

# Public Land Disputes in Vietnam: A Multi-Actor Analysis of Five Case Studies with an East Asian Comparative



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**T&C** Consulting



# **Public Land Disputes in Vietnam: A Multi-Actor Analysis of Five Case Studies with an East Asian Comparative**

**Transformation and Change Management Consulting Co. Ltd.  
and Professor John Gillespie, Ph.D. Monash University**

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## Table of Contents

<b>Acknowledgements</b>	<b>5</b>
<b>Executive Summary</b>	<b>6</b>
<b>Introduction</b>	<b>9</b>
<b>Analytical framework</b>	<b>10</b>
<b>Description of the cases</b>	<b>12</b>
<b>Mapping the cases</b>	<b>15</b>
Basic facts about five case studies	17
<b>Findings</b>	<b>19</b>
The level of local development	19
Divergence of actors' thinking in disputes	21
Availability of open forums	23
No role for the courts	24
<b>Comparative Study of Public Land Dispute Resolution in East Asia</b>	<b>25</b>
Introduction	25
Community consultation	26
Mediation	31
Courts	33
<b>Conclusions and Recommendations</b>	<b>36</b>
<b>Appendix 1: Son La Case Study</b>	<b>40</b>
<b>Appendix 2: Dung Quat Case Study</b>	<b>69</b>
<b>Appendix 3: Hoa Mac Case Study</b>	<b>86</b>
<b>Appendix 4: Can Tho (Hung Phu) Case Study</b>	<b>100</b>
<b>Appendix 5: Phu my Hung Case Study</b>	<b>117</b>
<b>References and Sources Consulted</b>	<b>140</b>

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## Executive Summary

Vietnam is facing the serious challenge of how to fairly and effectively resolve the rising number of land disputes. While thousands of private, citizen-citizen land disputes arise each year, land disputes involving the compulsory acquisition of land present more challenging issues of public interest, pitting groups of citizens against businesses and government. Unresolved or poorly-resolved public land taking disputes present a serious challenge to governmental and community legitimacy in Vietnam and contribute to social instability and insecurity. Although there is compelling evidence that dispute resolution mechanisms in Vietnam struggle to resolve public land disputes, only limited research and analysis of these disputes has occurred thus far.

We conducted a multiple-actor analysis of five land taking disputes in Vietnam. For the purposes of this study, an actor is a group or sub-group of like-minded people who share similar views about land disputes. The studies consider not only the formal policies and procedures applicable and/or employed in these disputes but also the perspectives and actions of citizens, businesses, investors, the media, mass organizations, and government officials. Case studies were selected for geographic and economic diversity and involve rural, peri-urban, and urban communities. The cases also vary in their level of private investor involvement and the intensity of the dispute. The cases studied were:

- Son La Hydropower Project - required the resettlement of over 20,000 households including 95,733 persons in the three provinces of Son La, Dien Bien and Lai Chau from 2003-2010. Despite its large size, the project proceeded relatively smoothly without any significant protests. Following a rocky pilot stage, more flexible resettlement policies acknowledged community preferences and cultural traditions. "Persuasion officials" stayed with villages and acted as a bridge between the people and the government. However, post-resettlement, people felt they were "forgotten" in their new places.
- Dung Quat Economic Zone Authority (DEZA) - A heavy industrial development in Quang Ngai province, including an oil refinery; this project required resettlement of thousands of households. In the first phase, despite relatively low compensation (26,000 VND/m<sup>2</sup>), the resettlement proceeded smoothly. In the second period (2006 to present), when project development occurred sporadically, compensation continually increased. Interestingly, these increases were accompanied by a surge in official complaints. A public protest temporarily blocked access to a factory onsite.
- Hoa Mac Industrial Park - This 134 ha industrial park on former agricultural land in Ha Nam province required more than 600 households to give up their land. However, after almost six years, over 100 households still refuse compensation or to relinquish their land. While the local government kept land prices low to attract investors, people were unhappy when they saw much higher compensation payments in neighboring Ha Noi and Hung Yen. No consultations occurred.
- Hung Phu Residential Area - This 42 ha project in Can Tho province consists of a new urban precinct, including a school, mall, supermarket, administration building, trade centers and residential buildings. By 2013, 123 households had received

compensation and moved out, while 34 households, who occupied 1.2 ha, continued to resist resettlement. One family went to extreme ends to protest, stripping naked and blocking site access. This behavior attracted international interest from traditional and new media across the world.

- Phu My Hung Residential Area - Occurring in a relatively wealthy residential development in Ho Chi Minh City, this dispute concerned whether land rights holders or a private developer had to pay the increasingly costly land use fee. The dispute also involved how the fee should be calculated. The local government in this case acted as both a private investor and the regulator of fees. Robust media coverage and formal complaints shaped the debate, but like the other case studies, the courts were not involved.

## Results and Conclusions

In each case, state officials emphasized the people's obligation to support the state's pre-determined plans on land acquisition and/or land compensation. While investors and officials tended to focus on monetary compensation, the cases showed that the quantum of compensation was generally not the dominant factor underlying dissatisfaction and disputes. Other more significant factors for land users included: security and stability of livelihood, continued practice of traditional and cultural lifestyles, having a 'say' in the process (consultation), sharing the benefits of the development, and equality in compensation and support amongst similarly-situated relocatees. The significance of these factors varied amongst rural, peri-urban and urban users and over time for development projects.

The cases reveal the incidence and intensity of disputes were higher where the divergence in the actors' thinking about access to land and fair compensation was largest. For example, the ease of land acquisition in Chau Giang commune (Hoa Mac IP) or in the main resettlement stage of the Son La HP contrasted with the sharp disagreements in Hung Phu and Phu My Hung. The case studies also showed that poor consultation and unfair compensation practices can transform initial convergence about compensation and resettlement into strong disagreement.

Convergence in the actors' thinking occurred, if at all, through a series of dialogues among land users and officials. Open forums where actors could discuss their views and expectations were rare. In the Son La case, 'Persuasion Officials' acted as "cultural bridges", facilitating discourse between state officials and land users. But this kind of consultation and mediation was the exception rather than the norm. In every case, people rarely mentioned the court as an effective means of dispute resolution, and courts played no role in any of the disputes studied.

Comparative case studies from China and Indonesia show that sometimes states gain more actual control over land disputes by relinquishing or relaxing some formal controls. Tight state management of formal dispute resolution has the unintended consequence of driving land users into non-institutional channels of protest and dissent. Where governments relax state management and open dispute resolution to genuine dialogue and negotiation, creative ways to reconcile law and order with protection of private rights emerge.

## Recommendations

- 1) Provide Meaningful Public Consultation to Promote Convergence of Thinking. The common regulatory approach in Vietnam of “the state knows best” or “the officials persuade people” should be reevaluated. This approach does not allow land users to openly express their views, nor does it encourage officials and investors to seriously listen to the people. As an alternative to top-down state management, land users should be invited to express their views and participate in planning and development, land acquisition processes and, importantly, during the post-resettlement stages. This is an understudied area of land disputes and there is a clear need to investigate and pilot how best to form these dialogues among government, investors, and land-users.
- 2) Cultivate Mediation and Mediating Organizations. Consistent with the need for open forums and dialogue, there is a need to nurture mediators and cultural interpreters and/or mediating organizations that can facilitate open dialogues in land acquisition projects and land disputes. Currently, it is difficult to locate neutral mediators who can bridge the cultural divide between state officials and developers on one side and land users on the other. In land-taking cases, mass organizations such as the Farmers Association or Women Union are currently not well positioned to serve this role, but regulatory frameworks could be altered and training and support could be provided to cultivate a more constructive role for these organizations. Grassroots democracy reforms in China and Indonesia suggest that more than any other single factor, rebalancing the power imbalance between land users and state officials/investors will reduce the number and intensity of land disputes. Additional recommendations include: 1) compensation policies should promote stability and equality. Land planners should give more attention to contingencies such as increases in land rights, lease prices and fees and delays in project construction and demand; 2) monitoring and assisting relocated people during the post-resettlement phase must be a priority to reduce the incidence of future disputes and dissatisfaction; 3) in-depth research into the interactions, formal and informal, between private developers, government, and land users could shed light on current practices and offer ways to reduce disputes while improving predictability for investors and the state.



## I. Introduction

As social and economic conditions have evolved significantly after more than two decades of reform, Vietnam is facing the serious challenge of how to fairly and effectively resolve a rising number of disputes<sup>1</sup> concerning a range of socio-economic issues, such as business transactions, the environment, and land. Given land's preeminent role as both a source of shelter and livelihood, land disputes are becoming particularly prominent and contested. However, while thousands of private, citizen-to-citizen disputes arise each year, many land disputes present more challenging issues of public interest, pitting groups of citizens against businesses and state agencies. Indeed, current economic, environmental and development pressures have led to a surge in the number and prominence of public land disputes in Vietnam. Unresolved or poorly-resolved disputes present a serious challenge to governmental and community legitimacy in Vietnam and contribute to social instability and insecurity.

The court is an option for dispute resolution, but the court system in Vietnam is weak, and businesses and citizens alike tend to opt for other dispute resolution forums before resorting to the court (Gillespie 2011a). When the state is a direct or indirect party to a dispute, the Vietnamese courts are encouraged to protect the 'state benefit' as defined by local political leaders (Gillespie 2011a, Nicholson and Nguyen 2005). Other obstacles to resolving these disputes include legal loopholes, overlapping and unclear lines of responsibility among different authorities, complicated and non-transparent procedures, and lack of information and legal awareness by petitioners (Gillespie 2011a, Dang Hung Vo 2009). Divergent conceptualizations of land, land rights, and dispute resolution predominate amongst farmers, urbanites, officials, and businessmen. And while parallel conditions of deficient legal infrastructure and insecure property rights can be found across many less developed nations, Vietnam offers a unique mixture of a socialist-market political economy with limited property rights, emerging and heavily-regulated property markets, and politically subordinate courts operating in one of the fastest developing economies in the world.

Although there is compelling evidence that dispute resolution mechanisms in Vietnam struggle to resolve disputes concerning state land acquisitions and private land conversions, only limited research and analysis of public land disputes in Vietnam has occurred thus far. The World Bank (2011) recently published an extensive report on land acquisition and land conversion in Vietnam. The report examined the technical policies of land acquisition and conversion, land valuation mechanisms, and evaluated the administrative complaints system nominally available for citizens who dispute the land acquisition process. The report makes numerous technical recommendations, drawing from comparative international practices, on how land acquisition, compensation, and complaint resolution can be improved in Vietnam. The Asia Foundation (2009) previously released a similar report with respect to the administrative complaint system. Although these reports present important analysis and recommendations for land planning, land development, and dispute resolution in Vietnam, it is clear, from this study and past experience, that any analysis focusing on

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<sup>1</sup> For this study, we considered 'disputes' with a wide range of intensities and characteristics, from violent protests, formal complaints, and informal complaints, to avoided confrontations and serious, but unvoiced dissatisfaction. A broad definition of disputes is appropriate for a study of Vietnam where formal two-sided disputes involving the state, much less court cases, are less prevalent.

formal policies and procedures examines only part of the issue and proscribes solutions addressing only part of the problem.

We therefore proposed a multiple-actor analysis of public land disputes in Vietnam, one that would consider not only the formal policies and procedures applicable and/or employed in these disputes but also the perspectives and actions of citizens, businesses and investors, the media, mass organizations, and government actors from all levels of government. By assessing the beliefs, arguments, and relative power of each party to a dispute, an analysis of which actors and viewpoints are driving or escalating disputes and why various dispute resolution mechanisms are failing or succeeding can be made.

In partnership with Australian Department of Foreign Affairs and Trade, The Asia Foundation commissioned this study by T&C Consulting and Professor John Gillespie of Monash University consisting of five in-depth case studies and comparative research from other East Asian developing countries. The cases were selected for geographic and economic diversity and involve rural, peri-urban, and urban communities. The cases vary in their level of private investor involvement and the intensity of the dispute. Four of the cases focus on land-taking projects, which account for a substantial number of the serious disputes in rapidly-developing Vietnam. The fifth case involves a dispute over land use fees in a relatively wealthy urban residential development.

To our knowledge, this is the first multi-actor study of land disputes in Vietnam. By understanding what brings parties together to resolve their differences, this study suggests the most (and least) promising methods of dispute resolutions. While the relatively narrow empirical base of our study limits the extent to which we can generalize the findings, many results were strikingly consistent across all case studies, and the data are sufficiently rich to provide significant conclusions and worthwhile parallels from comparative literature.

We start with our analytical framework that was applied to the five case studies. We then provide background information on the cases and compare the cases along different dimensions. We then draw parallels between land dispute resolution in Vietnam and in other developing East Asian nations, especially China and Indonesia, and end with our conclusions and recommendations.

## **2. Analytical framework**

This study applies a multi-actor analytical framework. This framework requires first an understanding of what the actors involved think about the settlement process in terms of both the methods and outcomes of the settlements. Thus, we need to categorize the different actors involved according to what they think about land and land regulation. An actor here is a group or sub-group of like-minded people who share similar views.

To understand the potential for lasting settlements, we need to examine the factors that motivate different groups to change their regulatory preferences. Settlement might occur where some groups adjust their regulatory priorities and bring the settlement process closer to the regulatory preferences of other groups involved. Lasting solutions are possible where the regulatory preferences of all the groups involved converge. For a detailed discussion about this methodology see Gillespie (2011b).

A growing body of socio-economic and socio-legal studies demonstrates that legitimacy expectations motivate people to voluntarily change their regulatory preferences (Levi and Sacks 2009; Black 2008; Tyler 2006). The studies identify three core aspects of legitimacy that change regulatory preferences: pragmatic, normative, and cognitive.

### ***Pragmatic Legitimacy***

Regulatory groups confer pragmatic legitimacy on regulators and regulatory regimes that convey *material benefit*. For example, in land acquisition cases, the group comprising land users might assess the legitimacy of the project by reference to the economic values of their pre- and post-acquired agricultural land.

### ***Normative Legitimacy***

Socio-legal theorists insist, however, that what constitutes a material benefit is socialized by understandings about “what is right, separately from judgments about what is personally beneficial” (Tyler 2006: 18). Notions of right and wrong are, in turn, assessed by reference to a deeper moral base - the normative legitimacy (Esty 2006). In land acquisition cases, for example, the resettled people might assess whether the resettlement was just and fair by comparing the economic value of land they received with the land received by others. If everyone lost equal amounts of land, the resettlement might appear normatively legitimate even though from a pragmatic perspective they incurred economic loss.

### ***Cognitive Legitimacy***

What constitutes the collective good is also shaped by cognitive legitimacy, which arises when a group regards a regulator and its procedures and outcomes as inevitable and necessary. Cognitive legitimacy is often tacit and taken for granted and is consequently closely associated with identity (March & Olsen 1996). For example, Victor Nee (2005: 55) observed in relation to China that “if the formal rules are aligned against the identity and perceived interests of members of close-knit groups, oppositional norms are likely to emerge to counter the formal rules.”

The legitimacy framework provides a means of predicting changes in regulatory preferences. Studies show that although pragmatic legitimacy is important in shaping regulatory attitudes, it is “socially embedded” (Granovetter 2005) in a matrix of normative and cognitive beliefs. Changes in normative expectations, and especially the cognition of what seems beneficial and appropriate, alters perceptions about what benefit to expect from regulation. What this means for our study is that lasting settlement is possible where different actors share similar normative and, especially, cognitive attitudes towards land resettlement. Pragmatic legitimacy, although the easiest to measure objectively and quantitatively, is the least important indicator of dispute resolution.

The multi-actor perspective suggests that the chance of successful dispute resolution increases when different actors converge in their thinking. The convergence requires one or more groups to adjust their regulatory thinking about the dispute. The challenge of using this analytical framework is that most cognitive and normative thinking is implicit, and a group may not recognize its own mental model until it is contrasted with different models. Moreover, in the field, interviewees do not neatly divide their comments into

pragmatic, normative, and cognitive categories. This approach thus requires some analytical interpretation by researchers.

This study also focuses on the different forums available and used by participants in the cases. Groups in land disputes interact with each other in a range of forums. Discourse in the forums can vary from unmediated or lightly mediated to highly-scripted and controlled. In mediated forums, an actor or group sets the rules governing the discussion. This limits the types of information and arguments that other actors (or groups) can use to support their case. Conversely, in unmediated forums, all the groups have equal powers in setting the rules of discussion. This type of forum is generally more effective in promoting mutual understanding and the convergence of preferences that leads to lasting settlements. Since key elements of cognitive and normative thinking are tacit, it is important for disputing groups to have sustained contact with each other. A large institutional learning literature (Selnes and Sallis 2003) shows that sustained contact through multiple discussions is required to convey tacit knowledge. “Cultural intermediaries” who can speak the “languages” of different groups can improve communication and improve the chances of preference convergence. These intermediaries “translate” one group’s thinking into the “language” of the other groups and vice versa (Gillespie 2011b).

### **3. Description of the cases**

#### **Son La Hydropower Project**

The Son La Hydropower Project required resettlement of 20,260 households including 95,733 persons in the three provinces of Son La, Dien Bien and Lai Chau. The resettled people were overwhelmingly of Thai descent (an ethnic minority in Vietnam). The resettlement process took place in 2003-2010 and was completed April 15, 2010. Despite its large size, over 100,000 households, the process proceeded smoothly without any significant protests. Most conflicts were resolved at commune and village levels. Only one individual claim was lodged with provincial level authorities. This case explores what contributed to this “smoothness” on the surface of land acquisition and any potential risks of dispute in the post-resettlement period.

The case analyzes the resettlement in three stages: 1) The pilot stage; 2) The large-scale resettlement stage; and 3) The post-resettlement stage. The pilot stage (2003 - 2005) resettled 60 households from Muong La District to Tan Lap commune, Moc Chau District. The new location was nearly 200 km from the original ‘home country’, with quite different environmental conditions and infrastructure. The government provided an “urban style” design for the commune with concrete houses. People were very unhappy with the modern but “strange” living conditions and unfamiliar livelihoods.

During the Large-scale resettlement stage, the government learned from the pilot stage and allowed people to participate in choosing new locations and to reuse housing material, and more generally minimized the disruption in living conditions. Cultural traditions were also better respected. In addition, “persuasion officials” stayed with people and acted as a bridge between the people and government. As a result, about 20,000 families were moved without serious or formal disputes. However, in the Post-resettlement,

people felt they were “forgotten” in the new places. During this stage, officials were less approachable; issues arising from the resettlement were not promptly addressed; and the people’s negative emotions surged, fermenting the potential for disputes.

### **Dung Quat Economic Zone Authority (DEZA)**

Dung Quat Industrial Zone (10,300 ha), presently called Dung Quat Economic Zone Authority (DEZA) (45,332 ha), was established by a decision issued by the Prime Minister. During the first period (1997-2005), 1,111 households were resettled to new locations. While compensation was very low (26,000 VND/m<sup>2</sup>), the resettlement was smooth with few complaints from relocatees. During the second period (2006 to date), the land acquisition affected another 8,297 households, of which 701 were to be resettled to new locations. The compensation increased almost every two years, and the land price in 2012 was about 10 times higher than in 2006. Interestingly, in parallel to the increase in compensation was a surge in people’s complaints, with more than 520 complaint letters issued from 2010 to 2012.

This case presented a counter-intuitive phenomenon: disputes surged in the second period when much higher compensation was offered to the relocatees. In the first period, the officials and people shared common views about land access and compensation. They both regarded land as a state asset, and believed that the people have an obligation to support the state plan. In addition, the compensation was much higher than earnings derived from agricultural production, the only basis for calculating land values at that time. In the second period, however, inconsistencies emerged. First, land prices skyrocketed, and late movers benefited from higher compensation payments. Some of these late movers were uncooperative and delayed their resettlement. Second, projects in DEZA were implemented at different speeds. Some projects could not pay compensation or relocate people on time. In those cases, people could not go to the new locations, receive the money, nor could they build houses or invest in their old lands. Finally, post-resettlement living conditions and livelihoods were far from the “better lives” people were promised and came to expect. As a result, some people believed they were being unfairly treated and/or deceived.

*“We are not offering you the water we drink because you could not drink it anyway.”*  
(A relocatee in Dung Quat - Quang Ngai) - Post-resettlement issues

### **Hoa Mac Industrial Park**

Hoa Mac Industrial Park (IP) Project was initiated in 2007 by the Prime Minister. The IP is located at the north of the national road 38, in Hoa Mac town, and in Chau Giang and Trac Van communes, Duy Tien district, Ha Nam province. The total area of the IP is 134 ha taken from agricultural land. More than 500 households gave up their land for this Project, but after almost six years, 103 households in Trac Van still refuse to relinquish their land.

This case represents land acquisition issues in a peri-urban area. While the local government kept the land price low to attract investors, people were unhappy when they saw much higher land prices (and compensation) in Ha Noi and Hung Yen - two neighboring provinces. More importantly, people felt that their land rights were not

respected. They did not have any “say” in land price decisions, nor did they have any “negotiation” with the investors.

*“Ho Chi Minh said: ‘Vietnam is a unified nation!’ [Nuoc Vietnam la mot, dan toc Vietnam la mot] Why was my land worth only one tenth of the other land just across the road?”* (A landholder in Duy Tien District, Ha Nam province - Hoa Mac IP)

### **Hung Phu Residential Area**

Hung Phu Residential Area Project was approved by the Can Tho People Committee in 2002. The purpose of the project was to develop a new urban precinct, including a high school, shopping mall, supermarket, administration building, trade centers and residential apartment buildings. The area was in Cai Rang District, Can Tho City. There were 157 households affected across a 42 ha site. By 2013, 123 households had received compensation and relocated, while 34 other households, who occupied 1.2 ha, resisted resettlement. The resisting households argued that the compensation was inadequate, compared with other projects in the area. It also did not enable them to reestablish themselves in new locations. One family went to extreme ends to protest, stripping naked to express their opposition to the project. This behavior attracted interest from media across the world and strengthened the family’s confidence in their dispute.

This case documented a land dispute in peri-urban Mekong Delta area. It demonstrates how people’s negative emotions can surge and how such emotions produce extreme behavior in some individuals. Again, there was a lack of dialogue, open forum, and community consultation in the land acquisition process. The business investors played a more prominent but less constructive role in the case. They attempted to negotiate with relocatees but only after development planning had already occurred. The investors’ handling of the protests also provoked outrage and attention.

*“I’m now not afraid anymore. I call media reporters; they would post all my stories.”*  
(A protester in Hung Phu Residential area, Cai Rang District, Can Tho province)

### **Phu My Hung Residential Area**

The dispute in Phu My Hung case study took place in one of the most modern residential areas in the country. Phu My Hung Project started in the late 1990s as a “pilot” project for constructing a modern residential area in Ho Chi Minh City. Under the 1993 Land Law, Foreign Direct Investment (FDI) enterprises were not allowed to conduct real estate business. Under a special arrangement, the investor PMH rented land, built houses, and then returned the land use rights to the City, which then sold houses to the public. In 2004, the new Land Law took effect, allowing foreign companies to conduct real estate business in Vietnam and pay land use taxes. Foreign enterprises renting land for infrastructure business were permitted to apply for the land use rights. These enterprises were required to pay their financial obligations, i.e. land use fees, to the state prior to the handover. After the new Land Law was enacted, the local government allowed Phu My Hung to continue as a pilot business, leaving the responsibility for paying land fees with the households.

From 2004 to 2009, land prices in this area increased about 500 fold (from 26,000 VND to 13,200,000 VND), as did the land use right fees (LUF). In 2009, residents complained that the land use fees were shockingly high, as the land price had doubled since 2008. They disputed the fee, arguing that the new Land Law required Phu My Hung Development Corporation (PMHDC) to pay the LUFs. On the surface, the dispute took place between land users and PMHDC. A deeper investigation suggested that central and local government contributed to this dispute through inconsistent regulations and different approaches between Central and Local government to the Project. With the involvement of the Government Inspectorate, the issue appeared to be settled in 2013. Under the settlement, PMHDC was required to pay LUFs for future contracts, and the people would pay LUFs for existing contracts with prices set at the level of the initial agreement (i.e. before they drastically increased in 2009). Yet, in June 2013, a formal decision has still not yet been announced.

This case provides a contrasting picture to the other four cases. In the other four cases, disputes occurred when people gave up their land rights. In this case, the dispute occurred when people “bought back” their land rights. In the other four cases, people complained that the land prices were too low (from 4000 VND/m<sup>2</sup> to 400,000 VND/m<sup>2</sup>). In this case, the land prices in dispute were too high (13,200,000 VND/m<sup>2</sup>). In all the cases, the prices were set by provincial government, and the people believed that the prices worked against them. Inconsistencies in sub-laws and the regulatory policies of central and local governments also contributed to this dispute.

*“From the agricultural land, we invested huge money... Thanks to our investment, the land price was now set extremely high. We had to pay for what we contributed. How can we do business [if we also must pay the land use fee]?” (Representative of Phu My Hung Development Company)*

Appendix I summarizes the five disputes.

### 3.1 Mapping the cases

This section further describes the cases by highlighting various case attributes.

The cases were drawn from across the country and from rural, peri-urban, and urban areas.

- “Urban-rural”: Son La HP was in a rural, mountainous area, while PMH was in Ho Chi Minh City. Hung Phu RP, DEZA, and Hoa Mac IP were in peri-urban areas.
- “Region”: Son La HP and Hoa Mac IP were in the North, DEZA was in the Central region, and Hung Phu RP and PMH RP were in the South.

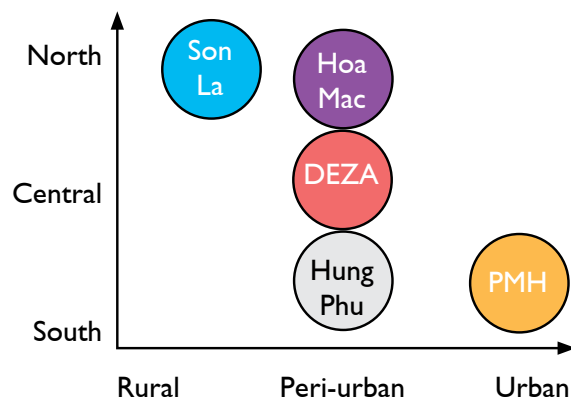


Figure 1

“*Number of affected people*”: Hung Phu RP and Hoa Mac IP had smaller numbers of affected people (hundreds). Son La Hydropower and PMH had the largest numbers of affected people (tens of thousands).

Most but not all cases involved relocation of residents and often involved a change in livelihood as well.

- “*Change in residents*”: Three cases involved changes in people’s living locations. These are Hung Phu RP, Son La HP, and DEZA. No families needed to change their living location in Hoa Mac IP and PMH.
- “*Change in livelihoods*”: People in PMH did not have to change their livelihoods. In all the other four cases, people (especially farmers) needed to change their livelihoods as a result of land acquisition.

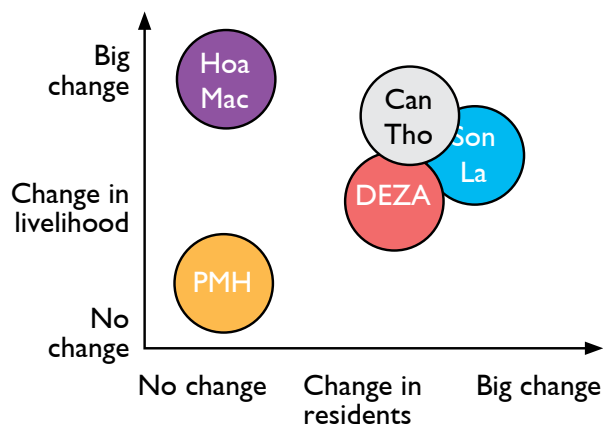


Figure 2

The cases ranged in their degree of complexity and intensity.

- “*Complexity of dispute*”: The dispute in Son La HP was the most complex in that it involved economic, social, cultural, and historical factors. Dung Quat was second in complexity. Hoa Mac IP and Hung Phu RP were in the middle, while PMH was simply economic.
- “*Intensity of dispute*”: Son La HP and Hoa Mac IP were the most implicit or unstated, with almost no complaint letters. PMH, Dung Quat, and Hung Phu were the most explicit. People sent complaint letters, collectively voiced their concerns, or even protest

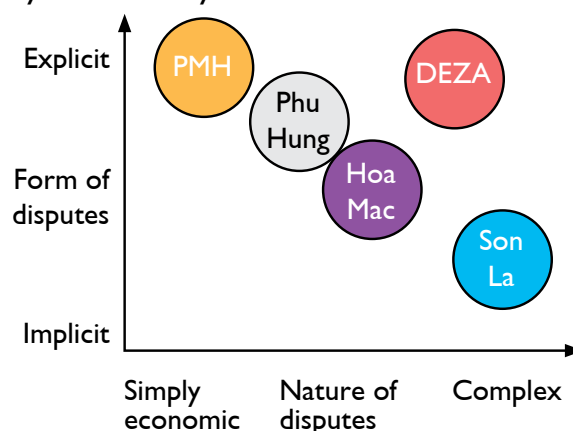


Figure 3

“*Involvement of investors*”: In two cases - DEZA and Son La HP - investors were not involved in land acquisition. In Hoa Mac IP, investor had some informal involvement, while in Hung Phu and PMH, investors were direct actors in the disputes.

“*Involvement of media*”: The Hung Phu case generated sensational media coverage, both traditional media and social media. The PMH and Hung Phu cases also generated significant media coverage and commentary, while the other cases were less publicized.



“*Type of land development*”: The Son La case involved a purely public development (a hydropower dam), while the PMH case involved an existing residential development. Hoa Mac IP and DEZA were primarily industrial developments while Hung Phu was a residential development.

The cases also shared striking similarities, most especially the complete lack of involvement of the courts. Lawyers were involved explicitly only in one case, PMH. Government officials from the center to local were key actors in the cases.

Table 1: Basic facts from the five case studies

	<b>Son La Hydropower</b>	<b>Hoa Mac Industrial Park</b>	<b>Dung Quat Economic Zone</b>	<b>Phu My Hung Residential area</b>	<b>Hung Phu Residential area</b>
Time of Project	2002 - 2010	2007 - 2012	1997 - 2012	1999 - 2012	2002 - 2013
Time of disputes	2003 - 2010	2009 - 2012	2008 - 2012	2009 - 2012	2009 - 2013
Place	Son La, Lai Chau, Dien Bien provinces (The case study focused on Son La)	Duy Tien District, Ha Nam province	Dung Quat districts, Quang Ngai Provinces	Phu My Hung Residential areas, Ho Chi Minh City	Cai Rang District, Can Tho Province
Purposes of land acquisition	To build Son La Hydropower Plant and water reservoir	To develop an industrial park	To develop an economic zone in the province	N/A	To develop a residential area
Amount of acquired land	Unknown	134 ha	2,820 ha	60 ha	42,65 ha
Number of households affected	About 20,000 households	About 500 households	1,528 households	About 10,000 households	157 households

	<b>Son La Hydropower</b>	<b>Hoa Mac Industrial Park</b>	<b>Dung Quat Economic Zone</b>	<b>Phu My Hung Residential area</b>	<b>Hung Phu Residential area</b>
Nature of land disputes	<p>There was only 1 written complaint. Most disputes were verbal in people's village meetings</p> <ul style="list-style-type: none"> <li>- Before resettling, people voiced their concerns or delayed moving</li> <li>- After resettlement, people showed their unhappiness with new places</li> </ul> <p>Unhappiness due to:</p> <ul style="list-style-type: none"> <li>- Lives were disrupted in economic, cultural aspects</li> <li>- Post-resettlement issues were not resolved as promised</li> </ul>	<p>There were no written complaints. People disputed by not accepting compensation for their land.</p> <p>The complaints were about:</p> <ul style="list-style-type: none"> <li>- Low compensation compared to other provinces</li> <li>- Uncertain new livelihoods</li> </ul>	<p>There were both written and verbal complaints.</p> <p>The complaints were about:</p> <ul style="list-style-type: none"> <li>- Low compensation compared to other relocatee groups</li> <li>- Poor living conditions and uncertain livelihoods in new places</li> </ul>	<p>There were both written and verbal complaints.</p> <p>The complaints were about:</p> <p><i>"Who pays the land use fees"</i> (residents or the Investor) and/or <i>"How much"</i> the fees should be</p>	<p>There were written and verbal complaints. Some extreme behavior from a single family.</p> <p>The complaints were about low compensation (especially when compared to selling price of the developed houses in the area)</p>
Forums	<ul style="list-style-type: none"> <li>- The first period (pilot) - only village meetings, state's plan was imposed</li> <li>- The second period - more dialogue thanks to 'persuasion' officials</li> <li>- Post-resettlement- very limited dialogues</li> </ul>	<ul style="list-style-type: none"> <li>- Most dialogues were in village meetings</li> <li>- The government persuaded people. There was no exchange or adjustment.</li> </ul>	<ul style="list-style-type: none"> <li>- Most dialogues were in village meetings</li> <li>- Officials persuaded people to follow the plan</li> <li>- People did not have a choice or voice in the policies</li> </ul>	<ul style="list-style-type: none"> <li>- Most dialogues were meetings between PMH Co. and residents</li> <li>- People organized meetings and operated a website to discuss amongst themselves</li> <li>- Media and lawyers provided advice to actors</li> </ul>	<ul style="list-style-type: none"> <li>- Most dialogues were in village meetings</li> <li>- Officials persuaded people to follow the plan</li> <li>- Officials organized a number of meetings with non-compliant households</li> </ul>

## 4. Findings

We now draw some general patterns from the five cases and present them in terms of relationships between several factors and land disputes. These factors include: the level of local development, divergence of actors' thinking, and forums available and used. We also note the minimal role of the courts.

### 4.1 The level of local development

The study revealed that the levels of local development at the time of land acquisition influenced the nature of disputes. The disputes in rural, less developed areas had certain commonalities, which are different from cases in peri-urban areas and from those in a developed city. In addition, disputes in the same area changed as land values increased and development projects progressed.

#### **Land disputes in rural, less developed areas: “Where are the better lives?”**

Son La Hydropower and Dung Quat Economic Zone Authority (DEZA) were in this category. The two cases shared certain characteristics of land disputes, which in turn distinguished them from other cases. First, land acquisition tended to be smooth at the resettlement period, but disputes emerged later in the post-resettlement. Although giving up residential land was never easy, people in Son La and Dung Quat accepted the move without formal complaint. People in these areas had a great sense of “obligation” to support state plans. In addition, the need for investment in the areas was so great that people welcomed investors and/or the government taking their land with compensation and the promise of better lives. To many relocatees, the compensation was reasonably high compared to what they could earn from the land. People in Dung Quat even used the phrase “won a slot in the project” (*trung du an*) to refer to the compensation process. Government policies and officials communication also implanted expectations of “better lives” after the resettlement.

However, negative emotions emerged post-resettlement in both cases. Living conditions were either poor (as in Dung Quat) or unsuited to people's customs (as in Tan Lap, Son La). New livelihoods were not easy to learn. Other cultural and social aspects of lives were disrupted. These created a sense of uncertainty and anxiety. As time went by, people observed inconsistencies in the treatment of different groups of relocatees. Since policies changed, later relocatees tended to get “better” treatment. Comparisons built a sense of unfairness. Yet, local officials were not as visible and responsive as in the resettlement period. They returned to their bureaucratic routine: “*Let's wait for the policies*” or “*I'm not responsible for this issue*”. These realities gradually built a sense of resentment and distrust. People complained for different reasons (e.g. measurement of lands, low compensation, and recognition of their investment in land), in different ways (e.g., informally as in Son La or formally as in Dung Quat). However, the root cause tended to be the same: Their dreams for “better lives” were unfulfilled.

