

REVISING THE LAND LAW

TO ENABLE SUSTAINABLE DEVELOPMENT IN VIETNAM

SUMMARY OF PRIORITY POLICY RECOMMENDATIONS
DRAWN FROM WORLD BANK STUDIES

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- ■ **Summary of priority policy recommendations drawn from World Bank studies**

Hanoi - September, 2012

ABBREVIATIONS

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
BCSC	Board of Compensation and Site Clearance
BCSR	Board of Compensation, Support and Resettlement
DANIDA	Danish International Development Agency
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
GDLA	General Department of Land Administration
GDP	Gross Domestic Product
GRM	Grievance Redress Mechanism
ILO	International Labor Organization
IPSARD	Institute of Policy and Strategy for Agriculture and Rural Development
LDO	Land Development Organization
LURC	Land Use Right Certificate
LRO	Land Registration Office
MoC	Ministry of Construction
MoF	Ministry of Finance
MoLISA	Ministry of Labor, Invalid and Social Affairs
MoNRE	Ministry of Natural Resources and Environment
NSDI	National Spatial Data Infrastructure
NZAP	New Zealand Aid Program
ODA	Official Development Assistance
Sida	Swedish International Development Agency
UN-Habitat	The United Nations Human Settlements Programme
UNDP	United Nation Development Program
WB	World Bank
WTO	World Trade Organization

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OVERVIEW

Vietnam's rapid and sustained economic growth and poverty reduction in the last two decades benefitted from the policy and legal reforms embodied in the Land Laws of 1987, 1993 and 2003 and subsequent related legal acts. It is easy to forget that in the early 1990s there was no "price" for land, and the market for land did not exist. Those using land had relatively few rights. The legal reforms embodied in those laws helped to lay the groundwork for the system that exists today.

While uneven in extent, an active land market has begun to develop in Vietnam accompanying the country's rapid growth. Major shifts have begun to occur in how land is used. Nevertheless, land governance is a (growing) concern. Land-related matters continue to dominate the complaints that the government receives, and corruption related to land matters is perceived to be widespread. There is an emerging pattern in which individuals or groups which lose land are staging public protests, evidently with some popular support.

Vietnam is in the process of preparing a new Land Law. It is critical that the new law address prevailing gaps and shortcomings, yet also create a more favorable enabling environment for the further development of a market economy with socialist orientation and for the more effective, equitable, and environmentally sustainable management of scarce land resources. To support this, the Government of Vietnam through its Ministry of Natural Resources and Environment (MoNRE) – the assigned focal point for the sector and for the preparation of the new Land Law – has requested advice from the World Bank. This Policy Note summarizes this advice, drawing upon the findings from several recent studies in which the World Bank participated.

This Note outlines reforms related to four main themes. The first relates to the needed reform for agriculture land use to create opportunity to enhance effectiveness of land use as well as to secure farmers' rights in land use. Prolonging the duration of agricultural land tenure would give land users greater incentives to invest and care for the land. Raising the land holding ceiling and allowing greater land accumulation would facilitate greater economies of scale, and extending the rights of agricultural land users to alter the land use purpose would further improve efficiency. This scope for more flexible land use will become increasingly important in the context of climate change, with farmers needing to make a range of adjustments based upon expected weather patterns and the associated risks.

The second set of priority reforms is to create transparent and equitable land acquisition and compensation by the State. Limiting the use of compulsory land acquisition only to cases for the public's benefit would similarly give land users more fairness and more confidence in their rights related to land. By relying predominantly on voluntary land conversions, there would also be a stronger sense of equity in those cases when land users actually do lose their land. Changing the focus of land compensation pricing (in cases of compulsory land acquisition), and introducing innovations such as benefit sharing, land pooling and land readjustment are also essential for generating a sense of fairness. Creating an efficient grievance redress mechanism at the investment project level would reduce complaints, speed up project implementation and facilitate social stability.

A third set of priority reforms is that the land law should offer the opportunity to reaffirm and strengthen the land use rights of vulnerable groups, such as women, the poor and ethnic minority communities. Land management oversight can be made more efficient by amending the land management decentralization and building monitoring and evaluation systems. Expanding the coverage of Land Use Rights Certificates (LURCs) and ensuring the rights and benefits of the land users would further help improve efficiency and fairness.

