (July 26, 2019), <https://dangcongsan.vn/y-te/khieu-nai-trong-linh-vuc-dat-dai-chiem-98---529832.html> [<https://perma.cc/S5MS-UCFY>].

<sup>123</sup> Thanh Hang, *Chuyên gia kiến nghị khoảng trống lớn nhất trong Luật Đất đai* [*Expert Recommends Biggest Gap in Land Law*], CHÍNH PHỦ NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [THE GOV'T OF SOCIALIST REPUBLIC OF VIET.] (June 28, 2018), <http://baohinhphu.vn/Utilities/PrintView.aspx?distributionid=340098> [<https://perma.cc/DTP5-KDJC>].

<sup>124</sup> *Id.*

### 2.5. *Unclear Land Use Titles and Registration*

Vietnam is a country developing effectively in many respects, but it faces significant land-related social instability.<sup>125</sup> Foreigners have also expressed confusion in the course of making investments in land-related projects in Vietnam.<sup>126</sup> In the broadest sense, Vietnam's Land Law does not seem to entirely satisfy any of the land users, the people in general, the State, or investors.<sup>127</sup>

Since 1992, although the basic economic policy has changed to a market orientation, the land ownership system has remained in its earlier status. Because of "entire people ownership," Vietnamese land users do not have ownership, and their land use certificates are time-limited<sup>128</sup> depending on the character and use of the land. As noted above, the time limit for land allocation and recognition of agricultural land use rights for households and individuals directly engaged in agricultural production is fifty years.<sup>129</sup> In Vietnam, the government can re-acquire land for public purposes simply by not renewing a certificate of use.<sup>130</sup> This would be based on the statutory treatment of the property as "land allocated or leased by the State for a definite term but not extended."<sup>131</sup> There are also a number of ways of clearing land "compulsorily" in Vietnam.<sup>132</sup> This legal culture of justification in favor of land use rights for individuals represents the major difference between Vietnam and developed countries.<sup>133</sup>

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<sup>125</sup> See Yves Duchère, *Urbanization and land disputes in Vietnam: compromises and protests*, RUSSIAN J. VIETNAMESE STUD. 20, 30 (2019) (explaining the benefits and challenges to Vietnam's urban development).

<sup>126</sup> See generally M.L. INGALLS ET AL., STATE OF LAND IN THE MEKONG REGION 169 (2018) (explaining attempts by Vietnam to attract foreign investments).

<sup>127</sup> See, e.g., Cent. Comm. Res. 19-NQ/TW (Oct. 31, 2012) (Viet.) (continuing to renew policies and laws on land in the period of comprehensively promoting the renovation process, and creating a foundation so that by 2020 Vietnam will basically become an industrialized country in the direction of modernity).

<sup>128</sup> LAND LAW 2013, *supra* note 54, art. 126; see also *supra* notes 55–**Error! Reference source not found.**7 and accompanying text.

<sup>129</sup> LAND LAW 2013, *supra* note 54, art. 126.

<sup>130</sup> See *id.* art. 65(1)(d); see also Hien & Spitzer, *supra* note 52, at 151 (describing the various types of land classifications in Vietnam).

<sup>131</sup> LAND LAW 2013, *supra* note 52, art. 65(1)(d).

<sup>132</sup> *Id.* art. 16(1).

<sup>133</sup> See generally Hien & Spitzer, *supra* note 52 (analyzing the theoretical, constitutional, and practical bases for governmental land acquisition in Vietnam from a comparative perspective).

### 3. IMPROVING VIETNAM'S PUBLIC LAND OWNERSHIP REGIME

In order to improve the Land Law, the underlying concept of land ownership in Vietnam should be confronted and addressed. The land ownership and use regime should be adjusted to reflect both the current market economy approach and the principle of socialist guidance.<sup>134</sup> Along with labor and capital, land is one of the indispensable elements of production. Consequently, allocating land is always a very important issue in every society, and the ability to allocate land fairly can result in the success or failure of a political regime.<sup>135</sup>

#### 3.1. *Addressing the Issues of Land Ownership: State Accountability*

Land ownership, promulgated in a national constitution, is a basic political institution of any country. Proposing a change in land ownership requires extensive consideration based on both the history and legal traditions of a country. However, through thoughtful amendments, Vietnam could make its Land Law more flexible, adapting to the current socioeconomic development in the nation.

