

## CON DAU PARISHIONERS ASSOCIATION

### **Submission to the Universal Periodic Review of the Socialist Republic of Vietnam**

1. We are an association of more than 200 members, primarily former residents of Con Dau Parish, Da Nang City who are living in the United States, Australia and Thailand, consisting of:
  - a. Refugees who escaped Vietnam in the aftermath of the end of the Vietnam War;
  - b. Recent refugees and asylum seekers who have fled the country since May 2010; and
  - c. Individuals not from Con Dau Parish but who are similarly situated.

We are submitting the following comments on behalf of ourselves and on behalf of Con Dau parishioners in Vietnam. The plight of Con Dau parishioners is typical of millions of other Vietnamese.

2. Of all the recommendations in the 2009 UPR of the Socialist Republic of Vietnam (SRV), our submission focuses on the following: "*Fully implement the land law passed (Switzerland)*". Not only has the Socialist Republic of Vietnam (SRV) violated its own land law referred to in that recommendation, this land law itself is in violation of international laws and international agreements.

### **Violation of Domestic Laws**

3. Ever since the passage of its 1980 Constitution, the SRV has passed laws to nationalize properties of individual citizens as well as religious institutions, causing tremendous suffering to farmers, infringing on the rights and properties of religious congregations, and displacing entire communities of indigenous peoples. Confiscating land has become a tool of repression to target religious congregations, the Montagnards in the Central Highlands, the Hmongs in the Northwestern Mountainous Region and the Khmer Krom communities in southern provinces.
4. We would like to use our Con Dau Parish to illustrate this area of persistent violations of human rights, which have been going on for almost four decades. Con Dau is a village and a coterminous Catholic parish in the Diocese of Da Nang, Central Vietnam. It has 135 years of history. The area was originally a swamp with low, uncultivable land due to salt water coming in during the full moon. The ancestors of the residents of Con Dau built a dam to prevent seawater and turned Con Dau into a habitable area. French and Vietnamese priests led this effort to build a beautiful and prosperous parish. The century-old cemetery of the parish, in which generations of parishioners have been buried, is located about 1km from the parish's church. This cemetery, property of the parish, is a beautiful 10 hectare park with more than 2000 burial plots. In the middle of the cemetery is a concrete plaza with a chapel where parishioners gather for evening prayers. Because the cemetery is over 100 years old, it was designated a national historic heritage site under Vietnamese law.
5. On 26<sup>th</sup> of June 2008, the People's Committee of Da Nang City issued Decision No. 5111/QD-UBND to confiscate the entire parish, thus displacing all two thousand of its

residents and wiping out this historical Catholic parish, purportedly for an eco-tourism development project. This was a clear violation of Vietnam's own laws regulating the land "recovery" process as laid out in Decree No. 181-2004. This decree allows for government's "recovery" of lands for the following purposes only: national defense, national security, national interest, public benefits, and economic development projects that belong in "Group A". Group A projects do not include urban development unless they involve infrastructure for a new urban area. The eco-tourism project in Con Dau does not qualify under Group A.

6. Furthermore, it is a development project of a private company to turn a profit for its owners or stockholders, having nothing to do with public interests or benefits. The government should have let this development company negotiate directly with residents of the Con Dau Parish. Instead, on May 4, 2010 the government of Da Nang City sent in hundreds of police to block the funeral of a 93-year old woman parishioner, claiming that the Parish' cemetery must be relocated and therefore off-limit to the parishioners. Over one hundred parishioners, including men, women, children and seniors, were brutally beat up. Sixty two parishioners were taken to the police station, where they were repeatedly tortured for days and some for weeks. Seven of them were sentenced to prison terms. On July 1, 2010 the militia caught and tortured Nguyen Thanh Nam to extract information about parishioners who posted photos and videos of police brutality on the internet. The next day he died of bleeding injuries. Some 90 parishioners trekked across Laos to seek refugee protection in Thailand. The United Nations High Commissioner for Refugees (UNHCR) has recognized the vast majority of them as victims of persecution and granted them refugee status.
7. After the May 4 raid, the police then rounded up parishioners and, threatening imprisonment and other retaliatory measures, forced them to surrender their land and homes for insignificant compensation, at approximately \$12 USD/m<sup>2</sup>. The developer then turned around and posted billboards placing the Con Dau Parish on sale, in the form of residential plots. The sale price was \$400 USD/m<sup>2</sup>, or 33 times the level of compensation. Some of the parishioners inquired about purchasing their own land, even at the much higher price, but were told that they may not – the only option available to them was to relocate outside of Con Dau Parish.
8. The police continue to resort to intimidation and threats so to coerce parishioners to surrender their real properties. In many instances, the police have summarily evicted the residents to allow the developer's contractor to bulldoze their homes. As recent as December 19, 2012, the police surrounded a home in Con Dau Parish while the thugs accompanying them broke into it, disrupted the family during lunch, and beat up the wife in front of her husband and two daughters. The couple managed to escape from Con Dau Parish on the same day, went into hiding in another village and then fled to Thailand. Their two daughters later joined them in Thailand. The entire family is now seeking protection from the UN High Commissioner for Refugees.
9. This confiscation of land and real properties not only violates Vietnam's own laws but also infringes on the properties of citizens of other countries. Many members of our

