

III. HISTORICAL LEGAL FRAMEWORK FOR LAND RIGHTS IN VIETNAM

A. Pre-Colonial Property Rights

In pre-colonial Vietnam, the king had ultimate ownership of all lands.²⁵⁴ Villages and individual households were granted “practical holding” rights from the king to occupy and use land, either as communal or private property.²⁵⁵ Communal property, more commonly found in the north, was managed at the local levels usually by the village, which paid taxes to the king as a collective entity.²⁵⁶ Private properties were managed by individuals or individual households.²⁵⁷ These properties were disproportionately granted to a few wealthy landlords, particularly in the south.²⁵⁸ The king had authority to revoke any land grant – and could do so without being required to pay compensation.²⁵⁹

When France began its conquest of Vietnam in 1858, one major change was the distribution and management of land. Over a period of decades, the French disbanded communal properties and redistributed those lands to rich French and Vietnamese families.²⁶⁰ The reallocation of land, among other decisions of the French colonizers, was met with resistance, social unrest, and violent conflict.²⁶¹

B. Property Rights in the Democratic Republic of Vietnam

During the First Indochina War (1945-1954), the Democratic Republic of Vietnam (Democratic Republic) effectively exercised control over North Vietnam. After the Geneva Conference in 1954, Vietnam was formally split into North Vietnam (where the Democratic Republic continued to govern) and South Vietnam (the Republic of Vietnam). While the Democratic Republic of Vietnam and the post-unification Socialist Republic of Vietnam have taken different policy positions towards ownership of lands, they have consistently recognized the legitimacy of private ownership of non-land real properties, including homes.

²⁵⁴ Nguyen Van Suu, *Contending Views and Conflicts Over Land In Vietnam's Red River Delta*, 38 J. SOUTHEAST ASIAN STUD., no.2, June 2007, at 310.

²⁵⁵ Nguyen Van Suu, *Contending Views and Conflicts Over Land In Vietnam's Red River Delta*, 38 J. SOUTHEAST ASIAN STUD., no.2, June 2007, at 310.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*, at 311.

²⁶¹ *Id.*

1. 1946 Constitution of the Democratic Republic

In 1946, the newly established National Assembly of the Democratic Republic adopted a constitution, the first ever in Vietnam's history.²⁶² Confirming Vietnam's "independence, sovereignty, unification and territorial integrity," the 1946 Constitution was based on three principles: (1) national unity, (2) ensuring democratic freedoms, and (3) building a strong administration of the people.²⁶³ In addition to laying out the institutions of the government, the 1946 Constitution established citizens' rights and obligations.²⁶⁴ Key among these rights was the right to private property ownership.²⁶⁵

2. Farm Land Reforms of 1953

From 1953–56, the Government began radical agrarian and land reforms in the north. The Law on Farm Land Reforms of 1953 provided a legal framework for this policy. While it did not abolish the principle of private land ownership, it allowed for the seizure of privately owned lands for redistribution to poor and landless peasants.²⁶⁶ In those years, 810,000 hectares of agricultural land were confiscated and redistributed to more than two million peasants in the north.²⁶⁷

3. Land Collectivization and the Establishment of Cooperatives

In 1958, the Government began the process of collectivization of all private agricultural land.²⁶⁸ The ultimate goal of these reforms was the creation of cooperatives (or communes), a core tenant of the Democratic Republic of Vietnam's Communist party. A profound shift away from the traditional family-household system, cooperatives were intended to further three related principles: (1) collective ownership over means of production; (2) centralized management of production; and (3) equal allocation of production outputs.²⁶⁹ Land for cooperatives was owned

²⁶² Pham Diem, *The 1946 Constitution of Vietnam*, VIETNAM LAW & LEGAL FORUM, Mar. 22, 2011, available at <http://vietnamlawmagazine.vn/the-1946-constitution-of-vietnam-4443.html>.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Nguyen Quang Tuyen, *Land Law Reforms in Vietnam – Past & Present*, ASLI Paper No. 015, ASIAN LAW INSTITUTE, Aug. 2010.

²⁶⁷ Nguyen Van Suu, *Contending Views and Conflicts Over Land In Vietnam's Red River Delta*, 38 J. SOUTHEAST ASIAN STUD., no.2, June 2007, at 311.

²⁶⁸ Nguyen Van Suu, *Contending Views and Conflicts Over Land In Vietnam's Red River Delta*, 38 J. SOUTHEAST ASIAN STUD., no.2, June 2007, at 311.