If public ownership of land is to be maintained, the real owner of the land should be adequately identified. If the entire people are the collective landowners, then the rights of those collective owners, and the corresponding obligations of the State as trustee, must be more clearly defined. Among those rights is the right to decide whether the State, as representative of the landowning public, is subject to accountability. Accountability could be exercised through its state agencies, such as the National assembly, the Government, People's Councils, and People's Committees, which could be responsible for responding to the public about the land use and management activities within the scope of each agency's tasks. To properly maintain the notion of the entire people's ownership of land

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<sup>134</sup> NGUYEN CUC, 20 NĂM ĐỔI MỚI VÀ SỰ HÌNH THÀNH THỂ CHẾ KINH TẾ THỊ TRƯỜNG ĐỊNH HƯỚNG XÃ HỘI CHỦ NGHĨA [20 YEARS' RENOVATION AND THE ESTABLISHMENT OF MARKET ECONOMIC INSTITUTION WITH SOCIALIST DIRECTION] 146 (2005).

<sup>135</sup> See Peter Ho & Max Spoor, *Whose land? The Political Economy of Land Titling in Transition Economies*, 23 LAND USE POL'Y J. 580 (2005) (exploring the importance of land allocation policy in developing countries).

where the State is the public's representative, working accountability of each relevant state agency should be established. In parallel, some fundamental processes or protections should be guaranteed in connection with the land management responsibilities of the State as representative of the entire people: democratic and just processes; open and transparent State actions; and outcomes that are both legally-based and reasonable.

### 3.2. *Addressing the Issues of Land Ownership: Dual Ownership*

Next, there exist countries where the land originally or formally belonged to the King or the Queen. In British law, there is no absolute title in individuals, because the rights to the land were established through the Sovereign's tenancy.<sup>136</sup> However, for historical and practical reasons, land holders are now treated like true landowners.<sup>137</sup> Learning from the experience of some countries, like the United Kingdom, Vietnam should develop regulations effectively allowing dual ownership. Land would continue to belong to the whole people, which could be called "primary ownership." When the owner's representative has assigned land to the users, those users would be granted the status of "secondary ownership." In fact, land use rights in Vietnam have evolved to have many of the characteristics of property ownership in the real estate market.<sup>138</sup> This creation and regulation of secondary ownership would help leverage productive motivation, guarantee the land users' rights, and encourage social stability. Residual primary ownership could be treated as a prior right. Thus, whenever the State would need land for public purposes, the State could completely buy out the secondary ownership rights. But those secondary rights of land users would formally be treated as true ownership interests and would be given appropriate protections.

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<sup>136</sup> See Honoré, *supra* note 34, at 370–75.

<sup>137</sup> See e.g., RIDDALL, *supra* note 10, at 50 (explaining the holder of the fee simple is treated as equivalent of the owner for all practical purposes).

<sup>138</sup> See *supra* note **Error! Reference source not found.** and accompanying text (showing Vietnam's evolving economy).



### 3.3. *Clearer Property Titles and Registers*

According to Hernando De Soto, the individual's rights relating to land not only express fundamental rights but could *also* be used as a lever to invigorate the economy (if the policies are appropriate), or depress development in the long term (if the policies are unsuccessful).<sup>139</sup> In order to attract investment and stimulate the economy in a developing country such as Vietnam, the process and compensation within compulsory acquisition of land need to be clear and transparent. It would be useful to explore De Soto's ideas in terms of respecting and registering private property rights to support economic development. In De Soto's concept: "[t]he key to unlock the development potential of the country was to drain the swamp, reduce the regulatory burden and give legal recognition to the already existing property claims of hundreds of thousands of poor people."<sup>140</sup>

As described above, there are a certain number of land users in Vietnam who, for various reasons, have been using the land without holding lawful certificates.<sup>141</sup> In addition to the instances of illegal users (technically land trespassers), there are some instances involving actions that are not obviously illegal but which lack the clarity to be considered lawful.<sup>142</sup> How are we to improve these situations and transform the Vietnamese system into a system which demonstrates a clearer property title and register?

