
HANOI, OCTOBER, 2013

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This report was funded by The Asia Foundation in partnership with the Australian Department of Foreign Affairs and Trade (DFAT). The opinions expressed here are solely those of the authors and do not necessarily reflect those of the Foundation or DFAT.
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Acknowledgements

This study was funded with support from The Asia Foundation in partnership with the Australian Department of Foreign Affairs and Trade (DFAT). The study was conducted by the Institute for Research on Policy, Law and Development (PLD).

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Executive Summary

Land disputes are a pressing issue of public concern in Vietnam. Administrative challenges, a complex history and sub-optimal resolution mechanisms draw individuals into lengthy disputes with negative consequences for themselves and societal harmony. Improving the timeliness and effectiveness of resolution measures is vital to ensure risks of instability are avoided. For individuals involved in a dispute the court is an option, but citizens tend to opt for other dispute resolution forums before resorting to the court as a last resort, if at all. One key route of potential resolution of land disputes provided by the Land Law 2003 is conciliation. Conciliation is a voluntary process whereby a neutral, intermediate conciliator helps the disputants come to a mutually-agreeable solution. However, previous studies and anecdotal evidence suggest that land dispute conciliation as currently practiced in Vietnam is of low efficacy.

In order to understand the current state of land dispute conciliation in Vietnam and to attempt to identify routes for improvement, The Asia Foundation, in partnership with DFAT, commissioned this study by the Institute for Research on Policy, Law and Development (PLD). Consisting of desk research, focus group discussions in four provinces (Ha Noi, Vinh Phuc, Bac Ninh, and Ho Chi Minh City), and stakeholder interviews and surveys in five additional provinces (Hai Phong, Nghe An, Da Nang, Can Tho, and Binh Duong), the study seeks to critically analyze current law and practice of land dispute conciliation in Vietnam and identify key recommendations for reform.

There are a wide range of land disputes prevalent in Vietnam with causes including shortcomings and inconsistencies in the land administration system, inept or corrupt land officials, poor knowledge and respect of the land law, and legacy impacts of Vietnam’s historical land management policies.

Conciliation approaches exist in multiple forms both within and outside of the judiciary. Under the 2003 Land Law and associated regulations, grassroots conciliation is to be attempted by a grassroots conciliation team, normally consisting of village elders, retired state officials, and leaders of mass organizations. If grassroots conciliation fails, conciliation by the communal People’s Committee occurs. If this step fails, either party is allowed to bring a suit in the People’s Court. However, under current law, land disputes involving a state agency must be resolved via administrative complaint.

The foundations for potential effective conciliation of disputes can be found not only in current legal codes, but also in the customs and moral norms of a number of Vietnamese ethnicities. Conciliation practice draws on Party guidelines and State laws, but also traditional and moral norms and village regulations to encourage and persuade parties involved to defuse land-related disputes. This emphasis perhaps contributes to the increased success of grassroots conciliation in rural areas, where community relationships and morals remain dominant, compared to urban areas, where land is increasingly commoditized and community ties are weaker.
This study proposes several specific amendments to the Land Law to clarify and improve the conciliation procedure and legal significance, including allowing the People’s Committee to enforce agreements following successful conciliations. Increased training and higher standards and remuneration for conciliators are also needed. Conciliation for citizen-state disputes should be studied as an alternative to the administrative complaint system. A community consultation mechanism for land acquisition and state-land management actions could also reduce disputes and instill a more cooperative attitude by all stakeholders.
I. Introduction and methods

Land disputes are a pressing issue of public concern in Vietnam, potentially posing risks to stability if prompt and effective resolution measures are not taken. The 2003 Land Law and related laws and decrees regulate the settlement of land disputes. While the court is an option for disputants the court system is weak. Businesses and citizens alike tend to opt for other dispute resolution forums before resorting to the court as the last resort.¹

One prominent option in the Land Law for certain types of disputes is conciliation. Conciliation, similar to mediation, is a voluntary process whereby a neutral intermediate conciliator helps the disputants come to a mutually-agreeable solution. Conciliation/mediation has gained popularity around the world as part of the Alternative Dispute Resolution or “ADR” movement, which seeks to reduce the number of cases in court and resolve disputes more efficiently and amicably.² Conciliation is not new. Conciliation mechanisms can be found in the customary and traditional norms of communities across the world.

Although there is interest in conciliation as an alternative to the courts, studies and anecdotal evidence suggest that land dispute conciliation as practiced currently in Vietnam has low success rates. The reasons for this include weaknesses in the conciliation legal regime, poor conciliation capacity at the grassroots level, the nature of land disputes in Vietnam, as well as potentially a fundamental incompatibility of Vietnam’s social and political economy with conciliation.

In order to understand the current state of land dispute conciliation in Vietnam, The Asia Foundation, in partnership with DFAT, commissioned this study by the Institute for Research on Policy, Law and Development (PLD). Consisting of desk research, focus group discussions, and stakeholder interviews and surveys, the study sought to critically analyze current law and practice of land dispute conciliation in Vietnam and identify key recommendations for reform. The study also sought to generate forums for discussion and debate about conciliation among policymakers and stakeholders throughout the country.

This research report first studies the theoretical principles and legal foundations of grassroots conciliation for land dispute settlement and then assesses the actual practice and perceptions of conciliation for land disputes in Vietnam. We then make recommendations to refine the law and enhance the effectiveness of grassroots conciliation for land dispute settlement.

Methodology and Study Activities

To obtain a comprehensive view of land conciliation law and practice, the study team completed a desk study of the relevant laws and regulations, held four group discussions, and interviewed 315 people in five provinces across Vietnam.

Group discussions

Group discussions on grassroots conciliation in land disputes were held with stakeholders, including lawyers, state agency representatives, mass organization representatives, and judges in the following cities and provinces:

- Ha Noi, February 2013, under the theme: “The Role of the People’s Court and People’s Committee in grassroots conciliation in land disputes in Ha Noi”.

- Vinh Yen city, Vinh Phuc province, March 2013: “Conciliating disputes arising from compensation, support and resettlement when the State acquires land in Vinh Phuc”.

- Bac Ninh city, Bac Ninh province, April 2013: “Conciliating disputes arising from urbanization and change of land use purposes”.

- Ho Chi Minh City, April 2013: “The role of legal support centers, law offices and social organizations in grassroots conciliation in land disputes”.

Interviews and social surveys

Interviews and social surveys on the current situation of grassroots conciliation in land dispute settlement were conducted in 5 selected provinces: (i) Hai Phong city in the north; (ii) Nghe An province in the north-central region; (iii) Da Nang city in the central region; (iv) Can Tho city in the Mekong Delta; (v) Binh Duong province in the southeast.

In each centrally-administered province or city, the study group conducted surveys and interviews with three target groups: a) residents; b) team leaders and members of a conciliating team at the hamlet, sub-ward levels, staff of commune, ward and township levels; c) Staff of rural and urban district, townships and cities affiliated to a province. The total number of interviewees was 315.

- The interviews and surveys in a province were conducted in 2-4 communes of 2-3 districts, townships and cities of each province:

  - In Hai Phong: Municipal People’s Court; Justice Office, People’s Committee of Hung Vuong ward, People’s Committee of Trai Chuoi ward, People’s Committee of Pham Hong Thai ward - Hong Bang district; Justice Office, People’s Committee of Trang Minh ward, People’s Committee of Ngoc Son ward - Kien An district.

  - In Nghe An: Vinh Tan ward - Vinh city; People’s Committee of Nam Loc commune - Nam Dan district; People’s Committee of Hung Xuan commune, People’s Committee of Hung Dao commune, district People’s Court - Hung Nguyen district.

  - In Da Nang: Municipal Peoples’ Court; Justice Office, People’s Committee of Xuan Ha ward, People’s Committee of Vinh Trung ward, People’s Committee of Thach Gian ward - Thanh Khe district; Justice Office, People’s Committee of An Hai Tay ward, People’s Committee of Phuoc My ward, People’s Committee of Tho Quang ward - Son Tra district.
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- In Can Tho: People’s Committee of An Khanh ward, People’s Committee of Cai Khe ward - Ninh Kieu district; People’s Committee of An Thoi ward - Binh Thuy district; Justice Office, People’s Committee of Thanh My commune, People’s Committee of Thanh Quoi commune - Vinh Thanh district.