²⁶⁹ Kaitlin Hansen, *Land Law, Land Rights, and Land Reform in Vietnam: A Deeper Look Into "Land Grabbing" For Public and Private Development*, SIT GRADUATE INSTITUTE/SIT STUDY ABROAD DIGITAL COLLECTIONS, Fall 2013, at 10.

by the state, and used collectively by the cooperative members; households that participated in cooperatives did not own the land that they farmed.

The process of collectivization was undertaken in stages. At first, farmers in the north were encouraged to “voluntarily . . . contribute their land, cows, buffaloes and other resources to farming cooperatives and production collectivities”²⁷⁰ and to participate in labor exchange teams.²⁷¹ These teams were developed into low-scale cooperatives, and later high-scale cooperatives; by the 1970s, most farmers in the north were wage-workers for high-scale cooperatives.²⁷²

Before unification, some similar land reforms took place in the south, but at a much smaller scale than in the north.²⁷³ Collectivization continued in the south after unification, and, while never as prevalent as in the north, within five years of unification more than one-third of peasant households in the south were part of a cooperative.²⁷⁴

4. 1960 Constitution of the Democratic Republic

In 1960, the Government replaced its 1946 Constitution “in order to adapt it to the new situation and tasks.”²⁷⁵ Like its predecessor, the 1960 Constitution continued to recognize private land ownership,²⁷⁶ in addition to three other types of land ownership: ownership by the state (or “whole people”);²⁷⁷ cooperative ownership (or “collective ownership by the working masses”)²⁷⁸; and ownership by “national capitalists.”²⁷⁹ Laying the foundation for future reforms and collectivization, the 1960 Constitution gave the Government the right to nationalize land “[o]nly when such action is necessary in the public interest” and “with appropriate compensation.”²⁸⁰

²⁷⁰ Nguyen Quang Tuyen, *Land Law Reforms in Vietnam – Past & Present*, ASLI Paper No. 015, ASIAN LAW INSTITUTE, Aug. 2010.

²⁷¹ Nguyen Van Suu, *Contending Views and Conflicts Over Land In Vietnam’s Red River Delta*, 38 J. SOUTHEAST ASIAN STUD., no.2, June 2007, at 311.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*, at 312.

²⁷⁵ 1960 Constitution, Preamble ¶ 11, *available at* http://web.hcmulaw.edu.vn/humanrights_en/index.php?option=com_content&view=article&id=50:constitution-of-the-socialist-republic-of-vietnam-1959&catid=28:constitution-of-vn&Itemid=44.

²⁷⁶ Ownership of private property included the “right of peasants to own land and other means of production” (Art. 14.), “right of citizens to possess lawfully earned incomes, savings, houses, and other private means of life” (Art. 16), and “right of citizens to inherit private property” (Art. 19). The 1959 Constitution also guaranteed the right of individuals to small businesses: “right of handicraftsmen and other individual working people to own means of production” (Art. 15). The exercise of these rights was limited: “The state strictly prohibits the use of private property to disrupt the economic life of society or to undermine the economic plan of the state.” 1960 Constitution, Art. 17.

²⁷⁷ 1960 Constitution, Art. 12.

²⁷⁸ *Id.*, at Art. 13.

²⁷⁹ *Id.*, at Art. 16.

²⁸⁰ *Id.*, at Art. 20.

C. *Property Rights in the Socialist Republic of Vietnam (1975–2003)*

In the aftermath of the fall of South Vietnam, many real properties in Vietnam, including lands and homes, had been vacated by Vietnamese and foreigners who fled during the war. In the decades to follow, there was confusion as those lawful property owners had their vacant properties illegally and arbitrarily seized by the Government, without recourse or compensation, under the auspices of nationalization.

1. Decision 434/TTg

After the war, some Vietnamese willingly donated their land and properties to the Government for use by the state. However, many had their properties occupied or unlawfully confiscated without consent, which the Government later claimed to have been “gifted” to the state. In many instances, local government units or state-owned enterprises rented or “borrowed” properties from their rightful owners, but then unilaterally decided to place them under state management.

In 1976, Decision 434/TTg of the Prime Minister addressed the issue of donations of property to the Government, laying out specific limitations under which donations would be accepted. For example, it was the policy to not accept property from small-scale proprietors and workers “because the properties resulted from hard work and thrift.”²⁸¹ Therefore, later claims by government officials that small-scale properties and homes had been “gifted” to the state in the aftermath of the war were categorically impossible; in reality, many properties were illegally seized and occupied by government officials for personal use without the rightful property owners ever transferring ownership rights.