### Land disputes in peri-urban, developing areas: “Recognition of land rights”

Hoa Mac IP (Duy Tien, Ha Nam) and Hung Phu RP were in this category. People in these cases divided right at the beginning of land acquisition: some accepted the compensation while others resisted. Residents made various comparisons in their assessment of the compensation offered:

- *Comparison with earnings from agricultural lands:* the compensation in both cases was higher than average earnings in many recent years. Local officials and investors tried to direct people to make this comparison since it supported the land acquisition. Farmers and early relocatees (those moved in the early stages of the project) tended to use this comparison.
- *Comparison with other provinces:* In Hoa Mac, the most critical comparison was with land compensation in Ha Tay and Hung Yen, two bordering provinces. In these provinces, the compensation was about 5 to 10 times higher than that in Ha Nam.
- *Comparison with other projects:* In both Hoa Mac IP and Hung Phu RP, people compared investor support with that of other projects in the areas or with earlier and later phases of the same project.
- *Comparison to perceived investors’ gain from the project:* This was most prominent in Hung Phu RP, where people believed that “the investor gained too much by selling for 5 million VND/m<sup>2</sup>, while they bought from us for only 400 thousand VND/m<sup>2</sup>.”

Behind these comparisons lay a fundamental issue: People perceived that their land rights were not adequately respected. In both cases, the land plans and land prices were imposed on people. In Hoa Mac IP, people did not have a chance to “negotiate” with the investor, the actor most people considered - “the buyer” - of their lands. Compensation was always an issue, but procedural justice also played a major role in shaping attitudes towards the dispute.

Another common issue in these two cases was that farmers were uncertain about their future without the land to support them. Not only were their land rights ignored, but their life security was also threatened. The compensation was larger than many of them might have imagined, however, land, not money, was the basis of their life security. Without liquid property markets, money could not easily buy property rights equivalent to their former land.

### Disputes in urban, developed areas: “Sharing the benefits”

The Phu My Hung RP case took place in Ho Chi Minh City, the most developed city in the country. People in the Phu My Hung dispute were also the wealthiest and most educated of the five cases. The dispute in this case was not about people giving up their lands, but about people “buying” their land rights. The issues in dispute were “who should pay the LUFs?” and/or “How should the LUFs be calculated?”

In essence this dispute concerned how the state should share benefits the benefits of land development. The investor committed considerable capital to the development during an uncertain period in Ho Chi Minh City. They would expect a high return for their high risk investment. Similarly, local government also expected good returns for their initiative since the Phu My Hung project was considered risky and a “ground breaking”

project in 1990s. The buyers also expected that a house in Phu My Hung would be a good investment. The key was to balance the benefits among these actors. Until 2008 the precarious balance was maintained. After 2009, the land price doubled, seriously threatening people's benefits.

In brief, levels of local development affected the disputes in the following ways:

- Local development influenced **initial support** for the projects. This initial support from people tended to be high in rural, less developed areas. In these projects, people acknowledged their "obligation" to support local and national development, and expected "better lives". The support was lower in peri-urban areas, where people weighed their land 'rights' in comparison to the compensation on offer. Initial support was lowest in urban areas, where simple cost/benefit sharing was the primary focus.
- Local development influenced the **nature of disputes**. For rural, less developed areas, the disputes were more likely to occur during the post-resettlement stages, and the more serious issue was about the failure to ensure stable, familiar, and better lives for resettled people. For peri-urban areas, the disputes were normally about the lack of consultation and unequal compensation and support when compared to other projects or project phases. In urban areas, the disputes were more likely about the equitable sharing of the appreciation of land value.

## 4.2 Divergence of actors' thinking

We applied the Pragmatic, Normative, and Cognitive legitimacy framework to analyze the divergence in the way the groups thought about land disputes. This analytical framework helps explain the current status of disputes in various cases and could potentially predict dispute patterns in the future.

### Local officials

*Cognitively* officials tended to view land as a state asset that can be rearranged for national and local development. Thus, land acquisition was the rearrangement of land for better values. For public purpose projects, such as Son La Hydropower or Dung Quat Economic Zone, the public interest was self-evident. For business-related projects as in Hoa Mac IP, Phu My Hung and Hung Phu residential areas, the officials' implicit assumption was that investors will make the land more valuable and contribute local jobs, increase local income, provide better housing and better societal amenities. This led to a typical *normative* view that people had an obligation to support the state plans. "The state knows best" was a dominant view, and thus discussions and negotiations with the people about land acquisition should be minimized.

*Pragmatically*, officials used earnings from agriculture to calculate the compensation for acquired lands. This kept the government spending low to make the location more attractive to investors. Officials believed that central government control over land acquisition produced the most effective results.

### **Resettled/disposed people**

*Cognitively*, land was viewed as part of people's lives. For farmers, land was a symbol of life security. For ethnic minority people in Son La, land was linked to their historical and cultural lives. There was a certain emotional attachment to the landholdings, and the failure to acknowledge this element in the acquisition plan induced dissatisfaction.

*Normatively*, people believed that their land rights should be respected in the acquisition plans. In the cases studied, people perceived that their rights were not adequately acknowledged. First, they did not have any "say" on the land price setting. There was not any sort of "negotiation" between people, investors, and local government in any of our cases. Second, the prices were set either very low (land acquisition cases) or very high (land use fee case in Phu My Hung) at the expense of the people. While officials and investors argued that these prices well compensated for earnings from agriculture, people felt that these prices did not reflect the land rights they had to give up. On the other hand, the land price was extremely high in the case of Phu My Hung residential area (13,260,000 VND/m<sup>2</sup> in 2009) where people had to buy "land use rights". With this price, people had to pay for very high fees to get a certificate of their "rights" (pink books).

*Pragmatically*, farmers cared about both immediate compensation and future livelihoods after losing lands. People in urban areas cared about sharing the benefits of improving the land.

### **Investors**

The involvement of investors in the disputes varied considerably among the cases. In Son La Hydropower Project and Dung Quat Economic Zone, investors stayed out of the land acquisitions and disputes. In Hoa Mac IP, the investor was informally involved in supporting the villages' dispute. In Phu My Hung and Hung Phu residential areas, investors directly dealt with people and were key actors in the disputes. Despite these different levels of involvement, investors shared similar legitimacy thinking regarding land disputes. *Cognitively*, they viewed land as a commodity that could be invested in and traded for profit. Land acquisition was a process of obtaining a necessary factor of their businesses. It was simply an investment process.

*Normatively*, they thought that disposed people should receive higher compensation for land than the cumulative productive value of farmland. They believed that the land acquisition should be centrally controlled by the state. Negotiation or discussion with people should be minimized because "*people always ask for more*". Investors also believed that a stable, predictable business environment was critical for local development.

*Pragmatically*, investors calculate their earnings from the projects. The costs incurred were not only the compensation paid, but also in the time they had to wait for land to be ready.

The various actors differed in their views about the *timeframe* during which the state and investors retained responsibility for disposed people. Investors believed that their obligations were completed as soon as land users received compensation. Officials tended to believe that they had done their job when people settled in new places or received new land. By contrast, disposed people thought that the state and investors had a responsibility to support them to

achieve “better lives” and a stable livelihood in the long term. This would take more time than just settling in to new places. In the four cases involving land acquisition, people were most unhappy in post-resettlement stage when officials “disappeared” and “forgot their promises”, and when people felt they were “being forgotten”.

The divergence in views varied across the cases as well as across the places and time. The potential for disputes increased where the divergence in actors’ thinking was large. By contrast, opportunities for dispute resolution improved when there was some convergence in actors’ thinking. Examples included smoothness of land acquisition in Chau Giang commune (Hoa Mac IP) or at the large-scale resettlement stage of the Son La HP. In addition, divergence in cognitive and normative thinking was hardest to recognize and resolve, as evidenced in the post-resettlement stages in Son La HP, DEZA, or Trac Van commune, Hoa Mac IP.

### **4.3 Availability of open forums**

The convergence in actors’ thinking did not happen by chance. It occurred, if at all, through a series of discussions, dialogues, and debates. Forums for such dialogue were critical. We found some common characteristics of the forums in the five cases:

- Open forums where actors could discuss their views and expectations were rare. In most cases, the forums were for government officials to “persuade” people to follow the state plans. Officials only recognized the need to seriously listen to people and adjust their plans when they faced strong resistance.
- Communities played a small role in the forums. Communities were not formally recognized as a forum for people to share knowledge, exchange ideas, and make decisions. Most of the time, officials wanted to direct the discussions among people. As a result, people in the communities could informally group together, mostly to resist the government plans. There was only one exception: in the Son La Hydropower Project, when officials allowed communities to discuss and decide on resettling issues (e.g., division of production land, locations of new houses). In this case, the problems were resolved more easily.
- People who could act as “cultural bridges” were rare in the cases. The most notable exception were the “persuasion officials” in Son La HP. Even in this case, “persuasion officials” were initially tasked to persuade, not to listen to, people. They soon recognized the need to listen to people and bridge the thinking between officials and people. These “cultural bridges” were critical in helping the actors understand each other views, before they can think of agreeable solutions.

Forums influenced dispute resolution in important ways:

- Government-controlled forums aimed to secure people’s compliance with the state’s plans. But this compliance was generally short-term and contained a high risk of subsequent disputes. This was evident in Son La Hydropower and DEZA. Open forums that allowed actors to share their views took time. However,

they were more likely to lead to more convergence in the actors' thinking. That resulted in solutions that were acceptable to all. Son La Project in stage 2 was a good example of this.

- The actors' cognitive and normative thinking was often tacit and not easily recognized or expressed. Cultural interpreters and mediators would play important roles in helping actors to recognize their own and others' thinking. The "persuasion officials" in Son La were a good example of how cultural interpreters helped resolve land disputes.
- Staff members of mass organizations were unlikely to serve as cultural interpreters. "Cultural interpreters" should be unbiased, willing to spend time with the actors, and have certain skills in reading people's thinking and emotions. As emerged from our cases, there was a high risk that these parties have their own legitimacy thinking and were not open to really understand actors' divergent views. Mass organizations, such as Woman Union, Farmer Union, or Father-front participated in the "communication" during land acquisition. These organizations were seen as "the Party's arm" and often participated in the land acquisition under the leadership of the Party. In such settings, they were more likely to protect the state's interests than to serve as "unbiased" mediators.
- The influences of media were mixed in the cases. In Phu My Hung and Hung Phu RPs, media reported stories and incidents from different actors and invited comments from observers and experts. In this respect, media served as an information channel that helped actors to recognize others' thinking and arguments. On the other hand, media often focused on "hot", "eye-catching" stories that may not represent the big picture of the disputes. Nor did media fully recognize and express implicit cognitive thinking of the actors. Thus, although the media influenced thinking, it did not serve as an effective cultural interpreter in mediating disputes.

#### **4.4 No role for the courts**

Another finding of this study was the minimal role of courts in land-taking cases. In Vietnam, the court is not independent from government agencies: they are both under the leadership of the Party (Nicholson and Quang 2005). People rightly perceived that the court and the government are "brothers," and it is logical that the court would protect the government interest. In our cases, people rarely mentioned the court as an effective means of dispute resolution. Even in the extreme case of Mr. HT in the Hung Phu Residential Project, the court was not seriously considered by any party. While complex procedures and inconsistent and changing legal bases were important reasons, the fundamental reason was the lack of belief that the court would issue an impartial ruling when the state is involved in the dispute.



## 5. Comparative study of public land dispute resolution in East Asia

### 5.1 Introduction

To deepen the analysis about land disputes in Vietnam, this chapter draws comparative insights from similar types of disputes in neighbouring countries. Many of the same economic, demographic and social changes animating land disputes in Vietnam are also sweeping across other developing countries in East Asia. It is possible to draw lessons from land disputes in other countries that are relevant to Vietnamese political-legal institutions and socio-economic conditions.

One message is clear from this comparative review of land disputes: court-based adjudication is generally a last resort. The inability of courts to deliver justice in complex social conflicts, such as land disputes, is common throughout the developing world, where state capacity is undermined by financial and human resource shortcomings, socioeconomic inequities and rapid social change. This chapter also argues that the political subordination of courts in China undermines their capacity to resolve land taking cases. As many studies in the region have shown, non-state dispute resolution mechanisms are more commonly used and are invariably more popular than courts (The Asia Foundation 2001; World Bank 2008).

Like courts, these “alternative” systems suffer from some systemic shortcomings of their own. What these studies suggest is that no one system, state or non-state, can provide the optimal range of solutions to resolve complex social problems. Rather than idealizing one system, it makes sense to explore ways of creatively combining elements from both systems. *What the case studies show is that sometimes states gain more actual control over land disputes by relinquishing or relaxing some formal controls.* A theme repeated throughout this chapter is the need to blend the strengths and mitigate the weaknesses of formal (e.g. courts) and non-state (e.g. mediation and consultative) systems. This approach carries the challenge of identifying the comparative strengths and weaknesses of the different systems and finding creative ways of combining two systems that draw on different regulatory traditions.

Since land disputes are contests over finite resources, what constitutes an effective settlement often depends on perspective. For example, from a governmental perspective, reducing social conflict and promoting compliance may constitute the key measures of success. Research from China discussed in this chapter suggests, on the contrary, that by allowing some avenues for dissent and protest, governments can reduce the intensity and scale of disputes in the long run. Equally, the focus should not always remain on land users. Case studies considered in this report show that some farmers harbor hostility and resentment long after they received compensation and resettlement packages. If disputes were assessed entirely from these farmers’ perspective, few public infrastructure projects would proceed. Rather than taking a fixed position in determining what constitutes successful dispute resolution, this discussion uses a multi-actor approach (previously discussed in this report) to explore what constitutes a successful outcome from multiple perspectives. It will focus on the types of dispute resolution mechanisms that bring relevant actors together to find mutually agreeable and long lasting solutions.

### **What types of dispute resolution practices are relevant to Vietnam?**

A survey of countries neighbouring Vietnam reveal three distinct dispute resolution practices that relate to the problems identified in this report. These practices are:

- Community consultation with government and/or developers before and during land projects.
- Mediation between communities, government and/or developers to resolve problems caused by land taking projects.
- Court litigation between communities, government and/or developers to resolved problems caused by land taking projects.

The following discussion examines examples of each of these practices and explores whether they are suitable to Vietnamese conditions.

## **5.2 Community consultation**

This section examines empirical findings from China and Indonesia that show how community consultation reduced the extent and intensity of land taking disputes. These finding suggest that consultation is most useful during the pre-conflict stage of a dispute before frustration and emotion transform peaceful dissent into violent confrontation. Consultation can take many forms, with or without moderators directing discussions. It works by letting the key actors discuss their deeply internalised perceptions, attitudes and intentions in unmediated dialogue that reduces emotion and encourages rational exchanges.

The case studies from China and especially Indonesia show the importance of giving land users an effective voice in planning land developments - a process that significantly reduced the scope and intensity of land disputes.

### **China**

Despite ongoing political sensitivity regarding land ownership and control, the government in China is incrementally improving private property rights. In addition to the current Land Management Law, the Property Law was promulgated in 2007, and more recently the Regulations on Requisition and Compensation of Real Property on State-owned Land in Urban Areas 2011 was enacted to deal with land taking cases. Nevertheless, the legislative reforms, which have significantly tightened land taking procedures, have so far not reduced land disputes, which continue to rise. A longitudinal survey conducted by Landesa (2012) in China shows that the number of land taking cases has increased every year since 2001, when the study began. This suggests the need to look beyond legislative reforms for solutions and examine how dispute resolution mechanisms work in and around the law to resolve land taking cases.

A large scale empirical study conducted under the auspices of the Chinese Academy of Science<sup>2</sup> (Hurst, Mingxing Liu and Ran Tao, 2010) in 2005 found public participation in

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2 The project interviewed over 1,700 people in 121 villages across six provinces in China.

solidarity organizations (mass-organisations) had a very positive influence over land use cases, reducing the scale of disputes and number of participants in disputes. Contradicting claims that economic development resolves land disputes, the study found no statistical correlation between village size/wealth and the frequency and intensity of land disputes (Hurst, Mingxing Liu and Ran Tao, 2010, 10).

Specifically, the study found that clan associations, business associations and other semi-autonomous social organizations with close personal links to village authorities could use their leverage confer moral legitimacy on village officials who governed well and constrain officials who abused their positions. In return for good governance, the semi-autonomous social organizations promoted order and contained political action and land protests (Tsai 2007: 104-107). In regions where citizens were less engaged in social organizations, officials had few effective external constraints on their behaviour. For example, the survey found that most reports about serious breakdowns in social order, large-scale violence or rioting, occurred in Sichuan, which was the province with the least well-developed semi-autonomous associations (Hurst, Mingxing Liu and Ran Tao, 2010, 14).

### **How do semi-autonomous bodies reduce tensions?**

Many studies about China have shown that formal mechanisms for redressing administrative grievances, such as petitioning and administrative litigation, are largely ineffective (Peerenboom 2001). What this and other studies (Tsai 2007) suggest is that some semi-autonomous social organizations in China are sufficiently independent from local party and state agencies to effectively monitor and check land officials. For example, an old people's association (*Laoren Xiehui*) in Fujian Province organized collective action against the local village authorities. Commencing in 2001, the association sent petitions to local authorities when compensation payments for land requisition failed to reach villagers. Four years later, the association organized a series of protests involving 20-30 participants to oppose the establishment of a university campus on village land. When the local government failed to act, the association sent petitions and then visited Fujian provincial authorities, mobilizing over 200 protesters. Each protest was carefully calculated to exert enough pressure to prevent the land seizures, but was small enough to avoid exacerbating tensions (Hurst, Mingxing Liu and Ran Tao, 2010, 13).

The semi - autonomous associations managed to prevent land disputes from "getting out of hand - and sometimes defused conflict - by representing villagers in negotiations with local leaders, calming tempers and ensuring results in terms of improved governance or services" (Hurst, Mingxing Liu and Ran Tao, 2010 11-12). To perform this 'boundary-spanning' function the associations needed close links with the local party and the state. They needed inside information to calculate how far they could go in representing their members without crossing the boundary and becoming dissidents. In this respect they resembled the 'Persuasion Officials' in the Son La case discussed above.

Studies in China reveal an additional benefit from active semi-autonomous organisations. In the areas where these organisations are weak and ineffective, local authorities and village cadres are more likely to outsource land clearance to crime syndicates and underworld networks. For example, authorities give organised crime access to development contracts in return for intimidating residents and discouraging compensation claims (Hurst, Mingxing Liu and Ran Tao, 2010 15-18). This practice is linked to the most violent and intractable

land disputes in China and it would be instructive to determine to what extent (if any) this outsourcing of enforcement occurs in Vietnam.

### **The Wukan case**

Land protests in Wukan, a village in southern China, were reported around the world as thousands of villagers took control of the official buildings in 2011 (Keliher and Wu 2012; Fu 2013). The protests concerned the sale of village land by local officials without proper authority and compensation. What is interesting about this case is not only the scale of the protests, which constituted open insurrection, but also the response by senior provincial officials. After attempting to use police action to repress the villagers, senior party officials in Guangdong Province changed their perspective (Fu 2013). Rather than regarding the villagers as dissidents, the party officials began view the Wukan protest as a result of economic exploitation and political repression of the marginalized peasants. They publically acknowledged the harm caused by rapid market reform and recognised that the Wukan protest was legitimate, since the villagers were merely demanding transparency and accountability and their legal rights to 'know and participate' in village governance as provided by the law (Keliher and Wu 2012; Fu 2013). Villagers sought to protect their economic interests and did not challenge the political system.

The Guangdong government agreed to the villagers' demand for free elections with candidates nominated by popular ballot. The villagers voted for an Electoral Committee to oversee the election of the Village Committee. With new local government officials who were directly accountable to the villagers, negotiations regarding land compensation reopened and are currently proceeding smoothly. The Party chief, Wang Yang recently concluded that the Wukan reforms have "set a reference standard to reform village governance across Guangdong" (Fu 2013). Currently the Wukan grass-roots reforms remain experimental, but the next study demonstrates the possibilities of codifying voter-directed grass-roots democracy.

### **Indonesia**

A study about community consultation in Indonesia provides a useful contrast to China. During the post-Suharto *reformasi* period, which began in 1998, Indonesia relaxed controls over community-based NGOs and strengthened grass-roots democracy. In contrast to China, where semi-autonomous organisations require informal connections with local authorities to function effectively, Indonesia enacted a legislative framework that created an orderly consultation process that has significantly reduced the number and intensity of land disputes in Indonesia (McCarthy 2007; Bakker 2010).

Land disputes in the Indonesian state of East Kalimantan illustrate the benefits of formal consultation processes. During the Suharto regime (1965-1998), large-scale industrial plantations developed in this region. The plantations were financed by associates of the President, who benefited from national laws that displaced local *adat* (customary) land rights. Protests by local farmers against the appropriation of their land were suppressed through police action, but resentment grew with every new national development project. When President Suharto was removed from office in 1998, the spirit of *reformasi* took hold, and *adat* farmers began to express their discontentment more forcefully. They not only wanted more say over future projects but also wanted to revisit past projects were

state coercion had been used to secure unfair compensation and resettlement deals. As it turned out, the Suharto government's failure to consult with *adat* farmers pushed grievances underground where they intensified and became increasingly violent and difficult to resolve.

During *reformasi*, regional governments, especially village authorities, were given more control over land (Bakker 2010: 12). For example, article 111 paragraph 2 of the Regional Autonomy Law 22/1999 (RAL) states that all district regulations must take the rights, origins and *adat* traditions (*hak, asal-usul, dan adat-istiadat*) of villages into account. The RAL thus gives the position of traditional village authorities and *adat* claims to land a significant boost. Adding to the power of *adat* communities, articles 56-67 of Law 32/2004 gave villagers the right to elect regional heads, a change that has made local authorities much more responsive to community concerns.

Decentralisation and grass-roots democratisation has enabled *adat* communities to challenge the application of national land law that displaced *adat* land rights. To understand how legislative reforms have improved consultation, it is useful to look more closely at a case study. In the Paser region in East Kalimantan, industrial corporations are lodging claims with the provincial government to clear large areas of *adat* forest land for palm-oil plantations. For small-scale *adat* farmers to challenge palm-oil plantations, they need to organise and advocate their case to government negotiation teams (*pertanahan*) responsible for resolving conflicts. In most cases, the farmers want to participate in, rather than block development.

Since grass-roots democratic reforms were introduced, local officials are now more receptive to pressure from *adat* communities. For example, Ridwan Suwidi was elected district head of Paser in 2005 on a platform of strengthening *adat* land rights in regional policies. 'One of Suwidi's main election promises had been to increase the overall wealth of the district's population and improve the living conditions of the population at large, but especially those of the 'common people' (Bakker 2010: 15).

The role of intermediaries in facilitating consultation also warrants further attention. One of the most noteworthy post-Suharto reforms was the relaxation of controls over the formation of NGOs. Currently, NGOs have sprung up to represent many different aspects of social life in Indonesia, including the interests of *adat* communities. Some of these NGOs are closely connected to particular *adat* communities and play an effective role in informing government negotiation teams (*pertanahan*) about the validity of *adat* land claims. Others perform a 'boundary-spanning' function, like the semi-autonomous organisations in Chinese villages. A few of these organisations, such as Lembaga Adat Paser (Foundation for Adat in Paser) are capable of fielding articulate and well-respected spokespersons, with a reasonable knowledge of national law, to represent *adat* farmers in discussions with government negotiation teams.

In the post-Suharto period, the state land system still enables national projects to displace *adat* landholdings. What has changed is that grass-roots democratic reforms have made provincial and district leaders more sensitive and responsive to the interests of *adat* farmers. Naturally democratic reforms have not removed corrupt incentives and issuing permits for plantation or mining activities remains highly lucrative for malfeasant government

officials (Hapsari, 2011). But in a democratic environment, regional governments want to maintain the peace and prosperity and are now aware that they need popular support to govern effectively. The government has become open to claims for land justice, especially those organised and supported by NGOs and *adat* organisations. The government remains the authority controlling state land law as well as *adat* to a large extent, but the law is no longer there for the exclusive benefit of the politically-connected elite.

### Relevance to Vietnam

A clear message from the Vietnamese case studies in this report is that there are few opportunities for land users to engage in meaningful discussions with state officials and developers before projects commence. State officials and developers used meetings to convince land users to accept compensation and resettlement packages, without giving land users an opportunity to discuss and potentially modify development plans. The case studies show the importance of giving land users an effective voice in consultations.

The Chinese study is particularly relevant to Vietnam, because the Chinese political system places similar restrictions over consultation between social organisations and government agencies. This study shows how semi-autonomous associations, which are functional equivalents to mass-organisations in Vietnam, can play a significant and positive role in leading consultations between land users and government officials and developers. The semi-autonomous associations rely on relational connections with party and state agencies to both promote land claims and ensure that disputes do not offend state law and order guidelines.

A key shortcoming with this approach is that party and government officials are given extensive legislative and extra-legal powers (as is in Vietnam) to intervene and compromise the autonomy of associations. This means that associations only have the autonomy to effectively monitor and check state power where local historical conditions have given them strong informal linkages with the party and state machinery. The Wukan reforms are promising precisely because they represent a break from the opaque and secretive deals done between semi-autonomous associations and local government officials.

Although semi-autonomous associations are reducing land disputes in some areas, overall the number of land disputes in China is increasing. A longitudinal survey conducted by Landesa (2012: 2) shows that the number of land taking cases in China has increased every year since 2001. This failure to contain land disputes overall calls into question the general effectiveness of relying on informal links between semi-autonomous associations and local authorities in securing effective land outcomes. Indonesia's experience with developing a formal legislative framework that rebalances the power between local officials and land users presents a more promising approach.

In contrast to China, land disputes in Indonesia initially spiked after the removal of President Suharto, but have been decreasing in frequency and severity ever since. What is more notable is that land disputes have decreased over a period where infrastructure and industrial projects have rapidly increased. Indonesia is now growing at 6.5 per cent GDP each year, just one per cent less than China, with proportionally fewer and less violent land disputes than China.

In practice, the land law has not changed substantially in the post-Suharto period; what has changed is the political representation of *adat* communities and their capacity to consult and negotiate with government officials regarding land development projects. This rebalancing of the power relationship between local government and land users would not have been possible without the emergence of local NGOs who are capable of representing the interests of local land owners. Unlike China, where semi-autonomous organisations are only effective where they have developed informal linkages with party and state agencies, the legislative framework in Indonesia gives NGOs autonomy to monitor and check the exercise of state power to ensure that land development take into account the interests of land users<sup>3</sup>. Far from blocking development, as some Indonesian critics of *reformasi* predicted, *adat* communities generally welcomed development provided they share some of its benefits. As we saw in many of the Vietnamese land taking cases discussed in this report, the feeling of being locked out of the develop cycle animates land disputes in Vietnam.

### 5.3 Mediation

A core difference between consultation and mediation is in the interaction between actors. During consultation, actors and intermediaries have the sole task of representing particular interests. Mediators, on the other hand, need to remain detached from the actors to avoid accusations of corruption and bias. Like consultation, mediation seeks consensus among the disputing parties through intensive discussions and negotiations, during which the actors learn to understand each other's interests, motivations, and desires.

In many countries in East Asia, mediation as a form of dispute resolution is often linked to societal norms (Fu 2009; Peerenboom and He, 2009). It is effective because mediators are not bound to follow state law, which sometimes serves central rather than local interests, and can use local norms that are accepted by the actors. As the following case study from China reveals, problems arise when mediation is institutionalized as a state practice, especially where the state is a party to the dispute.

#### Grand mediation in China

This section will examine why, given the historical preference in China for resolving disputes through mediation rather than courts, mediation has been relatively unsuccessful in dealing with land disputes involving that state. Over the last decade as land and other disputes have escalated in China, maintaining social order (*Weiwen*) became a key party goal (Landry and Tong 2005; Peerenboom and He, 2009). Cadres are increasingly evaluated according to their capacity to maintain social stability. One consequence of this reform is that provincial-level party and government officials are reluctant to allow land disputes, especially those involving the state interest, to proceed to court were the outcomes may not suit local developmental objectives. Cadres use their internal controls over court personnel, including judges, to instruct local courts about what types of land cases to accept or reject.

Chinese cadres not only discourage court litigation, they also actively draw villagers into grand mediation. Although grand mediation is relatively effective in finding solutions

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3 It should be noted that giving NGO's legislative autonomy and space to work still requires competent NGOs to fill the roles of monitor, advocate, and/or mediator.

to private land cases, such as leasing or boundary disputes, studies show that it is less effective in resolving cases where the state has an interest in the outcome, such as land taking cases.

The concept of “Grand Mediation” (da tiaojie) has evolved since the early 2000s when it was first developed as an alternative to court litigation (Hu 2011:1; Central Comprehensive Control Committee 2010). It involves the coordination of existing modes of mediation, such as people’s mediation, to proactively identify socio-economic problems, such as land grievances, and prevent them from escalating into more serious problems (Hu 2011; Minzner 2011; Fu 2009). According to the Central Comprehensive Control Committee (2010), this process is led by local party Political and Legal Committees, who coordinate other party and state agencies to prevent ‘mass incidents’ and other destabilising activities. Contrasting with the Alternative Dispute Resolution movement in the West and attempts to strengthen customary mediation in other East Asian countries, which are bottom-up reactions to inadequacies with court-based dispute resolution, grand mediation is a top-down political attempt to curb socio-economic disputes.

Most local governments throughout China have established grand mediation centres to deal with land disputes. Sichuan province, which it will be recalled from the previous discussion has a poor record of resolving land disputes through consultation, has approximately 150,000 mediation working groups - the largest concentration in China.

### **Land taking cases**

Although there are differences in the incentives surrounding land taking cases in China and Vietnam, they share the same basic problem of conflict over the distribution of profits from converting farmland into a higher value uses. In China, the legally-mandated compensation given to villagers is relatively low compared to the land transfer fee that the state charges the end-users of land. This means that compensation received by land users is generally around ten per cent of the entire land transfer fee. The remainder of the fee is retained by the state. In Vietnam, the state and developers share the profit generated by converting farmland to some other use.

In land taking conflicts - which typically pit land owners against the local government - the immediate involvement of local government as a party to the dispute has severely undermined the efficacy of grand mediation. At the same time, as the local government is using its authority to seize land, it is also attempting to present itself as a mediator standing between the interests of villagers on the one side, and developers on the other. Land users see local officials as acting as both players and referees in land takings. Note that land users interviewed in the Vietnamese land cases studies made similar observations. In addition, grand mediation often shifts the focus away from the interests of the parties directly involved in disputes to such an extent that land users many not directly participate in negotiations about land compensation and resettlement (Minzner 2011). Studies show that since grand mediation aims to manage land disputes, land users conclude that it is unlikely to yield positive results and turn to more confrontational strategies such as protests and collective petitions to improve their bargaining power.



## Relevance for Vietnam

What is important to note here is that Grand Mediation is a strategy of administrative - not adjudicatory - mediation. Instead of emerging as an alternative to court litigation, grand mediation has become a local government strategy for resolving land disputes through administrative power. It has not been effective in preventing land disputes from escalating into political confrontations, because it does not give land users access to the core benefits of mediation - informal adjunction by impartial referees. It is also largely divorced from the social structures and norms that land users might recognise as appropriate ways of fairly dealing with land.

An important lesson that can be drawn from grand mediation is that mediation is ineffective where the state is an active participant and attempts to 'manage' disputes to favour the state interest. In contrast, studies show that grand mediation has been a quite popular and successful means of resolving civil disputes, such as inheritance cases and civil debt. In these cases mediation grows out of social processes and provides a forum where the law is flexibly applied to suit the needs of the disputants (Ho 2011: 1082-1086).

Mediation is also effective where semi-autonomous organisations trusted by land users and local state officials act as independent adjudicators. The role played by semi-autonomous organisation in China and NGOs in Indonesia was discussed in the previous section dealing with consultations. Semi-autonomous organisations act like the 'cultural intermediaries' because they can explain the concepts underlying disputes using a language and idioms that are understood by land users and state officials. Through this dialogue, they can identify common ground that might form the basis for lasting settlements. Of equal importance, such organisations have the linkages into the community and government that compel each side to take the mediation seriously and refrain, at least temporarily, from using political means to leverage better outcomes. This kind of mediation shows that the state, even in authoritarian China, is not an all-powerful entity. Local government officials are often unable (and possibly unwilling) to fully control access to, and compensation for land and instead seek compromise solutions inspired by the needs of the disputing parties.

## 5.4 Courts

So far this chapter has considered consensual (consultation and mediation) approaches to land disputes that aim to find compromises that re-establish respect and craft lasting settlements. Litigation through courts, on the other hand, involves formal law-based adjudication. Court procedures follow formal rules that govern what types of arguments and evidence are, and are not accepted. Unlike consensual dispute resolution, judicial decisions are binding and may produce results that none of the litigants support.

The record of courts resolving land cases in developing East Asian countries is not encouraging. Formal court systems have been viewed historically throughout much of East Asia as colonial or alien impositions that are disconnected from indigenous norms and dispute resolution practices. Although this perception is slowly changing and litigation rates are increasing, there remains the systemic problem that courts are not particularly attuned to resolving disputes to the satisfaction of all concerned (Teubner 2001). Judges produce acceptable outcomes, not because the law is responsive to underlying social conditions, but rather because the law provides legal solutions to problems that cannot

be resolved through consensual dispute resolution. As a consequence, courts tend to work well where litigants are prepared to accept law-based outcomes, but struggle to find lasting settlements where law, legal reasoning and judges lack social legitimacy. This partially explains why unsuccessful litigants in land cases often do not accept the final decision in appeal courts and continue to lobby political and government agencies.

## China

Of all the countries in East Asia, China's court system most closely resembles the Vietnamese system. Both court systems were originally modelled on the judicial and procuratorial institutions developed in the former Soviet Union and maintain close working relationships between party and state officials and the courts (Nicholson and Quang 2005). Despite substantial reforms over the last two decades, courts in each country share some common characteristics that limit their capacity to effectively adjudicate land taking cases. A recent review of 200 land taking cases in China from 2004 to 2011 reveals the close connection between courts and the party and state (Cheng 2013). This political nexus does not significantly influence decisions in civil cases, such as inheritance and divorce, which involve private property claims. It is an entirely different matter where land users mount administrative actions against the state seeking to prevent land takings or increase compensation payments.

The study found that courts tend to interpret the entitlements of land users narrowly in land taking cases, restricting compensation to the productive value of land rather than market prices. Judges view land ownership in rural areas as entitlements rather than recognising fully autonomous private property rights. Land users are consequently treated as members of collectives without the individual standing to claim market compensation for their land rights. To avoid making rulings that might give land users compensation in excess of payments offered by local government agencies, judges push cases back to government officials. The following statement from the Zhejiang Provincial High People's Court Research Group, illustrates the pressures faced by courts in land taking cases (Hurst, Liu and Toa 2010):

“When the defendant's [local government] concrete actions are in error, the court does not give a verdict according to law, instead it uses mediation methods (*xietiao fangshi*) to get the plaintiff to withdraw their suit. Especially in cases of land takings, housing demolitions and other mass disputes, the local government in the general name of economic development and stability puts pressure on the court, demanding that the court uphold the defendant's concrete behaviour. In this situation, the court falls into a difficult spot where it doesn't dare (*bu gan*) to issue a verdict saying the government lost, and also cannot fail to take the legal interests of the plaintiff into consideration. In a situation in which it is under pressure from both sides, the completely safe plan is to begin a multi-sided mediation between the plaintiff and the defendant in order to make the plaintiff withdraw their case”.

Another finding with direct relevance to Vietnam is that Chinese judges interpret the law according to party socio-economic policies. Researchers (Fu 2009; Cheng 2013) have shown how court decisions in land cases closely follow changes in socio-economic policies addressing land disputes, sometime without accompanying changes of statutory laws. For example, from 1997-2004, the Chinese Communist Party followed the principle of “taking account of fairness while keeping efficiency as the priority” (CCP Report 1993). After 2004, however, the policy changed to “emphasize efficiency for primary allocation; emphasizing fairness for reallocation” (CCP 2007). Courts were asked to play different roles over time, alternatively to “protect the sail of the economy” and “to promote a harmonious society”.