- In Binh Duong: district People’s Committee, People’s Committee of Chanh Phu Hoa commune, People’s Committee of Hoa Loi commune - Ben Cat district; People’s Committee of Khanh Binh commune and People’s Committee of Uyen Hung township - Tan Uyen district.

This study also draws on case studies of land disputes undergoing successful and unsuccessful conciliation in Hanoi, gathered from discussions and public records and presented in the Appendix.

Group discussions and experience sharing activities were carried out in 4 provinces and cities, while the interviews and social surveys were undertaken in 5 additional provinces, a total of 9 of the 63 provinces and cities nationwide. Therefore, assessment and feedback may not reflect all problems arising from grassroots conciliation of land disputes. However, the provinces and communities were selected for their diversity in geography, economic development, rural vs. urban character, and perceived types of land disputes. Thus, we believe the sample provides an accurate assessment of current land dispute conciliation practices in Vietnam.

2. Overview of relevant principles and laws regarding conciliation for land dispute settlement in Vietnam

Introduction to conciliation in Vietnam

What is conciliation?

“Conciliation is the self-cessation of disagreement, disputes between involved parties via mutual negotiations or mediation by another person. Successful conciliation maintains solidarity between parties, avoiding prolonged and costly legal proceedings and cases where a petty dispute turns into a criminal incident.”

“Conciliation: Persuasion of parties to self-resolve their dispute satisfactorily. Normally, the conciliation is undertaken after negotiations (complaints) between parties fail.”

There are several basic characteristics of conciliation. First, conciliation is a method of settling disputes and disagreements undertaken by parties through voluntary self-negotiation. Second, the central actor of conciliation is an intermediary party, who helps the parties negotiate with each other to settle disputes. This makes conciliation different from negotiation. The intermediary person can be an individual, lawyer, consultant organization, or other organization selected by the negotiating parties. This person must be independent from involved parties and should not have any material interest in the dispute. The intermediary party has no right to give judgment. Third, in Vietnam currently, agreements and commitments resulting from conciliation process are not mandatory, but dependent on the goodwill and voluntariness of parties.

Forms of conciliation in Vietnam

Conciliation is raised in disputes on the basis of equality, freedom, voluntariness, commitment and agreement of parties. As a result, only civil cases (not criminal cases) are subject to conciliation. There are two existing forms of conciliation: conciliation within judicial procedure and conciliation without judicial procedure:

- **Conciliation within judicial procedure** is conciliation undertaken in a People’s Court, which settles disputes as requested by parties. Thus, during the procedural process, the People’s Court must implement conciliation principles. The 2004 Civil Procedure Code stipulates conciliation principles: “The court is responsible for undertaking conciliation and creating favorable conditions for involved parties to negotiate with each other on settling civil cases” (Article 10).

- **Conciliation without judicial procedure** is intermediary conciliation undertaken by involved parties before lodging the case with a judicial agency. In land-related disputes, this form of conciliation is comprised of:

Conciliation at commune, ward, township People’s Committees: Conciliation at the People’s Committee of a commune, ward, or township (hereafter referred to as communal People’s Committee), where the disputed land is located, concerning land disputes regulated by the 2003 Land Law and the Decree No. 181/2004/ND-CP, dated October 29, 2004, by the Government on the enforcement of the Land Law (hereafter referred to as the Land Law Enforcement Decree).

Grassroots conciliation: Conciliation organized at grassroots level (hamlet, village, sub-commune, sub-ward). This is voluntary conciliation in accordance with the Ordinance on organization and operation of the grassroots conciliation to settle disputes, differences and petty disagreement between the people on civil, marriage and family, as well as land issues.

Overview of land dispute conciliation

Principles of land dispute conciliation

‘Land dispute conciliation’ is a term used in land-related legal documents but not defined in detail by the 2003 Land Law and its enforcement documents. Based on common perceptions of conciliation, we can define conciliation in land disputes as follows: “Land dispute conciliation is the self-cessation of disagreement, disputes on land use among involved parties via mutual negotiations or mediation by another person or group.”

In addition to general characteristics of dispute conciliation previously mentioned, land dispute conciliation has the following characteristics:

First, land dispute conciliation not only is based on Party guidelines and State laws, but also applies custom, traditional practice, village regulations, and local customary law to encourage and persuade parties involved to defuse land-related disputes and contradictions.

Second, land dispute conciliation requires perseverance and constant encouragement, communications and persuasion of parties. It costs conciliators time and energy before any success is achieved. Moreover, the effective conciliation of land disputes should not rely on state agencies but rally the pro-active and creative involvement of the community, mass organizations and self-rule institutions of the people at grassroots level.

Third, reality shows that given the complexity of land disputes, they must be settled as promptly and definitively as possible; otherwise, settlement will grow more difficult and complicated. Therefore, land dispute conciliation needs to be implemented quickly. This requires organizations and individuals who play the conciliating role in land disputes to be ready immediately after any dispute or conflict arises.

Fourth, given land’s special importance, land disputes are prone to substantial political, economic and social consequences. So, land dispute conciliation is not only an obligation of authorized state agencies but also the responsibility of the whole social community and every land user.

Fifth, conciliators must respect the will of the parties, be impartial and reasonable; not use coercion to force the parties to engage in conciliation. Parties voluntarily put forth
foundations and factual evidence to prove their rights and obligations, freely discuss, give recommendations, negotiate and accept conciliators’ advices for dispute settlement. Members of the conciliation team only offer explanations and analysis of “pros and cons” so that parties will consider and decide themselves. In addition, conciliators not only help parties settle disputes but also contribute to educating citizens’ awareness of obedience to law. Conciliators should not give subjective remarks or make “right or wrong” judgments.

Sixth, conciliators should keep confidential information of the parties in dispute; respect the rights and legitimate interests of others; and not infringe upon the interests of the State, and the community. Everything should be aimed at building mutual trust, respect and understanding, which helps parties make concessions towards successful conciliation.

Seventh, dispute conciliation in general and land dispute conciliation in particular needs to erase the “win-lose” psychology of parties and think “win-win.” Due to the often strong emotions surrounding land and pre-existing relationships with the opposing party, parties often have tense and stubborn attitudes. Conciliators must comprehend this dynamic and help ease tension, envy and the need to out-do others.

Foundations for the law and regulations on land dispute conciliation in Vietnam

People in Vietnam tend not to file land dispute lawsuits in the People’s Court but instead negotiate themselves or find ways via conciliation to settle land disputes. The settlement of land disputes at the People’s Court or via state agencies is a last resort. Land dispute conciliation is a resolution mechanism favored by the people because:

First, Vietnam’s traditional society is influenced by the Confucian “Rule of morality” thought, so the people (particularly rural residents) treasure moral values. Social relations are likely to be ruled by moral regulations and traditional custom rather than laws and legal regulations. The residents of village and communes prioritize maintaining solidarity among community members and removing factors that are harmful to the close bonds among members and the community. This is a foundation for the formation of dispute conciliation in general and land dispute conciliation method in particular at grassroots level.

Second, throughout the development of village and communal culture, there is the rule of clans and mass organizations over rural society in Vietnam. Meanwhile, conciliation helps uphold the role and strength of clans and mass organizations in settling disputes and contradictions among the people.

Third, the communal People’s Committee is the closest level to the people in the system of state land administration agencies. As such, the communal People’s Committee understands the land use history and changes in use of the disputed land. Furthermore, as the direct land manager, the communal People’s Committee keeps a system of records, cadastral maps, and grassroots cadastral records (including documents, legal evidence on dispute pieces of land). Thus, land dispute conciliation undertaken by the communal People’s Committee is more convenient with a higher capacity to persuade parties involved to resolve land disputes.
Fourth, advantages of conciliation include its flexibility, simple procedures, convenience, and low costs of materials, time and energy. Therefore conciliation is often used by people, particularly those in the rural, mountainous and remote areas, who have no access to other resolution mechanisms or lack the resources (money, lawyers) to pursue other options.