In 1981, this prohibition against gifting property to the state was relaxed for those who had already been approved for legal emigration. Communique No. 953/V.4 by the Prime Minister, dated March 19, 1981, explained the new policy for the treatment of homes owned by emigrants:

- (1) Transfer the management or ownership to parents or children;
- (2) Donate to the state or transfer to state management if there is family; or
- (3) Sell.

Few, if any, owners chose to give their properties to the state.²⁸² However, selling a property during the short period between approval for emigration and actual departure for the U.S. proved impractical for most people. In most cases, emigrants transferred the right of use and management of their properties to a relative.

²⁸¹ Decision 434/TTg on Donations of Private Assets to the State, Oct. 30, 1976, at Art. 2 (“When small proprietors and workers wish to donate their property, our policy is not to accept such donations because the properties resulted from hard work and thrift”).

²⁸² Of the 450 cases received by BPSOS, there is only one instance where the owner acquiesced to donate his properties to the state – the Government made clear that gifting was required for emigration.

2. Executive Council Decision No. 111/CP

In 1977, the Government issued Executive Council Decision No. 111/CP, placing the properties of those who left into temporary state management: “All houses, land, and other property belonging to Vietnamese or foreigners shall be managed by the government.”²⁸³ Under temporary state management, the relevant local people’s committees were responsible for the properties, deciding who could use them and for what purposes;²⁸⁴ any occupation, transfer, sale and purchase of the vacated properties had to be approved.²⁸⁵ Management was “temporary” because there was a possibility for the landowners to recover their property if they returned.²⁸⁶ A 1989 official communiqué from then-Deputy Prime Minister Nguyen Huu Tho made it clear that state management was only intended to be temporary: “that practice was only temporary because attempting to leave the country in that period was not considered a crime.”²⁸⁷

The only exception to placement into temporary state management were properties left in the hands of caretakers by the lawful owner, or where family members continued to occupy the property.²⁸⁸ Decision No. 111/CP also placed in state management properties belonging to Vietnamese “puppets” and “reactionary groups” who supported the Americans.²⁸⁹

Distinct from “state management”, some properties were immediately confiscated and nationalized under Decision No. 111/CP:

- (1) Rental properties;²⁹⁰
- (2) Properties owned by the South Vietnamese government, or by reactionary organizations;
- (3) Properties of foreigners (including U.S. citizens) and foreign governments that supported the U.S. during the Vietnam War, with limited exception for consular properties and permissible foreigners’ residences.²⁹¹

²⁸³ Executive Council Decision 111/1977/CP (April 14, 1977), Policy on the Socialist Management Approach and Reformation of Rental Properties in Cities in Southern Provinces, Part II, Art. 1. A landowner’s reason for leaving was irrelevant, as the law explicitly covered lands left by those who (2) traveled abroad for medical treatment, to visit relatives, or to study, (2) joined the “revolutionary or resistance side”, or (3) “were afraid and abandoned their homes.” Part II, Art. 3(a-c).

²⁸⁴ Executive Council Decision 111/1977/CP (April 14, 1977), Policy on the Socialist Management Approach and Reformation of Rental Properties in Cities in Southern Provinces, Part II, Art. 6.

²⁸⁵ *Id.*, at Part II, Art. 1.

²⁸⁶ *Id.*, at Part II, Art. 1 (“When the owners return, the government shall settle with them”).

²⁸⁷ Communiqué of Deputy Prime Minister Nguyen Huu Tho, Nov. 14, 1989.

²⁸⁸ Executive Council Decision 111/1977/CP (April 14, 1977), Policy on the Socialist Management Approach and Reformation of Rental Properties in Cities in Southern Provinces, Part II, Art. 4.

²⁸⁹ *Id.*, at Part IV, Art. 1-2.

²⁹⁰ *Id.*, at Part I.

²⁹¹ *Id.*, at Part V.

In November of the same year, Decision 305/CP expanded the categories of properties belonging to “reactionary groups,”²⁹² thereby increasing the number of properties that the Government could place under state management following the Vietnam War.

Note that both Decisions 111/CP and 305/CP applied to lands and houses in the Southern provinces.