These socio-economic policies resulted in the following judicial outcomes:

- Private property rights cannot prevent governments from taking land or challenge the legitimacy of government takings.
- Substantive issues such as abuse of power are considered much more important than procedural violations.
- Government agencies are permitted to unilaterally determine compensation for collectively owned land, but courts require local governments to negotiate compensation with the owners of urban land.
- Rural land users were permitted to claim fixtures and young crops and sometimes resettlement subsidies.

There are a range of reasons given for the weak position of Chinese land users in challenging land taking and compensation decisions, such as vague laws and regulations, and incentives, both fiscal and corrupt, for local governments to maximise land takings and minimise land compensation. This discussion suggests several additional reasons. Courts are not sympathetic towards individual land claims and routinely interpret the same provisions in the land law in different ways to favour state interests. When legal rules are unclear (for example the Land Management Law does not stipulate how to distribute compensation to land users), judges look for guidance from party instructions and local movement policies rather than develop judicial doctrines that might uniformly and transparently guide their decisions. This approach follows the “Three Supremacies” policy: judges shall always keep in mind the supremacy of the party line, the supremacy of the people’s general interests, and the supremacy of the Constitution.

One consequence of this subordination to political policy is that judges are reluctant to accept politically controversial cases and push them back to government officials for resolution through grand mediation. Judges face a difficult position: ‘on one side, a powerful government agency may have demolished houses or occupied land for policy purposes; on the other side are a group of people who are angry, helpless, but ready to demonstrate in front of the court if the court’s decision is considered unfair’ (Cheng 2013). Courts in China struggle to impartially resolve land taking cases under the ‘Three Supremacies’ policy.

## Relevance for Vietnam

In principle, rural land users in Vietnam possess clearer land use rights than their counterparts in China. Whether Vietnamese administrative law courts will follow the Chinese lead in narrowly construing individual rights in land taking cases remains uncertain. However, given the policy and structural similarities between these court systems it seems unlikely that Vietnamese courts will be able or willing to provide effective and impartial dispute adjudication when confronted with political pressure from party and state agencies (Nicholson and Quang 2005).

## 6. Conclusions and recommendations

The findings of our five case studies, combined with the comparative study of East Asian neighbours, suggest conclusions and recommendations for mitigating and resolving public land disputes in Vietnam.

### 6.1 Conclusions

- 1) In rapidly developing economies, land taking and disputes are inevitable. Whenever people are forced to move from their homes and/or change their livelihoods, disputes are possible, even in countries with strong legal and democratic systems (see, e.g., Kim 2009). In addition, without absolute legal authority, unequivocal juridical foundations, or an irrefutable land compensation strategy, agreements will break down and be reshaped through fresh conflicts until a new consensus is reached. The process is therefore highly dynamic: land disputes are rarely settled 'once and for all.' However, the studies reveal strategies that governments can follow that will take some of the intensity and emotion out of these disputes or reduce their initial occurrence.
- 2) The multi-actor analysis confirms that conflicts not only occur over pragmatic interests, but also, and perhaps more importantly, where the actors have different assumptions about land use rights and the most appropriate way of resolving disputes. For example, state officials emphasized the people's obligation to support the state's pre-decided plans on land acquisition. From a historical view, the state (and the Party) led the revolution and brought land back to the people. Moreover, the law recognizes state ownership of land. This view contrasts with many people's views that they had land rights, including a right to consultation, and that they should share in the benefits of land development alongside the state and investors.
- 3) Just following the law is not sufficient. The common "just follow the policies" approach was not sufficient to resolve the disputes studied here. This is especially true when the law and policies are vague, constantly changing, and inconsistently interpreted by different agencies (as in Phu My Hung) but also true when the law is followed completely.
- 4) Rapid changes in policy and compensation rates give rise to disputes among the government, investors, early-relocatees, and holdout land users. Disputes were more likely happened in areas where land plans were fragmentally implemented, as in DEZA, or where land policies dramatically changed, as in Phu My Hung RP and DEZA.

- 5) It is not “all about the money.” Officials and investors tended to focus on monetary compensation. The cases showed that the amount of compensation was not always the dominant factor in inducing dissatisfaction and disputes. Other factors even more important to certain groups of residents included: security and stability of their livelihood, continued practice of traditional and cultural lifestyles, having a ‘say’ in the process (consultation), a share in the benefits of the development, and fairness in compensation and support amongst similarly-situated relocatees.
- 6) Tight state management of land planning and formal dispute resolution has the unintended consequence of driving land users into non-institutional channels. Low-level political participation in policy implementation is possible in the Chinese and Vietnamese systems, but institutional channels for resolving land disputes are rigidly restricted. Frustrated land users organize themselves to demonstrate their dissatisfaction and, with the support of the wider community as well as public and social media, force the government to compromise.
- 7) When the government relaxes ‘state management’ powers and opens dispute resolution to genuine dialogue and negotiation, creative ways to reconcile law and order with the protection of private rights emerge. As the Wukan China case and the grass-roots democracy reforms in Indonesia demonstrate, effective dialogue is only likely to occur where land users have the power to deal with state officials on a relatively equal footing. The closest example of this in the Vietnam case studies occurred during the “persuasion” official meetings in Son La.
- 8) The courts and formal legal institutions play almost no role in the resolution of public land disputes in Vietnam. Courts in Vietnam, as in China, are especially ill-equipped to deal with people-state cases because of their subordination to party-state socio-economic policy. The experience of grand mediation and courts in China clearly shows that state managed dispute resolution that favours the state interest is ineffective in reducing the scale and intensity of land disputes. Especially in an age when social media rapidly spreads information about land disputes, land users form clear views about the justice and appropriateness of land taking and compensation and are difficult to manipulate through state managed mediation and litigation.

### **Recommendations and future research directions**

- 1) Provide meaningful public consultation to promote convergence of thinking. Lasting settlements are most likely to occur where land users and state agencies negotiate together in relatively open dialogues. This may happen, as demonstrated in China, where informal connections link the social organisations representing land users with party and government agencies. Without these linkages, social organisations have no effective way of making local party-state agencies accountable to land users. Rather than relying on informal linkages, the Wukan China reforms and statutory powers in Indonesia enabled land users to organise and represent their interests to local governments and developers. Grass-roots democracy that conveyed political power to the people proved effective in resolving otherwise intractable disputes that resisted conventional dispute resolution practices.

Thus, the common approach in Vietnam of “the state knows best” or “the officials persuade people” should be reevaluated. This approach does not allow people to freely express their views. Nor does it encourage officials and investors to seriously listen to people. In all five cases, open forums were rare. Yet, these forums were critical for actors to understand each other and design lasting agreements. The study suggests that people should be invited to express their views on land plans and land acquisition policies. These dialogues should be constituted before plan development and continued throughout the land acquisition process and, importantly, post-resettlement. There is thus a clear need to study and pilot how best to form these dialogues among government, investors, and land-users.

- 2) Cultivate mediation and mediating organizations for dialogue and dispute resolution. Consistent with the need for open forums and dialogue, there is a need to nurture mediators and cultural interpreters and/or mediating organizations that can facilitate these open dialogues in land acquisition projects and land disputes. Currently, unbiased cultural interpreters are hard to find. In land-taking cases, mass organizations such as the Farmers Association or Women Union are currently not well-positioned to serve this role, but regulatory frameworks could be altered and training and support could be provided to cultivate a more constructive role for these organizations. Community-based NGOs or unbiased individuals who are respected by related actors could also be candidates.

The Indonesian and Chinese case studies suggests formal legislative recognition of a meaningful role for mediators in land planning and land disputes is more effective than relying on local organizations on an ad-hoc or informal basis. This is because local organizations may not be connected, respected, and impartial enough to be effective. Further study and piloting of reforms in the role of Vietnamese mass organizations, such as the Farmers Association, in public land disputes could reveal promising avenues for constructive dispute mediation.

- 3) Consider the role of private investors and developers in land disputes. The case studies suggest a complex and highly variable role for investors and private developers in public land disputes. In some cases, the investors directly engaged with residents, whereas in other cases, little to no interaction occurred. Land takings for private development are typically the most contentious and most complex, both legally and politically (Kim 2009). Vietnamese Law provides various avenues and procedures for voluntary and involuntary land acquisition for private development (see World Bank 2011). In-depth research into the interactions, formal and informal, between private developers, government, and land users could shed light on current practices and offer ways to reduce disputes while improving predictability for investors and the state.
- 4) Additional recommendations for land acquisition, resettlement, and dispute resolution. Except to provide context and where integral to the multi-actor case narrative, this study did not focus on the specific laws governing officials in land projects and dispute resolution.<sup>4</sup> We therefore do not have detailed recommendations for changes

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4 Revisions to the Land Law are currently under debate in Vietnam. The reader is referred to an extensive World Bank (2011) report on land conversion and the Asia Foundation's (2009) report on the administrative

to relevant laws and regulations beyond providing for land user consultations and mediators throughout land development. Nevertheless, the studies did identify a few additional areas for follow-up:

- a) Compensation policies should promote stability and equality, and the temporal nature of land projects and property markets much be considered before any project starts. The case studies suggest frequent changes in policies, especially compensation and support policies, even when well-intentioned and in response to market forces, leads to more disputes. Land planners should give more attention to contingencies such as increases in land lease prices and fees and slow-downs in project construction and demand.
- b) Disputes happened when officials paid little attention to post-resettlement issues. Monitoring and assisting relocated people during the post-resettlement phase must be a priority to reduce the incidence of future disputes and dissatisfaction.
- c) Fiscal measures, such as removing the benefits of land sales and taxation, can reduce the incentives for local government to take land and pay low compensation. For example, a report prepared by the Chinese Academy of Social Science, concluded that local government might follow land taking rules more closely if tax incentives were removed (Cheng 2013). Laws and policies should be changed to limit governmental conflicts of interest, such as that revealed in the Phu My Hung case where the local government was responsible for setting land fee policies while it had an economic stake in the beneficial private land development enterprise.
- d) The role of the courts is minimal in public land disputes and unlikely to change soon. Thus, it is not suitable at this time to focus on improving Vietnam's court system or other formal judicial mechanisms with the aim of improving public land dispute resolution.

## **Case Study I**

# **Changing Places, Changing Lives: Resettlement for the Son La Hydropower Project**



## I. Introduction

The first case is “the project of the century” in Son La province: resettlement for the Son La Hydropower Project (SHP). SHP was chosen because of its potential lessons for dispute management. Between 2003 and 2010, 20,000 families with 100,000 people had to move off of their land. Almost everyone came from an ethnic minority, and many of them had never travelled beyond their villages. Although this move must have been scary and emotionally trying for most people, there were no collective complaints submitted to the district or provincial level authorities. On the surface, this can be viewed as a huge success for the state. Looking deeper, however, potential issues and conflicts are fermenting as a significant number of people are dissatisfied with the acquisition and resettlement. What contributed to the resettlement “smoothness”? Are there any potential unresolved issues post-resettlement? What can we learn from this case about the mitigation and resolution of land disputes? These are the basic questions we set out to answer with this case study.

Similar to other cases in this series, we used a multi-actor perspective as the analytical framework for this case. According to this framework, the greater the difference in the way actors conceptualize land disputes, the less likely they are to find meaningful and lasting settlements. Settlement is most likely to occur where actors are prepared to adjust their regulatory priorities and bring their regulatory preferences closer to those of the other actors involved. Lasting solutions are possible where the regulatory preferences of all the actors converge. This study applies three core aspects of legitimacy that change regulatory preferences: pragmatic, normative, and cognitive. Pragmatic legitimacy refers to material benefits. Normative legitimacy is people’s moral base for judgment on what is right and wrong. Finally, cognitive legitimacy arises when a group regards a regulator and its procedures and outcomes as inevitable and necessary. The challenge of using this analytical framework is that most cognitive and normative thinking is implicit. Thus, a group may not recognize its own mental model, until it is contrasted with different models. Moreover, in the field, interviewees do not neatly divide their comments into pragmatic, normative, and cognitive categories. This approach thus requires some analytical interpretation by researchers.

We conducted this case study by systematically collecting and analyzing data from relevant actors (e.g., provincial and district officials, ‘persuasion’ officials, relocated and inhabitant people in Son La) in the resettlement. (Please refer to the Summary Chapter for more detailed description of the analytical framework and methodology).

First, we provide some background for the case, including a provincial and project overview. Then the analysis framework is presented and applied to the resettlement process in Son La province. Finally, we discuss the analysis results and make recommendations.

## 1.1 Son La: provincial overview<sup>5</sup>

Son La is a relatively poor province in Vietnam, with annual GDP of about USD 1.2 billion in 2010 (around 1.2% of the annual GDP of Vietnam). The contribution of agriculture, forestry, and fishery to the province's economy in 2012 was still high at 30%. The percentage of poor households in the province was 34.1% in 2010, among the provinces with the highest rates. In 2011, Son La ranked 52<sup>nd</sup> out of 63 provinces in terms of the Provincial Competitiveness Index (PCI), indicating a lower business development environment.

Son La is naturally divided into three ecological areas: 1) around the national way No 6, 2) the Da-river lakeside, and 3) border mountainous areas. Approximately 80% of the land is mountainous. Transportation infrastructure is poor, and about one third of communes cannot be accessed by cars. About one million people are scattered around the areas. Kinh ethnic majority people (18% of the provincial population) reside mostly in the flat-land areas, while 11 ethnic minorities are generally found in the highlands. Ethnic minorities are less integrated to the rest of the country, are unable to pursue opportunities to better their lives, have lower education, and face lower living standards than the Kinh in Son La and elsewhere in Vietnams.

The Thai are the largest ethnicity in Son La, accounting for 53.2% of the population. More than 90% of relocated people were Thai, thus a brief description of Thai's cultures would be beneficial for the case study. Thai people inhabit territories that stretch from Red River to the Lam River, across the Da and Ma rivers. Most Thai live near rivers or at streams where soil is fertile and where the water resources are large. A typical Thai house has frames of bamboo or wood and is covered with mud or boards. Rice production is a major traditional livelihood for the Thai. Fishing and forest production are other important activities in their daily lives. The Thai sometimes meet up with other ethnic groups in the highland and upland regions to conduct trade (Dang et al, 1993).

The Thai village is called a *Bản* and it consists of an average of 40 to 50 houses that are built on stilts (Dang et al, 1993). The village is highly united, with village patriarch and/or village leader were most referenced persons. The Thai have a rich culture, with their own (written) language and fairy tales. Some of their songs and dances are famous nationally. In their spiritual values, death means going to a next life. The Thai would never dig up graves.

## 1.2 Son La Hydropower Project

Son La hydropower is the biggest hydropower project in Vietnam and South East Asia. The designed power capacity is 2,400 MW, with an annual output of 10.2 billion kWh to the national grid. Every year the plant will create a turnover of US\$500 million and save over five million tons of coal which are needed to produce an equivalent amount of electricity.

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<sup>5</sup> Most of the statistics presented in the case studies were obtained from the provincial Departments of Natural Resources and the Environment (DONRE).

Besides providing power to the nation, the project also aims to control floods during the rainy seasons, supply water for irrigation in the dry seasons for the lower North delta, and contribute to the economic development process of the Northwest area.

From the government's perspective, the project has been accomplished successfully and earlier than scheduled. The Vietnam National Assembly approved the project in 2001 and the government issued Decision No 44/2001/QH10 and Decision No 13/2002/QH11 in 2002 to authorize construction. The project commenced in 2005 and was officially completed in December 2012, three years earlier than expected.

Son La hydropower has been called the project of the century for its huge investment and implementation process. Over nearly ten years, about 20,000 households totaling more than 100,000 people in Son La and two other adjacent provinces of Dien Bien and Lai Chau had to relocate to make way for the reservoir. Among them, 12,500 households in Son La had their land compulsorily acquired and were relocated by the state. Tens of thousands of workers and engineers lived in construction sites for seven years. Approximately one third of the total investment of VND 60,195 billion (around US\$ 3 billion), was set aside to cover compensation, relocation and resettlement costs.

At first glance given the large number of people relocated and relatively few problems, the project stands out as a model development. A closer investigation reveals that, beneath the calm surface, high levels of ongoing dissatisfaction with the acquisition and resettlement remain among significant numbers of citizens. In the following sections, we analyze why this group initially complied with the resettlement process without ever agreeing with the resettlement procedures and outcomes. In the next section, we outline a framework in which to place and analyze our empirical findings about this group.

## **2. Description of the resettlement process**

SHP required the resettlement of 20,260 households, including 95,733 persons in the three provinces of Son La, Dien Bien and Lai Chau. The resettlement process took place in 2003-2010 and was completed in April 15, 2010. Despite its large magnitude, the process proceeded smoothly without any significant protest. Most conflicts were resolved at the commune and village levels. Only one individual claim was lodged with provincial level authorities.

There were three models of resettlement: centralized-resettlement (tái định cư tập trung), mixed-inhabitants (xen ghép), and free resettlement (tái định cư tự nguyện). As the land-users were ethnic minorities and their traditional lifestyle is community-based, most completed resettlement followed the first two models, where almost the whole village moved to a new place together. Centralized-resettlement took place in 11 urban areas (23 plots – 5,445 households) and in 70 rural areas (249 plots- 13,597 households). The mixed-inhabitants model and free resettlement counted for 1460 households only.

The government's plans for changing relocated peoples' livelihoods depended on where they were resettled. For example, people relocated in Muong La worked on rubber tea, and coffee plantations or cultivated rice and fruits. Those sent to other destinations breed pigs and poultry or cultivated fish or forest plantations. New land was divided for each household based on the number of household members, on average 400m<sup>2</sup> housing land was allocated for each household; 2 ha farming land per household; for those using forest land, it was 3.2 ha per household. However, the actual land size provided for relocatees varied by destination areas and categories of land.

Three distinctions in the land allocation to relocatees caused confusion and conflicts: (i) the land quota being allocated for relocatees was different between areas, and (ii) the land size allocated in new areas was different from the original land size, as well as (iii) the compensated land size was different from the original land size. The first problem mentioned above might not lead to serious conflicts because of it can be rationally seen that the amount of land allocated to relocatees depends on the hosting land areas and this information can be provided to relocatees. However, the second and third problems were much more serious and will be discussed in detail in the following sections.

## 2.1 Compensation and supporting policies

### ***Compensation policies included:***

(i) *Compensation and support for losing land:* Land users were compensated with other lands in resettlement areas or with cash. They were compensated for the whole area of their land if they had legal papers that explicitly indicated land size. However, in many cases, land users did not have enough paper work. In this case, they were compensated by the land size limitation regulated by the Central Government (3ha per household). The compensation rate was regulated and announced by the Provincial People's Committee. If the original land was at a higher value or larger than the provided land in resettlement areas, relocatees were to be compensated with money for the difference.

(ii) *Compensation for losing houses* for those who must move, or inhabitants who must leave for establishing centralized resettlement areas. This includes funds to support relocation.

(iii) *Compensation for trees, domestic fowl, cattle, etc.* The rate was regulated by the Provincial People Committee.

### ***Supporting policies included:***

(i) *Living support:* Relocatees are provided the case equivalent of 20kg rice per person per month during 3 years after resettlement. They were also given healthcare (100,000 VND per household, one time), text books for children, and 30,000 VND per person per month for electricity and energy.

(ii) *Production support*: Each household was supported with 5,000,000 VND, and each additional person after one was supported with an extra 2,000,000 VND per person for purchasing seeds or materials for production. For inhabitants who lost their land for establishing resettlement, the supporting policies applied were the same.

(iii) *Training supports*: Farmers who shifted to non-farming jobs were supported up to 5,000,000 VND.

## 2.2 Resettlement process

This process can be divided into three stages:

### a) Pilot stage in Tan Lap (2003 - 2005):

Tan Lap was the first centralized resettlement area in Son La HP. It was built in 2004 and is located in Moc Chau District, about 180 km from the original village, Muong La District. From the government perspective, Tan Lap resettlement area had well-prepared infrastructure with completed systems of water resources, power supply, schools and healthcare stations, and ready-made houses. At that time, provincial and district government officials believed that these resettlement communities and houses were much better than traditional houses (i.e., more beautiful looking and solidly built).

However, the relocatees were unhappy with this “one size fits all” design. They wished to build their own houses with traditional design and materials, tailored to the specific owners’ situation.



Traditional Thai house



Resettlement house in Tan Lap

Relocatees in Tan Lap were provided with 1000m<sup>2</sup> lands in the mountains (đất nương) plus 1000 m<sup>2</sup> tea planting (đất trồng chè) for each person<sup>6</sup>. All relocatees in this place were from Muong La, where livelihoods were different from that of Tan Lap. The original Muong La livelihoods were based on farming, breeding pigs and poultry. Tan Lap’s cool weather and smaller land sizes, on the other hand, were more appropriate for tea planting and milk-cow breeding. Land is sloping, overexploited, with low productivity.

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6 Some areas that establishing later in Tan Lap area might provide up to 4000 m<sup>2</sup> per person.

The land plan and community design in Tan Lap was fixed at that time for relocatees. The resettling plan did not take into account new development when more households arose by splitting families (when children marry and move out). Tan Lap designed houses too close to each other with no spare land. It did not have common land for community festivals/ meeting/ activities. Nor did it have a cemetery for the resettling community.

As a result, relocatees were not happy with their new places. It took quite a long time (about 4-5 years) for the relocated families to get used to the new places and livelihoods. The relationship between relocatees and the local people has not been friendly. Three relocated families returned to their original land in Muong La and temporarily stayed in non-flooded original land. However they still retained their housing in Tan Lap or had it rented, and went back and forth to work on the original land.

### **b) Large-scale resettling stage (2005 - 2010):**

Learning from the Pilot stage, provincial officials made a number of changes in resettlement arrangements. The new policies applied to a large number of households (close to 20,000 families) who were relocated from 2005 to 2010. The new policies included the following:

- *More participation and choices:* Instead of moving people to already-established centralized-resettlement areas without discussion and negotiation, the authorities allowed land-users to make their own choices about where to go among available centralized-resettlement areas. Moreover, they could also receive cash to build their own new houses. They were encouraged to reuse materials from their original houses to save some money and retain original house designs. Commune and Village leaders visited 3- 4 places, and agreed on the best choice. They then took representatives of households in the village to the chosen place. If everyone agreed, the whole village could go. When the whole village moved to a new location, relocatees drew straws to distribute land to each household.
- *Mixed-inhabitant models:* This model allowed relocatees to move to areas where inhabitants were already well established. The authorities had to persuade inhabitants to give land to relocatees. Based on a land master plan, some inhabitants lost most of their land and were compensated according to state regulations. Infrastructure in these areas was also upgraded with better road, water and power networks. Schools and local healthcare stations were newly built or updated. Resettlement areas that had more than 30 households were given “Cultural Houses”. Resettlement areas also received additional funds for upgrading their infrastructure, 25 million dong per relocatee that they received.
- *Dedicated ‘persuasion’ teams:* The relocation of families was a logistical challenge for the local government. The whole state system at provincial, district and commune level participated in this process. Each governmental level had a Steering Committee (Ban chỉ đạo) headed by a Party’s Secretary. A Resettling Persuasion Taskforce (Ban Vận

động Di dân) was established by combination of several public service department officers such as the People Committee Chair, the Secretary of Party Cell, Women Union, Farmer Union, Father Front, and so on. This Taskforce could be as large as 30 people. The Taskforce assigned each member to be responsible for a village which was usually in their home district/commune or of the same ethnic minority. The purpose was to have the same “language” between state and people. They persuaded people through common messages: “This is for the fatherland’s lights”, “Northwest is the heart of Nation”, “We trust in the Party and State”, “We sacrifice for our future generations”, “The State will take care of all”, “Compensation and Supporting policies are fair and transparent”, etc. They stayed in the community for as long as needed to identify and persuade influential persons. Party members who are usually Secretary of Party Cell at the villages were also required to move first. Some Party members were even threatened with expulsion if they refused to move.

The new policies on relocation were successful in persuading people to move. However, there were still 50 households who decided not to move. They stayed at Quynh Nhai lakeside. There was neither coercion (cưỡng chế) nor support for these people.

### **c) Post-resettlement stage:**

The government at the different levels showed a strong commitment to support the relocatees. People had much better infrastructure, electrics and water. Education and healthcare infrastructure was also better than their original places. The state provided several levels of support for three years after resettlement. Most of the support aimed at stabilizing the economic conditions.

In some places, relocatees integrated quite well into new locations. For example, Yen Chau resettlement area has pleasant weather and arable land. Relocatees can farm well on flat, productive land. Compensation for land balances was received. Relocatees got used to the new life. In Chieng Son (Moc Chau), most families got on with new lives quite smoothly.

*“In Chieng Son commune, there are four resettlement areas (148 households, 612 persons), people adapted well, worked harder, and had a better life than the inhabitants”*

Commune leader, Chieng Son, Moc Chau

However, many families struggled. Moving to new places involved changing lives significantly. Firstly, production models changed. In some cases (e.g. Tan Lap), people switched to totally new livelihoods. In other cases, people continued their familiar production models (e.g., planting corn) but with much less land and water. They needed to learn better ways to raise productivity or the value of their products. Most people found it difficult to adapt to new production models. Secondly, other important aspects of lives were lost. The natural surroundings were different, resources for cultural activities were limited, and relationships with the local inhabitants were not always smooth. In some places, even the weather was vastly different (e.g., Moc Chau vs. Muong La). Unfortunately, government officials did not acknowledge or respond well to these non-economic elements.

Some relocatees also changed their minds about the new locations when facing challenges and not receiving balanced compensation as promised. They began raising funds to support protests, as they were told that commune level government officials had no authority to address these issues. They had to go to district level authorities.

### 3. Analysis of the three stages

Our analytical framework discusses how disputes (or potential disputes) were initiated and addressed at three stages of the resettlement: Pilot stage, Large-scale resettlement, and Post-resettlement (see Figure 1). The lower and higher portions of the figure demonstrate the thinking of the two most important groups in the resettlement: the officials and relocated people. There were some other groups at different stages, such as ‘persuasion’ officials or inhabitants at the destination. We will discuss their roles at appropriate stages. We applied the motivational thinking framework, comprising Pragmatic, Normative, and Cognitive legitimacy, to discuss the groups’ divergence.

At the core of the framework is the **convergence** of officials’ and relocatees peoples’ thinking, people’s **acceptance** of state’s plan, and groups’ **forums**. This framework portrays the role of groups’ **forums** in enlarging the **convergence** of thinking, and links **convergence** of thinking to people’s **acceptance** of state’s plans.

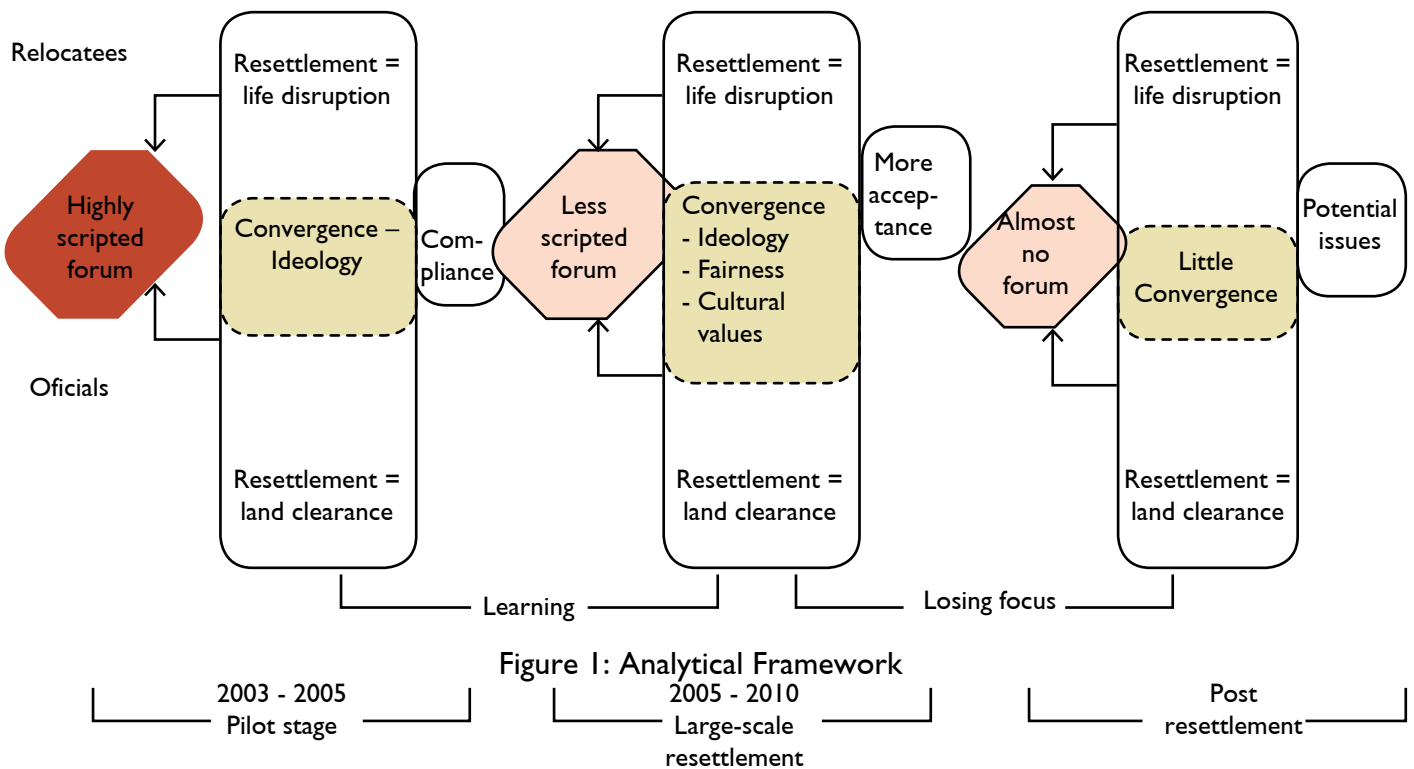


Figure 1: Analytical Framework



### 3.1 Pilot stage: Tan Lap resettlement model

#### a) Group categorization and their thinking

To clear land for the opening ceremony in 2005, 69 households in Muong La first needed to move out from their village. This was the first resettlement group and the government wanted it as the model for Son La Hydropower resettlement activities later on. As it turned out, this resettlement model was highly top-down with little attention to people's wishes. Thus, despite good intentions and considerable investment, the model did not gain a high level of acceptance.

Two key groups were present in this stage: 1) provincial/district officials, and 2) relocated people, including commune officials or village leaders. These two groups had vastly different thinking on related issues. Table I demonstrates the divergence in their thinking.

#### **Divergent views on resettlement:**

Officials were under pressure to get land ready for the opening ceremony. **Pragmatically**, their view on this resettlement was mostly about another "land clearance" activity with success measured as meeting the deadline to get people moved out. Tan Lap resettlement model was then designed as "trading land for land, and houses for houses", reflecting a view of just changing people's living locations. In officials' **normative** view, lands were state's assets. Thus, people's loss of lands in the resettlement should be compensated by other pieces of land. In addition, the compensation in land should also follow the government's current "land limits."

**Cognitively**, this view was reinforced by the ideology of "common goods", "common benefits" often seen under communist regime. The belief that the Hydropower Plant is "for the country's lights" was employed, and thus giving lands for the country was seen as the right thing to do. Finally, in Tan Lap model, "the state will take care of all", such that the government would build new houses, build infrastructure, give people new livelihoods to ensure the new lives would be "better than the existing lives". As a result, new houses were built with cement and concrete. The new village was designed as an "urban street" with the houses lined up neatly, facing in the same direction. Once they moved people were given totally new livelihoods: breeding milking cows and growing tea. Land was to be used flexibly to create values for lives. In officials' minds, these were the images of modernity progressive Vietnamese should aspire toward.

*"We needed to move people out by the time of opening ceremony [2005]. We worked hard to meet the deadline... Three households proposed to go elsewhere, the government did not agree. Houses were already built, if they go elsewhere, the houses would be of no use."*

Former Chairman of People Committee, Muong La District

*“The provincial committee chose Tan Lap, Moc Chau, as the destination. Many samples of new houses were presented, and the committee voted for this design.”*

A provincial official

*“We did kind of ‘force’ people to go [to Tan Lap]. Later on, we did not force. We took them to new places. If they liked it, they signed in a commitment document and organized the move.”*

A provincial official

*“People were spoiled. The government did everything for them.”*

A district official, Moc Chau

*“People did not even take the ownership of their houses. Sometimes, something was broken in their houses; they called officials to fix it for them!”*

A district leader, Moc Chau

*“People complained that they got not enough land for production. We (District People Committee) believed if they planted tea that would be good enough.”*

A Moc Chau District official

Unfortunately, government efforts were interpreted through the people’s vastly different understanding of the resettlement process. **Cognitively**, the resettlement was seen by people as a life disruption. Resettlement was not simply a changing of locations, but was a disruption of their *economic, cultural, spiritual, and traditional* lives. While officials may believe that they had created a “better place” for people, the relocatees had different views. They were disappointed that the houses were not built with wooden materials, that their spiritual fate was not considered (i.e., the houses facing the wrong direction), that the surroundings they were used to were taken away (i.e., the houses were too close to each other, and there was no river close by), etc. Worse still, the weather in Moc Chau is much cooler than that in Muong La. The first two months were foggy with no sunshine.

For the people, land (and surrounding nature) was an integral part of their lives. Land was not only a means of production but also an indication of life security and freedom. As a result, most complaints were about the area and planting quality of land, not the compensation rate. Land, as well as other conditions of the new place, was constantly compared to the original place. This normative comparison created standards of fairness, which we will discuss in subsequent section.

*“In the old place, our land was boundless. Here, the land is limited!”*

A Tan Lap relocatee - pragmatic and cognitive

*“New land can only be worked on for one season. Our old land could be worked on for two seasons, and it was close to water.”*

A Tan Lap relocatee

*“I used compensated money to lease lands for production. But it was not secure. I want to have my own land as before.”*

A Tan Lap relocatee

**Cognitively**, however, there was a convergence between official and people’s thinking about state ideology. Ethnic minority people in Son La cared for the “country’s lights” (*dong dien cua To quoc*), and thus perceived that resettlement was the right thing to do. On the other hand, some traditional norms and customs pulled them back. Examples of these customs include the Thai custom of not touching the graves, their spiritual relationship with ancestors, and their strong community sentiment. Resettlement was emotionally painful because this was viewed as violating customs (i.e. digging up graves), leaving “ancestral lands”, and/or breaking strong sentimental relationship. This cognitive conflict between state ideology and traditions was intense, yet was not well addressed at this stage. As we will discuss in the post-resettlement stage, conserving cultural traditions and customs was not adequately considered by the government at this stage.

*“When we knew we had to go, we were very sad. All of my family members could not stop crying. I was the Head of the Party Cell, so I went first. People lined up to show us out; they cried, our family cried, I cried. I had not cried when I joined the military, but I cried when we migrated.”*

A Tan Lap relocatee

*“Some people refused to go because their relatives stayed there, not because they could not earn a living here.”*

A Tan Lap relocatee

*“When we first got here, it was cold and foggy. No sunshine for 2 months. Just like our future at that time!”*

A Tan Lap relocatee

*“Some households got land parcels that are very sloping. They could not plant rice or corn. We persuaded them to plant tea, but it has been hard.”*

Leader of Moc Chau District

### **Divergent views on living conditions:**

Both officials and relocatees people believed that the resettlement involved a major adjustment of lives, and thus a proper preparation of living conditions in new places would be critical. However, our fieldwork suggested that officials and relocatees people had different images of “good” living conditions.