Grassroots conciliation of land disputes in local custom and practices
Forms of conciliation can often be found in the longstanding customs and practices of a wide range of ethnicities. Below are two examples from Vietnam.

(i) The Kinh

Study of the cultural conventions and regulations of some villages and communes of the Kinh people, who account for the majority of population in Vietnam, shows that methods of land dispute conciliation at the local level is included in many cultural conventions. Acknowledgement of land dispute conciliation in cultural conventions aims to place responsibility on every individual in the community to settle land-related disputes, helping maintain the people's solidarity.

For example, cultural conventions of Yen Khe hamlet, Song Khe commune (Bac Giang city, Bac Giang province) stipulates: “All interest-related disputes and individual disagreement must be conciliated in the hamlet. Citizens’ complaints and petitions must be sent to the right authorized agency in accordance with the Law on Complaints and Denunciation, must not be sent directly to agencies of higher level when they haven’t yet been dealt with or haven’t been settled completely at the grassroots level; Inciting many people to file the petition directly to higher agencies is not allowed” (clause 4 Article 5).

The book “Vietnamese customs” written in the early 20th century by the famous writer and journalist Phan Ke Binh cited some conventional provisions of De Kieu village in Bac Ninh province as follows: “People who litigate against each other must bring the case to the people first for their judgment, instead of directly bringing the case to the mandarins. Offenders will pay the fine of one dong, which will be allocated to the communal fund.” These examples show that convention and village regulations play an active role in grassroots conciliation of disputes.

(ii) The Raglai

According to the book “Customary law in life”, volume 1, written by Prof. Dr. Phan Dang Nhat and published by the Justice Publishing House in 2007, the Raglai ethnic group in Khanh Son district (Khanh Hoa province) involve customary law, in various forms and degrees, in their social life and the harmonization of social relations. Some forms of traditional judgment and punishment have been used effectively by conciliation teams to harmonize social relations, matching ethnic custom and compliance with state law and regulations. Conciliation teams have applied customary law in settling disputes and petitions within civil relations, including marriage, family and land-related relations.
Disadvantages of Conciliation

Commonly cited disadvantages of conciliation include:5

1. Powerful parties may be able to impose their will on weaker parties without the formal safeguards present in courts or other forums.

2. Focusing on individual parties may hide from public view disputes with important collective societal interests.

3. Pressure to resolve local disputes quickly and amicably may leave significant wrongs unpunished or addressed.

4. Conciliation may reinforce discriminatory biases (related to, e.g. gender, caste, or ethnicity) found in traditional norms imposed by powerful elders and local leaders.

5. No guarantee of a definitive resolution, risking wasted time and potentially increasing the dispute intensity instead of decreasing it.

6. The ineffectiveness of conciliation in resolving disputes involving ‘outsiders’ (people not within the influence of local norms).

Vietnamese Law on land dispute conciliation

Inheriting regulations of the 1993 Land Law, the 2003 Land Law governs land dispute settlement through: (1) Conciliation; (2) Settled by administrative agency (People’s Committee at the district and provincial level); (3) Settled via Court.

According to the 2003 Land Law and Article 159 of the Land Law Enforcement Decree, land dispute conciliation is undertaken in three steps as follows:

1. Parties self-negotiate

In this method of land dispute conciliation, parties themselves conduct discussions and negotiations to agree on ways to defuse disputes. It is generally not conducted with the involvement of a third party. The State does not impose any legal interference. The termination of disputes depends on the will of the parties. This method corresponds to the psychology of the Vietnamese who wish to maintain social relations without hurting feelings and breaking traditional patterns. This method of dispute settlement maintains confidentiality. However, parties’ self-settlement of disputes is normally only viable in petty, simple disputes without major conflicts of interest. Moreover, this conciliation method is most commonly used in rural areas or areas inhabited by ethnic people, where sentiments, neighborliness, and clanship are respected and honored. In the hope of

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cementing traditional solidarity, mutual-support and easing the pressure of land dispute settlement on state agencies, the State encourages parties in dispute to self-conciliate. The 2003 Land Law stipulates: “The State encourages self-conciliation by parties involved in land disputes” (Clause 1, Article 135).

2. **Grassroots conciliation**

This method of land dispute conciliation involves the participation of a third party, namely the grassroots conciliation team as an intermediary conciliator. Article 135 of the 2003 Land Law stipulates: “The State encourages parties involved in land disputes to conduct self-conciliation or settle land disputes via grassroots conciliation” (clause 1). Consistent with this provision of the 2003 Land Law, the Land Law Enforcement Decree states: “Parties involved in land disputes must take the initiative in self-conciliation. If no agreement is reached, land disputes must be settled via grassroots conciliation” (Clause 1, Article 159). Thus, if parties’ self-conciliation fails, grassroots conciliation teams hold meetings and play an intermediary role, helping parties to sit down and negotiate with each other to settle disputes and contradictions.

Grassroots conciliation teams are established by the communal People’s Committee in hamlets, village, or sub-wards. Members of conciliation teams are elderly people, who understand laws, have prestige, wisdom and life-experience and are selected by the community. Normally, they are hamlet heads, street wardens, staff of the Women’s Union branch and the Elderly Association branch, or retired state employees.

To ensure the quality of selection of grassroots conciliators, the law stipulates that the Vietnam Fatherland Front at the communal level and its member organizations are responsible for coordinating with the communal People’s Committee to establish grassroots conciliation teams. The process of selecting members of conciliation teams occurs as follows: (i) **Step 1.** The Vietnam Fatherland Front at the communal level and its member organizations select and introduce candidates for the grassroots conciliation team, to be elected by the people; (ii) **Step 2.** Heads of hamlets and villages, street wardens, etc., organize and chair meetings of the people and household chiefs to elect members of grassroots conciliation teams; (iii) **Step 3.** The minutes of electing members of grassroots conciliation team are sent to the Chairperson of the communal People’s Committee for consideration and approval.

3. **Land dispute conciliation at communal People’s Committees**

The procedure for undertaking land dispute conciliation at communal People’s Committees is in compliance with Article 135 of the 2003 Land Law and Article 159 of the Land Law Enforcement Decree.

1. If parties’ self-conciliation fails or grassroots conciliation fails, either party in the dispute can file a petition to the division.

2. After receiving an eligible petition asking for conciliation, the staff forwards it to the Chairperson of the communal People’s Committee for consideration. The time limit
for the settlement of disputes via conciliation is 30 working days from the date of the
local People’s Committees’ receipt of the complaint.

3. The Chairperson of the communal People’s Committee considers the petition and
passes it to communal cadastral staff to study and recommend methods of dispute
settlement; at the same time, he assigns a Vice Chairperson of the communal People’s
Committee in charge of land administration to take responsibility for organizing land
dispute conciliation in compliance with the law. In cases that are complicated and
significantly impact the local political and social situation, the Chairperson of the
communal People’s Committee chairs the conciliation in person.

4. Specialized staff help the communal People’s Committee prepare for land dispute
conciliation, including: (i) studying the dispute content and parties’ evidence, collate
them with provisions of land law and documents, dossier, cadastral records, and
cadastral maps on the disputed lot of land managed by the communal People’s
Committee in order to work out conciliation measures; (ii) setting the time, venue,
participants and necessary facilities for land dispute conciliation; (iii) sending invitations
to participants of the conciliation session; (iv) notifying or sending a summons to each
parties in the dispute.