3. 1980 Constitution of the Socialist Republic

By the end of the 1970s, it was clear the cooperative-based agricultural economy was failing.²⁹³ Vietnam was experiencing an economic crisis and agricultural productivity was stagnant.²⁹⁴ In response, the Government decided that a new land tenure framework was needed. Instead of collectively-owned cooperatives, the Government would redistribute land use rights back to individual households.²⁹⁵

The first step was abolishing any rights to private land ownership. This was done through a new constitution in 1980, which replaced the 1959 Constitution of the Democratic Republic. Instead of having categories of state and collective land ownership, all land was nationalized into “ownership of the entire people,”²⁹⁶ and managed by the State in accordance with a general plan of “rational and economic use.”²⁹⁷ Private citizens would only be granted a right to use the land,²⁹⁸ though the right to own income, housing and personal possessions,²⁹⁹ as well as the right to inherit land use rights, was retained.³⁰⁰ The Government did not require that any compensation be paid to those who lost land ownerships under the new constitution.³⁰¹

While the 1980 Constitution was clear that all land was nationalized, it was not clear about how that process would be implemented. Over the next three decades, dozens of decisions, resolutions, decrees, and circulars were issued in attempt to clarify land rights and management, though in reality they only added to the confusion.

Article 27 of the 1980 Constitution re-affirmed the state’s protection of citizens’ right of ownership over houses.

²⁹² Decision 305-CP, Nov. 17, 1977.

²⁹³ Nguyen Van Suu, *Contending Views and Conflicts Over Land In Vietnam’s Red River Delta*, 38 J. SOUTHEAST ASIAN STUD., no.2, June 2007, at 312–13.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ 1980 Constitution, Art. 19.

²⁹⁷ *Id.*, at Art. 20.

²⁹⁸ *Id.*, at Art. 20.

²⁹⁹ *Id.*, at Art. 27.

³⁰⁰ *Id.*, at Art. 28.

³⁰¹ *Id.*, at Art. 28 (“The State may, when it deems really necessary to the public interests, purchase or requisition with or without compensation, the property of individuals or of collectives”).

4. Land Law of 1988

While the 1980 Constitution provided a legal framework for land use rights, it was the Land Law of 1988 that formally began the process. Land users – which included farming households, cooperatives, state institutions, and organizations – would be allocated a right to use designated land by the State.³⁰² Land users were, however, explicitly prohibited from purchasing, selling, or leasing the land they used for money under any circumstances.³⁰³

5. 1991 Ordinance on Residential Housing

In March 1991, the Ministerial Council issued *Ordinance on Residential Housing* (51-LCT/HDNN8), declaring its new policy that ownership of houses previously under state management as of July 1, 1991 (and only such properties) were to be transferred to the State.³⁰⁴ In October 1991, the Chairman of the Ministerial Council issued Executive Decision 297/QD-CT to implement the Ordinance.³⁰⁵ On October 5, 1991, the Ministry of Constructions issued Circular No. 383/TT-BXD-ĐT to provide instructions on how to implement Decision 297/QD-CT. However, it fell short of providing clear procedures to nationalize property under state management nor did it specify a timeframe for implementation. More problematic was the fact that the said ordinance and decree contravened the 1985 Penal Code, which stipulated that, absent a statute passed by the National Assembly, properties of citizens may only be expropriated by court order and only for criminal offenses; it also violated Article 27 of the 1980 Constitution, which re-affirmed the state's protection of citizens' right of ownership over houses if not lands. Throughout the history of the former Democratic Republic of Vietnam and then the Socialist Republic of Vietnam, the right of citizens to ownership of their houses has always been protected by the Constitution.

Practically, the Ordinance on Residential Housing and the Executive Decision 297/QD-CT constituted an attempt by the government to use an administrative order to circumvent the prevailing legal and constitutional framework at the time for residential houses that had been placed under state management prior to July 1, 1991. Consequently, only a fraction of all the properties under state management at the time and declared to be state property were actually expropriated. In many circumstances, the nationalization of certain properties under Decision 297/QD-CT was carried out after the date of the United States – Vietnam agreement on the first Vietnam Claims Program (January 28, 1995).

³⁰² 1988 Land Law, Dec. 1987.

³⁰³ *Id.*

³⁰⁴ Ordinance on Residential Housing, Mar. 26, 1991, Art. 2 (“Houses which were previously subject to the management of the State in accordance with the socialist transformation of land and houses shall become owned by the State”).

³⁰⁵ *Decision on Addressing a Number of Residential Property Issues*, No. 297/QD-CT, CHAIRMAN OF MINISTERIAL COUNCIL, Oct. 2, 1991, at Art. 1 (“The following residential properties belong to the government: Those that the government manages and uses pursuant to the residential properties management reform policy . . . including all the houses being used by the people's committees with applicable authority, even when there has been no individual decision document issued”).

Since Executive Decision 297/QD-CT did not apply to properties placed under state management after July 1, 1991, the only legal ground for their nationalization would be Resolution 23/2003/QH11 (see later section) unless there was a court order involving a criminal offense.

