

*The law and land grabbing in developing countries :
the examples of Benin, Mali, Papua New Guinea, Vietnam and Costa Rica*

LAND OWNERSHIP IN VIETNAM & LAND SEIZURE IN ONE-PARTY STATE (*LANDBESITZ UND LANDRAUB IN VIETNAM*)

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A man's home is his castle. In countries which adopt and respect the rule of law, no matter whether one is a government official or not, if one is a property owner, one has the right to own and use one's land for one's personal enjoyment or any other purposes.

In Vietnam, however, the situation is far different. In the communist country, all land is owned by the state, and citizens are only granted temporary leases to use the land for their personal economic development at the household level. When a bureaucrat's plans on that piece of land change, a citizen's land claim can quickly become meaningless.

Land ownership in Vietnam

Vietnam became an independent state in 1945 when local citizens upraised against the Japan-France doubled occupation. The newly-established country struggled in the independent war against France which ended in 1954 with the country being divided into two parts. The northern part was under management of China-backed communists while the southern region became a Western-ruled republic.

The country reunited in 1975 as northern communists, with military and economic assistance from the former Soviet Union and China, invaded the Republic of Vietnam, which was then backed by the U.S. and its allies.

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Back to 1946, Vietnam held the first general election and formed a multi-party parliament. Several months later, the parliament built the nation's first Constitution, which did not address the issue of land ownership.

After taking power in the northern region, the communists formed the Democratic Republic of Vietnam and built a new constitution called the 1960 Constitution, which stipulated that all unoccupied land belongs to the state.

Vietnam has changed its Constitution twice since the country's unification in 1975. The 1980's version of the Constitution and the amended 1992 Constitution drastically changed land ownership—putting all land in Vietnam in the hand of the state and giving people only the right to use it.

In the draft Constitution which is being built and expected to be passed in late 2013, the communists strive to keep the land ownership unchanged from the current 1992 Constitution. Under the current Law on Land, the government can seize land from people for national defense and security as well as for socio-economic development. This allows authorities in numerous provinces and cities to evict people from their land and give grabbed land to so-called local development projects implemented by both domestic and foreign investors.

Land seizure in modern Vietnam

The largest and massive land grab happened in 1954-1956 after the Vietnamese communists took power in the North and formed the Democratic Republic of Vietnam (Northern Vietnam).

The Vietnamese communists conducted a land reform in order to encourage the poor to support their socialism and prepare for an invasion in the south. Under supervision of Chinese advisors, Vietnamese communists launched a brutal campaign to take land from rich families to redistribute to poor villagers. Many landlords were accused of making villagers' exploitation and working for French rulers. Tens of thousands of them were sentenced (summarily executed) to death while other received brutal harassment. All their possessions, including land, were confiscated and given to farmers under trials set up by state cadres who had never been trained in legal institutions.

During the trials, many hard-working landlords had been slandered by their relatives encouraged

by communists in return of small awards such as some parcels of land or household tools. Later, communists in the Northern Vietnam admitted the mistake and halted the land reform as well as made correction for their wrongdoings. However, many Vietnamese landlords couldn't find justice for their deaths, only few received lighter sentences.

In the 1960s and 1970s in northern Vietnam and in the southern region after 1975 when communists invaded and reunited the country, Vietnam formed agricultural cooperatives in the northern part and forced all farmers to contribute their land to the state cooperatives. Farmers were allowed to keep a small part of their land (5%) for their own cultivation of rice and vegetables. The cooperative model of agriculture eventually proved ineffective, driving the country into serious shortage of food and to be heavily relied on food aid from many countries, especially those from the former communist bloc, the Soviet Union and the Eastern European countries.

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In the mid-1980s, Vietnamese communists realized that the cooperative model would not work, dismissed it, and divided land for individual farmers. But the land still belongs to the state while farmers have only the right to cultivate for a specific duration (maximum of 30 years).

Land seizure conducted at the lower level by local authorities in provinces and cities started after 1986 when Vietnam conducted economic reform called "Doi Moi" or "Renovation". Under the urbanization and industrialization process, there was a huge demand for land to carry out industrial, property and recreational projects in localities. Since then, local authorities have taken over large areas of agricultural land from farmers for foreign and domestic investors to implement these projects.