5. If the parties in the land dispute do not have certificates for the right to land use, to
ownership of housing and other assets associated with land or do not have one of
the papers as stated in clause 1,2 and 5 Article 50 of the 2003 Land Law, the dispute
settlement is undertaken based on the following grounds:

i. Evidence of land origin and use process given by parties

ii. Opinions of the Advisory Council for settling land disputes in communes, wards
and townships established by the People’s Committee. The Council is comprised
of: a) Chairperson or Vice Chairperson of the People’s Committee of a commune,
ward, township, who is President of the Council; b) Representatives from the
Vietnam Fatherland Front of commune, ward, township; c) Street warden; head
of hamlet, village; d) Representatives from households who have lived a long time
in the commune, ward, township and know thoroughly the origin and use of the
land lot; e) Cadastral staff, justice staff of commune, ward, township.

iii. Area of land actually being used by parties, except for the area of disputed land,
and the average area of land per capita in the locality.

iv. Alignment between the disputed lot of land and the approved land use plan in detail.

v. State incentives for those who render great service to the country

vi. Provisions of the law on land allocation and rent.6

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6 Article 161 of the Land Law Enforcement Decree
Therefore, during the land dispute conciliation process implemented by the communal People’s Committee, the Advisory Council for settling land disputes established by the People’s Committee of commune, ward and township plays an active role in giving advice and contributes to the success of the conciliation session.

6. The conciliation must be recorded procès-verbal, signed by the parties in dispute, and certified by the local People’s Committees of the communes, wards or townships. The certification of successful or failed conciliation is significant and directly impacts on whether to implement the follow-up steps to settle land disputes or not. If the conciliation is successful, land disputes between parties are considered settled. Parties strictly implement their commitments as stated in the procès-verbal of successful conciliation. The communal People Committee is responsible for monitoring, encouraging and calling on parties to strictly implement what are stated in the procès-verbal of successful conciliation. If the communal People’s Committee fails in land dispute conciliation, a procès-verbal of failed conciliation is made and the Committee instructs parties in disputes to submit petitions to competent state agencies for settlement. These agencies include the People’s Court and the People’s Committee at the district level and the People’s Committee at the provincial level.

7. The conciliation results are reported to the Chairperson of the People’s Committee at the communal level.

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7 Procès-verbal is an official written documentation of the minutes and proceedings undertaken in the case.

8 Land disputes whose conciliation at the People’s Committees of the communes, wards or townships is disagreed with by one or the parties are expected to be settled as follows:

1. Disputes on land use right that parties possess certificates of the right to use land and to own housing and other assets associated with land or possess one of documents stipulated by clause 1, 2 Article 50 of the law and disputes on assets associated with land are settled by the People’s Court.

2. Disputes on land use right that parties possess neither certificates of the right to use land and to own housing and other assets associated with land, nor one of documents stipulated by clause 1, 2 Article 50 of the law are settled as follows:

   a. In case the first settlement by Chairperson of the People’s Committee of the commune, ward or township is disagreed with by one or the parties, they have the right to file the complaints to the Chairperson of People’s Committee of the centrally-administered province or city; the decision of the Chairperson of People’s Committee of the centrally-administered province or city is the final decision for settlement.

   b. In case the first settlement by the Chairperson of the People’s Committee of the centrally-administered province or city is disagreed with by one or the parties, they have the right to file the complaints to the Minister of the Natural Resources and Environment; the decision of Minister of the Natural Resources and Environment is the final decision for settlement (Article 136, 2003 Land Law).
3. Analysis of current practice of land disputes grassroots conciliation in Vietnam

The following presents the findings from group discussions, interviews, and social surveys on the most prevalent types of land disputes, the causes of these disputes, the primary types of dispute going through conciliation and those that do not, the perception of current effectiveness of conciliation, and limitations in the current law governing conciliation. Case studies collected from public records and interviews are also presented in the Appendix.

Prevalent types of land disputes in Vietnam

Land disputes tend to come in the following primary forms:

- **Disputes related to land use right boundaries.** This group of land disputes includes: (i) Disputes on land use boundary; (ii) Disputes on the alleyway.

- **Disputes related to transfer of land use right.** This group of land disputes includes: (i) Disputes on inheritance of land use right; (ii) Disputes on donation of land use right; (iii) Disputes on transfer of land use right; (iv) Disputes on leases of land use right; (v) Disputes on mortgage of land use right.

- **Disputes related to land acquisition, compensation, support, and resettlement.** This group of land disputes includes: (i) Disputes on land acquisition for economic development purposes; (ii) Disputes on implementation of compensation, support and resettlement when the State acquires land.

- **Disputes related to land use right certificates.** This group of land disputes includes: (i) Disputes on conditions for granting land use right certificates; (ii) Disputes on recipients of land use right certificates; (iii) Disputes on financial obligations when land use right certificates are granted; (iv) Disputes on areas of land as stated in land use right certificates against the actual area of land being used.

- **Disputes related to assets associated with land.** This group of land disputes includes: (i) Disputes on division of joint assets namely housing and land of husbands, wives pending divorce; (ii) Disputes on division of inheritance of housing associated with land.

The above-mentioned land disputes arise between the following actors:

*First*, land disputes arise between land users (including between households and individuals; among households, individuals and organizations; between organizations) related to land use rights and obligations. These disputes are common and exist in both rural and urban areas. Particularly, in the suburban areas, where urbanization continues rapidly, resulting in land price increases, these land disputes are on the rise in both quantity and complexity; for example: in Binh Thuy district (Can Tho city); Ben Cat district (Binh Duong province); Hai An district (Hai Phong city).
Second, disputes between land users and state agencies related to the exercise of the State’s land ownership rights, including: (i) Disputes related to land acquisition, compensation, support, and resettlement when the State acquires land; (ii) Disputes related to the granting, changing, correcting and revoking land use right certificates. This type of disputes appears in both rural and urban areas. These disputes may trigger “hot spots” and pose a risk of political instability if they are not settled radically. See The Asia Foundation’s companion study on public land disputes in Vietnam for detailed case studies of these disputes.

Types of land disputes conciliated at the grassroots level

In compliance with existing law, there are disputes for which conciliation must be undertaken at the grassroots level in the first instance. These are disputes arising among land users: First, disputes on the right to ownership, administration and use of land; Second, disputes on land-related assets; Third, disputes over the transfer of land use rights. By nature, they are civil disputes. The principles of freedom, fairness and goodwill govern civil transactions in land use right. Therefore, when this type of disputes arises, conciliation is prioritized and encouraged. Initially, land disputes arising between land users are often petty and conciliation can help defuse them without asking for state agency settlement.

Types of land disputes that do not undergo grassroots conciliation

According to the existing law, there are land disputes which are not subject to grassroots conciliation before being settled by competent state agencies. By nature, they are not civil disputes arising between land users but administrative disputes arising between land users and competent state agencies, including: First, disputes on the state agency’s decision to acquire land for economic development purposes; Second, disputes on the price of the compensated land; Third, disputes on the implementation of compensation, support and settlement when the State acquires land; Fourth, disputes on the construction of resettlement areas and the quality of resettlement areas; Fifth, disputes on the training and change of job for direct producers who lost their agricultural land without being compensated with another agricultural land lot; Sixth, disputes related to the issuance of land use right certificates (including disputes on the conditions for the issuance of land use right certificates; disputes on subjects to the issuance land use right certificates; disputes on financial duties land users must undertake once granted land use right certificates; disputes on the land area figures as stated in land use right certificates).

When disputes of this form arise, the people claim their rights to complaints and denunciations to competent state agencies in order to protect their legitimate rights and interests. The people must first file their complaints to state agencies or organizations which issued the administrative decisions or administrative acts subject to the people’s complaints. If the people do not agree with the first settlement decision, they file the case with the administrative Court for settlement. Such mechanism of complaint settlement is unlikely to achieve expected results; because in accordance with the existing law, it is the agency that is the subject of the complaint that settles the complaint.
Moreover, the court system in general and the administrative courts in particular lack capacity and are poorly suited to dealing with administrative disputes. In most cases of administrative disputes, the people are always at a disadvantage in relation to state agencies. The percentage of administrative lawsuits won by the people is low. Consequently, the people’s complaints and interests are not properly dealt with, leading to prolonged land-related litigation or litigation filed to higher-level agencies, posing a potential risk of social instability. The people also need help from lawyers in making arguments and legal evidences to protect their legitimate rights.