Note that Executive Decision 297/QD-CT applied to both North and South while Decision 111/CP only applied to properties in the South.

6. 1992 Constitution

The 1992 Constitution was a step further away from private property rights and towards a socialist framework. It reaffirmed that lands “come under ownership by the entire people,”³⁰⁶ and that the State allocates the right to use the land, which land users must protect and use appropriately.³⁰⁷ The 1992 Constitution also included an explicit takings provision that allowed for the nationalization of properties in use by Vietnamese citizens “for reasons of security and national defence and for the national interest.”³⁰⁸ Compensation “at current market prices” was prescribed.³⁰⁹

In contrast to past policies, properties owned by foreigners were expressly protected from nationalization, as the State “ensure[d] the legal ownership of capital and assets as well as other interests of foreign organisations and individuals.”³¹⁰ This position was in line with the economic restructuring policy, *Doi Moi* (in English, Renovation), introduced a few years earlier in 1986.³¹¹ In response to the economic stagnation of the late 1970s, the Vietnamese government had begun to adopt neoliberal reforms and open up its economy to Western markets.³¹²

Article 23 of the 1992 Constitution affirmed that “lawful properties of individuals, organizations will not be nationalized” except “when necessary for reasons of security and national defence and for the national interest.”³¹³

7. Land Law of 1993

To replace the Land Law of 1988, in 1993 a new land law was passed to implement the land property nationalization scheme under the 1992 Constitution. Land was categorized by its

³⁰⁶ 1992 Constitution, Apr. 15, 1992, Art. 17.

³⁰⁷ *Id.*, at Art. 18 (“Organisations and individuals who use the land are duty-bound to ensure its protection, replenishment, rational exploitation and economical utilization”).

³⁰⁸ *Id.*, at Art. 23.

³⁰⁹ *Id.*

³¹⁰ *Id.*, at Art. 25.

³¹¹ Kaitlin Hansen, *Land Law, Land Rights, and Land Reform in Vietnam: A Deeper Look Into “Land Grabbing” For Public and Private Development*, SIT GRADUATE INSTITUTE/SIT STUDY ABROAD DIGITAL COLLECTIONS, Fall 2013, at 11.

³¹² *Id.*

³¹³ 1992 Constitution, Apr. 15, 1992, Art. 23.

main purpose,³¹⁴ which provided a framework for determining national zoning and land use planning,³¹⁵ land use rights allocation and duration,³¹⁶ and, for the first time, land valuations for the purposes of taxation and compensation (in the case of expropriation).³¹⁷

As directed by the 1980 and 1992 Constitutions, households and individuals were allocated land use rights.³¹⁸ The Land Law of 1993 specified that these were for a fixed period of time, dictated by the type of land in question. For example, land zoned for agricultural use carried a land use right for a “stable and long term basis” of either 20 or 50 years, depending on the type of crop planted on the property.³¹⁹ Land zoned for residential use was allocated for a less precise and undefined “long-term use.”³²⁰

In keeping with the policy of *Doi Moi*, land users could transfer, exchange, lease, inherit, and mortgage their land use rights to another user,³²¹ and the law did acknowledge a price for land.³²² However, there was little guidance on the process and procedures for these transactions.³²³ In some cases, land users were required to pay a “rent” to the Government for the use of allocated land³²⁴; this created a distinction between “leased” and “allocated” land, though rarely did the law treat these two categories of land differently. All land allocations were to be registered with the Government,³²⁵ and a certificate issued to the land user.³²⁶

The Land Law of 1993 also provided more guidance to the takings provision in the 1992 Constitution, specifying when land could be “recovered” or when it “reverts to the State,” which included for reasons of national defence, security, and public interest.³²⁷ While land users were entitled to compensation for the loss of use of any “recovered” property,³²⁸ the Land Law of 1993 provided no guidance to calculate the amount.

In subsequent years, additional pieces of implementing legislation were passed to provide more guidance. For example, an August 1994 decree *Promulgating Regulations on Compensation Upon the State Recovery of Land for the Purpose of National Defence, Security, National Interests, Public Interests* expanded on the takings and compensation scheme for

³¹⁴ 1993 Land Law (July 14, 1993), Art. 11.

³¹⁵ *Id.*, at Art. 16–17.

³¹⁶ *Id.*, at Art. 19–25.

³¹⁷ *Id.*, at Art. 12.

³¹⁸ *Id.*, at Art. 3.

³¹⁹ *Id.*, at Art. 20.

³²⁰ *Id.*

³²¹ *Id.*, at Art. 3.

³²² *Id.*, at Art. 12.

³²³ *Id.*, at Art. 30–31.