From the officials’ viewpoint, good living conditions involved reasonable **income** and good community physical **infrastructure**. Almost all preparation at this stage targeted at these two conditions. Officials also believed that the state (i.e. officials) would know best how to build “good” infrastructure and develop “decent” livelihoods for people. As a result,

people's houses, community roads and schools were designed and built by the government. District officials worked hard to introduce new, commercially-oriented livelihoods to relocated people. They first gave people milk cows for breeding, with a guaranteed client (Moc Chau Milk Company). As the cow project failed, officials introduced planting tea as a livelihood, also with a friendly client (Moc Chau Tea Processing Company). Both jobs would have offered people with opportunities to sell their products to strong clients, promising a higher income than traditional planting of rice and corn. These livelihoods were also believed to fit better with small planting areas in the new places. Given these advantages, it surprised officials that people resisted these new livelihoods (in the case of planting tea), or even failed to follow (milking cows).

*“Tan Lap had a small planting area since it was designed for high-tech production. Breeding cows or planting tea would have given higher income, but people failed to do so.”*

A Leader of Moc Chau District

*“Some people pulled up a tea plant, waved it in an official's face, and said: ‘can you eat this?’”*

A Leader of Moc Chau District

In people's cognitive thinking, living conditions involved more than concrete infrastructure and high-tech livelihoods. Firstly, surrounding **nature** was an integral part of their lives. In the new place (Tan Lap), the weather was cold and foggy, the garden was small, river and natural water - an important element of Thai culture - was not available. Secondly, **relationships** with neighbors were another part of their lives, and the relationship between relocatees and inhabitants in Tan Lap was not well nurtured in the resettlement. Finally, **spiritual** lives (e.g. moving graves, retaining traditions) were undervalued. This different view on living conditions led to different evaluations of the new place. People we met, including those introduced by district and commune officials, believed that the “*new place was not as good as the old home village.*”

In summary, officials and relocatees in the pilot stage had very divergent views on resettlement and living conditions. On the one hand, officials believed that land belongs to the state, that the resettlement was just a land clearance activity, and that people should be happy since they “traded land” and were given new, modern lives. On the other hand, people viewed land and natural surroundings as an integral part of their lives, and by taking away these conditions, the resettlement disrupted their lives. With the “state knows best” approach, officials imposed their thinking on people in this resettlement.

### **b) Forum and propaganda program**

Convincing people to move was never easy, especially for this first group. At this pilot stage, the Task Force had not been established. Instead, district officials went to the village to cooperate with commune officials to persuade people. The forums included a number of village meetings and separate meetings with “problematic” households.

As presented in a previous section, state ideology was used in communications. In addition, officials emphasized that the “state will take care of everything” and “new places would have better living conditions”, despite the fact that this message created different expectations.

*“Because I was a Party Secretary of Village, I was trained a lot in propaganda. I came to Tan Lap first, broke off the rice, brought it back to show to people and said that paddy was good and we should go... the houses and the tea plants were available...”*

Tan Lap, La Tan Village relocatee

The forum at this stage was highly scripted. Not only the objective (i.e. moving people out to a preselected place) and deadline but also the message was fixed top-down. The officials’ main task was to convince, not to listen to people. Some tactics, such as separating people out or having a police officer in the team, were used to create psychological pressure on people. These subtle elements of ‘force’ reflected a high level of mediation of this forum. The following story illustrates this point:

*“There were three families: a father’s and two sons’ families who refused to go to Tan Lap. They wanted to go elsewhere, but we did not agree because new houses were already built in Tan Lap. The District formed a team, including Resettlement officials and a police officer, to go and meet with them. We spent the whole morning talking to them without success. We then separated them. It took another day to convince the sons and then the father agreed to go too!”*

Former leader of Muong La District

### c) Resettlement results

All 69 families finally agreed to move to Tan Lap, and the Son La Hydropower Plant groundbreaking ceremony was conducted on time. From the officials’ point of view, this was a huge success. For the relocated people, the move was rather unhappy. Not only did the resettlement disrupt their lives, but their wishes were also largely ignored. They complied with rather than accepted the state plan. The consequence was their long-lasting unhappiness and many issues in coping with new lives, which we discuss in the Post-resettlement stage.



Tan Lap village



Relocatees in Tan Lap working at their tea plants

Table 1: Divergent views on the pilot resettlement stage  
Tan Lap model

	District - Provincial officials	Relocatees people
Resettle- ment	<ul style="list-style-type: none"> <li>- Cognitive: Resettlement as Land clearance</li> <li>- Cognitive: Based primary on the State ideology</li> <li>- Cognitive Cost/Benefit: “State took care of everything” was a major benefit to people</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: <ul style="list-style-type: none"> <li>+ resettlement is process of changing locations with minimum changes in other conditions (economic - traditions - customs)</li> <li>+ new locations were evaluated based on old location’s living models</li> </ul> </li> <li>- Cognitive: <ul style="list-style-type: none"> <li>+ state ideology vs. people’s wishes</li> <li>+ violation of traditions = psychological solutions</li> </ul> </li> <li>- Cost/benefit: secure lives</li> </ul>
Land and assets	<ul style="list-style-type: none"> <li>- Cognitive: Land is state asset</li> <li>- Normative: People can trade production lands. The compensation for assets should be equivalent in value</li> <li>- Cost/Benefit: People got better value</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: land and nature was a part of lives</li> <li>- Normative: lands should be an indicator of life’s security and freedom</li> <li>- Cost/benefit: equivalent “exchange” of land</li> </ul>
Living con- ditions	<ul style="list-style-type: none"> <li>- Cognitive: Income and physical infrastructure were key conditions</li> <li>- Normative: state knew better about what is “good life”</li> <li>- Cost/Benefit: People got better conditions</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Surrounding nature (weather, landscape) is integrated parts of lives</li> <li>- Normative: <ul style="list-style-type: none"> <li>+ Minimum disruption of life conditions (relational, natural, economic, traditional....) was desired</li> <li>+ Cost/benefit: better living conditions</li> </ul> </li> </ul>
Reference	Policies	Tradition

### 3.2 Large-scale resettlement stage: revised resettlement model

People’s unhappiness and the problems from the Pilot stage were registered in meetings between officials and relocatees. These issues pushed the government to adjust their approach in the large-scale resettlement stage. Major adjustments included forming a Persuasion Taskforce and responding better to people’s wishes. This resulted in a less scripted forums for discussions among groups, more convergence in groups’ thinking, and thus more people’s acceptance to the state’s plan. We analyze this process in subsequent sections.

### a) Group categorization and their thinking

- With the establishment of a Persuasion Taskforce, a third group of stakeholders was added to the existing two groups of Provincial/District officials and relocated people. These groups still had different views on related issues, but significant overlaps were created.

#### Overlapping views on resettlement:

- The Persuasion Taskforce was the government group tasked with persuading people to move. Most of the ‘persuasion’ officials were ethnic minorities who worked in either government or mass organizations (e.g., Women’s Union, Farmers Association). They understood government ideas and policy norms as well as people’s cultural values. They were assigned to work with their own district or even commune. They were the best in bridging government and people.
- As discussed, the taskforce officials identified with people they worked with, and they often stayed a long time in the village during their mission. Within such a setting, the communication went both ways, from ‘persuasion’ officials to the people and vice versa. The ‘persuasion’ officials became a “cultural bridge” between the government and people. **Cognitively**, they saw resettlement as both land clearance (similar to officials’ view) and life disruption (similar to people’s view). They could sense the tension between state ideology (which they were tasked to communicate to people) and traditional cultures/values that hold people back from moving out. Bridging the government and people, ‘persuasion’ officials believed transparency and fairness in compensation process as critical for the resettlement success.

*“Money or economic situation was not the key reason [for resistance]. There were other important reasons, such as ‘new land does not fit well with our fate’, ‘moving is a separation of us with our ancestor’, ‘we cannot dig up the graves’ etc. We had to keep talking about the meaning of the Project to persuade them.”*

A persuasion official

*“Province and District sometimes pushed too hard, saying that if the village failed to go on time, commune/village leaders would be expelled from the Party. The commune/village leaders said: ‘Please expel my Party membership! I cannot betray my people!’ You see, ethnic minority people do not care much about artificial glory. We had to talk back to District officials that we cannot do it that way. Let’s listen to them and find a way that they can accept.”*

A persuasion official

- With help from ‘persuasion’ officials, Provincial/District officials changed their view of resettlement. These Provincial/District officials still saw resettlement as a land clearance task, but they also acknowledged that it was a significant change in people’s lives. Therefore, they recognized the need for responding to some of people’s wishes in the resettlement. Whether this was a fundamental change in

officials' cognitive model of the project (i.e. from "state knows best" to "listen to people") or just simply a change in tactics to achieve immediate objectives (i.e., moved people out) is unknown. What was clear was that this approach was significantly different compared to the pilot stage.

- Key changes include: Village leaders could visit several places and choose the one they liked best; family representatives could visit a new place before agree to go; people could re-use most of their old houses in new places and still get full housing support; support for bringing graves was also provided. Officials talked about "what people want" more in this stage, and the following quotes illustrate that point:

*"If government built new houses for them, we could not meet the deadline, and people would not like it either. People liked to re-use their houses and still get government support for housing."*

A former leader of Muong La District

*"The old place had favorable natural conditions: fish and shrimp were abundant, and land was rich. People did not want to go."*

A Muong La District official

*"People had choices: they could go with their village or with their relatives in other village."*

A Muong La District official

- As in previous stages, provincial/district officials and 'persuasion' officials had a similar view that land was a state asset. At this stage, these officials recognized the importance of transparency in dealing with people's land. They also paid attention to people's perception of fairness, mostly in comparison to other groups of relocatees. 'Persuasion' officials emphasized that officials' honesty and transparency in dealing with people's land and assets were critical to gain trust and acceptance from them.

*"Persuading people to have land measured by modern techniques was not easy. People used to measure by hand and ropes... Some people assessed their land by the amount of corn seeds they used to plant."*

A Muong La District official

*"There was one complaint letter to government. The owner was a hunter, and marked the land he hunted on as his. Some of this land could not be recognized as his, and he complained."*

Muong La District official

- People had a similar view on resettlement as described in the pilot stage. Their view, however, was better shared by the officials thanks to the lessons from Tan Lap, and also the hard work of 'persuasion' officials. Land was seen (though implicitly) as a part of lives and an indicator of security and freedom. "Compensation rate" or "price" was not as important as the area and cultivation quality of land.



### Groups' views on living conditions:

- As in previous stages, people saw their lives integrated with nature, past events, and long-time relationships with neighbors. They used old places as a reference point to evaluate new places.
- Officials still believed that physical infrastructure and income are the most important living conditions of the relocated people. However, lessons from Tan Lap and feedback from 'persuasion officials' changed their normative approach. First, they believed that people should be consulted, and their choices should be considered as much possible. Thus, officials did respond positively to many requests from people. Secondly, instead of having a "state does everything" view, officials at this stage tried hard to ask people to actively decide, take responsibility, and participate to the resettlement. This turned out to be a major positive factor of the resettlement.

*"The Thai customs were less complicated than the Kinh. They got support for moving houses and graves, formed an ancestral altar, held a moving ceremony, then moved."*

A former Leader of Muong La District People Committee

*"Before, we would assign housing places to people. This time, we let people draw lots. They then can change among themselves."*

A Moc Chau District official

*"In Tan Lap, we assigned people to specific pieces of production land. Nobody was happy. This time, we showed people the land, and asked them to discuss how to divide. We then helped them in dividing and mapping the land parcels."*

A Moc Chau District official

- People, as in previous stages, had a more complex view of their lives. Some of their "good conditions", such as generous surrounding nature or staying in the "ancestor's land" could not be retained. However, many other wishes were considered at this stage. What made it more complicated was that people constantly used their limited information to compare their conditions with those in different resettlement modes or at different times.

*"People in Tan Lap got more support: house, cow, teas, etc. We got less."*

A relocatee in Muong Vu, Muong La District

*"Quality of land here [in Muong Vu – Muong La] is not as good as Tan Lap - Moc Chau or Yen Chau and there is a lack of water sources so we cannot cultivate"*

A relocatee in Muong Vu, Muong La District

*"The compensation was not fair... Officials were not good. They deceived us, they said: 'let's go. You will be well compensated.' We went, but got less compensation than people who delayed to go."*

A relocatee in Mai Son District

## b) Forum, communication program, and agreement

Similar to the pilot stage, all discussions and communications happened at the relocatees' villages. This time, the government formed a Persuasion Taskforce in each district and assigned each member to work with a village. The members came to their assigned village, faced with people's opposition (sometimes quite hostile), stayed there with some supported households (normally village leader or members of the village's mass organizations), and conferred with the village's reputable persons. It took weeks for 'persuasion' officials to be able to talk to all the people. In that process, 'persuasion' officials were in less powerful positions, and they needed to gain trust from people to survive and accomplish their mission. By contrast, people had a safe and convenient forum right at their village to express their emotion, concerns, and wishes.

The taskforce became a 'cultural bridge' between the state and people. Their primary mission was to "persuade" people to move. At the beginning, their main persuasion weapon was the state's ideology of "sacrifice for the country's light" and "the state will ensure better lives for people". It quickly became clear that this weapon was not enough to gain people's trust. 'Persuasion' officials increasingly recognized the importance of taking people's concerns into consideration, and much for these concerns were rooted at the cultural values and customs. A new role emerged for 'persuasion' officials: providing feedback to district government on resettlement design to better fit with people's concerns. In the end, 'persuasion' officials actually persuaded both sides - the government and people - to change. Below are some stories from 'persuasion' officials.

*"When we came, people chopped down a tree and blocked the road to the village. They did not want to talk to us... They confronted us in a very hostile way."*

*"I asked the head of woman union at the village to stay with her family. I talked to her and her family, little by little, about the significance of the Plant and the state's plan. They gradually supported me, showed who I should talk to next. After a while, we could organize a village meeting and discussed the issues."*

*"I proposed to the Head of District Resettlement Unit that we needed to include supports for moving graves. He shouted at me that I assisted the 'enemy' [people]. But finally he agreed to propose to the supervisory units and got approval. It made people happier."*

The forum in this stage was less scripted than that in the Pilot stage. Neither were the officials in a dominant position, nor was the state's ideology unilaterally imposed to people.

## c) Resettlement results

All 3428 households in Muong La had moved out by January 15<sup>th</sup>, 2010, 4 months ahead of the plan. None of these cases was coerced. More importantly, people were more acceptant to the move since many of their concerns were addressed in this adjusted plan.



A relocatee in Yen Chau



Relocatees' houses in Yen Chau

Table 2: Groups' overlapping views in large-scaled resettlement stage

	District - Provincial officials	Relocated people	'Persuasion' officials
Re-settlement	<ul style="list-style-type: none"> <li>- Cognitive: resettlement is process of land clearance for HP Plant</li> <li>- Normative: state objectives should be reconciled with people choices</li> <li>- Cost/benefit: better lives for people</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive:                             <ul style="list-style-type: none"> <li>+ resettlement is life disruption</li> <li>+ new locations evaluated based on old location's living models</li> </ul> </li> <li>- Normative:                             <ul style="list-style-type: none"> <li>+ state ideology should be reconciled with people's wishes</li> <li>+ traditions should be respected</li> </ul> </li> <li>- Cost/benefit: secure lives desired</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Resettlement was a process of changing lives</li> <li>- Normative:                             <ul style="list-style-type: none"> <li>+ State ideology should be reconciled with people wishes</li> <li>+ People's traditions should be respected and accommodated</li> </ul> </li> <li>- Cost/benefit: People got secure lives from state</li> </ul>

	District - Provincial officials	Relocated people	'Persuasion' officials
Land and assets	Cognitive: Land = asset - Normative: + transparency and honesty in dealing with people's assets + fairness among different groups - Cost/benefit: + Compensation equal to land value + People supported and can re-use their houses	- Cognitive: land and nature is a part of lives - Normative: lands should be an indicator of life security and freedom - Cost/benefit: equivalent "exchange" of land	Similar to officials But at the same time recognized cultural values of lands
Living conditions	- Cognitive: Infrastructure and income are most important living conditions - Normative: + People's choices were important + People's contribution/ participation were important - Cost/benefit: better living conditions	- Cognitive: Nature (weather, landscape) integral part of lives - Normative: + Minimum disruption of life conditions (relational, natural, economic, traditional...) - Cost/benefit: better living conditions	Similar to officials But recognized the spiritual, relational and cultural values that people care
Reference	- Policies - Traditions	Other resettlement outcomes Tradition Current lives	Traditions Policies

### 3.3 Post-resettlement stage

Moving close to 20,000 households from their land was a huge effort. Helping these people to settle with new lives required even more dedication and consideration of people's needs. Unfortunately, the post-resettlement stage saw a return of the bureaucratic approach: most officials turned back to their normal top-down approach; open forums disappeared; and many people remain confused about their future.<sup>7</sup>

#### a) Group categorization and their thinking

The three key groups in post-resettlement were: i) district/provincial officials; ii) relocated people (including commune/village leaders); and iii) inhabitants at the relocatees' destination. Their divergent views on livelihoods, lands, and living conditions are discussed in subsequent sections.

<sup>7</sup> Since people moved at different time, the post-resettlement stage had a different time frame for different people. However, we found significant similarities in their issues after the resettlement. To simplify our analysis, we analyze the post-resettlement stage as if it all happened at the same time.

### Groups' divergent views on livelihoods:

A significant divergence in groups' views on livelihoods was evident at this stage. Officials' cognitive thinking of livelihoods was influenced by a commercial, market-oriented perspective. Officials viewed **land as a state asset** that can be given to people for living and production. Government 'land norms' should be followed. Related conditions for living and production (e.g., irrigation system, slopes of lands) were separate issues.

*"The province instructed that if planned lands for relocatees people were not enough, we need to find more land for them. Compensating with money was not approved."*

Provincial official

*"Some families got land, but the land was flooded, they could not farm. The province has not issued any instruction on this issue yet."*

Provincial official

A 'good' livelihood, from the point of view of officials, **generated tradable "goods" and brought in high income**. A decrease in land should not be a problem as long as the land assigned can generate valued products. Officials believed that a good transportation system and their effort in linking people's production with possible clients would solve problems. In officials' *normative* thinking, people should learn a market-oriented approach in their livelihoods, and the government was in a better position to direct them on what should be produced. Livelihoods are about value generation.

*"Do people have enough land? We believed size of land should not be problem. With high-tech livelihoods, income per m<sup>2</sup> would be higher."*

Moc Chau District official

*"Tea was not as profitable as planting corn. However, tea can be nurtured and harvested for the whole year, and tea has an assured client, so it should be more secure."*

Moc Chau District official

*"In the new place [Muong Vu commune], people can contribute land and become workers of the Rubber Plantation. That should be a good livelihood for people."*

Former leader of Muong La District

*"Good road system helped selling corns more easily, with better price."*

An official of Mai Son District

Relocated people, by contrast, still followed a self-sufficient approach. A 'good' livelihood, from their perspective, **provides necessary goods for immediate consumption**. 'Trading' was too uncertain and inconvenient. Working for others, such as for a rubber plantation, was insecure and strict. Thus, while officials tried to help relocated people with 'commercial' livelihoods, relocatees found it very hard to follow. They liked to do things as in the past.

*“My family do not eat things from the market. We raise pigs and chicken for ourselves. We do not eat animals that were raised on mash.”*

Relocated person in Muong Vu, Muong La

*“In the old place, we could just go to our garden and pick fruits we need. Here we have to go to the market. It is not convenient.”*

Relocated person in Chieng Lao, Muong La

*“Working for the rubber plantation is not easy. If we made mistake, they deduct payment.”*

Relocated person in Muong Vu, Muong La

*“When they [rubber plantation] have work, they call us. We have not got any call from them for about 3 months now.”*

Relocated person in Muong Vu, Muong La

Having resettled in new places, relocatees had to face the fact that their land for living and production was much smaller than before. These lands were no longer viewed as a good indicator of life security or freedom. They, however, still viewed **land as a means of production**. Without adequate conditions for plantation, e.g. an irrigation system, production lands would be of no use.

*“If compensated for land differences [between old and new places], I would like to have more land, not money. It is OK to have land parcels far from here, but we can earn a living from it. And we need to see them first.”*

A relocatee in Tan Lap, Moc Chau

*“Production lands were scattered because the inhabitants only gave land in the top of the hills. It was hard to farm... Next meeting we will not accept the land. People do not want to get poor quality land.”*

A relocatee in Mai Son

Inhabitants who gave their land to relocatees formed another significant group in the post-resettlement. For these people, **‘good’ livelihoods are the things that they liked to do and were able to do**. The compensation for lost-land was believed by most of inhabitants we met to be “fair”, by comparison to the currently very low “market price” in Son La. However, “fair compensation” was not necessarily sufficient. These people were on their own looking for new livelihoods. Unfortunately, many of them were confused and uncertain of what they could do with the compensation. They were scared.

*“My family gave 6 ha, we now have only 400 m<sup>2</sup>. The compensation of Son La Hydropower Plant Project was fair. We tried to change to breeding pigs as our new job. Many others do not know what they can do with the compensation.”*

An inhabitant in Chieng Son, Moc Chau

*“I believe people who lost land to relocatees are worse-off. They spent the compensation money, but do not have new jobs.”*

An inhabitant in Chieng Son, Moc Chau

*“We the inhabitants only lost, did not gain anything.”*

An inhabitant in Tan Lap

### **Groups’ views on living conditions:**

Officials did not change their belief that physical infrastructure and income are the most important living conditions for both relocatees and inhabitants. In fact, they used “better infrastructure” as a selling point to persuade inhabitants to give land to relocatees. Officials also believed that people need to learn to live modern lives, and having modern facilities was one indicator of good living conditions. Cultural and spiritual concerns were not critical.

*“What about relocatees’ lives post-resettlement? Much better [ modern] communication, information, transportation systems.”*

Provincial Resettlement Unit official

Relocatees and inhabitants had more complex views on living conditions. Besides physical infrastructure and ‘good livelihoods’ (which were defined very differently), they also cared about cultural, relational, and spiritual factors. The post-resettlement stage witnessed people’s unhappiness in lacking conditions for traditional cultural activities (e.g., water-related games, community land). Although “cultural houses” were built for each commune, these houses were rarely used for cultural activities. In some areas, tension between relocatees and inhabitants grew over time due to conflicts over production land. Wherever new livelihoods were not successful for either relocated people or inhabitants, social evils (e.g. robbery, drugs) appeared. That contributed to safety issues - an important element of ‘good living conditions’. While officials at this stage primarily referenced policies in their approach, people constantly referenced three main sources: officials’ promises before moving, other groups’ conditions and support, and their lives before the resettlement. Both relocated people and inhabitants we talked to acknowledged that they got “fair compensated money” but still lost many critical elements of their lives.

### **b) Forum and communication pattern**

The convenient and comfortable forums of the resettlement stage disappeared post-resettlement. Dedicated ‘Persuasion’ Taskforces were dissolved right after the resettlement was done (i.e., moving people out). Officials turned back to their regular “assigned functions”. If people had concerns or proposals, they had to go to commune or district offices to submit them. The relocated people had to go back to their original district offices if their concerns or proposals related to original lands. That could be close to 200 km away.

The message and approach also changed significantly. In the resettlement stage, it was common to hear that “the state will take care of everything” or “new lives will soon be better”. People’s concerns were listened to and accommodated to a reasonable extent. Post-resettlement, the most common message was “we need to wait for government policies”. A bureaucratic approach dominated the system, and it took a long time to get officials’ responses to any request.

In this new setting, relocated people’s ‘power’ in interactions with officials was reduced significantly. Firstly, it was very hard for them to get back to their original places. Secondly, families in the same village could not unite as before. Families faced different problems (i.e. some families had incorrect measures of original lands, some others wanted better land parcels in the new place). Thus, only small groups of families, sometime only one family in a village, went to see officials about their problems.

*“When people came and ask about re-measuring original lands, we said: ‘policies are being developed. You need to wait.’”*

Official from Muong La District

*“Some people complained about their original land (inaccurate measures). We asked them to come back here (Muong La), we are gathering all written complaints in the same commune, and will re-measure.”*

Official from Muong La district

### **c) Post-resettlement results**

Only 51 families moved back to their original place and stayed temporarily close to the plant. The vast majority stayed in their new places. People coped reasonably well with new lives, especially the younger ones. They recognized the better infrastructure and education facilities.

However, our fieldwork identified a number of issues inducing unhappiness. Firstly, people were impatient with the government’s slow responses on land compensation. While officials cited ‘technical issues’ as the key reason, people found it surprisingly slow in comparison with what happened in previous stages, and their expectations from officials’ promises.

Secondly, people’s new lives had a number of problems. Despite better infrastructure and new livelihoods, people felt they lost many elements of the good life. As presented in the previous section, lack of resources for community activities and/or a cemetery, lack of land for population growth, coupled with an uneasy relationship with inhabitant people, made relocated people dissatisfied.

Finally, people’s trust in officials eroded. The lack of officials’ attention to peoples’ concerns and slow response to complaints made some people doubt officials’ willingness to solve their problems. Some people recalled officials’ generous promises before they moved and referenced them to explain their feeling of distrust.



*“I don’t know the letters (illiteracy). I’ll get whatever and whenever they (officials) give it to me. I asked, they [officials] said: ‘if you think you are good, you go do it yourself!’”*

A relocatee in Muong La talking about land compensation

*“The government promised us to have compensation by June 2013, but we don’t know if that will be true.”*

A relocatee in Muong La talking about land compensation

*“We went to Muong La several times and asked officials to measure village common land for compensation. But officials said ‘don’t know’. Previous officials moved back to other work; we complained too late; nobody cares!”*

A relocatee in Muong La talking about village common land

*“Do not have land for cemetery here. Luckily nobody died yet!”*

Former Village Leader

Inhabitant people, especially those lost their land, were not happy either. They perceived unfair treatment when “relocated people got everything. We lost land but got nothing”. In some places, these people talked about grouping together and going to District for complaints.

Table 3: Groups' divergent views in post-resettlement stage

	District - Provincial officials	Relocated people	Relocated officials
Livelihoods	<ul style="list-style-type: none"> <li>- Cognitive: Commercial, market-oriented perspective</li> <li>- Normative: People should learn market-oriented production</li> <li>- Benefit: More income led to better livelihoods</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Self-sufficient view</li> <li>- Normative: <ul style="list-style-type: none"> <li>+ Livelihoods should provide goods necessary for immediate consumption</li> <li>+ Good livelihoods allowed people (in the village) to work together.</li> </ul> </li> <li>- Benefit: Look for sufficient goods for life</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Dominated by self-sufficient views</li> <li>- Normative: Some pressure to learn commercial approach and new livelihoods (buy land, pioneer market production)</li> <li>- Benefit: Only recognized the compensation</li> </ul>
Land	<ul style="list-style-type: none"> <li>- Cognitive: Land viewed as a commodity. Officials cared about prices and monetary value</li> <li>- Normative: Followed policies. Reference to technical issues in compensation</li> <li>- Benefit: view compensation for loss of land in monetary value</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Land was a means of production: cared about areas and production quality; Land was a part of freedom and security of lives</li> <li>- Cost/benefit: People got less land (as means of production). People perceived a loss of freedom and security.</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Land as means of production and past investment; Land is life, security and freedom</li> <li>- Normative: <ul style="list-style-type: none"> <li>+ Follow policies (though vaguely believed land = public ownership)</li> <li>+ Lost land should be compensated for past investment</li> </ul> </li> <li>- Cost/benefits: loss of security and investment</li> </ul>
Living conditions	<ul style="list-style-type: none"> <li>- Cognitive: Quality of life depends on income and physical conditions.</li> <li>- Normative: People should learn to have modern lives</li> <li>- Cost/Benefit: Improved infrastructure and modern lives were used as "selling point" to people - gain</li> </ul>	<ul style="list-style-type: none"> <li>- Cognitive: Living conditions comprised of complex configuration of contextual factors: water, land, houses, cemetery, community land, weather, traditional foods and customs</li> <li>- Normative: <ul style="list-style-type: none"> <li>+ Spiritual: linked with ancestor and fate beliefs.</li> <li>+ Relationship with nature</li> <li>+ Relationship with people</li> </ul> </li> <li>- Cost/benefit: <ul style="list-style-type: none"> <li>+ Seeing a loss of many aspects of lives</li> <li>+ Lack of lands for population growth</li> </ul> </li> </ul>	Similar to relocatees
Reference	Policies	<ul style="list-style-type: none"> <li>- Previous promises</li> <li>- Other groups</li> <li>- Lives before going</li> </ul>	Lives before losing lands Relocated people

## 4. Discussion

The aim of the case study is to explore what contributed to the overall smoothness of the resettlement for Son La Hydropower Plant and potential issues in the post-resettlement stage. This case study is of particular relevance, since it sheds light on the sources of potential disputes as well as success factors for managing disputes. We draw on a multi-actor approach and data from various sources to address the questions.

The case suggested that the presence of different groups and their divergence in thinking were key sources of potential disputes.

**First**, the resettlement had different groups of people involved, and the number as well as nature of these groups changed at different stages. While officials and relocated people were two key groups at all stages, 'persuasion officials' were only present at the large-scale relocation stage. The original inhabitants became involved during post-resettlement stage.

**Second**, these groups thought differently about related issues, they had different mental models about resettlement, livelihoods, and land. These models led to different views about what was an optimal ideal, fair, and what was beneficial.

**Third**, the divergence in groups' thinking on related issues was the key source of potential disputes. The case demonstrated that the pilot and post-resettlement stages had bigger divergence in groups' thinking. As a result, people were less happy with the solutions than in the large-scale reallocation stage. Thus, any effort to promote convergence in groups' thinking reduces the risk of disputes.

**Fourth**, the chance for convergent thinking depends significantly on the availability of unscripted forums, in which different groups have equal power and can raise their voices comfortably. Such a forum was available at the large-scale resettlement stage but not at the pilot or post-resettlement stages.

This case provides a new perspective on what causes disputes. People often believe that disputes emerge because of conflicts of interest or wrong doing. The implicit assumption is that people are using the same mental models on related issues. This case suggests that disputes can happen (and perhaps most frequently do) because involved groups think differently on related issues. They may see things from different perspectives, and thus have different norms and/or different calculations of cost/benefit. The potential of divergent thinking is higher when groups have different backgrounds and experience. In this case, officials, relocatees, and inhabitants came from different ethnicities, and had different life histories. Divergence in their thinking persisted through time.

Also emerging from this case is the notion of cognitive conflict within each person/group. People can simultaneously hold contradictory cognitive ideas. Different ideals dominate

in different circumstances. In this case, relocatees held both state ideology and their traditional cultural values, and these two sets of values were in conflict at the time of moving. While state ideology rose at the resettlement to get people to move, cultural values trumped back at the post-resettlement and guided people's emotion. This implies that resettlement practices should acknowledge this cognitive conflict to be sustainable. While nationalism may rise at times, cultural values persist in the long-run.

This case also illustrates that an unscripted forum with dedicated mediators is critical for convergence in thinking. In this case, unscripted forums not only *allow* groups to talk freely, but also *require* groups to listen to each other seriously. Cultural intermediaries played a critical role in 'translating' and communicating ideas across cognitive gaps. For this, joint experience and first hand observation may be needed in addition to verbal communication. At the large-scale resettlement stage, 'persuasion' officials had to stay with people for some time to recognize how they thought and value. They then recognized tacit elements of people's thinking, and communicated back to district officials for policy adjustment. These activities were absent in the other two stages.

Another straightforward lesson from this case is that resettlement success depends on the ability to control corruption. Relocatees, inhabitants, and officials agreed that almost no corruption occurred in this case. All activities were done in a transparent manner. Any irregular act would be immediately and strictly resolved. Had people experienced some form of corruption, the case would have been much more tumultuous.

While discussing groups' thinking, we need to acknowledge the role of emotion in managing disputes. Emotion has the power to transform normative views about fairness and pragmatic views about utility of land. In this case, emotion (not knowledge which informs pragmatic decision making) drove people's behaviors. Their emotion was rooted at the complex interaction of past (cultural, traditional, custom), present (disruption of lives when moving), and future (unknown lives) factors. Negative emotion surged when unscripted forums and dedicated mediators were not available, as in the pilot and post-resettlement stages. The potential risk of a dispute at post-resettlement stage was not about how much money people got from compensation. It was about how much people trusted officials (and the government). Delays in compensation, lack of availability of officials in responding to people's concerns, and unwillingness to accommodate people's requests eroded trust in officials. From a policy lens, nobody committed wrong-doing. Yet, the potential for disputes was certainly not negligible.

## **Case Study 2**

# **The Dung Quat Economic Zone Dispute: Quang Ngai Province**

## I. Introduction

*“While the intensity varies, petitions arise every day.”*

Current economic, environmental and development pressures have led to a surge in the number and prominence of public land disputes in Vietnam. However, there is compelling evidence that dispute resolution mechanisms in Vietnam struggle to resolve disputes concerning state land acquisitions and private land conversions. While court and administrative complaint resolution options are available, evidence suggest that they are complicated, relatively ineffective and likely to protect the state benefit over private interests. Other obstacles to resolving land disputes include a complex and internally contradictory legal system, sudden changes of policies and laws, unclear division of responsibilities among state agencies (including judicial bodies), complicated and non-transparent procedures, and a lack of information and legal awareness by petitioners.

We argue that lasting solutions to land disputes require relevant parties to share common views about the rules governing access to land, dispute resolution practices, as well as the outcomes from disputes. To investigate this proposition, we take a multiple-actor perspective that empirically examines the options available to, and strategies employed by parties to resolve land disputes. By understanding what brings parties together to resolve their differences and conflicts, this study will identify the most (and least) promising methods of dispute resolutions.

This report analyses the case of the Dung Quat Industrial Zone<sup>8</sup>, considered a “symbol of modernization and industrialization” in the central region of Vietnam at the beginning of the reform process. The zone has subsequently been renamed the Dung Quat Economic Zone Authority<sup>9</sup> (DEZA) under the direct management of the provincial government of Quang Ngai, but grievances arising from the project remain after 13 years. The DEZA dispute was chosen because it illustrates problems that arise from the mismanagement of disputes arising from an industrial park. This case presented a counter-intuitive phenomenon: disputes surged in the second period where much higher compensation was offered to land-holders by the provincial government of Quang Ngai when their lands being acquired. In the first period (from 1996 to 2005), there appeared to be considerable convergence in the official and popular thinking about land during the compulsory acquisition process for DEZA. They both regarded land as a state asset, and believed that the people had an obligation to support the state plan. In addition, the compensation was much higher than earnings from agricultural production, the only basis for comparison at that time. In the second period (from 2006 to date), however, inconsistencies emerged with both land-holders (regarding compensation and supports) and relocatees (regarding post-resettlement). Thus, higher compensation and better recognitions of land rights, as recorded in new policies and laws of

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8 The industrial zone is an area specializing in industrial production and implementation of services for industrial production, with a defined geographical boundary, established with the conditions, process and procedure under the Decree issued by the Government;

9 The economic zone is an area with particular economic space with favourable investment and production environment for investors, with defined geographical boundary, established with the conditions, process, and procedure by Decree issued by the Government. The economic zone is organized into the functional areas including: non-tariff zones, bonded zones, export processing zones, industrial parks, entertainment venues, tourist areas, urban areas, residential areas, administrative areas and other functional areas suitable for each economic zone (the current document applied is Decree no. 29/2008/NĐ-CP dated 14 March 2008).

the central and provincial governments, seemed to result in more disputes. Perhaps money and policies were not the whole story of why disputes arise.

What contributed to the successful resettlement during the first period? What induced disputes in the second period? Are there any potential unresolved issues in the post-resettlement? What can we learn from this case about optimal ways of preventing or resolving land disputes? These are the basic questions we set out to answer in this case study.

As with the other cases in this study series, we used a multi-actor analytical framework<sup>10</sup>. According to this framework, actors differ in their cognitive, normative, and pragmatic thinking about land-related issues. The greater the difference in the way actors conceptualize land disputes the less likely they are to find meaningful and lasting settlements.<sup>11</sup> Settlement is most likely to occur where actors are prepared to adjust their regulatory priorities and bring their regulatory preferences closer to those of the other actors involved. Lasting solutions are possible where the regulatory preferences of all actors converge. It should be noted that different groups in land disputes interact with each other in a range of forums. How and by whom these forums are mediated also has a strong bearing on whether lasting settlements are possible.