### 3.4. *Governmental Land Recovery: Striking a Balance*

In the context of government land recovery, the National Assembly of Vietnam should promulgate a Law on Compensation, Support, and Resettlement, separate from the Land Law. This new law would be aimed at improving the law of government land reacquisition, compensation, support services, and resettlement, and

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<sup>139</sup> Martin Ricketts, *Poverty, Institutions and Economics: Hernando De Soto on Property Rights and Economic Development*, INST. OF ECON. AFFS. 49, 50 (2005).

<sup>140</sup> *Id.*

<sup>141</sup> See Tran Quang Huy, *supra* note 42 and accompanying text.

<sup>142</sup> See e.g., Trinh Vu, *Vòng luẩn quẩn của sổ đỏ và hộ khẩu [A conflict circle between Household Booklets and Land Certificates]*, VN EXPRESS (Aug. 2, 2005), <https://vnexpress.net/vong-luan-quan-cua-so-do-va-ho-khau-2036841.html> [<https://perma.cc/9NNK-K7VR>] (explaining that many land holders in large cities in Vietnam cannot get a Land Certificate because they do not have a "Household booklet" of the place where they are staying. However, in order to apply for the Household Booklet, they must hold the land certificate.).

could increase fairness, equality, and transparency. It should also include a chapter on determining damages when the State recovers land. This provision would focus on the determination of damage, the methods of calculating the damage, and open publication of the results of damage determinations. In particular, land users must be involved in the process of determining land prices. These are important elements in determining compensation, support for displaced land users, and resettlement when the State recovers the land.<sup>143</sup>

#### 4. LAND OWNERSHIP, LAND USE, AND THE RULE OF LAW

The “rule of law” is an ideal enshrined in United Nations’ documents,<sup>144</sup> and most non-authoritarian polities arguably must be based on the notion of “rule of law.”<sup>145</sup> The mainstay of modern conceptions of the rule of law is the notion that state action must be based on cogent general rules and that the law must apply equally to all.<sup>146</sup> With respect to Vietnam’s Land Law, the rule of law is essential to ensure that the rights relating to properties acquired and the rights of the land holders are protected. Vietnam could stick to the strength of commitment to the rule of law. It may be useful to pay attention to De Soto’s work, which has focused on improving the economies of developing countries by building confidence in investments, through strengthening transparency, and reducing the uncertainty—key aspects of the rule of law.<sup>147</sup> Further, land should be compulsorily acquired only for the public purposes expressly granted by the Constitution. This is significant not only to confirm fair play between the State and private individuals, but also to reduce the uncertainty, and most fundamental of all, to increase transparency.

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<sup>143</sup> See Hien & Spitzer, *supra* note 52, at 164–67 (discussing recommendation in greater detail).

<sup>144</sup> See e.g., Clemens A. Feinaugle, *The Rule of Law and its application to the United Nations*, in HANDBOOK ON THE RULE OF LAW 204–05 (Christopher May & Adam Winchester eds., 2018) (illustrating the rule of law applied to the U.N.).

<sup>145</sup> See Jean Hampton, *Democracy and the Rule of Law*, in THE RULE OF LAW 13, 41 (Nomos XXXVI 1994) (arguing that modern democracies are successfully because the rule of law provides a remedy to reconcile differences).

<sup>146</sup> WILLIAM E. SCHEURMAN, BETWEEN THE NORM AND THE EXCEPTION, THE FRANKFURT SCHOOL AND THE RULE OF LAW (1994); Feinaugle, *supra* note 145, at 8–9.

<sup>147</sup> See generally DE SOTO, *supra* note 20.

To ensure people's participation in management, to enforce the principle that "under ownership of the entire people, represented and uniformly managed by the State,"<sup>148</sup> Vietnamese law should clarify the responsibilities of the owners (i.e., the People) in addition to the responsibility of the representative (i.e., the State), and to reinforce the accountability of the agencies exercising the role of representative to the owners. Then, the efficiency of land management in Vietnam will not only be better guaranteed, but the corruption and waste of national resources will be reduced, thus contributing to the completion of the goals of the industrialization and modernization of Vietnam.

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<sup>148</sup> HIẾN PHÁP art. 53 (2013) (Viet.); LAND LAW 2013, *supra* note 54, art. 4.