³²⁴ *Id.*, at Art. 22.

³²⁵ *Id.*, at Art. 33.

³²⁶ *Id.*, at Art. 36.

³²⁷ *Id.*, at Art. 26–27.

³²⁸ *Id.*, at Art. 27.

Vietnamese nationals in the 1993 Land Law.³²⁹ The Decree defined “public and national interest”³³⁰ and detailed appropriate types and forms of compensation.³³¹ Neither this Decree nor the 1993 Land Law specify measures to take in case land users did not voluntarily comply with government recovery orders.

8. 1995 Civil Code

In 1995, the Government adopted its first ever civil code, having spent nearly ten years drafting and revising the text.³³² Part II of the 1995 Civil Code addressed “Property and Ownership Rights,” echoing the multi-forms of ownership laid out in previous legislation,³³³ explicitly recognizing that “the legal land use rights of a family household are also household property.”³³⁴ Part IV dealt specifically with inheritance, and Part V with the transfer of land use rights, providing guidance on contracting transfers.³³⁵ The final section addressed issues involving “foreign elements,” emphasizing a commitment to *Doi Moi* goals of “materializing the open-door policy, [and] intensifying international integration and cooperation of Vietnam.”³³⁶

Ten years later in 2005, the 1995 Civil Code was replaced by a new revised Civil Code; in the intervening years, numerous additional documents were promulgated to supplement the 1995 Civil Code.³³⁷

The 2015 Civil Code provided a more specific definition of land use rights as property: “Property rights are rights which are able to be valued in terms of money, including property rights in respect of subjects of intellectual property rights, land use rights and other property rights.”³³⁸

³²⁹ Decree Promulgating Regulation & Regulation No. 90-CP (August 17, 1994), Art. 5 (“Foreigners whose land is nationalized are subject to separate regulation and do not fall under this compensation scheme”).

³³⁰ *Id.*, at Art. 1.

³³¹ *Id.*, at Chpts. II–III.

³³² Pham Diem, *Civil Law-Making Situation in Vietnam in the Period from 1995 Til Now*, VIETNAM LAW & LEGAL FORUM, Mar. 31, 2011, available at <http://vietnamlawmagazine.vn/civil-law-making-situation-in-vietnam-in-the-period-from-1995-till-now-4523.html>.

³³³ *Id.*

³³⁴ 1995 Civil Code, at art. 118.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.* See e.g. *National Assembly’s Resolution on Enforcement of the Civil Code*, Oct. 28, 1995; *Resolution of the Standing Committee of the National Assembly on Civil Transactions Regarding Dwelling Houses*, No. 58-1998-NQ-UBTVQH10, Aug. 20, 1998; *Law on Vietnamese Nationality*, No. 07/1998/QH10, May 20, 1998; *Law Amending and Supplementing a Number of Articles of the Law on Land Use Right Transfer Tax of 1999*, No. 17/1999/QH10, Dec. 21, 1999; and *Ordinance on Entry, Exit and Residence of Foreigners in Vietnam*, No. 24/2000/PL-UBTVQH10, Apr. 28, 2000.

³³⁸ 2015 Civil Code, at art. 115.

9. 2003 Land Law

The 2003 Land Law, which came into effect on July 1, 2004,³³⁹ replaced the 1993 Land Law, as well as its 1998 and 2001 amendments.³⁴⁰ As before, all land in Vietnam remained nationalized, with land use rights allocated or leased to individual land users.³⁴¹ All land use was assigned a specific duration of use,³⁴² but land users retained the rights to transfer, assign, lease, bequeath, and donate their land use rights.³⁴³ Land users, including those who received a land use right by transfer, donation, or inheritance, were entitled to a land use right certificate.³⁴⁴ The 2003 Land Law recognizes pre-1975 documents, including property titles, as valid.³⁴⁵

The Government also retained its right to “recover” or seize land being lawfully used.³⁴⁶ What made the 2003 Law on Land unique, however, was the addition of a new ground for recovery: economic development.³⁴⁷ In essence, this meant that the Government had authority to seize land for both public purposes (national defense, security, and public interest) and private development.³⁴⁸ When land was seized for private purposes by the Government, land use rights were transferred to private entrepreneurs and commercial parties.³⁴⁹ While compensation was still guaranteed for both public and private takings,³⁵⁰ this form of “private expropriation . . . for the benefit of one individual or company” was met with much criticism and led to many conflicts over land use,³⁵¹ particularly when compensation was lacking or insufficient (for an example, see discussion of Con Dau Parish below).