Qualitative interviews allowed us to approach respondents from different positions, to compare, contrast and understand their viewpoints with reference to local contexts. We conducted this case study by systematically collecting and analysing data from related groups (e.g., provincial and district officials, members of mass organizations, relocatees and inhabitant people in Quang Ngai) in the resettlement.

## 2. Project Overview

Dung Quat Industrial Zone, now called Dung Quat Economic Zone Authority (DEZA) was established by a series of decisions from the prime minister and a National Assembly resolution. The Prime Minister's Decision No. 207/TTg (1996) approved the general plan. Decision No. 553/TTg (1996) established the Management Board. The 10th National Assembly issued Resolution No. 07/1997/QH, (1997), on the Dung Quat Oil Refinery Factory project. The Prime Minister then issued Decision No. 514/TTg on investment in Dung Quat No.1 Oil Refinery Factory, and in 2005 the Prime Minister issued Decision No. 50/2005/QĐ-TTg on the establishment of Dung Quat Economic Area based on Dung Quat Industrial Zone.

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<sup>10</sup> For a more detailed description of the framework, please refer to the summary project.

<sup>11</sup> Note that actors can still disagree even where they share the same conceptual view of the dispute. They can always disagree about cost benefit issues. The important point is that this type of dispute is much easier to resolve than those where there are cognitive or normative clashes.



In Decision No. 1056/2005/QĐ-TTg, (2005), the Prime Minister approved the master plan for the development, adjusted under Decision No. 124/QĐ-TTg 2011. These decisions gave the DEZA a total area of *about* 45,332 ha; including: 10,300 ha for the Industrial Zone, an additional area of 24,280 ha and about 10,752 ha of sea surface area. An intensive effort to build and develop DEZA to become an integrated, multi-sector, multi-area economic zone with a focus on the development of the oil refinery industry and other large-scale heavy industry, as well as exploitation of deep-sea ports, Chu Lai international airport, and the development of new urban areas of Van Tuong and Doc Soi, Quang Nam.

With the new approved plan, DEZA borders the East Sea (East), the North - South railway (West), Quang Nam province (North), and new area of Quang Ngai City (South). The DEZA area covers the nine villages of Binh Son District: Binh Hòa, Binh Phú, Binh Phước, Binh Đông, Binh Thạnh, Binh Chánh, Binh Trị, Binh Hải, and Binh Thuận. To implement this project, the local authorities of Quang Ngai issued a number of policies regarding land acquisition, compensation, support and resettlement to promote the development of DEZA.

In the next section, we present the particular case of Dung Quat resettlement before using this framework to analyze research data.

### 3. Description of the resettlement

Dung Quat Industrial Zone (10,300 ha) now called Dung Quat Economic Zone Authority (DEZA) (45,332 ha) was established by decision of the Prime Minister. Between 1996 and 2011 a total area of 2,900 ha containing more than 2,500 households was acquired to allocate land and sites for investors, especially foreigners who invest to Quang Nam. 1,760 households, mainly residing in Binh Trị, Binh Đông, Binh Thuận village of Binh Son District have been resettled in 18 new resettlement areas in Binh Thanh Tây, other villages of the same District and Son Tinh District.



In the first period (1996 - 2005), **1,111 households** quietly moved to the new areas while the rate of compensation was very low (26,000 VND/m<sup>2</sup>) with no complaints received from relocatees. In the second period (2006 to date), **more than 600 households** moved to the new areas but complaints have arisen around each land acquisition project. At the same time, there were a number of cases where relocatees in new resettlement areas lodged complaints to local state agencies to ask for more support or compensations. They were the households who had left their residential and agricultural lands for DEZA in the first period without any compensations for land acquisition (according to the policies and laws at that time, they were only entitled to receive compensation for properties, trees, yields invested or benefited on lands). The number of complaints lodged by relocatees to local agencies is around 300. All of them recalled what they had received and compared it to those who left for resettlement in the second period. They also asked for more support from state agencies for their new life, especially to ensure their living conditions and careers.

This led to a situation where more than 300 households from the resettlement area in Binh Thanh Tây village, Binh Son District, who had left their lands quietly since 1997, returned to their previous land on the site of Dung Quat Oil Refinery Factory and Polypropylene Plastic Factory to protest for more compensation and support on 14th July 2010 (see photo by Minh Duc published on *sgtt.vn* – the electronic version of Sài Gòn Tiếp thị Media Newspaper on 15th July 2010 with the quotation “Hundreds of relocatees in the new resettlement area in Binh Thanh Tây village, Binh Son District blocked the entrance to Dung Quat Oil Refinery Factory to prevent workers from working for nearly 3 hours on the morning of 14th July 2010”).

The compensation increased around every two years, and the land price in 2012 was about 10 times higher than that in 2006. The increase in compensation was accompanied by a surge in complaints - more than 520 complaint letters were received between 2010 and 2012. This situation first arose when land prices skyrocketed, benefiting the late movers tremendously. Some of these late movers had been uncooperative, delaying their resettlement. In addition, projects in the DEZA were implemented at different speeds. Some projects could not pay compensation or relocate people on time. In those cases, people could not go to new places, receive money, nor build houses or invest in their old land. Finally, post-resettlement conditions and livelihoods were far from the “better lives” people expected. As a result, some people felt they were being unfairly treated or lied to.

According to provincial statistics, in the area of land acquisition for Dung Quat Economic Zone Authority alone, there were 4,576 people in need of work, 5,253 needing training and 872 in need of work transformation. However, in terms of employment status, in 2010, approximately 40% of workers are employed in seasonal construction or other professions. Workers employed in Dung Quat Economic Zone Authority account for approximately 31% of the total number of employees in the area (9,000 people). Approximately 42% of total industrial production workers reside in the province. However, there are only a little over 300 employees from the resettlement areas.

Some resettlement areas, such as Đông Hòa, Gò Đường, Đồng Ruồn, and Binh Thuận, where the system of common facilities and infrastructure has not built synchronously. In the Trung Minh resettlement area in Binh Chanh Commune, Binh Son District, no relocated households have yet moved in due to a severe lack of common facilities.

Although planning and construction of resettlement areas is required for households who must move from their land, the new facilities do not meet the basic requirements of “A new living location must be better or equally good as the old one”.

*“We are not offering you the water we drink because you could not drink it anyway.”*

A relocatee in Dung Quat - Quang Ngai - Post-resettlement issues

According to statistics gathered by the local Department of Natural Resources and Environment only 18.5% of resettled households had better living standards than before, 25.2% were equally good, while 56.7% had lower living standards. Through 2009, 364 households (23% of total resettled households) were not in the resettlement area or had transferred their resettled land to others; 33 households (2.1%) had returned to their old land. In addition, local people who previously relied on agriculture and fisheries now had to move to industry and services; facing difficulties with training, jobs, smaller cultivation area, and altered lifestyle.

### 3.1 Compensation and support policies

There was a clear increase in compensation paid from the first to the second development period. In the first period, according to Decree No. 22/1998/NĐ-CP (1998) and Decree No. 87/1994/NĐ-CP (1994) on land price and other guiding legal documents of the Provincial People Committee of Quang Ngai (hereinafter referred to as PPC), the value of compensation and support paid for 1 m<sup>2</sup> of housing land ranged from 9,000đ/m<sup>2</sup> to 26,000đ/m<sup>2</sup>; from 1,500đ/m<sup>2</sup> - 7,500đ/m<sup>2</sup> for agricultural land; and from 2,000đ - 5,000đ/m<sup>2</sup> to support vocational change. However, in the second period, according to Decree No. 84/2007/NĐ-CP, (2007) on granting land use certificates, compulsory acquisition of land, exercise of land use rights, procedures for compensation, support and resettlement and some relevant guiding legal documents of the PPC, the value of compensation and support rapidly increased on an annual basis. For example for 1 m<sup>2</sup> of housing land, compensation increased from 50,000đ - 300,000đ (2006) to 180,000đ - 650,000đ (2011).

There were inconsistencies in the terms of the supporting policies of the PPC in dealing with households among different projects and times. Specifically, there were several specific cases when households disagreed with local agencies about the resettlement and did not move. They lodged complaints to the PPC to ask for more compensation and support. An example is seven households in Binh Đông village that complained in relation to the site-clearance project for Guang Lian Steel Factory in 2007. At the first stage of resolution, the PPC did not receive the complaint, giving the reason that there was no legal foundation for dealing with this dispute and local agencies had strictly followed all necessary regulations and procedures in the land acquisition process, paying compensation and support to the resettlement. However, a short time later, the PPC agreed to increase compensation by an additional 1.08 billion (đ), compared to a previous 1.65 billion(đ). Another example of inconsistent policy was site-clearance for a polypropylene factory, where the PPC allocated 1.5 land plots for resettlement for one household with four persons while in the other resettlement projects, one household received only 1 land plot.

### **3.2 Acquisition, Compensation, Supporting and Resettlement Procedures**

The acquisition of land in the DEZA followed a master plan approved by the Prime Minister and regulations approving the DEZA investment project. The DEZA Management Unit assigned Dung Quat Infrastructure Development Company, which was the project owner, responsibility for paying compensation and ground clearance and at the same time the PPC was to undertake the following processes:

- First, inform local authorities on the implementation of the compensation project and agree for local authorities to meet with households affected by the project;
- Second, invite representatives from relevant agencies, organizations, unions; representatives of households affected by the projects and a representative of the project owner to provide relevant information on the project;
- Third, announce the plan for implementation of compensation, clearance for the project; the mechanism, policies and unit price of compensation; the responsibilities of local authorities, and rights and obligations of the people affected by the project.

On the basis of a consensus from the households in the project area, the Provincial Compensation Board carried out the following steps:

- Delivering asset declaration forms to affected households;
- Inviting representatives of grass-root authorities together with households to implement a land inventory on the basis of the cadastral maps;
- Writing the inventory minutes, analysing data, classifying disputes and/ or violation cases, requesting collaboration of local authorities in handling those disputes;
- Publicizing use of land for land users without land use right certificates and carrying out procedures for competent authorities to issue appropriate certificates;
- Developing plans on compensation, support, resettlement including publication and public consultation; Compiling, revising, and supplementing to submit for approval;
- Publicly listing the plan, coordinating with grass-root PCs to inform them and pay the compensation, support in accordance with the approved plan and organizing the resettlement delivering land to the project.

### **3.3 The process of resettlement**

Resettlement in this case was quite different from experiences reported in the other case studies. The resettlement process changed considerably as a result of policy changes regarding land management, acquisition, compensation and resettlement. Due to these changes, the resettlement process can be divided into two stages. Each stage had a different pattern of disputes.

**a) The first stage (1996 - 2005):**

No official dispute arose during this stage, even though the compensation price was low. However, there were a number of minor conflicts over land use rights when the compensation plans were under development.

Conflict began when construction of the DEZA commenced in 1996. According to regulations at that time, if land holders did not have a land use right certificate they were not considered for compensation and support for resettlement when their lands were compulsorily acquired by the state. However, since the 2003 Land Law, all land occupants without a land use right certificate, and even in some cases those occupying land illegally, so long as they had been there for a prescribed period, were recognised as formal land users and granted a land use right certificate. These legal changes led to inconsistencies in compensation and support for the resettlement leading to minor conflicts between state agencies and land occupants. Those whose land was compulsorily acquired between 1996 and 2003 demanded equal treatment with those who were resettled from 2003 onwards. Local state agencies had some success dealing with these conflicts. The PPC met every land occupant and provided increased compensation and support.

*“The people from the central region often occupied land without any legal grounds or titles after the revolution. Handicraft households were often not allocated land even after having contributed to cooperatives before. Tangible damage is compensated but intangible losses are not compensated by the state”.*

Local official

**b) The second stage (2006 to date):**

Disputes arose during this stage. Occupants primarily disputed the process of land acquisition and resettlement, as well as the compensation paid. There were also a number of disputes on the post-resettlement processes between relocatees and local state agencies and in some cases with investors. These disputes led to 260 complaints in 2009, 201 in 2010 and 60 in 2011.

- The rapid changes in laws and regulations, as well as application of laws by the PPC, led to a considerable increase in compensation values during this period. This led to some land holders not following administrative decisions on land acquisition and delaying their resettlement, as well as asking for more compensation and support. In dealing with these kinds of disputes, to ensure site clearance continued to progress, the PPC changed the value of compensation and support considerably. However, this inconsistency fermented additional complaints initiated by relocatees who had resettled in a timely manner. They asked for the same treatment on compensation and support applied to the late movers.

*“From 2008 to date (since the issuance of Decree No. 69/2009/ND-CP and Decree No. 84/2007/ND-CP), with the provisions around formal recognition of illegal land occupants and compensation and support for resettlement, local people were very unpleasant. The PPC decision to allocate more support for late movers irritated the other movers”.*

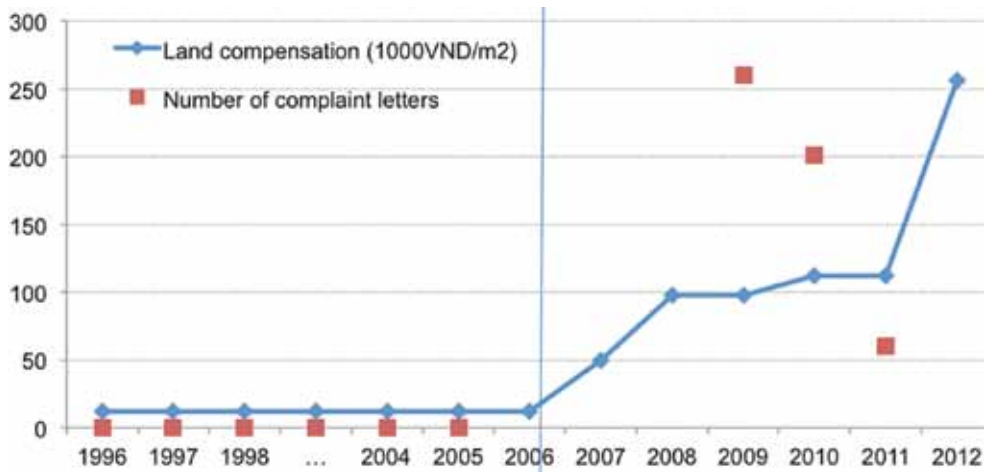
Clearance and compensation official

- Post-resettlement living conditions and livelihoods were far from “better lives” relocatees expected. Preparation of resettlement areas was very slow, incomplete and lacking basic facilities, including electricity, clean water supply, hospital, and markets.
- In addition, new relocatees were settled on land occupied by indigenous people. Some private conflicts arose between relocatees and indigenous people. This led to two types of disputes with local state agencies and investors. Firstly, indigenous people lodged complaints to the PPC to ask for compensation and support for land acquired from them because in the first period, they were only entitled to receive compensation and support for their property and investment on the land. Secondly, relocatees faced difficulties in their lives and livelihoods due to conflicts with indigenous people. They then went back to their original land to ask investors for resolution, including more compensation and support in the new resettlement areas.

*“In the first period of the resettlement, in 1997 the state acquired land from indigenous people without compensation for that land. This led to indigenous people expelling relocatees. As a result, relocatees were forced to return to their primary land where the Oil Refinery Factory was located for protest. Sometimes around 300 resettled households convened to protest and pressure the Factory.”*

Local official of the land development fund

The evolution of dispute in these two stages can be summarized below:



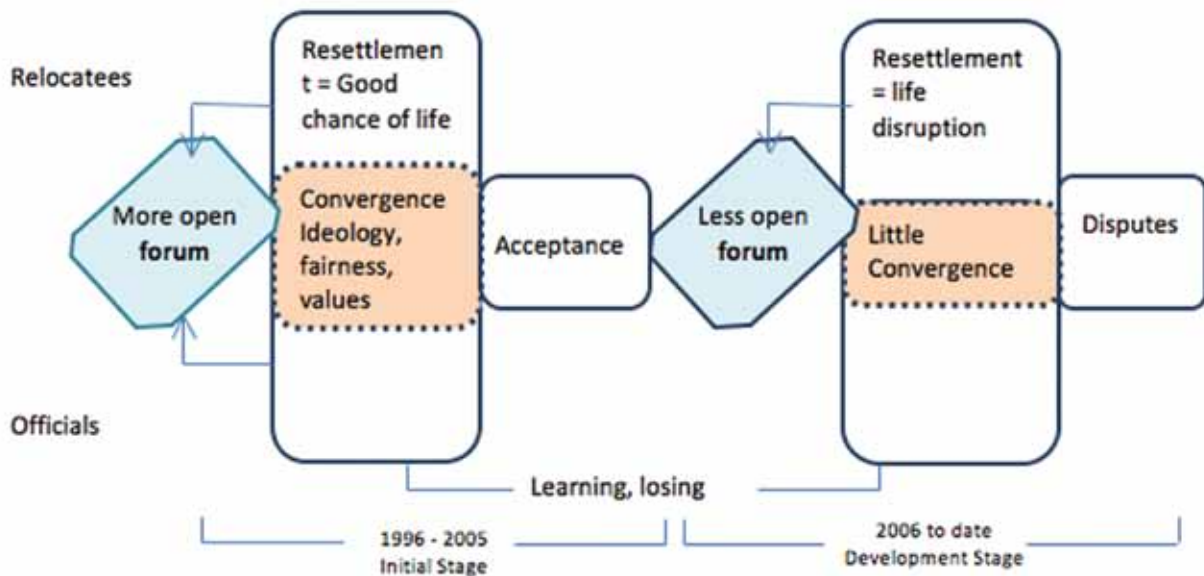
Land compensation and number of complaints over time

Stage 1: 1996 - 2005	Stage 2: 2006 - date
<ul style="list-style-type: none"> <li>- Land price very low</li> <li>- People’s support very high</li> <li>- People had high expectation that the DEZA will positively change their lives</li> <li>- Only some complaints on land certification paperwork</li> </ul>	<ul style="list-style-type: none"> <li>- Land prices increased almost every year</li> <li>- big changes in 2007, 2008, and 2011</li> <li>- The post-resettlement was poorly implemented, negatively affected people’s lives</li> <li>- Implementation of the DEZA was slow</li> <li>- Comparisons among different relocatee groups - perception of unfairness</li> <li>- Disputes surged to become a big issue</li> </ul>

## 4. Analysis of the two stages of resettlement

Our analytical framework assesses how disputes (or potential disputes) were initiated and addressed during the two stages of the resettlement. The lower and higher portions of the figures demonstrate the thinking of the two most important groups in the resettlement: the officials and relocated people. We applied a motivational thinking framework, comprising Pragmatic, Normative, and Cognitive legitimacy, to discuss the groups' divergence.

At the core of the framework is the **convergence** of officials' and relocated peoples' thinking, people's **acceptance** of the state's plans, and **open forums**. This framework shows how the **open forums** facilitate the **convergence** of thinking, and links **convergence** of thinking to the people's **acceptance** of the state's plans. To analyze the DEZA resettlement case, we map this framework onto two distinct stages. Figure 2 illustrates our analytical framework.



Analytical Framework

### 4.1 Stage I: 1996 - 2005

#### a) Relocated people:

**Cognitively**, these people saw land as a state asset. They were not much concerned with their land use rights and believed in the state's resettlement plan. They believed that the project was very important for the development of the central region and for the country as a whole. They also thought that their grandfathers, fathers and other relatives had devoted their life to the revolution, so it was easy to accept land acquisition even with low compensation.

*“The Prime Minister signed Decision No. 514 on the oil refinery factory. The people were very eager and willing to convert their land to build the factory. This stage was very smooth and the people were very happy, even with very low compensation prices”.*

Official working with the land development fund

**Normatively**, these people believed in supporting the government. Giving land for local development fitted with their normative view of “the right thing to do”. In addition, all affected people were treated equally and misunderstandings or conflicts were dealt with promptly by competent agencies. People generally felt their relocation was fair and acceptable. They did not have much opportunity to compare what they received with what was given to others, and accepted the land acquisition plan announced by the State.

*“The development of industrial zones was very important at the time. If the State had a policy on this, it’s inevitable for the people to move to other residential places”.*

Local official

**Pragmatically**, the compensation appeared desirable, given the low productivity of their agriculture. The people thought the resettlement stage was a huge opportunity giving them more essential services such as electricity, roads, schools and medical stations, which they lacked.

*“The plan to move 11,000 households out of the area of DEZA was very interesting. The resettlement at that time created a lot of opportunities for people, especially building roads, ports and providing money for fishing...”*

A local man

*“My hands were trembling when I received the money. We would never have got that amount of money from farming.”*

A relocatee

#### **b) Local government:**

**Cognitively**, officials viewed land as a state asset. The state could use land for local and national development. At the same time, the State had paid for social surveys and studies of the impacts of DEZA on the local people. It was necessary to move the people from their residential land.

**Normatively**, compliance with regulations would ensure fairness. In addition, the land price for compensation was higher than those applied in several neighbouring provinces. In comparison with existing conditions, the resettlement brought about more favourable conditions and resources for the people.

**Pragmatically**, the DEZA gave potential for local development. Getting people’s support meant they had done their jobs well. Local officials did not pay close attention, nor did they know how, to calculate cost/benefit for relocatees.

#### **c) Forum and mediation:**

Most forums held involved government agencies and households. According to the law, and in practice, the organization of dialogues is compulsory and a critical step in

harmonizing the interests of the parties, especially in land acquisition and resettlement. The first period of resettlement showed the importance of holding dialogues or forums in preventing disputes. The PPC met every household to listen to their opinion, and then adjusted policies and regulations on compensation and support for resettlement.

*“Whatever we implement, we meet the people, to discuss what to do, where to go... the government set up a team to announce the policies, and plans to the people... They attended 3 times per week together with the district and commune authorities. The Vice chairman leads, we meet each household... If there was any problem, it would be solved immediately”.*

A local official

*“If there is any problem (dispute), the Land Fund Development Centre will try to address it first. If they do not succeed, they bring it to the authority and the commune undertakes the conciliation. Most of the cases are successful”.*

Staff member of the Department of Natural Resources and Environment

In this way, officials could persuade the people to accept the compensation and resettlement packages. As a result, there was **convergence in thinking** among different stakeholders, particularly those losing their land and the government. This could explain why there were no official disputes during this stage.

## 4.2 Stage 2: 2006 to date

### a) Relocated people:

During this stage the people changed their cognitive, normative and pragmatic views: **Cognitively**, while land was a state asset, people understood that they have the **right** to use land under the full tenure system and to be compensated for their investment in the land. Additionally, although their land could be acquired for public or developmental purposes, they were entitled to compensation and support. While not forgetting their “obligation” to support the state, people focused more on their “rights”.

**Normatively**, people thought that fairness meant consistency between projects/ time of resettlement. Resettlement needs to consider people lives from a long term perspective.

*“If the move was made in 2003, payment is made in 2004. If the price adjustment amount is high, the people do not oppose it. If the price is low, people have opinions”*

A commune official

*“The land has been subject to an acquisition plan approved 5-6 years ago, but there still has not been a land acquisition decision and no implementation of investment projects. This has meant people cannot carry out legal processes such as passing on land to their children or transferring land. The land acquisition decision for such cases should be cancelled”.*

A commune official

**Pragmatically**, people thought that post-resettlement lives needed to include their livelihoods and living conditions.

*“If my land had been acquisitioned when I was young I would look for another job to support myself, now I am too old, if it happens now I do not know what to live on”*

An individual interviewed in the DEZA



*Another viewpoint is that whatever age you are the land was not productive, so getting compensation for retirement is a positive thing: "I want my land to be acquired for the compensation"*

An interviewee in the district

*"I must say that if there is no economic zone, saving all my life I could not afford to construct this house, there was no money to build..."*

An interviewee in the district

However others experienced significant difficulties in the resettlement area:

*"If we invite you, you cannot drink because it is alkaline water"*

*"It is very hard for the people here to get electrical connection, so they freely take electric wire from anywhere. The life in this place is worse than the old place, because there are no fields, gardens, trees as before. In the old place we also had a road, although not an asphalt road. There are still 100 households living there, maybe their life is better. In short it is most important that there is clean water and work, jobs for those who lost their farms. We only desire these, not more, because we all talk about this for a long time but no response"*

A relocatee

#### **b) Local government:**

**Cognitively**, as mentioned with regard to the first stage, the local government considers land to be a state asset for local development. Since many investors are involved at different times, local government deals with resettlement on project basis. They lack budget for site clearance and infrastructural development, including paying compensation, support and resettlement for the people whose land is acquired.

**Normatively**, the local government agreed to compensate investment made in the land. They also understood the importance of post-resettlement but the execution was poor. Furthermore, some interviewees thought fairness meant following the law.

*"The people request as per their interests, we settle, but if they request too much, we have to abide by the law"*

A commune official

*"If these methods, or other methods, don't work we have to use force. For example the case of the plastic plant (where the state used force to clear land for the DEZA project)"*

A staff member of the Department of Natural Resources and Environment

**Pragmatically**, the local government proposed the need to balance between DEZA, investors, and people's benefits.

*"At the beginning, many factories used many unskilled workers at a high income from 70.000 to 150.000 dong/day. But later on, with less jobs, many unskilled workers faced redundancy"*

A land fund development officer

*“Company D (one plant invested in the DEZA) is now not seeking any employees. They send people away”*

Individual in the resettlement area

*“My children are grown up now. They cannot find a job, so they go to sea to fish.”*

Individual in the resettlement area

### c) Forums and mediation:

In the second period of resettlement, in line with regulations, holding dialogues with citizens was a compulsory requirement. However, the increased number of disputes showed that the dialogues did not converge the thinking of all parties in the acquisition and resettlement process. Reasons for this include. Firstly, representatives of local state agencies in some cases did not have enough authority to decide alternatives that could create convergence in thinking of related parties. For example, representatives of the district committee did not have the power to adjust compensation and support values. Secondly, there was a lack of citizen-supporting organisations such as civil society organisations, law firms or legal aid service to assist citizens in dialogue with the other parties, especially local state agencies. Thirdly, there was no forum or platform for citizens affected by land acquisition to express their views before projects were approved by state agencies. Fourthly, there was no mediator to play a more independent role in converging the thinking of the parties. State actors generally played a leading role in the dialogues.

The analysis of stage 2 shows that there was considerable divergence among key stakeholders in their cognitive, normative and pragmatic thinking regarding the land acquisition, resettlement and post-resettlement. While officials focused more on peoples' obligations to give land to the DEZA, the people emphasized their land rights. While officials viewed resettlement as short-term “land clearance”, people tended to view it as “life adjustment”. While officials solved resettlement issues in a project-based, piecemeal manner, people expected a more comprehensive and consistent approach. Without open forums for sharing divergent approaches, simply “communicating” the policies did not resolve the root causes of disputes.

## 5. Discussion

The aim of this case was to document different actors' accounts of the land disputes in the DEZA. This case was chosen partly because the dispute happened in a Central revolutionary province. The case illustrates how disputes emerged as land was acquired and people were resettled for an economic area. We interviewed different actors to explore their perspectives on related issues.

This case was counter-intuitive: the worst disputes happened when policies offered better compensation and recognized more of the people's land use rights. Our study shows that the disputes were not simply about how much money people received. They happened because resettlement policies did not fit with people's perception of fairness, nor did resettlement satisfy expectations of “better lives.”

Firstly, fairness was not **only** about “following the law” as local officials believed. Nor was it **only** about larger financial compensation. While legal and financial conditions were important, what mattered most was a convergence in thinking about land and related issues. This case demonstrates that actors had different implicit cognitive models about

land and land rights. While local officials emphasized “land as a state asset“, occupants believed that “land is part of lives” and “people have rights on land and their investment in land“. Similarly, while officials believed “fairness is following the law“, people tended to view fairness as “consistent treatment for different groups of relocatees, across time“. These different conceptual models informed their responses to the land clearance and resettlement policies. Without acknowledging these implicit mental models, policies bear a high risk of being perceived as unfair.

Importantly, people changed their views over time. During the first stage (1995 - 2005), people and officials both thought that “land is a state asset” and that “future local development will benefit all”. Thus, everyone had an **obligation** to support the state’s plans. This made it easier to clear the land. As time went by, policies changed. Inconsistencies in compensation, coupled with unmet expectations on “better lives” in the post-resettlement, eroded people’s trust and cooperation. As a result, people increasingly focused on their “**rights**” with land and their investment.

Secondly, different mental models about the resettlement contributed to disputes in the second stage. Most officials paid attention to clearing land but lost interest during the resettlement period. As a result, post-resettlement issues were not properly handled. Basic living conditions in a number of places were not provided. People’s new livelihoods did not ensure a stable life. Yet, a “better life” was what people expected post-resettlement. This sharp contrast made people frustrated and feel ‘forgotten’.

This case suggests that a piece-meal approach to land acquisition leads to a high risk of disputes. DEZA was typical in that policies were made on project- and short-time basis. Land was cleared and people were resettled based on investors’ capacity at different times. This fragmented approach created considerable inconsistencies, which contributed to disputes. A more strategic approach taking a long-term, big picture and resource-based view is needed in land planning and policies.

## 5.1 Implications for policy makers

The approval of master plans for industrial zones, economic zones not attached to detailed implementation plans, timelines, as well as methods to mobilize resources for land clearance, compensation, support, and resettlement create potential dispute risks.

Waiting for investment projects has negative impacts on the households affected by projects. From the moment the acquisition plan is approved, they do not have the right to invest in their land or transfer land use rights to the other parties. Moreover, frequent and confusing policy changes exacerbate underlying tensions. Resettlement areas need to be planned and connected to commercial and service centers for a convenient living environment and a stable life for relocatees. This would help limit comparisons with previous residences. The master plan for resettlement areas should be developed before and connected to provincial urban and public land use plans.

Lack of effective dialogues involving the participation of citizens and citizen supporting organisations such as media and civil society organisations risks leading to disputes, especially after resettlement.

People generally think they receive less than others. This perception might be reduced if citizens can participate in the process of land acquisition, compensation, support, and resettlement. Often they also feel that they haven't expressed all of their expectations during the acquisition process. This leads to a high potential risk of later disputes, especially when they face difficulties in their new homes. Therefore, participation of residents and mechanisms to protect their rights should be considered in future land laws, especially promotion of dialogue among related stakeholders.

Lack of responsibility by enterprises that implement investment projects involving land acquisition may also increase disputes, when residents compare benefits and costs for the enterprise in relation to their land. In this case, enterprises didn't take much responsibility to stabilize the lives of relocatees after resettlement, especially in creating jobs for residents whose land is acquired. Cooperating with state agencies in providing vocational training and creating job opportunities to ensure stable livelihoods would help residents affected by land acquisition.

#### Viewpoints of related stakeholders in the land acquisition process

	Stage 1 (1996 - 2005)		Stage 2 (2006 to date)	
	Relocatees	Local government	Relocatees	Local government
<b>Cost-Benefit</b>	There is no calculation of benefit. Compensation money is a big amount to them. General benefit is prioritized.	Benefit from DEZA is the top priority. Benefit for residents is not considered. There is no consideration of benefit as they follow their superior's instruction.	Compare value of land, high or low but it does not actually follow market mechanism  Compare price of land with market price. Sale and transferring appears.	There is consideration and evaluation of benefit for residents. However, they can't require more than regulation.  Pay much attention to usage benefit of residents  Benefit of the DEZA has to be attached to benefits of local residents.

	Stage 1 (1996 - 2005)		Stage 2 (2006 to date)	
	Relocatees	Local government	Relocatees	Local government
<b>Nor-mative</b>	<p>There is no comparison between immigrants who leave earlier and the immigrants who leave later.</p>	<p>“Law is normative”</p> <p>Following legal regulations brings equality to all.</p> <p>Compensation price is already higher than ones of neighbouring provinces.</p> <p>Application legal regulation to all immigrants is normative.</p>	<p>Equality needs to be done between former and later immigrants.</p> <p>It’s necessary to have reasonable compensation for exploiting investment.</p> <p>Equality is to keep promise about social security, and livelihood.</p>	<p>It’s necessary to have equality for both former and later immigrants. The former get less benefit and need more support.</p> <p>Equality is mainly to obey the legal regulations because legislative rules are from the central level.</p> <p>It’s necessary to have a plan for social security and livelihood.</p>
<b>Cogni-tive</b>	<p>Residents are ready to follow the state policies.</p> <p>Land belongs to state.</p> <p>Acquisition of land which is not convenient for agricultural purpose is “good” for project.</p>	<p>Land is public asset. When state needs, acquisition is required (compensation) to serve the targets of economic development.</p> <p>Law and regulations issued by the central agencies are very important</p> <p>Guidance and instruction of superior is a right policy</p>	<p>Land belongs to the public represented by the State but land use right belongs to investor, so compensation should be reasonable.</p> <p>Lives and livelihood of residents having land acquisition have to be ensured.</p> <p>Acquisition of land which is not convenient for agricultural purpose is “good” for project</p>	<p>Land belongs to the public represented by the State. Acquisition is necessary when the state needs to serve the targets of economic development.</p> <p>Law and regulations issued by the central agencies.</p> <p>Land belongs to the state but land use right needs to be paid attention.</p> <p>If residents do not agree with resolution of the district, they can make it to the court.</p> <p>Tasks of local agencies are to follow legal regulation strictly.</p>

## **Case Study 3**

# **Land Acquisition for Hoa Mac Industrial Park**

## I. Introduction

This report analyzes land acquisition for Hoa Mac Industrial Park in Duy Tien District, Ha Nam province. This case was chosen because it represents the key characteristics of land disputes in peri-urban Vietnam. First, Duy Tien rapidly industrialized over the last 10 years. The district's agriculture share dropped down from more than 40% in 2005 to only 16.2% in 2012. Many households have lost their farmlands to new industrial parks, willingly or unwillingly.

While there have not been violent disputes, interviews show that significant numbers of people express unhappiness or distrust toward the local government. The land disputes concerning Hoa Mac IP are typical of the non-violent yet harmful peri-urban disputes. Second, Duy Tien borders Hanoi and Hung Yen, two more developed provinces. Different policies in these neighboring provinces provoked comparisons and stimulated land disputes in Hoa Mac IP, further demonstrating the complexity of land management in the industrialization process.

As in other cases in this series, we used a multi-actor perspective as an analytical framework. According to this framework, the greater the difference in the way actors conceptualize land disputes the less likely they are to find meaningful and lasting settlements. Settlement is most likely to occur where actors are prepared to adjust their regulatory priorities and bring their regulatory preferences closer to those of the other actors involved. Lasting solutions are possible where the regulatory preferences of all the actors converge. This study applies three core aspects of legitimacy that change regulatory preferences: pragmatic, normative, and cognitive. Pragmatic legitimacy refers to material benefits. Normative legitimacy is people's moral base for judgment on what is right and wrong. Finally, cognitive legitimacy arises when a group regards a regulator and its procedures and outcomes as inevitable and necessary. The challenge of using this analytical framework is that most cognitive and normative thinking is implicit, and a group may not recognize its own mental model until it is contrasted with different models. Moreover, in the field, interviewees do not neatly divide their comments into pragmatic, normative, and cognitive categories. This approach thus requires some analytical interpretation by researchers.

We conducted this case study by systematically collecting and analyzing data from related groups (e.g., district and commune officials, businesses, pure farmers, multi-job residents, as well as influential people in the area). We conducted a total of 28 interviews with 22 people, including 6 district officials, 4 commune officials, 10 people in Trac Van and Chau Giang communes, and 2 business managers of Hoa Phat Group and Hoa Mac Residential Park. The interviews took place May 13 - 18, 2013. (A detailed description of the Analytical Framework and Methodology is included in the Summary Chapter).

First, we provide some background for the case, including District and Hoa Mac Industrial Park overviews. Then we use a multi-actor framework to analyze the land acquisition process in Hoa Mac IP. Finally, we discuss the analysis results and make recommendations.