Differences in land conciliation between urban and rural areas

The application of land dispute conciliation varies between urban and rural areas. In rural areas, given the blood relationships and close neighborliness, relations are established among the people. People tend to respect solidarity more. Thus, when disputes arise, conciliation is favored to defuse disputes in order to maintain solidarity. Furthermore, morality, traditional customs, habit, village law, and customary law greatly influence the life of the rural residents. During land dispute conciliation, the application of these factors in mobilizing and persuading parties usually has high success rates. In the life of a rural resident, the elderly, clan chiefs, and highly educated people are respected and admired; thus their voice and role are very important. Their participation in land dispute conciliation is a strong indicator of success. There is no participation of lawyers, both because it goes against the conciliation method and because the people are not accustomed to inviting lawyers to help settle disputes for them. In addition, one of the barriers to inviting lawyers for settling land disputes at the grassroots level is that the lawyer fees are higher than the financial capacity of most people.

In urban areas, conciliation is still used to settle land disputes at grassroots level. This work is normally undertaken by members of a conciliation team, street wardens or members of social organizations such as the Fatherland Front, the Women’s Union, the Veterans’ Association, or the Elderly Association. However, the rates of successful conciliation differ by the types of land disputes. For example, disputes on fences and joint alleys between households have the highest rate of successful conciliation as these disputes are simple and the disputes are of low value. It is easier for parties to reach an agreement. With regard to disputes on inheritance of housing and land, conciliation results are mixed. Conciliation succeeds when family members and co-inheritors have good will and make concessions to reach an acceptable solution. Conciliation fails when family members and co-inheritors do not have good will and are adamant about their points of views, or the inheritance is of huge value. With regard to disputes on transfers of land use rights such as leasing, conciliation within judicial procedure and conciliation without judicial procedure are used in the first instance to settle disputes. In urban areas, land-related disputes are fiercer and more complicated due to the high value of land. In addition, given the higher general knowledge of urban people compared to rural people, parties resort to legal consultation during the process of land dispute conciliation more often.
Causes of land disputes in Vietnam

According to interviewees and discussants, the following are significant causes of land disputes in Vietnam.

(i) **Flaws in the land administration system.** Previously, the State delegated power related to land administration to too many sectors, resulting in lax management. Numerous agencies, some poorly suited to the task, allocated land. To promote uniform land administration nationwide, the Government Council approved Decree No. 404/CP in 1979 on the establishment of the General Department of Farmland Administration (now the Ministry of Natural Resources and Environment). Still, despite strenuous efforts, land-related State administration does not operate proactively; land dossiers are incomplete, resulting in lack of legal and practical foundations to identify subjects’ farmland use rights and a failure to reflect the real state of affairs of land use. Land planning is not yet in good order. Land management is lax, with numerous agricultural and forest lands deserted or illegally occupied. In rural areas, village land intermingles without clear boundaries. The issuance of land use right certificates is slow, cumbersome and complicated. Illegal transfers and trades of land are uncontainable.

(ii) **Vietnam’s land policies and laws as well as other relevant policies are not uniform and clear.** The process of industrialization and modernization plus adverse impacts of the market mechanism have triggered disputes. Meanwhile, land policies and laws have failed to meet social demands and are incomplete for the effective management of land.

(iii) **Land-related state employees often act arbitrarily,** violating the regulations on land administration and use. In addition, the level of professional qualifications among some state employees is low.

(iv) **Propaganda, education and dissemination of the land law is not given a due attention.** The land law has not been uniformly enforced. For this reason, land users are not responsible in fulfilling their land use obligations and abiding by the land law.

(v) **Land disputes are also due to Vietnam’s historical legacy of shifting land policies and land use rights regimes.** With Vietnam’s shift from a centrally-planned and subsidized agrarian economy to a socialist-oriented market economy, the already diverse, complicated relationship with land has become more diverse and more complicated.

(vi) **Land disputes also stem from other reasons such as:** the splitting or joining of new administrative units, the unpunctual and unclear definition of administrative boundaries leading state agencies to ‘pass the buck’ around. Another cause is the land “fever” that has pushed up land prices.

Perceptions of the people and staff at communal and district levels on grassroots conciliation of land disputes

Social surveys and interviews with the people and members of conciliation teams and communal and district staff in five provinces about the role of grassroots conciliation in land disputes produced the following results:
The majority of the surveyed respondents said that grassroots conciliation in land disputes is important and necessary; because:

**First**, in recent years, land disputes have increased, with many complicated cases. Meanwhile, relevant state agencies lack the human resources, means and facility to settle land disputes in a timely manner. Unless timely measures are taken, disputes may become “hot spots” that involve many people and threaten socio-political stability. Therefore, land dispute conciliation at the grassroots level is a supportive method that helps reduce pressure on competent state agencies in settling land disputes.

**Second**, the timely conciliation of land disputes at the grassroots level right after the petty disputes arise will help parties to defuse their disputes, preventing disputes from growing fierce and complicated. Once grassroots conciliation in land disputes is successful, it will help the people maintain solidarity. At the same time, parties will save time, energy and money as they don’t have to pursue a lawsuit on land disputes.

**Third**, Land dispute conciliation at the grassroots level helps parties enhance their awareness and understanding of the law in general and land law in particular. On this basis, they will better abide by the land law. Moreover, land dispute conciliation at the grassroots level helps members of the conciliation team and the staff of the communes and grassroots mass organizations accumulate experiences and skills of mobilizing and persuading the people to abide by the land law; simultaneously, they improve their own knowledge and understanding of the land law.

**Fourth**, Land dispute conciliation at the grassroots level helps promote the position and role of the Vietnam Fatherland Front and grassroots mass organizations in rallying the people to coordinate with the communal administrations in settling land disputes among the people, contributing to local political stability.

A minority of surveyed respondents (mainly urban residents) said that land dispute conciliation has little effect, costs time and energy of the parties and is too formal, especially because land disputes are already conciliated by the communal People’s Committee where the disputed land is located. And later on, when one or the other party changes their mind, the disputes will still be forwarded to the People’s Court or to competent agencies for settlement.

According to interviews and social surveys, individuals and grassroots staff believed that not every dispute that arises should undergo grassroots conciliation. Grassroots conciliation can only be undertaken for land disputes on the rights and duties between land users. With regards to land disputes between land users and state agencies on land administration (administrative land disputes), the existing law stipulates that the disputes must be settled by competent state agencies instead of conciliation. However, respondents said the settlement of this type of disputes via administrative complaint does not achieve the desired result. People are unlikely to agree with the decision by the competent state agencies, a reason behind prolonged litigation over unclear, biased and unfair settlements. To this end, respondents said the State needs to establish a mechanism to consult and exchange opinions between parties to seek consensus; at the same time,
the administration must be responsible for explaining, communicating and persuading people about the causes of disputes. The settlement at the competent state agencies would be the last choice after the consultation mechanism fails.

Interviewees hold that knowledge of law in general and land law in particular, conciliation skills, prestige, enthusiasm, perseverance, the ability to apply laws and local customs as well as an impartial attitude are essential factors for the successful conciliation of land disputes. With regards to land disputes between the people and state agencies (administrative disputes), the success of dispute settlement depends largely on the impartial attitude, respect for and attention to the people’s voices, and the objective, fair, democratic, transparent and legal settlement by competent state agencies.

Respondents’ assessment of the role of land dispute conciliation differs between urban and rural areas. According to the rural people, conciliation plays an important role in land dispute settlement, helping to maintain the people’s solidarity and grassroots socio-political stability. Respondents who shared this assessment account for a very high percentage (more than 95%). Meanwhile, urban respondents said that the number of conciliated cases related to land disputes is low. Urban people held that grassroots conciliation only plays a role in newly-arising, petty disputes with a low value of disputed assets (e.g. below 5 million VND). For land disputes related to the inheritance of land, housing asset or contracts on trading, or transferring land use right worth from hundreds of millions of VND to trillions VND, even tens of trillions VND, dispute conciliation within and without judicial procedure can rarely bring about any success. The final measure is that parties file the case in the People’s Court and the dispute will be settled by a court ruling.9

The surveyed individuals and grassroots staff held that capacity and qualification of conciliators for land dispute conciliation at the grassroots level was often lacking. Conciliators must also be energetic and enthusiastic, knowledgeable of local customs, experienced, unbiased and impartial for the community’s interests. However, the majority of them lack the conciliation, mobilization and persuasion skills as well as the knowledge of land-related laws and policies. This directly impacts the effectiveness of land dispute conciliation.