The 2003 Land Law also prescribed a new measure, “enforcement by force” in circumstances where the owner of land use right refused to comply with Government’s land recovery decision.³⁵²

³³⁹ 2003 Law on Land, at art. 145.

³⁴⁰ *Id.*, at art. 145.

³⁴¹ 2003 Law on Land, at art. 1, 5(1). Land is allocated by the Government through the use of an administrative decision and leased through a contract (Art. 4).

³⁴² 2003 Law on Land at chapter 3.

³⁴³ *Id.* at chapter 4.

³⁴⁴ *Id.*, at arts. 48–49.

³⁴⁵ *Id.*, at art. 50(e).

³⁴⁶ *Id.*, at art. 4(5).

³⁴⁷ *Id.*, at art. 38.

³⁴⁸ Kaitlin Hansen, *Land Law, Land Rights, and Land Reform in Vietnam: A Deeper Look Into “Land Grabbing” For Public and Private Development*, SIT GRADUATE INSTITUTE/SIT STUDY ABROAD DIGITAL COLLECTIONS, Fall 2013, at 16–17.

³⁴⁹ *Id.*

³⁵⁰ 2003 Law on Land, at arts. 42–43.

³⁵¹ Kaitlin Hansen, *Land Law, Land Rights, and Land Reform in Vietnam: A Deeper Look Into “Land Grabbing” For Public and Private Development*, SIT GRADUATE INSTITUTE/SIT STUDY ABROAD DIGITAL COLLECTIONS, Fall 2013, at 16–17.

³⁵² 2003 Law on Land, at art. 38.

The following year, a decree was issued providing the necessary guidelines and policies required to implement the 2003 Law on Land.³⁵³ Most importantly, this decree outlined the process and procedures for recovery of land for both public and private expropriations.³⁵⁴ It also provided a framework of reprimands and punishments for public officials who abused their authority when dealing with land use issues.³⁵⁵ Further implementing laws were enacted following the 2003 Law on Land in order to provide additional guidance on topics covered within the law.³⁵⁶

10. Resolution 23/2003/QH11

On the same date the National Assembly passed the 2003 Land Law, it also promulgated Resolution 23/2003/QH11 to deal once for all with the issue of properties placed under state management up to that point pursuant to the policy created by Executive Council Decision No. 111/CP of 1977 but had not yet been nationalized.

The Resolution's purpose was to remedy the confusion created by decades of piece-meal and often contradictory implementation of Decision 111/CP, most recently the 1991 Ordinance on Residential Housing, which called for the nationalization of all properties under state management as of 1991. It ordered local authorities to formally complete the process of transitioning from state management to state ownership.³⁵⁷ To facilitate this, it declared the Government's policy of no longer considering petitions by owners for the return of their properties that had been placed under state management. Vietnamese citizens living overseas were called on to support and strictly implement the National Assembly's Resolution, considering this a practical contribution to the cause of national stability and development." In other words, the Vietnamese government was fully aware that its expropriation policy would affect overseas Vietnamese, including those being naturalized U.S. citizens. The Resolution did not include requirement for compensation.

Despite the claim that Resolution 23/2003 would clarify the policy land use rights, its implementation has only added to the confusion and contradictions. It took another two years for implementation guidance to be issued,³⁵⁸ and the deadline for provincial and municipal authorities for nationalization of state managed properties was not set until June 30, 2009.

³⁵³ *Decree Providing for Implementation Law on Land*, No. 181-2004-ND-CP, Oct. 29, 2004.

³⁵⁴ *Id.*, at arts. 34-36, 65, 125, 130-132, 162, 172.

³⁵⁵ *Id.*, at chapter XII.

³⁵⁶ See, e.g., *Directive of the Prime Minister on Implementation of 2003 Law on Land*, No. 05-2004-CT-TTG, Feb. 9, 2004; *Decree Providing for Implementation Law on Land*, No. 181-2004-ND-CP, Oct. 29, 2004; and *Circular Guiding Implementation of a Number of Articles of Decree 181-2004-ND-CP of the Government Dated 29 October 2004 on Implementation of the Law on Land*, No. 01-20050TT-BTNMT, Apr. 13, 2005.

³⁵⁷ *Resolution on Houses and Land Managed or Arranged By the State for Use in the Course of Implementation of House and Land Management Policies and Socialist Transformation Policies Before July 1, 1991*, No. 23/2003/QH11, Nov. 26, 2003.

³⁵⁸ *Decree 127/2005/ND-CP*, Oct. 10, 2005.