## 2. The land acquisition process in Hoa Mac IP

### 2.1 Duy Tien District

Duy Tien is a district of Ha Nam province and is located about 50 km southeast of Hanoi city. Duy Tien borders Hanoi (north), Hung Yen province (east) and other districts of Ha Nam. A number of national roads go through Duy Tien (National Road 1A, 38, highway Hanoi - Ninh Binh, and north-south railway), making transportation to and from the district very easy.

Duy Tien is typical of the Red River Delta, in that agricultural lands account for nearly 70% of the area. The alluvial soils are suitable for rice production.

According to data from the provincial Department of Natural Resource and Environment (DONRE), until 2005, agriculture accounted for more than 40% of the district's total economic output. Since 2005, the district has experienced rapid industrialization. By 2012, agriculture accounted for only 16.2% of total GDP output, while industry and construction made up 54.3%, and services 29.5% of GDP. Five Industrial Parks and three Residential Areas have been developed from hundreds of thousands of hectares of agricultural lands. A University Town of 912 ha is planned, which will further reduce agricultural lands.

The District has about 130,000 people. 51.5% are employed. The industrialization process in the last decade has engendered a significant change in people's livelihoods. Young people have moved away from agriculture to work for businesses in the industrial parks. In every village, farmers live alongside those engaged in other industries.

### 2.2 Land Acquisition for Hoa Mac Industrial Park

In 2003, the Prime Minister approved the Hoa Mac IP Project through Decision 2003/TTg, 25/12/2007. The project is located at the north of the national road 38, in the land of Hoa Mac town and Chau Giang and Trac Van communes. The total area of the IP is 134 ha, of which 4 ha came from Hoa Mac town, 82 ha from Chau Giang commune, and 45 ha from Trac Van commune. All lands were previously used for agriculture. More than 500 households gave up their land for this Project.

The compensation paid to acquire the land was based on the 'frame price' set for agricultural land in Ha Nam province. In general, households received three types of compensation:

- Compensation of lands 40,000 VND/m<sup>2</sup> - this 'price' was set by the Provincial People's Council. The 'price' has remained unchanged for years.
- Support for changing livelihoods: 5000 VND/ m<sup>2</sup>.
- A "service land" supplement based on 7% of the land loss. Households were permitted to open businesses, such as small shops or motorbike repair shops, on service land. In reality, however, most people built residential houses and/or sold this land to others.

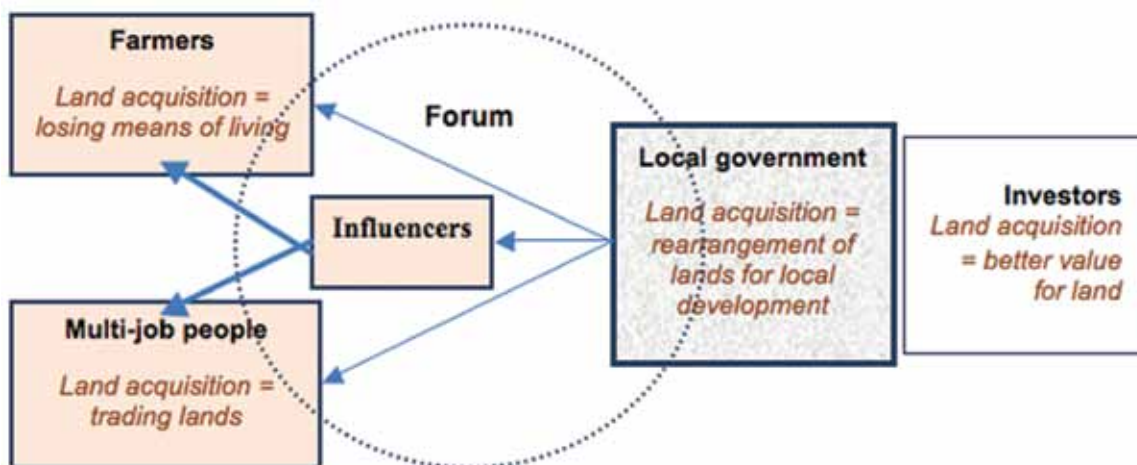


In total for every “sao” (an area unit in the Red River Delta, equal to 360 m<sup>2</sup>), the householder received compensation of 21.6 million VND and 25.2 m<sup>2</sup> of “service” land in new areas. At the height of the market (2008 - 2009) the “service land” could be sold at 4 million VND/m<sup>2</sup>, but in 2013 the common price dropped to 1 million/m<sup>2</sup>. Thus, total converted compensation of one “sao” was about 48 million VND. At the same time, total compensation of lands in Hung Yen - bordering with Duy Tien District, was about 90 million/ m<sup>2</sup>. Worse still, on the other side of the Red river, the compensation in Phu Xuyen (Hanoi) was close to 300 million VND/m<sup>2</sup>.

The land clearance for Hoa Mac IP started in 2008. Like many other IP projects, the land clearance in Hoa Mac proved difficult, though non-violent. By May 2013, all households in Chau Giang and Hoa Mac town had received compensation for land taken for the project and agreed to the land plan. However, 103 households in Trac Van had not received compensation, and thus the IP grounds have not been completely cleared. On the surface, the reason for householders refusing compensation is the low land values paid in comparison to bordering provinces (i.e., Hung Yen and Ha Noi). A more nuanced investigation discussed in the next section reveals more complex reasons based on how the actors conceptualize access to land and land disputes.

### 3. Analysis of the land acquisition process

In this case, we focused both on people who already received the compensation and those who have not. Drawing on our analytical framework, interviews with key groups involved in this case disclose how disputes were initiated and addressed during the acquisition of land for the Hoa Mac IP (Figure 1). Five rectangles represent five key groups in the land acquisition: three groups of householders (farmers, multi-job employees, and agents of influence), local government officials, and investors. The dashed circle represents the forums in which local government and householders interact, and the arrows illustrate the flows of regulatory knowledge (such as ideas, precepts and practices). While householders and local government officials directly participated in the forum, businessmen did not. Instead, investors stood behind the government and conveyed their wishes through government officials.



Analytical framework for land disputes in Hoa Mac IP

### 3.1 Group categorization

Actors were grouped according to their thinking about land access and the land acquisition process. Five key groups were present in this case:

- 1) *District/commune officials*: Officials directly involved in the land acquisition process.
- 2) *Investors*: Hoa Phat managers and other business people in the District.
- 3) *Householders - farmers*: People who lost land whose incomes had come primarily from agriculture.
- 4) *Householders - multi-job people*: People who had lost land whose agricultural production only contributed a small portion of their income.
- 5) *Agents of influence*: People who had a strong influence on other people in their villages. They might be retired officials, communist party members, or even successful people who worked outside the village.

These actors had different viewpoints on land and land acquisition process. We applied the legitimacy criteria to understand what the different actors thought about land access and the dispute. Table I demonstrates the divergences in their thinking.

### 3.2 Divergent views on land and land acquisition process

#### a) Local government

Local officials, mostly district and commune level, were under pressure to prepare the land for the IP. **Cognitively**, officials viewed land as a public asset that was used for local development. Local officials were required by the Land Law (2003) to assume responsibility for the land acquisition process. Most officials *took for granted* that land acquisition was a public function that resettled land users for local development. They strongly believed that the state has a responsibility and capacity to **centrally manage the acquisition**.

**Normatively**, they viewed land as a state asset assigned to people to generate income and facilitate local development. In this case, they believed that land should be used to facilitate local industrialization and modernization. From this perspective the conversion of farmland to industrial purposes is an inevitable outcome of modernization and industrialization. The state-control process - i.e., land plan, price, and acquisition procedure decided by the government - ensured fairness in the province. It also balanced benefits for the relevant actors: the state, the people, and the businesses. Compensation for land loss should be consistent across time and areas to ensure fairness.

**Pragmatically**, they supported land conversion because it helped them to achieve economic targets faster. In balance, low land compensation rates were preferable because they attracted more investors, even though they made householders unhappy. The state-control approach made it easier for the officials to do their jobs. This meant that it was in the officials' interest to minimize discussion with people about the compensation and resettlement plan, price, procedure, because it was seen as impossible gain a consensus. Similarly, business investors were discouraged from talking directly with the people,

because this might have provoked demands, created discrepancies (and perceived unfairness) across projects in the area, and slowed down the process. In this view, people only had a right to “understand and follow” the government’s decisions.

To illustrate the mindset of the local officials, consider the following statements.

*“Duy Tien is a focal district for industrialization of Ha Nam province. Since the year 2000, we have acquired hundreds of thousands ha agricultural land for industrial or residential parks.”*

Local official

*“We have to balance benefits for the province, businesses, and people. If we set the land price high, we could not attract investors. Right now the price is lower than other provinces and people are not happy. It is very hard!”*

Local official

*“By law, we [local government] are responsible for land acquisition. There was some discussion about ‘negotiation’ between investors and land users - but we have never done that. It would be very complicated. Small projects would destroy big projects because they could offer higher compensation.”*

A district leader

*“I strongly believe that the new law should not allow ‘negotiation’ between businesses and land users. No agreement could be reached!”*

A district official

## **b) Investors**

Investors are those who invested in the Hoa Mac IP and neighboring residential projects. Investors **cognitively** view land as a commodity that can be invested in and/or traded for higher values. They view land acquisition as the process for obtaining a necessary factor of production. It is simply a part of their investment process.

**Normatively** they believe it would be fairer if land compensation was higher than the accumulative productive value of farmland (i.e. values from agricultural production for some years). Investors did not understand why some farmers resisted giving-up land when the compensation offered was more than the productive value of their land. According to the Land Law, investors should not directly “negotiate” with land-users. Two managers we met, however, acknowledged that they would prefer three-way discussions (investors, land-users, local government) before plans are drafted for industrial/residential parks. They formed the normative view that locations should only be chosen for IPs once some sort of agreement had been secured from the land users. The price and procedure could then be centrally controlled by the government.

**Pragmatically**, investors calculated their payment for land just as they would investments in any other project. The costs they incurred were not only monetary expenses but also included the time taken to clear the land. They thought that the current “state-

control” process helped businesses avoid dealing with large numbers of people. The downside of this approach was that investors were powerless with regard to the local government. Investors had no power to “punish” local government if they could not meet deadlines, which was a frequent occurrence. Moreover, time was money. The delay in land acquisition in this case has placed the investor (Hoa Phat Group) in financial difficulty. Other investors in the district sometimes subtly paid the community (e.g. donated for building village roads, repaired a pagoda, or gave awards to local pupils) in exchange for people’s agreement on the land acquisition. This provoked some comparisons among different investors - and then created some perception of unfairness since Hoa Phat did not offer this kind of “support”.

To illustrate the mindset of the investors consider the following statements.

*“People complained anyway! Deep down, they recognized that the compensation was much better than income from agriculture productions for years.”*

A manager of the neighboring residential park

*“We signed contract with the District’s Land Clearance Committee. But one day delay costs us some money. At this time, the delay has been several years!”*

A manager of Hoa Mac IP

*“I think ‘negotiation’ between businesses and land users was not a good idea. People always ask for more, and businesses would not have land in the end.”*

Hoa Mac IP manager

*“Negotiation on money may not be a good idea. But I think before we decide the locations of IP or residential parks, we should have three way discussion between business, government, and people. If people support, we go ahead. If people do not support, we move to other location. Currently, the government just developed a land plan, then go to persuade people. People know that we could not go elsewhere, they raise difficulties for us.”*

Hoa Mac residential park manager

*“State-control acquisition was legally valid. We signed a contract with the District Land Clearance Committee. But in reality, who ensures that the contract will be honored? I had to stay in the field, gently remind district and officials to work on the project. Sometimes I had to go to village to collect data myself and gave to the officials, etc. It was by no mean an equal partner contract.”*

Hoa Mac IP manager

### c) Farmers

Many families in the area lived primarily from agricultural production. They accounted for about 25 - 30% of the land-loss population, as estimated by a commune official and a retired cadre. In their **cognitive** view, land provides security in life. Owning land gave them control of their lives. Therefore, land acquisition was the process in which people “sold” their land use right. This was a “trading transaction”. Therefore, the “sellers” and the “buyers” should negotiate, and the government only facilitated this negotiation. It was

so “wrong” that people had no say in this process, and the investor (Hoa Phat Group) never “showed up” and talked to people.

**Normatively**, land acquisition was frightening. It pushed them to an uncertain future since their traditional agricultural livelihoods were no longer possible. Monetary compensation was necessary but not sufficient because the farmers wanted stable livelihoods after giving up their land. These people believed that the state and investor should provide practical support to ensure they enjoyed a stable life. Monetary compensation did not alleviate their feeling of uncertainty and resentment. Some people even felt that just giving them money for their land was “irresponsible”, implying that the state owed a duty to protect farmers. This view was clearly in conflict with the thinking of market reform and commodification of land.

**Pragmatically**, farmers were satisfied only when they received other pieces of lands as a trade for the land acquired. Most efforts in re-training for other jobs did not work, at least in the short run. The following quotes were from three farmers we interviewed during the fieldwork.

*“Now I don’t have any production land. I stay at home. I don’t know what to do for future.”*

A female farmer approximately 50 years old

*“They gave us money and thought that was enough! Our old saying was: ‘we can eat the whole mountain’. What people do after losing land is more important, but they do not care.”*

A middle-aged female farmer

*“I used the compensation money to trade for an equal piece of land. When we gave money to the land seller, it was really hard. But now I’m happy because we still have land.”*

Injured war veteran

#### **d) Actors with Multiple Occupations**

Compared to traditional agricultural districts in the Red River Delta, Duy Tien experienced industrialization relatively early. Many people, especially the young, found new jobs outside agriculture. This group of people still controls agricultural land but derives income from other occupations. Some members of the group lease their land to farmers. While this is a relatively diverse group, they were still coherent and uniform in their views of land and land acquisition.

For this group, farming was not the main source of income. **Cognitively**, they view land as a family’s commodity. Therefore, land acquisition is a “trading process” of the commodity. They used the word “sell” to talk about giving up their land.

**Normatively**, they believed that land can be ‘sold’ at the will of both seller and buyer, i.e., land acquisition should be voluntary. Their (dis)satisfaction about land compensation arose more from the fact that they were not given an opportunity to ‘negotiate’ the price offered.

**Pragmatically**, members of this group compared the compensation offered with income from agriculture production and with compensation paid in neighboring provinces. The

first comparison suggested land acquisition was beneficial for them, while the second compensation created a perception of being unfairly treated. Whether they accepted (as in Chau Giang and Hoa Mac) or resisted (as in Trac Van) the compensation depended largely on how the agents of influence acted in their villages.

To illustrate the mindset of the multi-occupation actors, consider the following statements.

*“We did not do anything wrong, why ‘thu hoi’ [acquire or take away] our land?”*

*“I was one of the last ones to receive the compensation in my village. I supported the government’s general policies, but could not understand why our price was so low. Moreover, my investment in the land was only partially compensated!”*

A middle aged machinist

*“Some people gave up agricultural production long ago. I know very clearly that they rent out their land for small fees. But when the land was acquired, they complained as if the land was critical for their lives.”*

Commune official

*“My wife and I had given land for our relatives to work on. When the officials talked about acquisition, we thought the price was too low. My children in Ha Noi told us: ‘We do not need money. Mom and dad keep the land. Please do not sell at this price’. So we have not accepted the compensation as yet.”*

A small shop owner in Trac Van commune

*“They [officials] just told us of the plan and price. We had no say in these terms. We had to comply.”*

*“If this is for national projects, such as building road or power network, I would support right away. But this is for businesses, we want to discuss with business managers. Yet, we have never seen managers of the business.”*

### e) Agents of Influence

Agents of Influence included retired cadres, communist party members, and successful people who worked far away but kept close connections with the villagers. While diverse in background, these people had common characteristics: they were knowledgeable of the policies, experienced in working at different locations, and respected in their community. Although not all the agents owned land in the IP area, their family members were usually land owners. The agents’ knowledge, experience, and reputation gave their opinions legitimacy to many people.

From a **cognitive** perspective, the actors interviewed thought that ‘land for farmers’ [*ruong cho dan cay*] was a symbol of the success of the revolution. ‘Land for farmers’ was a result of people’s sacrifices in the past, which aimed at providing life security to farmers. The agents reminded people to think about land as security that was won through revolutionary struggles.

**Normatively**, they believed that land should only be acquired with the people's consent. Even when people volunteered their land, compensation payments should be consistent across provinces. According to the agents of influence, acquiring farmland for businesses carried a high risk of exploitation. Investors were 'capitalists' who would seize any opportunities to exploit others for their own benefits. People, on the other hand, were vulnerable and needed government's protection. Their knowledge and exposure to land compensation in other provinces (i.e., mostly higher price in Hanoi and Hung Yen provinces) provoked a perception of unfairness when knowing the land compensation in Ha Nam. The relatively low compensation also meant that local officials had not done their jobs correctly.

In their **pragmatic** thinking, the benefits from the Project should be shared with the people who lost their land. People who had fewer job opportunities after losing land, such as middle-aged women, required assistance to change their livelihoods. Given these factors, the agents found it inconceivable that the farmers were not given a say in the land acquisition or that the compensation offered was 20 per cent of the levels paid for land just across a road or river (but in other provinces).

The agents of influence's reactions to land acquisition were watched and followed by many people. For agents, changing their decisions was hard since it eroded their credibility. They would be blamed for leading people to "wrong decisions". Some agents admitted that having refused (and led others to do them same) to accept the land compensation at the beginning, it was very hard for them to accept the compensation later on.

Some insight into the thinking of the agents is given by the following statements:

*"We sacrificed a lot to get land back to people. Now land was taken away without any discussion."*

A retired cadre

*"Female farmers who are older than 35 would be worse-off. Businesses in industrial parks do not hire them. They could barely learn new jobs. I worried that their lives would face difficulties 1 or 2 years after the compensation money was gone."*

An agent working away from village

*"Uncle Ho said: 'Vietnam is one unified nation' / 2. Yet, my land's compensation was only one fifth of a similar piece of land just across the road or river. Is that right?"*

A communist party member

*"Investors never care about people. They care about profit. Our local government let them buy land from our people too cheaply."*

*"The investor name - Hoa Phat - meant 'Even/ Win'. We people were only 'Loss'."*

*"A number of people will be worse off. Middle aged women could not do anything else after losing land. I don't see the government has any good solutions for that."*

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12 "Bác Hồ nói: 'nước Việt Nam là một. Dân tộc Việt Nam là một'. Vậy mà đất của tôi lại chỉ được đền bù bằng 1/5 so với đất của bên kia đường hay bên kia sông thì có đúng không?"

*“I refused the compensation, and some people followed me. Now I will be the last one to accept the money.”*

#### Groups’ thinking about land and land acquisition

	Local government	Businesses	Multi-occupation people	Farmers	Influential actors
Cognitive	Land is public asset, state officials know best  Follow party modernization and industrialization ideology	Land is a commodity that can be traded for values	Land is not a main sources of income and is a tradable commodity	Land is the key for life security	“Land for people” is the symbol of revolution success  Pre- Doi Moi revolutionary view about land and investment
Pragmatic	Land should be used to facilitate local development  (industrialization)  Fulfilling officials’ jobs: i.e. getting better economic indicators  Minimize public consolation because it only slows the process	Payment to get land is reasonable  Delay in getting land is very costly  Want to get involved in planning discussion with land users to improve efficiency	Compensation for land loss is better than using land for agriculture  Compensation is much lower than similar land in neighboring provinces	Compensation and support does not ensure life security  Future opportunities are not for them and very uncertain	People should benefit from new Project, but that is never clear  Social, environmental problems from new Project

### 3.3 Interactions among actors

#### Forums

Forums for actors to interact in this case were very limited and controlled by the government. Most of the communication on land acquisition plan and policies happened in village meetings. Some individual meetings were scheduled for resisting families. Representatives of families were invited to visit a similar IP run by the Hoa Phat Group in Hung Yen. This visit was to clear people’s concerns about environmental issues created by the IP.

The forum that involved government officials was highly scripted. The acquisition plan and policies were fixed by the provincial government. District and commune officials were only expected to inform and persuade people to accept. Business investor (Hoa Phat) managers did not take part in these exchanges. There were no discussions or negotiations. People could talk or shout, but they had no ‘say’ in the acquisition.

Informally, several groups of people met to talk about their decisions. Some even contributed money to send representatives to the provincial government to protest the plan. However, these groups dissolved quickly as they recognized there was no chance



of success. Commune officials believed that some people grouped together and swore to resist the acquisition. The members found it hard to change their decisions since it would destroy their relationship with other members.

### **Explaining the different rates of land clearance in the project**

Given the relative small scale and similarity between Chau Giang and Trac Van communes, it was surprising to see two quite different land acquisition outcomes. By 2013, all families in Chau Giang had accepted the compensation, while 103 families in Trac Van continued to refuse the offers. Different levels of convergence in actors' legitimacy were the direct cause of these different rates of land clearance. The convergence (or lack thereof) in legitimacy appears rooted in three key factors: the competency of commune, critical threshold in the number of resistant people, and the timing.

In Chau Giang, commune officials actively looked for agents of influence. For example, the officials called successful children or relatives of families in Hanoi and asked them to persuade their families. In 2008 - 2009, the land price of the "service areas" was high (up to 4 million VND/m<sup>2</sup>). The officials used that value to persuade people. They also quickly proposed a "bidding process" in which people who wanted to get good locations in the "service area" had to pay higher fees. The fees were used to build infrastructure for the service areas. This attracted people to accept the compensation and sell the "service land." Chau Giang had people who resisted the acquisition, but the number in each village was initially only about 10 - 15 families. These numbers gradually dropped over time. By 2013, all families accepted the compensation, although unhappiness and resentment persisted in some families.

Trac Van was different. First, a number of strong agents of influence openly voiced their objection to the plan and policies. They now found it hard to change their positions, making it difficult to persuade other people to accept the compensation. Second, the "service land" was not cleared in a time of high land values (2008 - 2009). As the land price dropped, the attraction of selling "service land" disappeared. Third, the 103 resisting families were located in only two villages, making these groups a strong collective action force. Trac Van officials believed that the only way to resolve this problem was to wait: Some families would need money and quietly accept the compensation offered. The number would then decrease over time. The following quotes were from commune officials:

*"We knew some families swore together to refuse the compensation. Any of them now would find it hard to accept since they were afraid of being boycotted in the community. Perhaps we have to continue to persuade and wait. Some families would need money and quietly accept. At some point the 'alliance' will break down."*

*"We must not change policies and satisfy their demands [higher price]. In the end, people who were against the government should not gain more than those who supported."*

## 4. Discussion

The aim of this case study was to explore factors that contributed to the land dispute in Hoa Mac IP, Duy Tien district of Ha Nam. This case represents land acquisition issues in industrial parks, especially in urbanizing areas. Using a multi-actor approach, we collected data from different sources and actors to answer the questions.

The study supported the argument that the key source of land disputes was the divergence and conflict in what the actors' thought about land access and acquisition. What is clear is that the state, investors and farmers had vastly different views. While local officials believed that land was a public asset that could be used for local development, investors viewed land as just one factor for their businesses. Farmers, on the other hand, viewed land as the safety net protecting their livelihoods. For many agents of influence, land was the symbol of the revolution and it belonged to the people. These views induced different types of commitment to land that were implicit yet powerful in driving people's normative and pragmatic thinking about land.

The views on land were closely related to the actors' perspectives about land acquisition. On one extreme, local officials believed that land acquisition was just a process of rearranging land use for local development. The acquisition process should be fully controlled by the state, and discussion should be minimized to ensure consistency across areas and projects. On the other extreme, land-users believed that land acquisition was the process of trading their land with businesses. Therefore, there should be "negotiations" between 'sellers' and 'buyers'. Business managers' pragmatic views were more close to state-control process by which they would avoid dealing with a large number of people. However, the delay in land acquisition convinced the business managers that some sort of discussion with land users would improve efficiency. Another small group of agents of influence had different views on the acquisition process. For them, the land acquisition contained a great risk of people being exploited by 'capitalists' (the investors). Relatively low compensation, coupled with the imposed policies and the lack of open discussions between people and businesses strengthened their perception.

These different views, especially cognitive thinking, were hardly raised in the land acquisition process in Hoa Mac IP. First, the forums available were highly controlled by the government and the land plan and policies were fixed. There was no room for any discussion or adjustment of these terms. Second, the investors avoided dealing directly with people for both legal and pragmatic reasons. Actors blamed each other without really exploring their different views. The divergence in actors' thinking remained large throughout the process. After six years, about 80% of people accepted the compensation mostly for pragmatic reasons (i.e. it was better to receive earlier than later). A big proportion of these people still felt unhappy. The remaining 20% had not yet received the compensation. For them, it was normatively "wrong" not being given a 'say' in the process, and the compensation was unacceptably low in comparison to neighboring provinces.

It is instructive to note that this land dispute did not happen because an actor violated a law or procedure. There was no irregularity or corrupt incident reported by any party. The dispute arose because the actors failed to understand and narrow down the divergences

in their views. While neither government officials nor business managers supported an open forum for discussion on the land acquisition, it appeared that an open forum may have helped the actors reach agreement more rapidly.

This case has some broader policy implications. First, an open discussion between local government, business managers, and land users should be considered in the land acquisition process. The current regulatory framework inhibits investors from dealing directly with land users. Instead, local government officials are allowed to control the process. On the surface, it appears to be more feasible and efficient since the local government “knows how to deal with people”. In reality, the absence of an open forum for discussion between government, land users, and investors stimulated resentment and induced land disputes. Investors also were reluctant to rely on local government because, with an unequal relationship, they felt that outcomes were unpredictable. We believe that a study about the elements that create effective forums (i.e. when to organize, who to involve, what topics of discussion, mechanisms to reach agreement) would be beneficial for designing alternative land dispute resolution mechanisms.

Second, land plans and acquisitions in different provinces should be better coordinated. At this point, each province has its own land plan and policies that do not fit in with an overall regional development plan. In this case, many IPs and residential areas had been developed in Ha Nam, Hung Yen, and Ha Noi without a careful consideration of demand in the region. If these IPs and residential areas do not have enough demands, it would be a big loss for both investors and local people. This further accelerates people’s resentment over land acquisition.

## **Case Study 4**

# **Compulsory land acquisition in Can Tho: Conflicting perceptions of justice in the case of a commercial project**

## 1. Introduction

This case was selected to explore land disputes in a peri-urban area in a provincial city in the Mekong Delta region in southern Vietnam. The dispute occurred between local government, commercial project investors, and 34 households in the Hung Phu Project, Cai Rang District, Can Tho. Land disputes arose from a commercial project where the investor proposed land clearance to develop a new urban area. The extreme response of some residents to the compulsory land acquisition points to severe problems underlying many other projects involving the government and private business investors.

As in the other cases in this series, we used a multi-actor perspective as an analytical framework for this case. According to this framework, the greater the difference in the way actors conceptualize land disputes, the less likely they are to find meaningful and lasting settlements. Settlement is most likely to occur where actors are prepared to adjust their regulatory priorities and bring their regulatory preferences closer to those of the other actors involved. Lasting solutions are possible where the regulatory preferences of all the actors converge. This study applies three core aspects of legitimacy that change regulatory preferences: pragmatic, normative, and cognitive. Pragmatic legitimacy refers to material benefits. Normative legitimacy is people's moral base for judgment on what is right and wrong. Finally, cognitive legitimacy arises when a group regards a regulator and its procedures and outcomes as inevitable and necessary. The challenge of using this analytical framework is that most cognitive and normative thinking is implicit, and a group may not recognize its own mental model until it is contrasted with different models. Moreover, in the field, interviewees do not neatly divide their comments into pragmatic, normative, and cognitive categories. This approach thus requires some analytical interpretation by researchers.

We conducted this case study by systematically collecting and analyzing data from related groups: government officials at commune and district level, the managers and CEO of the investor, and several land-users, including Mr. HT and his family.

## 2. Overview

### 2.1 The development of Cai Rang District

**Cái Răng** is a peri-urban district of Can Tho City. In 2007 the district had a population of 82,152, and by 2013 the population was estimated at approximately 90,000. The district covers an area of 68 km<sup>2</sup>. Cai Rang District was established by Decree No. 05/2004/ND-CP on January 2, 2004. The district borders Vinh Long province, Tay Phong Dien district, Hau Giang province, and Bac Ninh Kieu district.



The Floating Market in Cai Rang is among three of the most well-known and largest markets in the Mekong Delta, and together with Ninh Kieu Wharf, attracts domestic and international tourists. The district contains industrial zones such as Hung Phú I, II, the Cái Lân Oil Company, and Cái Cui Harbor, providing the district with a diversified and dynamic economy. However, Cai Rang mostly relies on agriculture, especially rice. The average area of agricultural land per household is 0.4 ha, and the average income generated by farming households is less than 1 USD per person per day.

Cai Rang is undergoing rapid urbanization and infrastructure development. According to data from the provincial Department of Natural Resource and Environment (DONRE), during the last ten years, 70 projects have been implemented, affecting 12,288 of the 22,344 households in the district. Among these projects, 48 were for public purposes such as street expansion or national defense and security; 22 were for establishing new urban areas and relocation. Half of public service projects have been completed while only 18% of the commercial projects had been completed by May 2013.

During the development boom, Cai Rang officials have accumulated substantial knowledge and experience on how to deal with land acquisition, compensation and resettlement. They have established a team responsible for checking the compliance with the law of any document or policy related to land acquisition. They also have a staff group that focuses on conflict/complaint resolution.

## 2.2 The Hung Phu New Urban Area Project

Hung Phu New Urban Area Project was in Block 49, Hung Thanh Ward, Cai Rang District, invested by No8 Construction and Investment JSC (CIC8). The project was approved by Decision 526/QĐ-UBND (2002). There were 157 households affected in a 42 ha site for the project. By 2013, 123 households had received compensation and moved out. 34 other households, occupying 1.2 ha (or 4.2% of the total area), continued to resist resettlement.

The project is to build a new urban precinct, including a high school, shopping mall, supermarket, administration building, trade centers and residential apartment buildings. The total investment is estimated at 1,791 billion VNĐ (approximately 90 million US dollars). The project was proposed by No.8 Construction and Investment JSC (CIC8). This company was established in 1989 by the Ministry of Construction. In 2004, the company equitized and became a joint stock company. However, it retains strong relations with the state authorities. The company's central office is located in Ho Chi Minh City.



Hung Phú Project

The Can Tho People's Committee adjusted the planning for compensation and acquisition of Land for this project on three occasions. These changes were made to match the compensation to the needs of the land users. The first plan approved by Decision 3201/QĐ-UB (October 2002), authorized compensation for farming land at 44,100 VNĐ per m<sup>2</sup>. The second in August 2003 (Decision 2967/QĐ-UB) increased compensation to 63,000 VNĐ per m<sup>2</sup>. The third in January 2005 (QĐ 100/QĐ-CTUB) approved the proposal of the investor to raise compensation to 400,000 VNĐ per m<sup>2</sup>. Besides paying compensation to the land users for the acquisition of their land using rights, houses and crops, there were other compensation policies, such as exchanging land (providing discounted access to serviced land in new urban areas). Land users were also provided other support for relocation, such as incentive payments for people who moved quickly.

### **3. The dispute in the Hung Phu project**

In the first phase from 2002 to 2003, the project completed 76% of land acquisition (32.33 ha) resettling 88 households (or 56% of the total number). There were no disputes in this phase.

In the second phase between 2004 and 2012, 7.42 ha of land were acquired. The remaining 2.9 ha (34 households) were left alone because they kept requesting more compensation. Local officials and investors attributed the dispute official document No 1701/CP-CN (2003) which prevented the local government from interfering in the land acquisition and directing the investors to negotiate directly with land users.

Many written complaints were sent to state agencies, including the Ministry of Natural

Resources and Environment. After reviewing all the records, the Ministry of Natural Resources and Environment dismissed the complaints. Afterward three more households sent written complaints to the Prime Minister and the Government Inspectorate, but they also rejected the complaints.

Among the complaints, Mr. HT and his family stand out because of their extreme behavior. During the first phase of the project from 2002-2004, Mr. HT and family were offered 164,629,471 VND for 3,006 m<sup>2</sup> of farmland, as well as other supporting funds. He refused to accept. This amount was increased to 257,170,171 VND. At that time, Mr. HT requested 300,000 VND per m<sup>2</sup>, well above the offer rate of 44,100 VND. It is noted that the local authorities were following lawful procedures. In 2003, the Can Tho People's Committee authorized the forced eviction of Mr. HT from the land. Compensation for Mr. HT was deposited in a bank under his name and the eviction proceeded.

After the eviction, Mr. HT lodged complaints with several government agencies and re-occupied the land. Because central policies had changed since the project started (the Hung Phu project was approved and implemented in 2002 while a new Land Law took effect in 2003), Can Tho authorities asked for central government approval to continue implementation of the original plan. In September 2006 the Prime Minister issued document 1519/TTg-NN allowing local authorities to continue with the originally approved plan. The Ministry of Natural Resources and Environment followed this line by issuing official letter 4483/BTNMT-TTr in October 2006, rejecting Mr. HT's request by stating that there is no legal foundation to meet his request and confirming that Can Tho authorities had followed the resettlement policy.

The Centre for Land Acquisition (a state agency directly reporting to the Cai Rang People's Committee) in collaboration with the investors and other state agencies such as the Women's Union and the Farmer's Union organized a meeting to persuade Mr. HT and his family to accept the compensation offered and give land to the investors. The investor then agreed to provide compensation at 400,000 VND per square meter, raising the total amount to 1,202,720,000 VND (60,000 USD). This was three times higher than the rate specified by government policy at that time. Mr. HT and his wife Mrs. L still did not agree. They asked for a market rate of 1,000,000 VND per square meter. One month later the investor offered a rate of 12% new land for the land loss, but this proposal was not accepted.

The Chairman of District People's Committee, held a meeting with the seven households seeking a resolution to the conflict in 2010. Mr. HT did not attend, without explanation. After that meeting, the district authorities asked for forced eviction approval from the city authorities, and this request was approved in writing on 16 December 2010.

Before eviction, the district authorities continued to persuade land users to comply. As a result, three out of the seven households agreed to the compensation and gave up their land. Mr. HT, together with three other households, did not accept the offer. The investor paid the compensation and then local authorities evicted the four remaining households in 10 March 2011 giving the land to the CIC8.

CIC8 brought workers and equipment to the site to commence construction work. But Mrs. L, Mr. HT's wife, protested aggressively. She was fined 3,500,000 VND by the



District State Police for her action. After the workers left for the day, she and her family re-occupied the land and did not allow workers to enter the site. The District People's Committee once again forcibly evicted her family from the construction site. Mr. HT drank pesticide in a suicide attempt, but was rushed to hospital and recovered.

The company continued construction work on 10 May 2012. Mr. HT and his family, including Mrs. L, Th, daughter and V, son, came to the site and hindered workers to the point that they were not able to continue their work. V threw stones at the security guards and was arrested and taken into police custody for a short time. District authorities directed the local authorities to use commune officials and state agencies like unions to educate the protesters.

On 22 May 2012, the company brought trucks and equipment to the construction site to continue their land clearance. Further escalating the confrontation, Mrs. L and her daughter Th followed the trucks to enter the site, and then removed their clothes to protest their loss. They also attacked the security guards with a cane. The security guards attempted to convince the women to dress and not to obstruct the trucks. As the women refused to comply, the security guards dragged them from the site. V took photos of the scenes. Finally, the local police arrived and requested them to leave. The photos were uploaded on to several websites. It was a shock to the media and immediately generated hundreds of articles in newspapers in Vietnam and abroad, attracting thousands of comments.

On June 6, 2012, District People's Committee held a press conference to announce the result of their investigation and attempts to resolve the dispute. Mrs. L and her daughter Th were fined 80 000 dong (\$4 US dollars) for violating Vietnamese customs and traditions; another 1,500,000 VND (\$75 US dollars) for obstructing authorities. CIC8 was also fined 350,000 VND (\$17 US dollars) for using untrained security guards and for the unprofessional behavior of their staff.