Conciliators are heterogeneous in terms of capacity, legal knowledge and conciliation skills. The conciliators who are retired state employees have higher rates of success than those who are farmers or laborers. The reason may be that retired state employees have better knowledge of law in general and land law in particular than the farmers-turned conciliators.

Limitations and loopholes in the current legal regime on grassroots conciliation of land disputes

The social survey conducted in Da Nang city on the state of land dispute conciliation showed that successful grassroots conciliation cases account for between 20% and 40% of the total number of land disputes. Based on group discussions in four provinces and cities

9 But many complicated cases are prolonged for decades via various court levels and remained unsettled.
and interviews and social surveys in five provinces, the expert team analyzed the reasons behind less successful land dispute conciliation. The 2003 Land Law contains very limited definition of the role of conciliation, greatly impacting the effectiveness of land dispute conciliation. Limitations and ‘loopholes’ in the 2003 Law include:

First, clause 1 Article 135 of the 2003 Land Law stipulates “the State encourages parties’ self-conciliation” but does not explain in detail what methods or forms of self-conciliation are encouraged. In addition, the existing provisions do not mention in detail the legal value (binding or non-binding) of land dispute settlement via grassroots conciliation.

Second, clause 2, Article 135 of the 2003 Land Law stipulates land dispute conciliation should be undertaken by the People’s Committees of communes, wards and townships (hereafter referred to as communal People’s Committees). This provision does not touch upon the legal responsibilities of parties in implementing the results of successful land dispute conciliation. Thus if the parties do not implement the results of a successful land dispute conciliation, the communal People’s Committee does not have sanctions available to it to coerce them into implementation.

Third, the existing law defines fees for successful conciliation as 150,000 VND per case and for unsuccessful conciliations as 50,000 per case. The sum of money is not compatible with the efforts and time of conciliators. As land disputes are sensitive, complicated and related to many parties, the land dispute conciliation at grassroots level must be conducted many times. So the funding is not even enough for tea drinks served pending the conciliation of disputes. Moreover, when land dispute conciliation fails at the grassroots level, parties file petitions to the communal People’s Committees to ask for conciliation. In Can Tho city, land dispute conciliation at the People’s Committee of a commune, where the disputed land is located, is undertaken by the Conciliation Council. But the funding for the operations of the communal Conciliation Council is not regulated by the State.

Fourth, the 2003 Land Law does not stipulate whether the minutes of land dispute conciliation at grassroots level are compulsory or not, the legal value of grassroots conciliation minutes, nor how many times grassroots conciliation must be undertaken to be defined as unsuccessful so that parties can file their petitions to the communal People’s Committee where the disputed land is located to ask for formal conciliation.

Fifth, as mentioned above, factors like customs, habits, traditional morality; village regulations, customary law, cultural convention, etc. play a very important role in conciliating land disputes at the grassroots level (particularly in rural areas). However, the existing law has no provision on customs, morality and traditional, cultural factors in land dispute conciliation.

Sixth, the existing law has no provision on the role of lawyers in land dispute conciliation at the grassroots level or the training and qualifications of conciliators. In reality one of the key determinants of successful land dispute conciliation at the grassroots level is the capacity and legal knowledge of the conciliators. At present, the capacity and legal knowledge of the conciliators are heterogeneous. It is more likely that conciliators in urban areas have higher capacity and knowledge than those of conciliators in rural and
remote areas. To improve the quality of land dispute conciliation, the State needs to focus on regular training for conciliators on law and to encourage the participation of lawyers in land dispute conciliation.

**Seventh**, clause 2 Article 135 of the 2003 Land Law stipulates land dispute conciliation should be undertaken by the communal People’s Committee. But this provision does not provide solutions to the following cases:

- If land dispute conciliation succeeds, then one of the parties change his/her mind, should re-conciliation be undertaken or should parties be instructed to submit their complaints to competent state agencies to ask for settlement?

- If one of the parties is absent and the conciliation session is impossible, should the conciliation be postponed to another session or should minutes be made of an unsuccessful conciliation? How many times are parties allowed to be absent for legitimate reasons?

**Eighth**, the 2003 Land Law does not stipulate in detail which kind of land disputes must be conciliated at the grassroots level before being settled by competent state agencies and which kind must not be conciliated at the grassroots level.

**Ninth**, the existing land law also does not regulate in detail land dispute conciliation within judicial procedure (i.e. land dispute conciliation carried out by the People’s Courts during the process of handling the disputes). This makes land dispute conciliation within judicial procedure uncertain.

**Tenth**, the 2003 Land Law does not stipulate any process for consultation and opinion exchange between parties for disputes not to be conciliated at the grassroots level before being settled by competent state agencies.

**Eleventh**, in compliance with the existing law, land disputes between land users and competent state agencies exercising their competent powers but adversely affecting the people’s legitimate rights and interests (e.g., disputes on compensation, support, resettlement when the State acquires land) do not undergo conciliation because these disputes are administrative. Surveys and interviews show these disputes are on the rise. To improve the effectiveness of dispute settlement, there needs to build a consultation, dialogue mechanism to create relative consensus between parties before the case is submitted to the competent state agencies for settlement. However, the existing law does not regulate this issue.
4. Recommendations for refining the legal regime on land dispute conciliation in Vietnam

The above findings suggest several recommendations for reform of the legal regime governing land dispute conciliation in Vietnam.

**Recommendations on amendments and supplements to the 2003 Land Law**

**Recommendation 1:** Amendments to clause 1 Article 135 of the 2003 Land Law as follows: 1) The land dispute conciliation at grassroots level should be minuted. 2) If parties fail to achieve conciliation after three rounds of conciliation at grassroots level, they should submit the case to the communal People’s Committee to ask for conciliation.

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<th>Clause 1 Article 135 2003 Land Law</th>
<th>Clause 1 Article 135 2003 Land Law (after recommended amendments)</th>
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| 1. The State encourages parties’ self-conciliation or settlement of land disputes via grassroots conciliation. | 1. The State encourages parties’ self-conciliation or settlement of land disputes via grassroots conciliation.  

The land dispute conciliation at grassroots level must be minuted. If parties fail to achieve conciliation after three rounds of land dispute conciliation at grassroots level, they can submit the case to the communal People’s Committee to ask for conciliation. |

**Recommendation 2:** Amendments clause 2 Article 135 of the 2003 Land Law:

- Adding a provision on parties’ responsibilities in implementing the results of successful conciliation of land disputes.
- Adding a provision on the settlement in case one of the parties is absent and the conciliation session is impossible.
### Clause 2 Article 135 2003 Land Law  
(Annexed amendments, supplements)

2. If parties involved in land disputes fail to reach conciliation, they can file the complaints to the People’s Committees of communes, wards, townships where the disputed land is located.

... The results of the conciliation of the land disputes must be made in procès-verbals, signed by the parties in dispute, and certified by the local People’s Committees of the communes, wards or townships. In case the results of the conciliation are different from the real state of affairs of the land use, the People’s Committees of the communes, wards or townships are expected to forward them to the competent state agencies to settle them, in compliance with the provisions on land administration.

**Parties must comply with the results of successful conciliation; in case one of the parties does not implement the commitments stated in the results of successful conciliation, the communal People’s Committee can take coercive measures within its authority governed by law.**

In a case where one of the parties is absent for legitimate reasons, the land dispute conciliation is postponed. **In case one of the parties is absent for illegitimate reasons, the communal People’s Committee makes procès-verbals of unsuccessful conciliation.**

### Other Recommendations

- Specify in detail the significance and role of moral norms, traditional culture, customs, habits, customary laws and village law in conciliating land disputes at grassroots level.

- Add a provision detailing, and in certain cases encouraging, lawyers’ involvement in land dispute conciliation at grassroots level.

- Amend and supplement a provision on remuneration compatible with the time and effort spent by conciliators during land dispute conciliation.