Land grabbing has occurred everywhere from the south to the central and the north including the capital city of Hanoi.

During land seizure, local authorities have forcibly asked farmers to give their land at prices much lower than the market price and sold the land (more precisely, the right to use the land) to property developers at much higher prices. Of course, a large part of the profit goes to pockets of corrupted officials instead of to the local budget.

In some cases, farmers have been forced to sell their land at very low prices for realty project development, and later they have to pay at prices hundreds times higher for apartments built on their land.

When local authorities see profit from taking farmers' land and selling the land to project developers, there is no chance for farmers to refuse, even if the land has been their houses for ages or has cemeteries and other basic livelihood, since in the one-party state, local leadership holds all three branches—executive, legislative and judicial—of power.

Land grabbing in Con Dau parish in the central city of Danang

Con Dau parish has over 135 years of history in Hoa Xuan ward, Cam Le district where residents are Catholic followers.

In 2010, the People's Committee in Danang decided to take 440 hectares of land in Con Dau parish for the construction of Hoa Xuan ecological resort. Many houses in Con Dau parish and the local cemetery are located within the areas of the resort project.

Despite strong protest from parish's residents, the local authorities demanded a demolition of the local cemetery as well as ordered numerous residents to move out of the areas for the resort.

The compensation for taken land was 30 times as low as the price of a villa in the resort.

Residents in Con Dau parish did not want to move their cemetery. On May 4, 2010, policemen did not allow the local residents to bury Maria Dang Thi Tan at the cemetery. A clash between the police force and Con Dau residents ensued. After the incident, police arrested dozens of Con Dau residents, accusing them of conducting activities against the local authorities. Six locals were imprisoned while the others suffered torture during their short period of detention.

After Ms Tan's funeral, one member of the Con Dau funeral services was beaten to death. Over 70 residents of Con Dau fled to Thailand to seek asylum, of whom 14 successfully got permission to live in the U.S.A.

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For residents who had to move out of their land, local authorities offered a small amount of compensation not enough for buying land and building materials in new places.

Recently, Danang city's authorities announced it will move all tombs out of Con Dau cemetery by April 10.

Another case of land grab in Danang is the one in which a local resident immolated himself to protest the city's authorities. On Feb 17, 2011, engineer Pham Thanh Son, 31 years old, used gasoline to set himself on fire in front of a local government building. No one intervened and Mr. Son died. He was said to have suffered from unfair decision of Danang city in taking over his land without adequate compensation. Prior to his self-immolation, Mr. Son sent numerous petitions to the city's authorities to protest against the seizure of his land.

The incident was soon forgotten since the local media, tightly controlled by the city's authorities, described it as an accident. All members of Mr. Son's family were under strict surveillance for a long period after his funeral.

Eviction of ethnic minorities from their land in the Central Highlands and Northern mountainous region

Vietnam has 54 ethnic groups, of which the Kinh or Viet accounts for over 95% of the total population of nearly 90 million. Most ethnic minorities are living in mountainous areas in the northern and central regions.

With a good deal of socio-economic advantages, many Kinh, especially cadres, have grabbed land from ethnic people, taking away the ethnic's basic tools for food production. Losing their land and getting harassed by Kinh people, many ethnic people in the Central Highlands (1985) and Hmong ethnic people in the North-Western province of Dien Bien (2011) went on protests against the local authorities. However, their protests were violently suppressed by riot police forces which are heavily armed, in some cases even with tanks and helicopters.

Land grabbing in the northern port city of Haiphong:

In January 2012, after legal proceedings and callings on the arbitration authorities to solve the land dispute and protect his right became unanswered, farmer Doan Van Vuon coordinated an act of armed resistance by placing home-made bombs on his 40.3 hectares of land in the Tien Lang district of Hai Phong city. He took this step to fend off the 100 policemen and soldiers sent by the local authorities to invade his land and forcibly remove him and his family in the area.