Association are US citizens; we have retained our original ownership of real properties in Con Dau Parish while allowing relatives to live in our homes or cultivate our farmlands. Many others among us have inherited real properties from our Vietnamese relatives. As the government continues its efforts to expropriate additional land in Con Dau Parish, the SRV practically continues to violate the right to own property of non-Vietnamese citizens, which is a violation of international laws. This is happening not only in Con Dau Parish but throughout the country.

### **Violation of International Laws**

10. Article 17 of the Universal Declaration of Human Rights stipulates that: (1) Everyone has the right to own property alone as well as in association with others; and (2) No one shall be arbitrarily deprived of his property. Accordingly, governments have come to agreements on certain norms and rules of conduct relating to the protection of their citizens' properties: the expropriation of alien property is lawful only if prompt, fair and effective compensation is provided for. A number of governments have promulgated laws to protect the properties of their citizens. For example, the U.S.' International Claims Settlement Act of 1949 established the Foreign Claims Settlement Commission to arbitrate claims of U.S. citizens and U.S. companies against foreign governments over expropriated properties. The U.S. Foreign Assistance Act of 1961 as amended in 1964 (22 USC 2370(e)) stipulates that the President suspends all assistance to a country the government of which has expropriated the properties of U.S. citizens, and the U.S. government votes against loans to that government from international financial institutions such as the World Bank and the Asian Development Bank. The Trade Act of 1974 (19 USC 2462(b)(2)) stipulates that the President shall not grant Generalized System of Preferences (GSP) status to a government that has "*nationalized, expropriated or otherwise seized property of U.S. citizens or corporations without providing, or taking steps to provide, prompt, adequate, and effective compensation, or submitting such issues to a mutually agreed forum for arbitration.*"
11. The SRV's land laws of 1993 and 2003 have arbitrarily expropriated the property of foreign nationals without compensation. Furthermore, such expropriation is unlawful because it involves violations international agreements.
12. In 1975, the Democratic Republic of Vietnam (North Vietnam) breached the Paris Peace Accords and invaded the Republic of Vietnam (South Vietnam). Some 130,000 South Vietnamese fled by sea and were evacuated by the US 7<sup>th</sup> Fleet. Responding to the large number of real estates left vacant by Vietnamese who had left the country in the days leading to the fall of South Vietnam and afterwards, the government of a unified Vietnam on April 14, 1977 issued Executive Decision 111/1977/CP (Chapter II) to place such real estates under temporary State administration. It stated that "*All residential housing, land and properties absent of owners who are Vietnamese or foreigners are directly administered by the government. When these owners return, the government will resolve [the matter] with them. No one may expropriate, unilaterally transfer ownership, sell or buy residential housing, or properties in the absence of their owners without the authorization of the government agencies with proper jurisdiction.*" This Executive

Decision also placed real estates owned by certain mid- to high-ranking officials of the South Vietnamese government or military under State's direct administration, without disputing their ownership.