Several task forces met with Mr. HT's family to explain the issues and convince them to settle. CIC8 offered to sell them a two-story house for the discounted price of 500,000,000 VND (the true cost for construction was estimated to be 750,000,000 VND) and to provide rental accommodation while the house was being constructed. Mr. HT and his family still refused to settle. One such meeting was held by the Government Inspectorate (*Thanh tra Chính phủ*) combined with the District People's Committee, Hung Thanh Commune People's Committee and other state agencies on October 3 2012. The task force reached the conclusion that their complaints had been well received and responded to in accordance with legal regulations. It requested Mr. HT to stop sending complaints to state agencies and warned that these institutions would no longer receive his complains. The Task Force decided that the District People's Committee should continue supporting the construction project.

#### **4. Multi-actor analysis of the case**

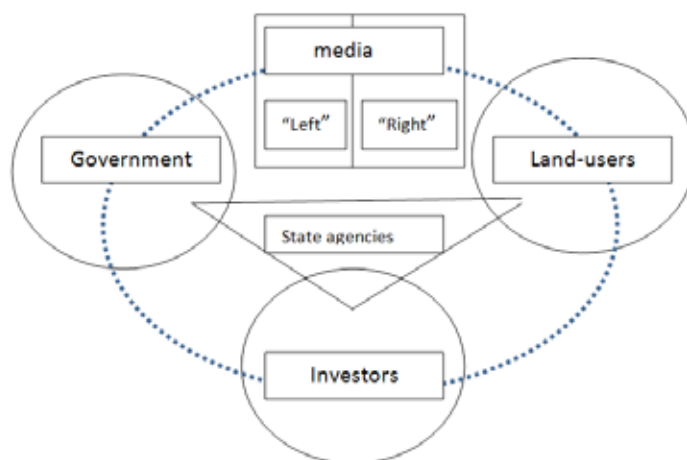
This case illustrates some of the problems caused by land taking for commercial development. It also reveals some issues around land disputes in the Mekong Delta, where the characteristics of the southern farmers play a role. Using a multi-actor approach, we

interviewed several key actors to examine the divergence on their point of views, the evolution of their thinking, if any, and how it impacted the dispute resolution process.

#### 4.1 Analytical framework

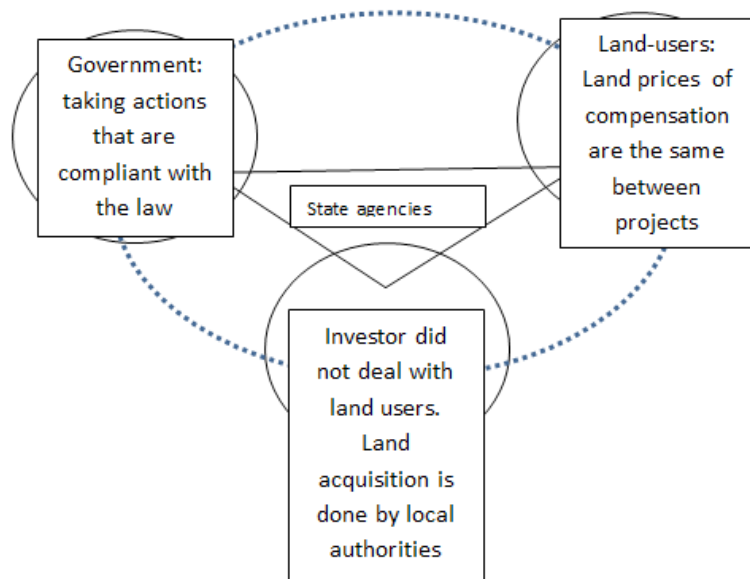
There are three key actors in this case: (1) the government (local and central government); (2) investors; and (3) land-users affected by the project.

These key actors interact in an environment of state policies which are changing frequently. In the figure below, the round dash represents the forum in which the actors deliver their messages and influence other actors. Within these forums we recognize two more actors: the media and the state agencies such as Women Union and Socio-Political Organizations.

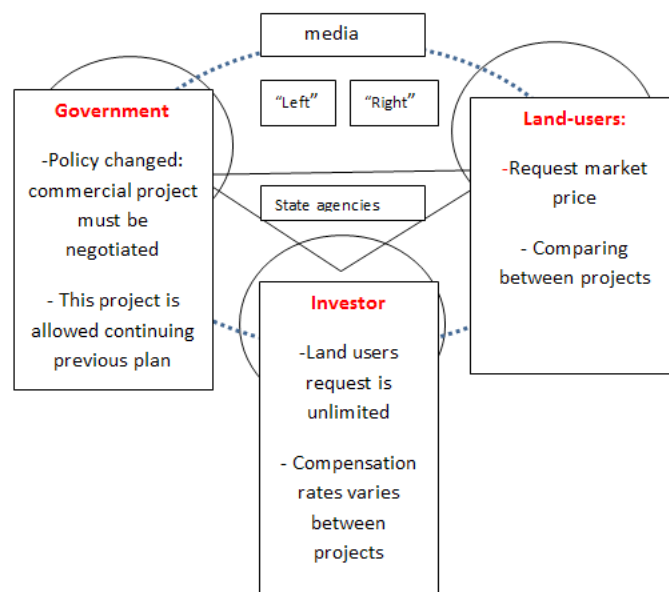


Note that in this case, the media played an important role. Interestingly, there were two kinds of media: the “right side” – state run media, such as Thanh Nien, Tuoi Tre, and Phap Luat, controlled by the state; and the “left side” – foreign media such as VOA, RFI, and the BBC and hundreds of personal blogs/websites, which are mostly or entirely outside of state control.

Using this figure, we can summarize the basic facts describing the process of how the dispute evolved during two phases.



Phase I: Pre dispute Period



Phase 2: Intensive Land dispute Period

## 4.2 Divergent views on land disputes, causes and appropriate resolution

Here we explore the different ways actors understand and conceptualized the dispute, not only in the way they see land, but also their conceptions of justice and equality. The divergence in thinking is a notable feature of this case.

### a) Government actors

In this case, there were few differences in perspectives between local and central government authorities. The responses given by the government officials were consistent.

*Cognitive thinking:* government officials considered land to be a state asset assigned to people for use. The Land Law is seen as an instrument to secure state policy rather than bestowing individual rights.

*Normative thinking:* They did not specifically consider the time frame for compensation. Of importance to the land users is not only how much the compensation is, but also when it is given. While the “total package” may seem reasonable, the timing may not be suitable for some land users who prefer land exchange rather than a package compensation. The government officials used a procedural understanding of justice and fairness and emphasized regulatory conformity. They thought that disputes arose when people failed to follow regulations. For officials, fairness is measured by consistent compensation rates across time and projects. Therefore, they did not recognize some “unfairness” when people received different compensations because they were under different projects or because policies changed in the middle of a project. However, people’s complaints were unjust because local officials had “followed the law”. The government officials compared the compensation rates between the *official rates regulated by local government* and the ones offered by CIC8. Justice was measured by compliance to the law.

*Pragmatic thinking:* government officials see that changes in policies and different regulations applying to different projects makes their jobs more difficult. Allowing firms to directly “negotiate” with land-holders created major problems because “people always want more”. No agreement can be reached for all people. On the other side, officials see that their career promotion might be harmed due to not handling disputes. For example, a representative from the Center for Land Development thought that: “*the People Committee is very afraid of disputes. Therefore officials were very cautious, following the regulations closely.*”

Members of this group share similar views about land acquisition and the causes of this conflict.

*“In public purpose projects, people easily comply with the compensation and resettlement policies, though the rate is much lower. The commercial project faces much more difficulty”*

Local official

*“Cai Rang has done the task of land acquisition quite well thanks to local authorities who do not only base their actions on the legal framework but also introduce flexible interpretations of the regulations. First of all, the authorities require the Legal Team (Tổ Pháp chế) to review in advance all documents and policies introduced to assure that they are compliant with recent laws set by the central government”.*

Local official

*“We try to persuade land users several times before forced eviction.”*

Local official

Because they followed legal procedures, the state officials believed that their actions were ‘right’ and just. They were confident that local government did nothing wrong. It seems that they do not question whether the law set by the government is justifiable with common sense. The official interviewed also said that local authorities kept the

official land price determined by local government at a low level so that Cai Rang was an attractive destination for investors.

Therefore, in their view, the land-users request was improper. They attribute the causes of the dispute to two main factors:

- (1) The inconsistency of the policy environment: since 2002, there were several changes, from Decree 22/1998/ND-CP that applied at the time the project was first approved to the new Land Law 2003, which took effect in 1st July 2004, to Decree 34, Decree 84 and especially document no 1701/CP-CN (2003). Each of these documents changed the compensation rates, procedures and key actors in the land acquisition process. Since document 1701/CP-CN, the investor must negotiate the compensation directly with land users while before that, land acquisition and price arrangement were responsibility of the local authorities.
- (2) The Procedural frame of reference: From the local government perspective, especially at executive level, document no 1701/CP-CN issued by the central government generated problems, because it stated that in commercial projects, investors were responsible for negotiating compensation payments for land clearance. A cadastral official in Hung Thanh commune opined:

*“In the same area, compensation rates are much different between projects. This causes problems.”*

Official, Hung Thanh Ward, Cai Rang District

In sum, state officials blamed disputes on inconsistencies and shortcomings with state land acquisition regulations. State policies and procedures formed their frame of reference (hệ quy chiếu) for evaluating land disputes. As we shall see, this approach differs significantly from the land users' frame of reference.

#### **b) Business investors**

*Cognitive thinking:* the investors see the land as a factor of production for their businesses. Land has decoupled from personal and spiritual relationships and is treated as a tradable commodity.

*Normative thinking:* for the investors, fairness relates to the consistency of land prices across projects and time. Land users complain where there are inconsistencies in compensation.

*Pragmatic thinking:* the investors use cost-benefit analysis to assess their investment and any land dispute. As a consequence, they thought that land users were acting unreasonably when the users did not take into account the investment costs in making compensation claims. They also thought that “negotiation” with large numbers of people went nowhere, because they don't see the possibilities of achieving consensus, and they do not have power to take action in compulsory land acquisition as the government does.

The investors tried to understand the viewpoints of land users, but maintained that their compensation policies were just. The comment below from an official in the PMU of the

Hung Phu Project, reveals the investors understanding of justice:

*“The compensation rate for public purpose projects is lower than that of commercial projects. It is unequal and unjust. For instance, the government takes land use rights from people for expansion of roads. The larger roads bring benefit to local communities and society at large, but the loss is only for the land users as they will receive a lower rate of compensation. Why do they have to stand to lose while other people benefit?”*

*“Our compensation rate is lower than that of other projects in the same area at the same time, because we have to give 10% of the land acquisition fund to the local government. We also plan a large size of land for public construction in the new urban area that is used for school, health care station, for example, which might not exist in other projects”.*

Regarding Mr. HT’s request to increase the compensation rate equivalent to the market price, a project manager, commented:

*“He asked for 2,000,000 VND compensation per square meter because he looked at the selling price of project land which was 5,000,000 VND per m<sup>2</sup>. He did not see that the investor could not afford such compensation because we have to spend money on a million things for land acquisition, building infrastructures, and reserving land for public purposes as well”.*

A local official said:

*“The investors did not pay attention to pleasing the protesters, giving them presents on special occasions. Vietnamese people are emotional. Everyone likes gifts”.*

The investors also made some comments that reflected a common position with the government. Business people see things from a cost and benefit consideration. They also see that document no 1701/CP-CN is a source of disputes. They prefer to leave the task of land acquisition entirely to the local government rather than to negotiate directly with land users. The reason for such a preference is top down thinking. They think power of the authorities works better than negotiation and reduces their costs because power can help impose a low rate of compensation. In this regard, they have a similar point of view to that of the local government.

In general, just like the local government, the investors see land-users as too demanding and making improper requests.

### **c) Land users**

*Cognitive thinking:* the land-users, who were farmers, see land as the central stabilizing force in their lives. Resettlement disrupts their lives by forcing them to find new houses, new livelihoods, and new social networks. This view was not fully considered by officials and investors. It seems that most of people’s resentment and unhappiness, even after receiving money, arose from the long period of disruption, before and following disruption, when their lives were unstable and uncertain.

*Normative thinking:* land-users argued that people should have a say in determining the

land “price”. “Imposing a price”, even if it was reasonable, was perceived as “unfair”. In addition, land users applied two different baselines for comparing prices that lead to two different responses. The land users who accepted the compensation in the first stage 2002-2004, compared to the compensation rate offered by CIC8, to the income that was generated from the land, and the cost of purchasing equivalent farmland. Based on these comparisons, they decided that the compensation would enable them to continue earning a livelihood as farmers. Here justice was based on a pragmatic assessment of what they stood to lose and gain. In other words, in this case, pragmatic assessment shaped normative views about fairness.

The land users who rejected the compensation, such as Mr. HT and another 34 households, compared the compensation offered by CIC8 with the market value of land after the redevelopment. In other words, they believed that it was unjust because of the large difference between what the company offered and the improved value of their land. They thought it was unfair that they did not participate in the profits generated from the project. Here justice was measured by the distance between the compensation offered and what they thought they should have received.

*Pragmatic thinking:* land users thought that compensation, either in money or land, should ensure stable lives. Mr. T, Mr. P, and Mr. HT shared this common view, even though they had different responses to the compensation offered by the investors. To recap, Mr. T completely agreed with the offer, while Mr. HT rejected the offer. Thus, land users calculated different personal values (utility) for their land.

*“Most land users received payment in cash and moved to other places, purchasing other land and continuing farm work. There were only 4 households out of 160 in total number who have stayed in this area”*

Mr. T, who exchanged his land for new land provided by the investor

*“I have already given my land to the CIC8. My land was exchanged into 2 foundations of a house in the project land. However, CIC8 has not handed the project land to me, therefore I built a tent to live on their land, in case they were cheating. Who knows if I moved to another place, they might never give me the land as promised”*

Mr. P, a land user who remains on the project land

Mr P was among the first group who received compensation of 44,100 VND per square meter and then later received additional compensation of approximately 20,000 VND per m<sup>2</sup>. When asked whether he had suffered a loss, he replied that he did not feel like he lost, because the gold price has increased ten times during that time, so 44,100 VND in 2003 could buy the same gold as 400,000 VND in 2010 could do.

We asked him what he thought about the protest by Mr. HT and his family. He said Mrs L was stupid because *“our mouth is as small as a cup, their mouth as big as a bowl”*. *“This family was out of its mind. Too greedy, and when they were coerced, they lost, because the expenditure for eviction will be counted in the compensation amount deposited in the their bank”*.

Mr. HT and his family have their own strong views about the project and filtered out opposing points of view.

*“This land was bought with 0.8 cây vàng. That is 20 years of me working like a slave”.*

*“I have four children. The last compensation amount they offered is 1.2 billions VND, divided for 4, how big is this amount? If withdrawal of land for road expansion or public interest I will agree with low compensation. But this is a commercial project! The land price must be negotiated”.*

*“What I request is only the same compensation rate applied for another projects near here”.*

*“The Government Inspectorate also acknowledged that there must be negotiation. When they came here, two sons of mine recorded the conversation but it was technically interfered with by the local authority so that I cannot have the evidence to prove their arguments”*

Mr. HT

*“I will never let them work on my land if the compensation is not sufficient as requested. If I die protesting, my children will bury my dead body on this land”.*

Mrs. L, Mr. HT’s wife

The divergence of viewpoints on land price among the actors in this case comes down to the framework they selected to assess justice. It was clear from the interviews that each actor rather rigidly pursued their own way of thinking and made little effort to see the problem from the perspective of the other actors.

## 5. Forums for discussion and interaction

There were two major forums: media and meetings held by local authorities.

### a) Persuasion meetings held by local authorities

There were several meetings before and after the forced eviction. Based on the sequence of meetings, we could see that these meetings mostly focused on the compensation rate, rather than examining and reconciling different perspectives. These meetings, which included mass organizations such as the Farmer’s Union, Women’s Union, and Fatherland Front (Mặt trận Tổ quốc), and the investors, aimed to explain about the project and convince the land users to accept compensation. There were few opportunities given to listen to and understand what the farmers thought about the project and compensation. These meetings were strongly controlled by the authorities, both local and central government. People come to the meetings and then went back home with the same perspectives, because the meetings are seen as ‘propaganda’ and not a ‘discussion’ from both sides.

### b) Media participation

The media played an important role in this case, because it’s reporting of the extreme reactions by Mr. HT and his family generated hundreds of articles within the country and abroad. Mass media reports also sparked a vibrant discussion by



thousands of bloggers and social media commentators. As previously discussed, it is important to categorize the media actors into two sub-groups: “the right side” including state run media outlets such as Thanh Nien, Tuoi Tre, Phap Luat Newspapers, HTV, VTV, Dan Tri, and VnExpress. This group is tightly controlled by the state. In contrast, “the left side” including foreign press such as RFI, VOA, the BBC, and the AP, as well as hundreds of Vietnamese personal blogs, such as Ba Sam, Nguyen Xuan Dien, Que choa, and Huynh Ngoc Chenh. Also included in this group are foreign websites such as Dan Luan, Dien Dan, and Dan Chim Viet. The ‘left side’ media are entirely or partly beyond state control. Although there is no real dialogue taking place in these forums, the internet environment exposed multiple interpretations about the facts that undoubtedly broaden social discussions about land disputes.

### **State-controlled media - the “right side”**

Most of the reports presented the basic facts in a neutral way. They also posted the naked photos of Mrs. L and her daughter and the security guard dragging them out. Many articles quoted the Can Tho authorities and confirmed that the local government implemented the compensation, resettlement and forced eviction properly according to the legal regulations. For example, the press reported, Mr.C, Director of No8 Construction and Investment JSC (CIC8) admitting that the dispute was their fault for not dealing effectively with the unexpected response to the land taking. He admitted, at a press conference on June 6, 2012, that it was wrong for the guards to treat the protesters roughly, pushing and dragging the two nude women away. However, the press also showed how the compensation had increased, suggesting that the protestors were unreasonable in their demands.

A few weeks after Mrs. L and her daughter protested naked, when Can Tho authorities held a press conference, most state run newspapers reported that the mother and daughter were fined for their behavior. Some headlines provide an understanding about the press coverage: “Mother and Daughter get naked to hinder contractors” (Tuoi Tre News, 22 May 2012); “Mother and Daughter are nude to keep their land” (Vietnam Net 29 May 2012); “Cai Rang authorities explained protest by naked woman on reclaim land” (Sai gon Giai phong 30 May 2012); “Mekong Delta residents take off their clothes to protest land eviction” (Thanh Nien 31 May 2012); “Can Tho: Mother and daughter are fined 4USD for being naked” (Vietnam Net 20 June 2012).

### **Non-state media - the “left side”**

An English website posted 7 articles about the case focusing on the scandalous protest. However, they merely repeated what had already been reported by Vietnamese press. These articles were either translations or rewritings of accounts that had appeared in Sai gon Giai phong, Thanh Nien, Tuoi Tre, and Vietnam Net. Other press accounts were more original in their approach. The foreign press, for example Radio France Internationale (RFI), presented the case largely from the perspective of the land users. These articles quoted Mrs. L’s account of the fight with the security guards. She denied attacking the workers on the construction site, as reported by local government officials. More importantly, her views that business investors must negotiate land compensation

with land users received wide coverage in the foreign media. She also explained why she chose an extreme form of protest: *“We felt we had no other choice but to do something as drastic as what we did, despite the sense of shame.”*

Vietnamese bloggers updated information on the dispute, displaying photos that caused a social sensation. These blogs/web attracted numerous comments. Most criticized the government. They argued that it was “daylight robbery” to offer low compensation whether the local authorities followed the rules or not. Bloggers also drew attention to state officials and business investors profiting from such projects. Although the bloggers did not report corruption in this case, they pointed to the close relationship between authorities and the investors.

Mr. HT clearly believed that the media could help him. He used media as a “weapon” to deal with officials. He felt emboldened in his dispute because: *“I’m not afraid anymore. I have many newspaper reporters’ contacts. I [would] call them and let them tell stories.”*

The major difference between official and unofficial media is in the attitude towards the story. The “right side” raised the voices of government officials and leading readers to the conclusion that Mr. HT and his family are selfish, greedy, and out of their minds. The “left side” expressed sympathy to the protesters and criticized the government. In some private blogs, people can post their comments. Therefore, it can be seen as a type of public discourse. This debate might impact the actors’ behaviors (as we could see in Mr. HT’s and quotations from the local officials). However, all these forums are “one way streets” where people assert their view without dialogue, because the actors (government officials, investors and protesters) have never replied on these comments.

## 6. Discussion

It has already been pointed out that differences concerning justice depended on how the actors assessed the value of farmland. From the state and investors’ perspective, the project succeeded profitably and eventually took over the farmland. Viewed from the perspective of achieving a harmonious settlement, the project was less successful.

By the time this study was conducted, the land acquisition of this project has been mostly completed. It is said “mostly”, because legally speaking, the compulsory eviction has ended. Land was given to the investor. But there was an undercurrent of dissatisfaction in some people who agreed to give land. Thirty four families still refuse to receive compensation, with Mr. HT and his family a special case among them. This section discusses the reasons why the project failed to satisfy these 34 families, including Mr. HT and family. At the time of writing, they are still determined not to give up their request.

The dialogue between the government, investors and Mr. HT did not succeed because it was never intended to reach a meaningful settlement. The government’s instrumental pursuit of development left little space to compromise and reach a genuine consensus. For this reason, Mr. HT thought the meetings convened by state agencies were “propaganda” and “one way streets”. True consensus could be achieved when people take into account the perspectives of others and consider them thoughtfully, but this did not happen in

this case. Most media analysis attributes land disputes to contests over compensation and procedural compliance. This case demonstrates that this is only part of the story. It is also vital to understand the normative perspectives of the key actors. Their understanding about justice profoundly influences how they respond to the compulsory acquisition of land.

This case suggests the need for dispute resolution forums that enable the key actors to come together in a relatively unscripted environment to work through problems. The investors apply a narrow cost benefit approach, focusing on short term goals about reaching agreement on price, but they did not realize that negotiating with large numbers may be useful in the long term in creating social pressure to prevent some land holders from holding out later.

In Mr. HT's case, dialogue failed because the parties had formed fixed cognitive and normative positions regarding the dispute, and there were no trusted intermediaries who could explain the different viewpoints in a mutually intelligible context. In part, the problem is also a question of power imbalance, since the mass organizations present at meetings represented the state rather than the land users.

Mr. HT and his family feel they are standing alone, and, because they believed their position was just, they chose an extreme reaction. No one could persuade Mr. HT and his family, because no dialogue happened. Propaganda is not a conversation. What Mr. HT wanted was to allow land users to participate in the profits generated by the land development. That is not recognized by law, so no amount of discourse could convince the state to give what the law does not allow. It also appeared that land-users may "calculate" profits differently from the investors, and thus part of an open discussion is for actors exchanges their views on "profits" generated by the land development.

We can also see the evolution of people's emotion in this case. For Mr. HT, emotion (not knowledge which informs pragmatic decision making) drove his and his family's behaviors. Their emotion was rooted at their assessment of fairness in both the outcome and procedures for settling the compensation. Emotion surged when his attempts to reach agreement were frustrated by the highly-scripted forums. Confrontation with both officials and investors promoted the feelings of being driven into a corner, and these extreme emotions lead to extreme behaviors.

## **7. Conclusions**

Land users in this case can be divided into two groups: those who assess the fairness of compensation according to the value of farmland and those who wanted to participate in the value added to their land. These groups formed different normative frameworks because they had different information. Farmers who are better connected the outside world are better informed and more demanding. The fact that Mr. HT's son intended to take photos and upload them to the internet suggests they were quite familiar with the cyber world and better aware of benefits generated in the project. The farmers who accepted the first round of compensation remain satisfied when they saw the compensation increase because they compared increasing rates of compensation and the increasing value of gold, and find it is fair. Traditionally farmers measure values of land/ house by gold.

This case is typical of disputes where land is taken for commercial purposes. Though each case has a particular context and trajectory, we have identified some unifying factors. Our multi-actor approach allows us to delve deeply into land disputes to understand the cultural, economic and political values underlying people's reactions and behaviors. The story of Mr. HT and his family show that justice really does matter and that disputes cannot be solved by merely imposing more regulations or refining property rights. The closer the legal framework is brought to community understanding of justice, the more effective it will be for resolving conflicts. However, this case suggests that the inevitable differences between the law and social expectations are most effectively resolved by dialogue between disputants. More importantly, **the involvement of the community in the negotiation process was missing**. Though the Farmer's Unions, Fatherland Front, and the like, participated the process, these bodies are seen state agencies and did not represent the community. The protesters were standing alone in facing the state and investors. There was almost no dialogue, and the disputes became more and more intense.

# **Case Study 5**

## **Phu My Hung:**

### **Who should pay the land use fee?**

## I. Introduction

The report analyzes conflict over “Who has to pay the land use fee” in the Phu My Hung urban area, District 7 - one of the new districts in HCMC. There were several reasons why we chose this case study. First, HCMC is the most dynamic city of Vietnam, where the urbanization is proceeding rapidly. “HCMC is twice as large as it was before 1975, it is the result of the urbanization process both in width and depth”<sup>13</sup>. More importantly, this case involved multiple actors in multiple dimensions. To resolve the conflict, there have been multiple forums among various actors, including courts, media, and blogs.

Phu My Hung residential area was developed by Phu My Hung JVC, established on 19 May 1993. The aim of the project was to develop a modern residential area in Ho Chi Minh City. It began as a pilot project and has been incrementally revised to resolve implementation problems. The revisions have been suggested by various state agencies from the central to local levels, from various ministries and departments. The revisions have been divergent and ambiguous, leading to misunderstandings among stakeholders. In addition, rapid urbanization and increasing immigration from other provinces into HCMC resulted in high demand for housing and real estate investment. Therefore, land prices in HCMC have raised rapidly since 2005, with a peak in 2009.

The dispute in the Phu My Hung project began in 2004 when the 2003 Land Law took effect, and has surged since 2009. From 2004 to 2009, land prices in the area increased about 500 times. As has the land use right fee (LUF). Residents of Phu My Hung first asserted that, according to the Land Law 2003, Phu My Hung Development Corporation (PMHDC) is responsible for paying the LUF, not them. As it turned out, Phu My Hung was allowed by the local government to continue its pilot-business, placing responsibility for paying the LUF on the residents. People then claimed the price for calculating the LUF was not just. On the surface, the dispute takes place between land users<sup>14</sup> and PMH Co. However, considering the nature of the story, it can be considered a dispute between local people, investors, and the government. The dispute is due to contradictions among different laws, inconsistencies between local and central government approaches to the project, and changes in land price policy.

We used a multi-actor perspective as an analytical framework. According to this framework, the greater the difference in the way actors conceptualize land disputes, the less likely they are to find meaningful and lasting settlements. Settlement is most likely to occur where actors are prepared to adjust their regulatory priorities and bring their regulatory preferences closer to those of the other actors involved. Lasting solutions are possible where the regulatory preferences of all the actors converge. This study applies three core aspects of legitimacy that change regulatory preferences: pragmatic, normative, and cognitive. Pragmatic legitimacy refers to material benefits. Normative legitimacy is people’s moral base for judgment on what is right and wrong. Finally, cognitive legitimacy

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13 Source: 2012 report of Ho Chi Minh City Department of Planning and Architecture

14 Land-users in this case refers to people who purchase land of PMH, or to buy houses, apartment from PMH but do not have a land/house certificate issued by government because the land use fee has not paid for the government yet.

arises when a group regards a regulator and its procedures and outcomes as inevitable and necessary. The challenge of using this analytical framework is that most cognitive and normative thinking is implicit, and a group may not recognize its own mental model, until it is contrasted with different models. Moreover, in the field, interviewees do not neatly divide their comments into pragmatic, normative, and cognitive categories. This approach thus requires some analytical interpretation by researchers.

We conducted this case study by systematically collecting and analyzing data from relevant groups (e.g., local officials, businesses, residents of PMH, as well as lawyers and reporters involved in the dispute). (See Summary Chapter for detailed description of the analytical framework and methodology).

We first provide some background, including a provincial and project overview. We then use a framework for analyzing the views of actors based on their perceptions of fairness, rationality and benefits to the parties. Finally, we draw some lessons and recommendations for land dispute resolution in Vietnam.

## **2. Phu My Hung Urban Area**

HCMC is the most dynamic city in Vietnam; a multi-polar, multi-center and multi-functional city with service industry, culture, science and technology, high technology, seaports and tourism. The city is located in the key economic triangle of the South of Vietnam, including HCMC- Dong Nai- Ba Ria Vung Tau.

### **Establishment and development**

Phu My Hung urban area was formed and developed by Phu My Hung JVC (the name was changed to Phu My Hung Development Corp. March 2013) established under investment license No 602/GP in May 1993 by the State Committee for Cooperation and Investment (Ministry of Planning and Investment). It is a joint venture between the Tan Thuan Industrial Promotion Co. (IPC, representing Ho Chi Minh City People's Committee) and the Central Trading & Development group (CT&D, representing Taiwanese investors).

According to provincial data, the total initial investment was USD 242 million, including legal capital of \$60 million. Taiwanese contributed USD 42 million and Vietnam contributed USD 18 million in the form of land use rights for 600 hectares.

Phu My Hung development Co. conducts three main activities:

- 1) Constructing Nguyen Van Linh avenue (17,8 km length, 120 m wide comprising of 10 lanes) with parkland in the central reservation for a light rail project in the future.
- 2) Constructing 5 modern urban clusters A, B, C, D, E along Nguyen Van Linh Parkway.
- 3) Completing the construction of infrastructure for 150 ha of public works to hand over to the People's Committee of HCMC; completing the construction of public utilities.

The formation of the PMH urban area is the initial step in a program to expand HCMC to the South, heading to the East Sea. Developing PMH urban area is an important element of forming an urban center with full service functions such as international finance, trade, residence, cultural activities, education, science and high technology development.



Plan for Nam Sai Gon new urban area

### Phu My Hung ‘s contributions to the JVC

From an area with poor-quality soil, the south area of HCMC has changed dramatically in the last decade. Nha Be flourishes; poverty has receded. The formation of Phu My Hung urban area is an important factor in this change.

Many architectural planners recognize the Phu My Hung urban area as a modern, well planned city. A notable contribution of the Project was the completion of Nguyen Van Linh Avenue that connects important areas in the southern urban area of HCMC. The Phu My Hung project received numerous prizes, awards, from local and international organizations

*“On the salty soils that have not been exploited for hundreds of years, a group of people have spent time, intellectual and material resources over 15 years to build up Phu My Hung new urban area and a wide range of current projects. Another group of people continues the direction and development of the city towards the East Sea”.*

Mr. Lawrence S. Ting – Former Chairman of Phu My Hung Development Co. Ltd



Before investment



After investment

Before and after investment - Phu My Hung urban area



### 3. Disputes in Phu My Hung

This section describes the emergence of disputes in the Phu My Hung Residential Project. A detailed account of this process can be found in Annex 2 .

#### a) Starting the Project (1993 - 2004)

During 1990s, Phu My Hung Project started as a “pilot” project for building modern residential areas in Ho Chi Minh City. Under the 1993 Land Law, FDI enterprises were not allowed to do real estate business. The special arrangement was that PMH rented land, built houses, then returned the land to the City and sold houses to the people. People needed to pay a land use fee to get a land use right with the houses they purchased. Specifically:

- PMH JVC and house buyers agreed on price (known as transfer of the right for using land with infrastructure investment);
- House buyers wishing to own land use right certificates, house ownership (called a pink book) must pay a land use fee in relation to the allocated area and based on the rural land price at level 3, which was 26,000/m<sup>2</sup>;
- After completing the procedure of transferring land use rights, PMH JVC should pay an amount of money into the City State Budget in order to settle the cost of clearance.

During this stage, PMH JVC mobilized capital from people to build infrastructure and houses. PMH area at that time was incomplete; people contributed their money to construct the PMH urban area. Perceiving a high potential for development of this new urban area, the number of people investing in PMH projects increased over time. In 2003-2004, when PHM JVC launched sample products to the public, a ‘fever’ for house and land emerged. People had to queue and scramble to get on the list of buyers. Financial obligations (i.e., the LUF) of buyers after receiving the house and land were written in the initial contracts, but not verbally explained to the buyers.

#### b) Disputes on the LUR fee (2004 - 2010)

The land law of 2003 came into effect on 1<sup>st</sup> July 2004. The Law permitted FDI enterprises to operate real estate businesses. PMHDC was permitted to apply for land use rights. The company would be required to satisfy financial obligations to the state, i.e. land use fees, prior to handover of the land.

Despite the Law, local government allowed Phu My Hung to continue as a pilot-business, putting responsibility for land fees on the households. The continuation of the previous arrangement benefited the company. A quick calculation suggested that rent was only about 25% of the land use right, so the company would have had to pay 75% more if they had followed the new regulations. Because land prices were already fixed, the company could not pass on the cost of the LUF to the buyer. Thus, Phu My Hung did not register land use rights for the project, and let the people pay the LUF.

The land price issued by HCMC People's Committee in accordance with the 1993 Land Law was 26,000 VNĐ/m<sup>2</sup> stabilized until 4/2004. According to 2003 law, the land price should be issued by Provincial People's Committee annually and should be close to market price. On 31 March 2004, HCMC PC issued a decision (No. 1367A/QĐ-UB) on the adjustment of land prices for District 7, effective 15 April 2004. From that point of time, the land price of district 7 from 2005 to 2013 changed periodically, as detailed below:

Land prices for district 7 announced annually by HCMC PC

Unit price: 1,000 VND

Name of the road	Land price for the year				
	2005	2006-07	2008	2009	2010-13
Nguyễn Hữu Thọ	5300	5300	6400	6600	8400
Huỳnh Tấn Phát	5300	5300	6400	8400	8400
Nguyễn Thị Thập	3500	4200	6400	9900	9700
Nguyễn Văn Linh	5300	5300	6400	13200	13200
Tân Phú	3800	3800	6400	12000	12000
Tân Trào	3400	3400	5600	11000	11000
KDC Phú Thuận	1800	2100	2500	3700	3700
KDC Tân Thuận	1800	2250	4200	5500	5500

From 2005-2008, the PMH continued to be treated as a "pilot" Project, as it was prior to the 2003 Land Law. People still bought and sold houses and accepted paying the LUR fee. In 2009, the land price skyrocketed, leading to a very high LUR fee. Shocked by the new amount, residents initially requested the HCMC Peoples' Committee and PMH JVC to review the LUR fee so they could pay the price fixed for 2008.

The government did not agree with the request, and the PMH JVC considered payment of land use fees as an issue between the people and the government.

*"In house purchasing contracts from before 2010, it was indicated that land use fees are paid by the buyers. The procedure with the government for certification of housing land rights is the responsibility of the buyers."*

Representative from Phú Mỹ Hưng Company.

One point to note is that the time for fee calculation was disputed. In the policy, the calculation for the land price is from when the applications for housing land tenure certificate reach the Tax Department. Before that, people had to sign two contracts: an initial contract signed when people agreed to contribute money to the project, and a final contract signed when people get the house. The gap between these two contracts could be from 1 to 4 years. Thus, when signing initial contracts, people do not know how much LUF they will have to pay when they get the house.

Worse, there was usually a delay from the time of signing the final contract to when the certificate reached the Tax Department. The delays were administrative. If the land price increased at that time, the people would have to pay for the administrators' ineptitude.