Trained as an engineer, when Vuon moved to Cong Roc, he was allowed to rent a small parcel of land there. Later, he expanded his farm and transformed a wasteland into shrimp and fish ponds. Vuon began to build the dikes, sluices and ponds needed to raise fish and shrimp. No one expected Vuon and his family to succeed, but after several years of effort and experimentation, the fish farm turned profitable. Other pioneers followed Vuon's example. By 2004, some 20 families in Tien Lang district were developing fish farms covering approximately 250 hectares of previously worthless land. Vuon himself had reclaimed a further 11 ha from the sea, increasing his family enterprise to 40 ha of ponds altogether.

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In 1997, he had been granted a permission to use the land for 14 years from authorities in Tien Lang district.

A few years ago, Vietnam had a plan to develop an international airport in Tien Lang to replace Noi Bai Airport in Hanoi. The airport would cover a large area that includes the aquatic ponds of Vuon and his neighboring farmers. Local authorities wanted to revoke Vuon's right to his aquatic ponds as well as that of his fellows in order to get high compensation from the state if the international airport project starts.

In 2005, the fish farmers of Tien Lang received a shocking notice from the district administration, which declared that their rented swampland would be repossessed when their leases expired.

Moreover, there would be no compensation for improvements.

As said above, all land in the Socialist Republic of Vietnam is owned by the state. Since 1993, however, individuals and enterprises have been granted 'land use rights.' For most farmers, that meant that they were allotted a piece of their former collective farm for a 20-year period.

Vuon, for reasons still unclear, had been given only a 14-year lease backdated to 1993. He was ordered to vacate by 2007.

Vuon and the other fish farmers said they had believed – in accordance with the long-standing rural norms – that their leases on the land they had improved would be routinely extended. Further, just as all Vietnamese farmers, they expected that if the local government took a piece of land back for some public purpose, they would be compensated sufficiently for the improvements they had made.

As such, because their demand was not met, the fish farmers protested. The district authorities wouldn't budge. The district court upheld the authorities' order to vacate. The farmers appealed to a higher court in Haiphong City.

The arbitration was agreed upon and signed by the local authorities and Vuon right in the court. The agreement stated that Vuon would drop the lawsuit and the local authorities would renew the land lease. As soon as the lawsuit was dropped, the local authorities proceeded to evict Vuon from his land without any compensation.

On January 5, 2012, local authorities in Tien Lang sent hundreds of riot police and military units to evict Vuon and his family from his land. The officers faced fierce resistance, and as a result, four policemen and two army officers were injured and hospitalized for medical assistance.

Vuon and his younger brother were arrested and accused of using weaponry to act against state cadres. His house was demolished by local authorities a few days later while fisheries in his pond were illegally harvested by gangsters supported by local authorities.

The Hai Phong authorities' treatment of Vuon clearly reflected a lack of respect as well as a deep sense of contempt for local farmers and their properties. The Communist authorities showed great disregard for Vuon's long-standing claim to the land that he had developed so effectively. Instead of seeing Vuon's farm as an example of what hard work can achieve for a community, the Vietnamese authorities saw his land as a way to make profits with potentially new "development projects."

Although Prime Minister Nguyen Tan Dung stated that the eviction order was an illegal act, Vuon and his brother were taken into custody in January 2012 and stayed until their trial on Apr 3-5,
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2013. Despite having done nothing wrong morally and legally other than preparing to defend themselves, the two were sentenced to 5-year imprisonments on the charge of murder attempt and fighting against on-duty state officials.

Land seizure in Van Giang district in Hung Yen province for Ecopark satellite city project:

In 2004, authorities in the northern province of Hung Yen granted a license for a private company to develop the 20,000-unit Ecopark satellite city project on 500 hectares in Xuan Quan commune in Van Giang district, which is about 30 kilometers from the capital city of Hanoi.

For the Ecopark project, 3,900 farm families, residents of three villages, were "persuaded" to give up their prosperous farms and move elsewhere.

Land for the project was confiscated in two stages in 2009 and 2012, but around 2,000 households have refused to take compensation from the government for their 5.8 hectares, saying the amount is significantly below what they are owed.

The farmers have held periodical protests in Hanoi, demanding higher compensation for their land or a cancellation of the project.