- Supplement a detailed provision on the role of judges in conciliating land disputes while handling land dispute cases (i.e. detailed regulation of the role of land dispute conciliation within judicial procedure).
Recommendations for provisions on consultation and opinion exchange in land dispute settlement between the people and the state agencies

To mitigate the formation and improve the resolution of land disputes involving the people in conflict with the state, provisions on community consultation on compensation, support, and resettlement plans should be implemented along the following lines:

- Land developers are responsible for undertaking consultation with the community on compensation, support, and resettlement plans after compilation of draft plans are complete. Community consultation is undertaken within the community of people whose land use rights are requisitioned or affected by the resettlement.

- Documents for community meetings should cover major contents about options of compensation, support and resettlement plus a printed form: agree, disagree or others on such categories as area of land, type of land, quantity of asset types, class of asset types, prices of land, prices of assets, land compensation value, asset compensation value, resettlement plans for all cases in which land use rights are requisitioned by purchase or requisitioned. Time limits for the preparations of documents for community meetings should be clearly defined.

- Community meetings must be prepared carefully and ensure the participation of majority (e.g. at least two-thirds) of the total community members. In case a community has a large number of members, community meetings in groups should be allowed.

- Community consensus need to be clearly defined. Time limits also need to be specified in cases a community consensus is not reached, for the land developers to adjust compensation, support and resettlement plans based on the reports on community consultation results. Land developers should be responsible for organizing follow-up community consultation meetings after the adjustment of compensation, support and resettlement plans is completed. Compensation, support and resettlement plans should be approved by competent bodies only when community consensus is achieved.

Recommendation for Further Study and Piloting of Conciliation Option for Public Land Disputes

Under current law and practice, conciliation is only available for private, citizen-citizen disputes in Vietnam. However, other countries have successfully implemented conciliation forums for public, citizen-state land disputes. In these cases, a neutral party may be able to help resolve disputes even where the state is a party and retains ultimate authority. Mediators in these cases must be highly competent and politically astute to be successful. Further study and piloting of conciliation for public land disputes in Vietnam may yield breakthroughs that, in partnership with up-front community consultation mechanisms, could yield less intense conflicts and more lasting resolution for citizens and state agencies. See also The Asia Foundation’s companion study of public land disputes in Vietnam (2013).

5. Conclusion

Land disputes in Vietnam are on the rise becoming increasingly more complicated and intense, threatening social stability. Conciliation is one measure provided by the land law to defuse and settle land disputes. This study identified areas where conciliation is working and areas where it is not. For example, although conciliation is effective for simple rural disputes, where community solidarity and traditional norms still prevail, conciliation is less effective in urban areas where land has been commoditized and community structure is weaker. Conciliator capacity, vital to achieving successful settlement, is uneven in practice and remuneration for conciliators’ time and effort is low. The provisions of the existing land law relevant to grassroots land dispute conciliation are too sparse and, for example, do not mention in detail what kinds of land disputes are subject to grassroots conciliation and what kinds of land disputes are not.

Moreover, as the law is written, disputes between citizens or communities and the State cannot be conciliated and must be settled via administrative complaints. Because this system is ineffective, disputes of this type go unresolved. A consultative mechanism for public land issues is needed, and conciliation for public land disputes is an option worthy of further study.

Conciliator capacity and resources throughout Vietnam must be built up at the lowest (grassroots) and highest (large public disputes) for conciliation to survive and thrive as an effective alternative to the courts or other routes (such as violence and protest). Revisions to the existing legal regime can also be made to more effectively channel disputes to conciliation and improve outcomes once started. Improved land disputes conciliation could significantly reduce the ongoing tensions arising from Vietnam’s rapid urbanization and is thus of substantial importance for Vietnam’s future.
Appendix:

Case Studies of Land Disputes Settled via Grassroots Conciliation

The following are examples of land disputes settled by the People’s Committees of communes, wards and townships in Ha Noi:

Ms. H of H commune, Tu Liem district

Ms. H of H commune, Tu Liem district, Ha Noi city, filed a complaint to the communal People’s Committee, saying the near-by household of Mr. S, while building a house, appropriated 8m² of her household’s land. The communal People’s Committee attempted conciliation between H and a representative of S’s household with no result.

Later, H filed a case with the Court of Tu Liem district. But the court instructed her to redo the conciliation procedure at the People’s Committee of H commune because the People’s Committee had followed incorrect procedure because the Fatherland Front was absent. In addition, the representative of S’s household was not authorized in accordance with law.

H submitted a petition, asking the communal People’s Committee to redo the conciliation procedure, but the Committee did not agree. She could not take legal action to the Court of Tu Liem district.

In this case, the communal People’s Committee's conciliation did not have the full attendance of participants in compliance with Article 135 of the 2003 Land Law, the representative of S’s household, a near-by appropriator of land, was not authorized in accordance with law; the conciliation minutes were incorrect in format and content, thus not accepted by the Court of Tu Liem district. The court’s request that H return to the communal People’s Committee to redo the conciliation procedure was correct according to law. The disagreement of the People’s Committee of H commune was groundless. Therefore, the People’s Committee of H commune should have been responsible for receiving H’s petition on re-conciliation, and organizing conciliation activities within 30 working days.

Mr. T’s household in Quoc Oai district

There are cases of successful conciliation and the minutes of successful conciliation changed the state of affairs of land use by one of the parties. But one of the parties may change his/her mind, refusing to accept the results stated in the conciliation minutes. Mr. T’s household in Ha Noi’s Quoc Oai district is a case in point.

Mr. T’s household was in dispute over a land boundary with Ms. M’s household in S commune, Quoc Oai district, Ha Noi. T submitted a complaint to the communal People’s Committee asking for settlement. The Chairperson of the Committee called for the establishment of a Conciliation Council led by a Vice Chairperson of the Committee. The Conciliation Council successfully undertook conciliation and made minutes of a successful
conciliation between T and M. Five days later, when the People’s Committee carried out the re-measurement of the land, T changed his mind and adamantly refused to accept the conclusions stated in the conciliation minutes.

This is not a rare case. The problem not only hinders the settlement of disputes between parties but also puzzles communal staff. Thus, in this case, the Vice Chairman of the People’s Committee (Head of the Conciliation Council) should proceed as follows:

If conciliation was organized within 30 days in compliance with the law and one or the parties who previously agreed with the conciliation results changes their mind and refuses to accept the implementation of commitments written in the conciliation minutes, the Conciliation Council should continue organizing conciliation activities up to the date the conciliation expires. If the follow-up conciliation fails or if the 30-day deadline expires, new minutes are made and parties are instructed to demand the People’s Court or the higher People’s Committee settle the case in accordance with Article 136 of the 2003 Land Law.

Mr. K and Ms. M in Thanh Tri district

There are examples of other cases of subsequent disagreement. Following the communal People’s Committee’s successful conciliation, parties are provided with land use certificates, but later on, one of the parties puts forth new demands, as in the case of Mr. K and Ms. M in Thanh Tri district.

The land dispute involved Mr. K and his sister Ms. M in a commune of Thanh Tri district, Ha Noi: K and M built houses on a plot of land left by their parents without legal agreement. A dispute gradually arose between the families of K and M over the land boundary. Grassroots conciliation was undertaken and the minutes of successful conciliation were made by the communal People’s Committee. The land plot left by K’s parents was divided into two for K and M. Based on the communal People’s Committee’s minutes of successful conciliation and origin of land of the two siblings, the People’s Committee of Thanh Tri district issued a decision on granting new certificates of land use rights to K and M. After that, K rejected the district People’s Committee’s division of residential land into two halves. He proved that he had contributed to reinforcing his parents’ low-lying land into residential land. In addition, being the first-born son, he has to take care of worshipping ancestors. He continued to file a complaint to the district People’s Committee, demanding M to return parts of the inherited land or refund his contributions to land consolidation and ancestor worshipping. Thus, the content of the previous minutes on grassroots conciliation no longer provided a foundation for the subsequent settlement of Mr. K’s new demands.