13. Executive Decision 111/1977/CP also applied to the hundreds of thousands of Vietnamese who later fled the country by sea (known as the “boat people”) or by land, the hundreds of thousands of Vietnamese who were sent to “New Economic Zones” and the hundreds of thousands of South Vietnamese government officials or military personnel sent to “re-education” camps. Many of these Vietnamese nationals later resettled to other countries as refugees from May 1975 to around 2000.
14. On the 18<sup>th</sup> of December 1980, the National Assembly of the unified Vietnam passed the new Constitution, which declared, for the first time, that “*land belongs to the entire people with the State as the representative owner*,” thus nationalizing all lands. By that time, many among the 130,000 evacuees and the early “boat people” had already acquired citizenship of countries where they were residing. There were also Vietnamese other than evacuees who had become citizens of other countries whose land was affected by the 1980 Constitution. For example, many South Vietnamese government officials working or exchange students studying in Western countries were recognized as “*sur place*” refugees in May 1975. By the time the 1980 Constitution was passed, many of them had already acquired citizenship of these countries.
15. Furthermore, the 1980 Constitution’s provision on the State ownership over all lands did not come into effect until much later. In 1987 the National Assembly promulgated Vietnam’s Land Law to place all land under the people’s collective ownership and the government’s administration; individuals, organizations and agencies have the right to land use but may no longer own land. While the 1987 Land Law nationalized lands, it did not address lands that had been placed under State administration after their rightful owners had fled Vietnam. In fact, in a communique dated November 11, 1989 to the Chairman of the People’s Committee of Ho Chi Minh City, Deputy Prime Minister Nguyen Huu Tho asserted that only the People’s Court may strip a person’s of his/her ownership of real estate, which is protected by the Constitution. The communique requested that the said People’s Committee return to return the relevant real estate, which had been placed under State administration, to its rightful owner.
16. The SRV’s 1992 Constitution re-asserted the government’s role in administering all lands and in assigning land use rights to individuals and entities. The following year, the SRV’s National Assembly passed the new Land Law to implement the 1992 Constitution, declaring that the government will not return land placed under State administration to its original owners once it had been assigned to other entities, effectively nullifying Executive Decision 111/1977/CD. In other words, lands that belonged to Vietnamese who evacuated in April 1975 and refugees who left the country afterwards and that had been placed under State administration were effectively nationalized in 1993 (on 14<sup>th</sup> of July, 1993 to be exact). By that time hundreds of thousands of Vietnamese had already acquired citizenship of countries where they resided.

17. On November 26, 2003, the National Assembly issued a new Land Law (13/2003/QH11) along with Resolution 23/2003/QH11, declaring that the government no longer entertains any claim for the return of land or residential housing already placed under State administration. This Resolution officially nationalized all residential housings of Vietnamese who had left the country and placed under State Administration. By that time, millions of Vietnamese had already acquired citizenship of countries where they resided.
18. In summary, in 1980 the SRV declared that all lands belong to the State but only in 1993 did it officially nationalize lands left vacant by owners who fled to other countries, and only in 2003, other similarly situated real properties. Throughout those two and a half decades, a growing number of the 3 to 4 million Vietnamese who had fled the country, as the direct result of the breach of the Paris Peace Accord, had acquired foreign citizenships.
19. As the SRV continues to expropriate properties of lay communities and religious congregations, it continues to violate the right to property of foreign nationals. For example, many Vietnamese who have assumed citizenship of a foreign country have inherited real properties from their deceased parents in Vietnam. When the SRV confiscates these properties without fair and prompt compensation, it again violates international laws governing the properties of foreign nationals. As Vietnamese provincial and local authorities increasingly expropriate farmlands and real properties, they continue, aggravatingly, to violate international laws on the right to property of not only their own citizens but also citizens of other countries.

## **Recommendations**

We would like to respectfully make the following recommendations to the SRV:

20. Immediately suspend all further expropriations of lands so as not to violate the properties of additional foreign nationals.
21. Set up a transparent process for local, provincial and national governments to announce their intention to expropriate lands and other real properties not only to Vietnamese citizens but also to Vietnamese living abroad, and allow sufficient time for them to verify and assert their ownership over the targeted real properties.
22. Set up an independent body to arbitrate all disputes over real properties.
23. Collaborate with foreign governments in determining the compensations for potentially hundreds of thousands real properties already confiscated from their citizens over the past 38 years.