On April 24, 2012, Hung Yen province's authorities sent three thousands armed policemen to evict Xuan Quan villagers from their land. The police force used tear gas grenades to attack local residents, beating many of them severely and arrested tens of them. Among the arrested were two reporters of the national Voice of Vietnam radio who came to cover the eviction in favor of local authorities' action.

Unofficial sources said that Nguyen Thanh Phuong, a daughter of incumbent Prime Minister Nguyen Tan Dung, was a shareholder of EcoPark.

Land seizure of Ha Dong district in Hanoi: Duong Noi village in Ha Dong district

In 2010, Hanoi city decided to develop Le Trong Tan new urban area and the city needs to evict

337 families from their 21.5 hectares. As many as 155 families agreed to move out of their land while 182 other householders refused to give up their land, saying the prices they could receive from the developer was significantly below the market prices.

In order to clear field for construction, Ha Dong district's government cleared up Duong Noi cemetery, moving all tombs out of the areas planned for the new urban area development. Angry with the acts of the local government, Duong Noi villagers sent petitions to many state agencies to ask for intervention to stop the land seizure.

Many of them have stationed on their fields and rotationally guarded the fields to prevent the local government from confiscating their land.

On January 17, 2013, Ha Dong district's authorities sent 200 policemen, militia and mobs to attack the village, hoping to use forces to move out farmers from their fields. However, the police met strong protest from local villagers and eventually had to withdraw. The case is yet to end.

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Land Seizure in Mekong Delta city of Can Tho: A mother and her daughter took off their dress to protest a realty developer

In order to build the Hung Phu new urban housings, local government in the Cai Rang district in the Mekong Delta city of Can Tho decided to take over land from residents in Hung Phu commune to give to a construction company named CIC 8. However, as the project developer, CIC8 was willing to pay for the revoked land at very low price, tens times lower than the prices of apartments built on.

Under pressure of local authorities, many residents already handed over their land to the developer but some others, including Pham Thi Lai didn't want to concede their land at low prices.

Since 2002, family of Pham Thi Lai has sent petitions to state agencies at different levels to protest the decision of Cai Rang district in Can Tho city to take 3,000 square meters of the family at such a cheap price. However, Pham Thi Lai has received no response from state agencies.

Ms Lai and her daughter decided to take off their dresses when the developer sent its workers to clear the land. However, bodyguards of CIC 8 forcibly took two naked women out of their land.

Later the government in Cai Rang fined Lai and her daughter for undressing in a public place, saying the act violated the code of ethics.

Grabbing property from Christian churches:

A number of Christian churches in Vietnam are victims of property grab by state agencies and cadres. Along with political interventions which affected the religious activities of Catholic followers

across the nation, authorities in many provinces and cities have been taking over properties of churches, triggering dissatisfaction among priests and religious people.

In the past, local governments in many places borrowed properties and facilities from churches for alleged public purposes. They have refused to return these properties to Catholic churches, turning them into public buildings, hospitals, schools, hotels and even recreational places for non-Christians.

In the capital city of Hanoi, local authorities have been taking over 95 facilities of Catholic churches. They have used riot police force to suppress protests from priests and Catholic followers.

Even Hanoi's authorities had tried to take Thai Ha parish's land to build houses for local officials.

Under the strong protest from priests and Catholic followers, the local authorities had turned the land into a park.

Statistics on Land Disputes in Vietnam

In Hanoi alone, there are over 1,000 complaint cases related to land disputes every year. The cases mark people's dissatisfaction with the authorities' decisions on land seizure, compensation and resettlement when they revoke land from local residents.

At the national level, land-related petitions account for 70% of total civil cases in Vietnam.

According to the government's Inspectorate, there were 851,000 complaint cases on land disputes in the 2003-2010 period, mostly related to land seizure for economic development.

Of the 31,000 land-related complaints filed in 2007, some 70 percent alleged inadequate compensation for expropriated land, the government agency said.

During 2001-2006, some 376,000 hectares of rice land were expropriated, displacing over a million farmers. Amendments to the land law in 2003 that spurred 'development' by making it easier to 'liberate' large tracts appear to have accelerated the pace of farmer displacement.