11. 2013 Constitution

In 2013, the Government adopted another new constitution.³⁵⁹ This 2013 Constitution made several changes to strengthen the “Communist Party’s monopoly on power” and created loopholes allowing for the “override [of] human rights guarantees . . . if . . . necessary for national security.”³⁶⁰ However, these changes made no significant impact on land ownership and land use rights. The 2013 Constitution maintains that all land was “under the ownership of the entire people represented and uniformly managed by the State.”³⁶¹ It also reiterates that individuals only have the right to land use, not the right to land ownership.³⁶²

Like the 1992 Constitution, there is also still an explicit takings clause that allows the Government to expropriate land for a variety of purposes.³⁶³ However, unlike the 1992 Constitution, the new 2013 Constitution did not expressly exempt foreign land use right holders from nationalization. Instead the 2013 Constitution put a blanket protection on the “lives, possessions and legitimate interests in accordance with the provisions of Vietnamese law”³⁶⁴ omitting any specific reference to the “interests of foreign organisations and individuals.”³⁶⁵

10. 2013 Law on Land

Following the adoption of the 2013 Constitution, a revised Law on Land was passed to replace the 2003 Law on Land. While many of the policies from the 2003 Law on Land were transferred into the 2013 Law on Land, the new law contains several additional provisions to further the goal of making Vietnam a modern and industrialized nation.³⁶⁶ Many of the provisions relate to the rights of foreign organizations and individuals, as well as Vietnamese and foreigners residing overseas.³⁶⁷ Notable changes include new provisions allowing foreign land use right holders to elect their category of land use grant and payment schedule.³⁶⁸ Additionally, the 2013 Law on Land changed the method by which land prices are calculated.³⁶⁹ Previously under the 2003 Law on Land, prices were calculated based on a set table of land prices; under the 2013 Law on Land, land prices can be determined on a case-by-case basis, meaning there is less strict government regulation to land prices.³⁷⁰

³⁵⁹ 2013 Constitution, Nov. 29, 2013.

³⁶⁰ *Vietnam: Amended Constitution a Missed Opportunity on Rights*, HRW, Dec. 2, 2013, available at <https://www.hrw.org/news/2013/12/02/vietnam-amended-constitution-missed-opportunity-rights>.

³⁶¹ 2013 Constitution, Nov. 29, 2013, at art. 53.

³⁶² *Id.*, at art. 54(2).

³⁶³ *Id.*, at art. 54(3).

³⁶⁴ 2013 Constitution, Nov. 29, 2013, at art. 48.

³⁶⁵ 1992 Constitution, Article 25.

³⁶⁶ Nguyen Quang Tuyen, *Rights for Foreigners Under New Land Law*, VIETNAM LAW & LEGAL FORUM, June 6, 2014, available at <http://vietnamlawmagazine.vn/rights-for-foreigners-under-new-land-law-3290.html>.

³⁶⁷ *Id.* See 2013 Law on Land, No. 45-2013-QH13, Nov. 29, 2013, at chapt.11, § 4.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.* 2013 Law on Land, No. 45-2013-QH13, Nov. 29, 2013, at chapter 4, § 2, art. 114 (3).

Shortly after the 2013 Law on Land was adopted, at least three additional pieces of implementing legislation were also passed to provide more details regarding the 2013 Law on Land. One of these implementing laws was *Decree 43: Detailed Provisions for Implementation of A Number of Articles of the Law on Land*, which provided additional information particularly about the administrative tasks relating to land management, zoning, and planning.³⁷¹ It also provided additional details regarding the grant of land use certificates, as well as information on land allocation, lease, and conversion.³⁷²

CONCLUSION

In late 2003, Vietnam's National Assembly passed two pieces of legislation that resulted in the expropriation of a large number of real properties belonging to American citizens. These laws stripped these American citizens of any legal recourse to reclaim their properties expropriated by the Government of Vietnam.

U.S. citizen victims of these abuses are now seeking the direct assistance of the U.S. Government to hold the Government of Vietnam to account for the ongoing deprivation of property rights and other human rights violations.

The FCSC Vietnam Program should be reopened or a second FCSC Vietnam Claims Program created to compensate U.S. citizen victims whose property was nationalized, expropriated, or otherwise taken *after* January 28, 1995, the date of the final settlement agreement with Vietnam. After such a claims program has been closed and all outstanding claims adjudicated, the U.S. Government should immediately seek to negotiate payment of all such claims with the Government of Vietnam.

³⁷¹ See generally *Decree 43: Detailed Provisions for Implementation of A Number of Articles of the Law on Land*, May 15, 2014, at chapters 2, 3, 7, 8.

³⁷² *Id.*, at chapters 4, 5, 6.