The case of Mr. T’s family in Phuc Tho, Ha Noi stands in contrast. His family has 5 siblings, including 3 brothers. T is the youngest son, who lives on the 700 m² land left by his parents. His 2 elder brothers settled in the South and in 2010 wanted to return to live on the land left by their parents. After returning to the homeland, the two men asked T to divide the land, but T refused. Then, D, the eldest brother, submitted a complaint to the communal People’s Committee, asking for intervention. The communal People’s
Committee undertook conciliation based on the verification of the origin of land and consideration of the legitimate rights and duties of parties as well as T’s contributions in land consolidation and tending. In the conciliatory spirit of the Conciliation Council of the communal People’s Committee and parties’ voluntariness, T agreed to divide the lot of land for his brothers to build houses, and they lived in peace.

Mr. H’s family in N ward, Thanh Xuan district

Another typical case of a dispute related to inheritance is that of Mr. H’s family in N ward, Thanh Xuan district, Hanoi. In 2002, his parents died, leaving no written testament, just an oral promise made during their lifetime that the 400m² lot of land, including residential land, pond and garden, would belong to their 2 sons, including H, the eldest son, and his youngest brother. The right to use this lot of land was certified in 2002. After his parents’ death, the lot of land was used by H and his brother. At the end of 2008, both of them wanted to build new houses due to the degradation of their existing houses. But H’s younger sisters filed a complaint, demanding inheritance rights.

The ward People’s Committee called on parties for conciliation many times but failed because of the absence of H and his brother. The case lasted until 2010 when the ward People’s Committee established the Conciliation Council. The conciliation was unsuccessful because of the parties’ disagreement. At the same time, H and his brother submitted a complaint to the ward People’s Committee, asking for permission to rebuild houses given the serious dilapidation of their houses. But the ward People’s Community only permitted repair of the houses while waiting for the disputes to be settled. After the unsuccessful conciliation at the ward People’s Committee, H’s sisters forwarded their complaint to the Court of Thanh Xuan district, asking for their inheritance rights. To date, the case remains unsettled, resulting in tense intra-family conflicts.

Consider also the case of letting somebody stay in a house, like Ms. M’s family in Thuong Tin, Hanoi. In 1991, she moved to the South to live with her children. She asked the family of her cousin, Mr. B, to take care of her fully-furnished housing and land. B used the furniture and the farm produce that he cultivated on that piece of land. Both parties did not formulate any written document and instead spoke with each other in the witness of an old woman named L in their clan. From right after M left, B regularly visited the site for tending and harvesting crops. In 1996, B let his married son move to live on M’s land. In 2002, L died. In 2005, B’s son named D applied for a land use right certificate. In early 2007, D was given a certificate to use M’s land by a competent state agency.

In late 2007, M came back home to live, but D did not allow her in, saying that the land belonged to his father, who gave it to him when he got married. Shocked, M met B and demanded the return of her house and land. However, the witness, L, was dead and nobody could testify in favor of M. Although some of her neighbors knew the story, they were afraid to be involved in misfortune, as D was infamous in the village for his quarrelsomeness. Meanwhile, the families of B and D deliberately refused to cooperate. M submitted many complaints to the communal People’s Committee, asking for intervention to return the housing and land to her. She also demanded the authorized agency to cancel D’s land use right certificate.
The communal People’s Committee summoned D and B to conciliation many times, but they did not show up. The communal People’s Committee took no further measures. As B and D had not shown up the communal People’s Committee could neither undertake conciliation nor make minutes of unsuccessful conciliation. That meant M could not take legal proceedings to the court because disputes were not yet conciliated at grassroots level.

Ms. H’s family in Hoai Duc district

The following is a dispute related to exchange of farmland. In 1997, Ms H and Ms. N’s family exchanged farmland so the fields’ they tended would be near their houses, convenient for farm work, cultivation and harvest. H’s land was near the big road and N’s house and was used by N, while N’s land in the village near H’s house was used by H. The two plots of land had the same area. The parties made a verbal agreement but did not have it certified by the communal People’s Committee because they thought the exchange of land was just for more convenient farm work and that they would return the land to each other at a later date. Each of them kept their own certificate for the rights to use agrarian land issued by the competent state agencies.

After Ha Tay merged into Ha Noi, the road was upgraded to a highway with an urban area developing alongside. In late 2009, H proposed to N that both sides return land to each other. But N did not agree, saying that once the land was exchanged, it could not be returned. H met N many times demanding N return the land to her, but N still disagreed. In 2010, H submitted many complaints to the communal People’s Committee, demanding that the Committee intervene and that the communal staff copy the name of the land user written in the commune’s cadastral dossiers. At the conciliation session, the communal staff opened the cadastral book and said a party who had previously been allocated land remains the holder of the certificate of the use of that piece of land. The conciliation session settled the dispute in a way that both parties return the farm land to each other. H agreed that she would retrieve her farm land after N finished her harvest on that land lot. But N made inappropriate gestures during the conciliation session as she still refused to return the land to H. To date, the dispute is being handled at the district Court with no resolution.

Ms.Q in Gia Lam district

The following case demonstrates how the conciliation process can trigger the limitation of action in a lawsuit. On May 17, 2003, Ms. Q initiated legal proceedings to demand her share of her parents’ inheritance at the People’s Court of Gia Lam district. According to the document No 244/CV-TA provided on November 25, 2011, by People’s Court of Gia Lam district: “On June 16, 2003, the People’s Court of Gia Lam district received a complaint on land inheritance sharing dated May 17, 2003 by Q, 60, a resident of Dinh hamlet, Thuong Cat village, Thuong Thanh commune, Gia Lam, Ha Noi. Because Ms. Q’s complaint had not undergone conciliation in accordance with Article 138 of the 1993 Land Law, Gia Lam Court summoned Ms. Q to appear before the Gia Lam Court on June 26, 2003 to return her complaint for local conciliation. The Gia Lam Court did not directly send back the case to Thuong Thanh commune.”
On February 18, 2009, Ms. Q filed a complaint, saying: During their lifetime, L and C (her father and mother) built a modest house and a water tank on an area of 492m² in sub-ward 10, Thuong Thanh ward, Long Bien district, Ha Noi city. In 1984 L died leaving no will or testament. On November 26, 1994, C formulated “Paper of land division” for her children. According to the paper, Mr. H.A was given 12m of land facing the road, Mr. H.O 8m of land facing the road, Ms. N 3.5m of land facing the road and Ms. Q 6m of land facing the road. All the pieces of land stretch from the road to the end of the total lot. After that, the communal staff came to make an on-spot minutes of land division, but failed, because Mr. H.O did not agree. In 1998, C died. Now the asset is being managed and utilized by Ms. N, Ms. L, and Ms. N.A. Ms. Q demanded that the asset be divided in accordance with law or with the “Paper of land division” made by C in 1994, for her 4 children or their heirs.

According to the law, the limitation of actions on the division of inherited land filed by Phan C expired on June 11, 2008, but only on February 18, 2009 did Ms. Q file legal proceedings to demand the division of joint and inherited assets with the People’s Court of Long Bien district. In 2003, Ms. Q submitted her lawsuit to the People’s Court of Gia Lam district but the court returned it to her and required communal conciliation. From 2003 to the end of 2008, despite many unsuccessful conciliation attempts, Ms. Q did not file the complaint to the Court to continue demanding the division of inherited assets and the limitation of actions expired. Thus, the lawsuit was deadlocked.

Each of these cases is real. Land disputes are diverse and relevant to many aspects of social life. These cases show land disputes engaging grassroots conciliation are mostly disputes between individuals and households, many of whom are close relatives. The majority of disputes come from land appropriation, encroaching upon the boundary of land during construction process, letting people stay in one’s house, and disagreeing about land division left by parents without a testament. However, the aforesaid cases show that despite legal grounds to identify the land use rights for those whose names are included in the cadastral records, it is still difficult to retrieve land, as in the case of Ms. H in Hoai Duc. Or in the case of letting people stay in the house as of Ms. M, it’s extremely difficult to see justice done when “witnesses” die and individuals are able to obtain a land use right certificate.