Land complaints made up 80% of serious and unresolved graft cases in 2012, said Huynh Phong Trinh, head of the government's General Inspectorate.^{2*}

Le Dang Doanh, an outspoken expert on economics, argues that the leadership has lost its way and has been captured by vested interests. "The current party takes the land off the farmers at an unreasonable price and sells it to investors at a much higher price, instead of taking land from landlords for farmers like before."^{1*}

What the civilized world can do to urge Vietnam's government over land grabbing issue in Vietnam?

Land seizure has become systemic in Vietnam where the Communist Party of Vietnam (CPV) is holding a monopoly of power. Without private land ownership, the locals are always in danger of losing their land once the officials decide that their land can be used for national development or security purpose.

Using the excuse of "social development for public interests," local authorities have not hesitated to take over land from residents to give it to project developers. This means that the more reluctant the people are in handing over their land, the more rampant the use of armed forces is in land evictions. It is especially disconcerting that anyone who advocates for land rights would face strict penalties.

Many experts said that in order to prevent land grabbing, Vietnam needs to change the current Law on Land by allowing various kinds of land ownership including both state and private ownership. Vietnam must reform its confusing land law if it really wants to mend its ailing economy, says Tran Huu Huynh, head of the legal department at Vietnam's Chamber of Commerce and Industry (VCCI).

"With state ownership, farmers don't feel assured because they are not the owners of that land, so they don't want to invest and work hard," he says. "With this fragmentary land situation, they can't develop their business, extend scale or invest in high technology so their products are not very competitive."

James Anderson, a governance specialist at the World Bank's office in Vietnam, says that the current situation often leads to a lose-lose outcome for farmers and investors.

"Rather than facilitating voluntary negotiations, the state has a special role in determining compensation prices and strong powers to use compulsory processes to reallocate land. Naturally, this can lead to difficulties for either side, with those losing land unhappy with the compensation package, and the investor facing delays as it takes longer for the land to be cleared," said Anderson.

The government and local authorities should not be empowered to take land for socioeconomic development projects, said experts. In order to get land for developing socio-economic projects, local authorities need to negotiate with citizens having land in the planned areas for agreeable compensation based on the market price.

Vietnam should dismiss the current policy of setting fixed prices for land, allowing evaluation prices

of land according to the market prices. Currently the provincial governments determine prices of land in their respective localities, a practice that does not allow the compensation to reflect the market prices and consequently causes huge losses for evicted citizens while benefiting only state agencies and project developers.

However, land disputes in Vietnam basically stem more from a political reason rather than from an economic one—it remains a matter of fact that the CPV has no intention to give up their absolute

control over everything including land ownership. However, the rising cases of land dispute may pose a crucial threat to the CPV because the peasants used to be crucial supporters of the party. Therefore, in order to solve land issues in Vietnam thoroughly, the CPV must essentially loosen up its political grab.

France and Vietnam have agreed to enhance bilateral cooperation, targeting to upgrade bilateral relationship to strategic partnership in near future. France, as well as other countries in the EU, should urge the Vietnamese communist government to respect human rights and freedom of expression.

The two countries are also committed to strengthening bilateral cooperation in legal and judicial sectors. Through assistant programs, France should urge the Vietnamese government, especially the CPV, to make reforms towards the rule of law, the free media and the separation of powers where the judiciary, legislative and executive branches operate independently in a check-balance manner.

Farmer Vuon's resistance is an exemplary case that shows and foreshadows what may happen in a country that lacks a democratic system and a commitment to the rule of law.

Affected residents and farmers rarely find the communist-backed courts helpful, and their street protests have resulted in harassment, abuses or detentions by the state.

According to the international Freedom House, in Vietnam, lawyers are scarce, and many are reluctant to take on human rights and other politically sensitive cases for fear of harassment and retribution, including arbitrary arrests by the state.

Unlike the court systems in developed countries, the judicial branch provides little protection to Vietnamese citizens.

Reference:

1* Land grabs rile Vietnam's farmers- Nguyen Phuong Linh Financial Times Apr 11, 2013

2* Reports of Vietnam government's General Inspectorate