*"PMH only delivers house to the people when construction is finished. When the people submit their application to pay the land use fee is the people's responsibility. For example, if the house delivered in 2007, but the buyers started their application in 2009 they are responsible for the delay, not PMH"*

Representative from Phú Mỹ Hưng Company

*"Because of government delays in handling the paperwork the gap between receiving the files to decision on land delivery (collection of payment at the delivery land time) is long, the land price increases too much already and the people do not want to pay. For example, one house contract was notarized in 2005, but only in 2010 was there is decision on land delivery. The price is then calculated at 2010 values."*

Tax official

In fact, from 2004 to 2009, buyers of PMH apartments had tried to pay the fees to get a "pink book" but they could not proceed because PMH had not completed the paperwork.

*"About 700 households signed a collective complaint and sent it to the Prime Minister. But this request was denied because according to the law complaints cannot be submitted collectively. Then a group of lawyers established a blog entitled "PMH community" that provided instructions for people on how to submit individual complaints, where to send forms and costs associated in sending complaints to to the court (Website: [www.congdongphumyhung.wordpress.com](http://www.congdongphumyhung.wordpress.com))"*

A lawyer, legal adviser of Phú Mỹ Hưng community website

PMH JVC and the land users agreed to communicate with each other to find solutions to their concerns about the land use fee issue mentioned above. But the dialogue was not successful. The sides could not reach a satisfactory conclusion.

*"The board of representative of PMH population held 3 meetings with PMH JVC to work on this issue. 2 direct encounter dialogues failed, on the 3rd one (31 October 2009) the PMH Company closed their office. There were 60 anti-riot police blocking the office of PMH JVC and some in civilian clothes among the land users to control the situation... The land users were very frustrated. They wanted to move to District 7 People Committee to protest, but the members of the Representative Board blocked that idea, suggesting land users should not take aggressive action, otherwise they may be charged with disturbing public order, opposing the state..."*

A member of the Representative Board of Phu My Hung land users

In 2010, the government established an inspection delegation to inspect the land use fee payments at the Phu My Hung urban area. On 2 December 2010, the government issued the official note 2187/TTg-KTN on the collection of land use fees for the Phú Mỹ Hưng new urban area, The Prime Minister commented:

(1) For the cases where PMH JVC signed house contracts with the buyers, the land use fee is calculated at the year of signing contracts. However, it was not clear which contract this decision referred to.

(2) For the cases where the contract is not signed, PMH JVC is required to pay the land use fee.

Until 9 Mar 2012, the District 7 Tax Department had received 6,056 applications. The Tax Department issued collection notices for 5,849 households, of which 4,155 households had already paid the land use fee. 1,864 applications had a notice issued but did not pay, of which 1,070 had signed house purchase contracts before 2006 but signed the notarized contract after 2006.

PMH residents continued to gather and contest the timing of the tax calculation. At the time interviews were conducted (June 2013), the relevant government agencies suggested that a tax would be calculated at the time of initial contract. Presently, HCM People's Committee is preparing an official letter to the Prime Minister's Office for approval of this plan.

The table below summarizes the key events of the dispute.

Summary of key policy socks that induced disputes

1993 - 2003	2004	2005 – 2008	2009	To date
Special projects  PMH developed residential areas People bought apartments/houses People paid LUF Land price: 26K VND/m <sup>2</sup>	<b>Land Law effective:</b> PMH would pay LUF HCM City kept PMH as a special project Land use fee: decided by HCM PC every year	Transactions as special projects People signed two contracts with PMH at <b>two</b> different times: initial contracts to contribute money - and final contract to get apartments/houses Land price: 5300K - 6400K/m <sup>2</sup>	<b>SHOCK:</b> Land price: 13,200K/m <sup>2</sup>  People studied regulations and pointed out inconsistencies	Government Inspectorate involved. Prime Minister issued a decision on 2 cases: For those with signed contracts: People paid tax based on the price of the time contract was signed For those without contracts: PMH paid tax
No dispute	No dispute	No dispute	<b>DISPUTE</b> Who pays LUR fee? Based on what time (prices)?	Continued disputes on: Based on what contract (price)?

## 4. Multi-actor analysis of the case

In this section we analyze differences in the actors' perceptions about the dispute, as well as dialogue between the actors in each stage of the dispute.

### 4.1 Stage I (1993 - 2004)

The factors that lead to later disputes arose at this stage. There were three principle actors:

- Central and local government: Government and ministries, PC of HCMC, line departments
- Phú Mỹ Hưng Joint Venture Company
- People: the households and organizations who bought land/ houses/ apartments in Phú Mỹ Hưng urban area

The above actors had different perspectives about the construction, investment, and business of the new urban area Phu My Hung that were influenced by their cognitive, normative, and pragmatic assessments about land rights and dispute resolution.

#### **a) The government authorities (at central and local agencies)**

In 1993, few investors were willing to finance urban expansion. To overcome this capital shortage, the central and local governments wanted to develop policies to attract foreign investment for infrastructure development and the expansion of urban HCMC.

**Cognitively**, the authorities, especially local officials, viewed Phu My Hung Project as an opportunity for modernizing the city. The idea was to mobilize social resources (foreign investors and people) to build the city's infrastructure and residential areas. This idea was far ahead of the legal framework and most people's thinking about how to develop the city in the 1990s.

**Normatively**, state officials believed that a proactive idea required special mechanisms. The Phu My Hung Project got special arrangements that smoothed transactions among the investors, the people, and the state. These arrangements were beyond the legal framework and were treated as a "pilot". This project could be regarded as an experiment that suspended the normal application of the law in the spirit of "fence breaking". Fairness was not about following the law but about creating benefits for all related stakeholders: the state, the investors, and the people. The views were expressed by the authority through the issuance of a particular business mechanism for PMH JVC in two decisions released (Decision 134 of Prime Minister and Decision 112 of HCMC PC).

**Pragmatically**, the project opened a new way to resolve the City's conflict between development requirements and a small government budget. Through this investment, the government realized the benefits of infrastructure development in the Southern zone through building Nguyen Van Linh Parkway and establishing the land housing business of Phu My Hung JVC with a capital contribution in land by HCMC People's Committee. The profits were shared on a ratio of 7 to 3 (Taiwanese party 70%, Vietnamese party 30%).

However, the implementing procedures and financial obligations of the parties were not entirely consistent. Different instructions gave different perceptions about who (PMH Company or the people) should pay the land use fee. Even some government officials point out contradictions in the tax arrangements.

*"PMH applied a special mechanism stated in Decision no. 112/2002 of the City People's Committee (PC) in which piloting by a foreign company is permitted, including transactions for housing in leased land. In Decision 112 there are many contradictions: It is stipulated*

*PMH shall pay the land use fee but at the administrative procedure section, it is written the PC implements the procedures of recovery, allocation of land and issuance of land use right certificate to the people. So if the government can withdraw the land use right from PMH and deliver it to the people, then it is reasonable that the people pay the fee, why should PMH have the responsibility to pay?"*

Tax official

*"It is PMH who has to pay [the land use fee], not the people. In the mechanism, it is agreed that PMH must pay (Decision 112). Department of Natural Resources has issued wrong guidance (there are 2 different documents)... What I dislike most is that the concerned parties do not cooperate with each other. If they cooperate according to business mechanisms in article 6, it is PMH who has to pay."*

Tax official

### **b) Phu My Hung Joint Venture Company - the Investor**

From the beginning of the initial investment stage in the new urban area of southern HCMC, PMH JVC recognized that the project was potentially profitable. In addition, their investment also brought significant socio-economic development to HCMC. This would enhance PMH JVC's reputation in Vietnam. On the other hand, the business environment in Vietnam early 1990s was highly uncertain for foreign investors. Neither regulations nor official attitudes were supportive of foreign investors. Thus, the PMH Project had substantial risk.

**Cognitively**, PMH JVC viewed this as an investment **opportunity**. As this was a high-risk investment, the company would expect a high-return.

**Normatively**, PMH had two key reasons to believe that they should not have to pay the LUR fee. First, according to the Land Law at that time they did not have to pay the LUR. Secondly, all contracts with people had an article to say that people would pay the LUR fee. Thus, fairness and rightness was about following the policies. Also, they had the view that laws should set a stable investment climate allowing for predictable business decisions.

**Pragmatically**, PMH considered the costs and benefits of the investment. According to PMH, the business mechanism that the government and city authority offered them at that time was reasonable. They spent a lot of money investing in the Phu My Hung urban area, thus the costs related to land use right transfer procedures should be handled between the government and the house buyers.

*"The policies have to stabilize, so the enterprises can make the right decisions in their business."*

*"Since 1993, PMH has paid a land lease amount of 18 million USD, supported 15 million USD for compensation of land clearance and we have built Nguyen Van Linh road of 17,8km length and 10 lanes (4 mixed lane and 6 express lane) at a cost of over 100 million USD (in 2007). Our expenses are too much."*

*“When selling houses to the buyer, PMH indicated clearly in the contract that the buyer pays the land use fee to the government, the buyers have asked us how much the land use fee, PMH cannot give them the fee amount as the fee is different each year. This is an administrative relationship between the buyers and the government, and does not relate to PMH. PMH is only the business intermediate.”*

Representative from board of Phu My Hung JVC

### c) The people

Many people who bought PMH land and/or houses in this period were speculators. In their **cognitive** thinking, this was also an investment **opportunity**. The money they contributed to build the area was an investment that would potentially generate profit afterward. They, however, took for granted that related policies, i.e., land prices, would be unchanged. **Normatively**, people at that time accepted the fact that they needed to pay the LUF. Despite some confusion over the City’s guiding instructions, it was the people who had to pay the LUF, according to the overall legal framework.

**Pragmatically**, people saw large benefits from this investment. Supply was much lower than demand for PMH houses in this period. In addition, land price was low (26,000 VND/m<sup>2</sup>), leading to a small LUF. As a result, most people tried to get a “slot” without carefully reviewing the contracts, and they were prepared to take a risk for high rewards. In addition, many speculators could “sell” their houses without finishing a contract. They would not have to pay a LUF for such informal transactions.

*“PMH houses at that time were selling like hot cakes. Those who want to buy had to draw, jostle, grab, when they can. They completely closed their eyes in signing the contract. They do not care about issues such as tax, obligations and benefits, this group primarily buy for speculation to re-sell.”*

House owner, Mỹ Cảnh block

*“Vietnamese people do not understand the law, if they do not work in the government institutions / agencies, they do not care about wordings. If we care about wording, PMH is wrong. In the business mechanism, article 6.2 specified very clearly, until PMH pays for the land use fee, they are authorized to sell their houses. The recovery of lease land and delivery of land to the people is only a procedure, an excuse for forcing people to pay.”*

Former official of HCM Department of Planning and Investment

*“I did not ask PMH on the duty to pay the land use fee. I did not even read the contract because I knew I did not have any right to change the content in the contract. I can either buy or not buy.”*

A resident at Mỹ Viên block

*“When signing the contract with the Company, it was a scramble, snatching fiercely. There was no time to read or discuss anything, if you wish to buy, then sign, you can’t do otherwise.”*

A resident at Mỹ Tú block

*“When signing the house contract, there was no time for reading, the pricing indicated the total amount but not the composition of the pricing. The duty of land use fee payment was written in Annex 2, addition [?] to Annex 3... the people did not have an understanding about legislation and did not familiarize with appraising contracts they could not understand...nevertheless there was no time for review, we were given a bunch of copies of contracts for signing, then we just unfold and sign.”*

A resident at Mỹ Cảnh block

In summary, the PMH Project ran smoothly in this period due to a large convergence in actors' thinking. All three key actors saw PMH Project as a special **opportunity**, either for the City's development (local government), business investment (Investor), or speculation (speculators - people). All parties tended to assume that the policy environment would be unchanged as time went by. Despite some inconsistency in the City's instructions, the overall regulations required the people to pay LUR fee before receiving their houses. Finally, all parties perceived benefits in their transactions with PMH. Because the contradiction was not revealed, in this period there was no dialogue among parties.

The table below summarizes the perceptions of the actors at this time Analysis of group views in Stage I

Actor	Cognitive	Cost/ benefit	Normative
Government	<p>Opportunity to attract foreign investment for urban development.</p> <p>No major changes in policies was foreseen or considered.</p>	<p>Development of new urban area</p> <p>Infrastructure is built.</p> <p>Sharing profit in doing business.</p>	<p>Regulative: special arrangement and policies for PMH</p> <p>Consistencies in policy framework in most important parts</p>
Phú Mỹ Hưng	<p>Investment opportunity</p>	<p>Profits from land, house business</p> <p>LUF is paid by the people, reducing an expense for PMH</p>	<p>Land use fee is not calculated in the selling price, the people need to pay.</p> <p>LUR certificate and tax was the business between the people and the government</p> <p>In the business contract, it is indicated clearly that the payment of land use fee is paid by the buyers</p>



Actor	Cognitive	Cost/ benefit	Normative
The house buyers (primarily the real estate speculators)	<p>Opportunity for speculation</p> <p>Never thought of policy changes</p>	<p>Newly developed urban area, good infrastructure, land price increases in the following years</p> <p>Land use fee by that time was low, not generating much interest.</p> <p>Contracts were not reviewed, 'take-it-or-leave-it' offer</p>	People paying LUF was acceptable from legal point of view

## 4.2 Stage 2 – from 2004 to date

This was the stage when the dispute emerged following the “shock” land price increase in 2009. During this period, considerable differences emerged in the thinking about land fees at the central and local levels. Adding to the polarization of views, many different forums emerged to discuss the dispute, such as newspapers and community networks, in addition to the representative board of Phu My Hung residents. The following is an analysis of the divergent views, and the role played by the forums. The actors involved in this stage included:

- Government: by this time the central and local government of City PC had the same view: City PC must follow the direction of the government.
- Enterprise: Phú Mỹ Hưng company
- People: the households and organizations buy land, houses at Phú Mỹ Hưng urban area

### a) The central government

The new Land Law was approved in 2003, (effective from 1 July 2004). The implementing Decree No. 181/2004 and Decree No. 84/2007, stated that foreign invested enterprises were allowed to conduct real estate businesses on the condition that they fulfill financial obligations (paying the land use fee) before receiving land. At this time the LUF was calculated on the land price issued by Provincial People’s Committees every year. Following the new regulations, the Prime Minister issued the Decision No. 2178/TTg-KTN requiring PMH JVC to pay LUF for houses that had not yet been sold. The document also required HCMC PC to adjust the business model for PMH JVC to comply with the law.

**Cognitively**, the central government already viewed foreign investors as legitimate players in the real estate business. PMH Project was thus seen as an ordinary real estate project conducted a foreign investor. **Normatively**, it must follow the new regulations. **Pragmatically**, any “special” treatment of pilot projects created inconsistencies and

potential disputes. Extra money from this “special” project did not go to the central government budget.

However, the central government regulation only discussed how to handle unsold property. For property already sold, some people paid the LUF while others did not. It was impossible to force PMH to pay for those who already signed contracts but had not paid the fee. Nor was it possible to ask PMH to reimburse those who already paid the LUF.

*“How to pay back? It is legally non-retroactive... taking what to pay? The money already paid to the budget- how to pay back? If paying back is related to the Budget Law, it needs the attention of the National Assembly. The paid amount was thousands of billion dong. Thus could not pay back...”* Land fee management division – HCMC Tax Department

### **b) The local government – Ho Chi Minh City People’s Committee**

Disregarding the new regulations, especially Prime Minister’s instruction 2178/TTg-KTN, the HCMC PC kept treating Phu My Hung JVC as a special Project in accordance with Decision QĐ 112/2002. In their **cognitive** thinking, local government still viewed PMH Project as a special project. Historical commitments and agreements should be continued, and issues should be resolved consistently as in the past. **Normatively**, it was unfair to force PMH to pay the LUF at this time. PMH already made a huge investment with an assumption that they would not have to pay the LUF. This historical issue was not recognized by central government regulations. Maintaining the status of “special Project” also **benefited** the local government pragmatically. First, if PMH had to pay the LUF, its profit would decrease, so would the 30% local government’s share from this Project. Second, protecting investors would help attract more investors to the City. Finally, since the total LUF amount would be large, it might be easier to collect from a large number of people than from the PMH, which might default. Because of this thinking, from 1 July 2004 to December 2010 HCMC PC continued to maintain the business approach of Phu My Hung JVC. However, as the dispute intensified in 2009, a number of southern government officials expressed their disagreement with the HCMC PC’s decision.

*“In 2004, the law land came into effect and in 2007 when the Decree 84 came, it was contradictory with 112, [but] no one cared to revoke or cancel the Decision 112/2002.”*

Tax official

*“The government stated that period was wrong. That was the transition period from the land law in 1993 to 2003. After 2004 when the land law came into effect, the business approach to PMH must be adjusted, but no one did.”*

Tax official

*“Decree 134 of the Government and Decision 112 of City PC were issued legally at that time, but when the 2003 land law came, then Decree 84 came in 2007, 134 and 112 needed to be cancelled. But with law one way and the individual mechanism another way, the more the individual mechanism was followed the more wrong it was...”*

Official, HCMC Department of Finance

*“Initially, it was simple, the people accepted paying the land use fee until 2008, 2009 when the land price increased rapidly. The people requested to pay the 2008 price. If*

*the government at that time had agreed and accepted the 2008 price, the issue would have been addressed.”*

Official, HCMC Department of Finance

*“In 2008, the people still paid, but in 2009 when the land price sky-rocketed, those people with a legal understanding started to open the case, legal proceedings... Those pioneers are lawyers, journalists...”*

Tax official

After the Government Inspectorate reviewed the case in 2010 the central government decided to calculate the fee at the time the initial contracts were formed. However, there are potential risks: people who paid the LUR fee according to the previous policies (based on final contract time) paid too much compared to what they would have to at this time. Some people felt that this adjustment motivated people to complain.

*“Previously the residents received notice of land use fee payment calculated at the price of the year of signing notarized contracts. This was then changed to calculate by the price of the initially signed contract. Those who paid earlier lost, [those] who did not pay got benefit. It is not fair. After announcing this, there will certainly more claims, denunciations...”*

Official, HCMC Tax Department

*“In the last meeting, it was informed that whomever has not paid will now pay by the price of contract signing date, but for those that had paid, it remained. Obviously it is not fair. And [since the LUF is] already collected, it cannot [be] refunded to the people.”*

Senior official, HCMC Tax Department

*“The government lost by allowing the residents to pay by the price of the contract signing year. The government reduces its collection, and now if the residents do not pay, no one would do anything, there is no penalty on delay of payment. It has been wrong, just do it as it is, adjusting it as now, those paid earlier (those paid by the time of notarization) should be able to claim a refund.”*

Official, HCMC Department of Finance

*“I myself find this is not reasonable. Those earlier followed the policy, paid as required, they paid four times higher. Those who did not pay now benefit. If we do this, how can we ask the people to pay tax on time?”*

Official, Tax Division, District 7

### **c) Phu My Hung Joint Venture Company**

PMH retained their previous **cognitive** view about the Project. It is a special Project in which PMH invested in infrastructure and houses, and people pay the LUR fee to the local government. The LUR fee was a transaction between the people and the government. From a **normative**-regulative perspective, local policies and people’s contracts with PMH historically indicated that people pay the LUR fee. PMH argued that thanks to their

investment, the land price in the area increased. It would be unfair if they have to pay for their own contributions to the City's development. From a **cost/benefit** calculation, paying the LUR fee would seriously affect the company's business, destroying the normal business rule of high return for high-risk investment.

*"The land law has many shortcomings. The general view has not been adjusted, only adjusting the top. Enterprise can only do the business in a stable environment. If the policy constantly changes, the enterprise does not know how to do its business."*

Representative from Phu My Hung Development Company

*"The land use fee is calculated in a way that the enterprise cannot stand. The land was agricultural land. We had to invest a lot of money to build infrastructure. Doing business must generate profit. In order to convert land use rights from agricultural land to residential land the enterprise has to pay the government the land use fee at the current price. It is too high. The enterprise cannot get any profit."*

Representative from Phu My Hung Development Company

#### **d) The people**

Because the land price was increased rapidly, speculation had decreased by 2009. At this time, most of the house buyers in Phu My Hung urban area had purchased houses from speculators. Many of them bought housing to live in, and few of them continued to speculate. Those who bought houses to live in needed land use right certificates and house ownership certificates to subsequently sell. After the 2009 price increase, the LUR fee amount that everyone had to pay was beyond their imagination. Some intellectuals at Phu My Hung urban area began looking for legal and procedural defects that would allow a challenge to the fee.

**Cognitively**, the houses were no longer investments but became necessary living accommodation. People who wanted to live long-term stably, so they needed legal ownership of the houses. **Normatively**, people found the high LUF unfair. For those who signed both initial and final contracts with PMH before 2009, they believed they were entitled to the 2008 price. It was the delays and slowness in local government procedure that caused their documents to fail to reach the Tax Department before 2009.

Those who signed the initial contracts before 2009 also believed that the LUF should be based on land price at the time of the initial contracts. These people contributed money for the Project at the time they signed initial contracts. Their investment contributed to the development of the area, and they should not have to pay for that development (as reflected by a higher land price). **Pragmatically**, the LUF doubled from 2008 to 2009, making the housing cost too high. Coupled with the downtrend of the real estate market since 2009, this increase of the LUF was unbearable for most people.

*"When buying the apartment, I knew that I needed to pay some fee, but is the fee was calculated at a few hundred million dong, equal to half of my apartment value. I have to buy my apartment 1.5 times."*

Apartment owner Hung Vuong

*"I bought my house in 2006 with a price of 8 billion dong, in 2008, I was requested to pay 1.2 billion dong for the land use right certificate. I think this is too much, so I did not pay."*

House owner of Mỹ Thái block

*"There is no reason for the government to force the residents to pay a land use fee on the land which the government did not pay a penny of investment on."*

House owner Mỹ Viên block

*"PMH received the land from the government, PMH has to pay to the government, I buy it from PMH, I am not related to the government. In Hanoi, I do not see any project requesting the buyers to pay that much".*

House owner of Panorama block

*"It is fair that PMH must pay. The price for 1m<sup>2</sup> of Riverview apartment is 43 million VND. The price is too high to pay for the land use fee. The residents are right, PMH has earned a lot, and still requests the residents to pay. The residents have to pay twice: first time for PMH and second time for the government."*

Apartment owner of Mỹ Cảnh block

*"Our legal situation: one law but it can be interpreted in many different ways." i.e. the role of legal interpretation is not defined properly leading to arbitrary implementation.*

A lawyer living at Mỹ Cảnh block

*"We arrived here in 2006. If we paid by 2006 prices, it was only 400 million VND. In 2009-2010, it increased to 1,2 billion VND. Others denounced [about 700 households signed a collective complaint sent to the Prime Minister], then I did not pay, as others did not pay, why do I have to pay. After that there is a decision of the prime minister on this, saying that you pay the price of the year in which you signed the contract. So in 2012 we paid only 400 million dong. Thanks to the delay in payment, we get interest of 800 million VND...(laughs)."*

House owner of Mỹ Thái

*"I did not pay a land use fee as I see this as an injustice for the people. There is no problem for me to be without the house ownership certificate".*

House owner of Mỹ Viên

*"Initially the calculation for me was a number of hundred million dong. I did not pay, then re-calculation, I have to pay only 70 million dong, I find this reasonable, cheap then I paid."*

House owner of Hung Vượng

*"I did not pay, this house I live in, not for business. There is no need to do the land use right procedure."*

House owner of Panorama

*“The government must be fair to the people, those who complied well, they get lost, conflict arose ... the amount that the government [should] refund to the people was not big, of few hundred billion dong, the government should refund to the people in order to be fair.”*

House owner of Mỹ Thái

The following table summarizes groups' divergent views in this 2<sup>nd</sup> stage

Analysis groups' divergent views in this 2<sup>nd</sup> stage

Actor	Cognitive	Cost/ benefit	Normative
The central government	It is legitimate for foreign investors to do business in real estate.  PMH should be treated as other projects	Collection of land use fee from foreign investors before delivering the land.  Consistencies in policies nation-wide help government	Enterprises that want to do business in real estate must pay land use fee to the government, regardless the type of enterprises
The local government	Treated PMH as special project  Historical agreement and commitment should be kept	Whoever pays, it is City PC to collect the land use fee  The City PC has 30% capital in PMH company, if PMH pays, then its profits are reduced.  PMH could not pay LUF - losing investor would be bad for the City	PMH made huge investment based on an assumption that they would not have to pay LUF
Phú Mỹ Hưng	This had been a special Project, started long before Land Law 2003  Historical agreement and commitment continued	Exit from the responsibility of PMH reduce the cost, increase profit	The LUF is not calculated in the pricing, PMH cannot pay  The land price increase as PMH invest in infrastructure, PMH cannot pay the land use fee as the high price

Actor	Cognitive	Cost/ benefit	Normative
The house buyers (for persons with living demand and for property speculators)	PMH must pay as Houses were for living. Ownership of the houses was critical.  LUF could not be too high, in comparison to house's price.	The LUF amount is high compared to the house value, affecting to the interest of the residents.  Real estate market was in a down turn.  Comparing the price PMH sells with other projects, the price of other projects has included the LUF why PMH is not included.	The land price increase according to the land law, it is PMH who has to pay.  PMH is selling the products not belonging to them, it is not right  Because PMH and the residents contribute the money to invest, why paying land use fee for the government

## 5. Forums

The first types of forums were formed by the community. For example, a group of residents living in Phu My Hung developed a community website.

### a) Community website

The website [www.congdongphumyhung.wordpress.com](http://www.congdongphumyhung.wordpress.com) collects opinions of residents and disseminates, communicating the relevant legal documents, articles from experts, lawyers as well as instructing households on how to undertake the claims. Established at the beginning of 2009, there have been over 515,000 hits on the website. This forum linked members of the Phu My Hung residential area, created a common voice and a collective power. It has helped residents be more knowledgeable about the law, more confident in their decisions. For the government, the website provided information on how people think about the issues.

*“We have this website as a collective form, with a common goal to fight for.”*

Tax official

*“They have a website to share information, If you visit this website, you can see how they talk badly about the government agencies. They even instruct each other on how to claim and denounce government agencies.”*

Official, District 7 Tax Division

However, in this forum there is only information exchange of the residents and speculators in Phu My Hung. There is no real dialogue between the government, the Investors (PMH JVC) and the people. Another community forum was established by the representative board of the Phu My Hung community, which was formed to serve the “victims” of the case. This group of mostly lawyers represented residents in discussions with Phu My Hung JVC. The board was established in 2008 as a bridge to discuss solution with PMH JVC to reconcile the parties’ interests. The representing board was voted on quickly by residents. The member of the representing board includes three persons, intellectuals, with high education levels and an understanding of Vietnamese legislation (a lawyer, a

doctor, a retired government official). However, the representative board of Phu My Hung residents could not perform the mediator role between two sides. After two unsuccessful meetings, the Phu My Hung Company refused to meet the board. The board was then dismissed.

The Board was tasked to talk only with the PMH Company. The focus of these discussions was who was responsible for paying the LUF. Without involvement of local government, the dialogues failed to reach any agreement.

The second type of forum was formed by media agencies who had studied, analyzed and broadcast news related to the Phu My Hung dispute. Between 2008 and 2010, there were more than 100 articles dealing with the LUF dispute at Phu My Hung. Reports appeared in leading daily newspapers, such as Tuổi trẻ, Thanh Niên, Sai Gon Time, Diễn đàn doanh nhân, Sài Gòn Giải phóng, Người lao động and the online newspapers; [www.tuanVietnam.net](http://www.tuanVietnam.net); [www.tintucvietnamonline.com](http://www.tintucvietnamonline.com); [www.vietnamnet.com](http://www.vietnamnet.com); and [www.vnexpress.net](http://www.vnexpress.net). Some media outlets invited land experts and lawyers to provide in depth analysis. Although opinions differed, most agreed on one point; the dispute in Phu My Hung arose from the changes in land regulations and ambiguity in the regulations. This uncertainty allowed each stakeholder to interpret the law in a way that was most beneficial for them.

*“According to item 6 of Decision 112, the residents did not differentiate the liability of each. “Payment” does not mean “spending money””*

*Abstract from the article “Payment of land use fee in Phú Mỹ Hưng” by Nguyễn Ngọc Bích, DC Law Company, 12/11/2009 in The Sai Gon Times*

Two controversial, issues were discussed, (i) who is responsible for paying the land use fee and (ii) how should the fee be calculated. Experts offered the following solutions for who should pay land fee:

*“The house contract between PMH and the buyers states that the buyers pay for the land use fee. This agreement is contrary with the land law of 1993 and 2003, because by the law, the land use fee is the responsibility of the party that receives the land. In this case it is PMH Company.”*

*Quote from the article “Dispute over the land use fee in urban area of Phú Mỹ Hưng: Enforcement of the law!” Lê Văn Tú- Senior Expert of Research Institute printed on 25/06/2010 in Business Forum*

*“The house contract was signed and notarized. It was indicated that the house buyers need to pay the land use fee to the government. So the duty of payment of land use fee is with the house buyer.”*

*Quote from the article “Handling of land dispute from Phú Mỹ Hưng’s view” of Professor Đặng Hùng Võ printed on 04/11/2009, in [www.tuanVietnam.net](http://www.tuanVietnam.net)*

On the issue of when the amount of the land use fees should be calculated most reports had the same viewpoint that the price should be calculated at the time the government delivered the lease land to the PMH Company.



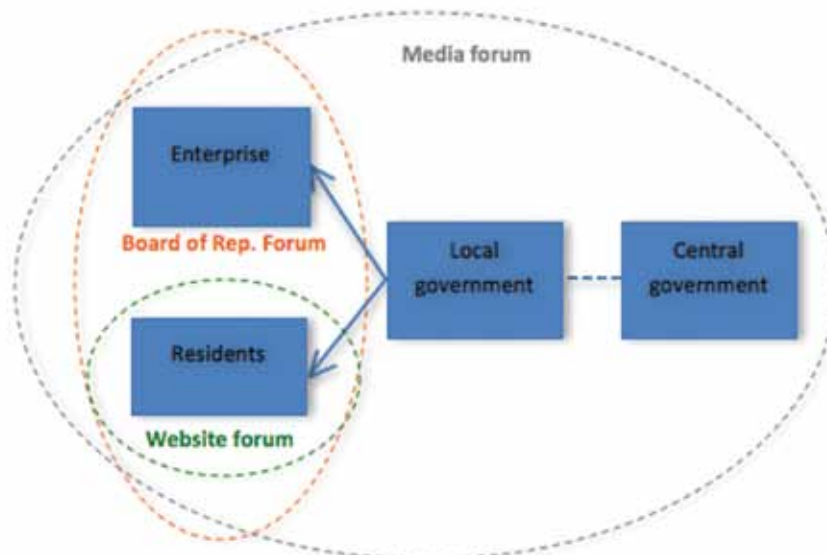
*“The government did not spend to renovate infrastructure, to change the land plots. The payment amount should be defined clearly. [Right now it seems that it is] the difference between the land price PMH rent and the buyer’s current price. It should not be called a “land use fee”. That would be paying twice for the same plot of land. With the same land in 2000, the difference was 26.000 đồng but in 2009, it was called “land use fee” and applied for the 2009 land price of millions Dong, while the government did not pay any. Even application of 2005 or 2006 land price, it was not justifiable and reasonable.”*

Quote from article “Payment of land use fee in Phú Mỹ Hưng” by Nguyễn Ngọc Bích, DC Law Company, printed on 12/11/2009 on The Sai Gon Times

*“The City People’s Committee can also decide the price of land for calculation of financial obligations to be at the earlier time of receiving the house to take into consideration that house buyers may be disadvantaged in the price. In the worst case, when they have already postponed the calculation time of land prices, house buyers were still disadvantaged. There was only one way, i.e. to call for the investor to support the customers from their profits, morally, not because of justice.”*

Quote from article “Handling of land dispute, seen from Phú Mỹ Hưng case” of Professor Đặng Hùng Võ printed 04/11/2009, on www.tuanvietnam.net

The discussions affected key actors in different ways. On the one hand, some lawyers focused on the fact that the contracts with PMH requiring buyers to pay the LUF were against the 1993 and 2003 Land Law. This made people change the dispute from “*what time to calculate LUF*” into “*who is responsible for paying the fee*”. People believed that their argument “*PMH must pay the LUF*” was legally valid. The fact that the PMH Project was a special Project and that they had signed contracts voluntarily was ignored.



The actors and forums during the 2<sup>nd</sup> stage

Through all the forums in this period, no real dialogue occurred directly among the parties (State, Enterprise and People) to reach a final resolution. Each party used the forums to make their views known.

## 6. Discussion

This case study documents and analyzes the dispute over land use right fee in Phu My Hung residential area, Ho Chi Minh City. The case illustrates how the divergence in actors' perspectives ignited and transformed the dispute. The case also highlights why examining disputes from the perspective of regulators provides few insights, whereas a multi-actor perspective sheds more light on the most promising ways of resolving the dispute.

Phu My Hung Residential Project was seen by local government, the investor, and people as a beneficial **opportunity**. For the local government, it was an opportunity to develop the urban landscape without using too many state resources. For the Investor, it was a great business opportunity, even though it involved considerable risk, a large investment, and a long term perspective. For the people, especially speculators, Phu My Hung Resident was also an investment opportunity. Phu My Hung began as an experimental "pilot" project that did not fully comply with the legal framework in the early 1990s. Yet, the lack of solid nation-wide regulation did not induce any disputes during the 1990s. Only when some actors (the people and Phu My Hung Company) saw their **opportunities** disappearing, did disputes emerge and intensify.

Phu My Hung Residential dispute is a typical case in which regulations cannot be the only basis for dispute resolution. On the one hand, **nobody followed all the laws**. The local government established the Project as a "pilot" that did not follow the Land Law in 1990s. Nor did they follow the central government instruction in 2004 that required them to adjust Phu My Hung Project to fit with the Land Law 2003. The Investor - Phu My Hung Company - complied with local government, and thus did not follow the Land Law 2003. The people who purchased the houses did not respect all related laws either. They signed contracts without a careful review, and then wanted to dismiss their own written commitment.

On the other hand, the legal basis was **changing and complex**. Adjusting an on-going project according to new policies was difficult since it disrupted the historical commitment of all parties. In this case, policy changes created confusion about the reference time for LUR fee calculation. Another element was the tension between a specific versus universal application of the law. The dispute in Phu My Hung involved references to both. While local government and Phu My Hung Company referred to the special status of the Project, people referred to the universal application of Land Law 2003 to dispute their responsibility for paying the LUR fee. For these reasons, a pure reliance on regulations - or "*just follow the laws*" as suggested by a lawyer - would not help settle the dispute.

In this case, a "shock" in the policy environment triggered the dispute. The jump in land price in 2009 not only eroded benefits from the project but also induced a feeling of being disregarded. People's responses were highly defensive, intensifying the dispute. Since similar policy "shocks" are not uncommon in Vietnam, finding a solution in this case has wider implications. .

This case also demonstrated different perceptions about distributive justice. The Ho Chi Minh City People Council approved land prices, which reflect the land values in different areas. As Phu My Hung area was in high demand, the prices and LUR fee were high. This practice was

considered fair in other areas of the City. However, the Investor and house buyers disagreed. Phu My Hung became a high-valued area only because of their investment. The increase of land prices would cost them tremendously in LUR fees. The government's decision meant that the investors were taxed for the improvements they made to the land rather than the underlying value of the land.

The role of different mediators and forums should be noted in this case. A number of mediators and forums were created but not for open dialogue. These forums were created mostly to "fight" for the benefits of a single party. As previously described, open dialogues among key actors rarely happened. Actors did not try to genuinely engage in discussions, but rather tried to manipulate regulations for their own benefit. The help from some legal professionals to people complicated the dispute. As in other case studies, effective mechanisms for dialogues were much in need to resolve the land dispute.

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**The Asia Foundation**

#10-03 Prime Centre • 53 Quang Trung Street • Ha Noi, Vietnam  
Tel: + 84 (4) 3943-3263 • Fax: + 84 (4) 3943-3257 • Email: tafvn@asiafound.org

[WWW.ASIAFOUNDATION.ORG](http://WWW.ASIAFOUNDATION.ORG)