Finally, the fourth set of priority reforms is aimed at making the governance system more effective and accountable. Developing a more flexible and effective land planning management system, and improving transparency of land and anti-corruption in land management are all needed to take Vietnam's land governance system closer to that worthy of a middle income country.

Table 1: Recommendations summary

No	Priority areas	Approach in current Land Law	Recommendations for revised Land Law	Contribution to Sustainable Development
ENHANCING EFFECTIVENESS AND SECURING RIGHTS IN AGRICULTURAL LAND USE				
I.				
1.	Prolonging duration of agricultural land tenure	Land tenure limited to 20 years for annual crops, aquaculture and for salt production; and 50 years for perennial crops and forests for households and individuals. (Art. 67)	Establish a longer or unlimited term of agricultural land use by households and individuals.	More effective and environmentally sustainable land use practices, and greater incentive to invest in land.
2.	Raising land holding ceilings and allowing greater land accumulation	Land allocation limited to 3 ha for annual agricultural land, 10 ha for perennial crops in the plain areas, and 30 ha for perennial crops in highland, mountainous areas and forest land (Art. 70). Limit for land holding by land transfer is defined by the National Assembly's Standing Committee (currently it is twice the land allocation limit)	Abolish or ease the existing agricultural land holding limits for households and individuals.	Higher investment and productivity thanks to economies of scale and agricultural transformation.
3.	Extending rights of agricultural land users to alternative land use purposes	Permission from relevant state body needed to convert rice land to perennial crop, forest and aquaculture land (Art. 36). The state "preserves land specialized for wet-land rice farming" (Art. 74)	Abolish current limitations on alternative uses for so-called 'designated rice lands'; at least for those where mono-crop rice cultivation is not economically viable.	Higher efficiency, increased rice-growing farmers' incomes and reduced threats of land degradation thanks to diversification.
II.				
TRANSPARENT AND EQUITABLE LAND ACQUISITION AND COMPENSATION				
4.	Clarifying and re-limiting the State's rights in compulsory land acquisition	State may use compulsory land acquisition for a range of purposes, including "national defense and security, national interest, public interest, and economic development." (Art. 38)	Restrict the state's compulsory land acquisition for the purposes of national defense, security, and projects with general public benefits only. Provide specific criteria of the types of projects that are for the public benefit. Land acquisition for economic development purposes could still be allowed, but would need to be voluntary and mutually agreed by both parties.	More secured land tenure and thus livelihood of land users, especially small holders. Improved good land governance. Current wide spread underutilization of land under pending projects is reduced.
5.	Land compensation price in compulsory land acquisition	State determined land prices are to be "close to market prices". (Art. 56) Relevant state bodies have much discretion over price determination methods and price framework.	a. Mandatory determination of land market prices for property compensation by land valuation service provider selected on consensus basis. b. Then the price for property compensation shall be appraised and decided by independent boards at Central and Provincial levels.	Enhanced social equity and stability as land users' interests are protected and transparency improved. Smoother implementation of project concerned.

No	Priority areas	Approach in current Land Law	Recommendations for revised Land Law	Contribution to Sustainable Development
6.	Benefit sharing	Not covered in the present law.	Benefits from large hydropower, mining or similar-nature projects shall be equitably shared between their beneficiaries and affected people.	Long term rehabilitation and development of the livelihoods of local communities affected.
7.	Land pooling and land readjustment	Not covered in the present law.	Provide provision for land pooling and readjustment as an effective tool for peri-urban development without the need of land acquisition.	Long term rehabilitation and development of the livelihoods of local communities affected.
8.	Reducing complaints related to land acquisition	The same body, who make land acquisition decision, will resolve the complaint as the first step. The second step will be the PPC or the court. (Article 138)	Establish efficient, fair and responsible grievance redress mechanisms at investment project level to reduce the complaints to speed up the project implementation and enhance social stability.	Enhanced social stability and improved land administration.
ENABLING EFFECTIVE AND EFFICIENT ADMINISTRATION OF LAND				
9.	Ensuring land use rights of vulnerable groups, such as women, the poor and ethnic minorities people	The Land Law requires that newly issued certificates of land use right state the full names of both husband and wife (Art. 48), but this did not originally apply to previously issued LURCs. Subsidiary decrees and circulars clarified that both husband's and wife's names should be listed. Community land use is addressed in the Land Law (Art. 71), but no detail is provided to recognize customary land use and management practice and allow them to be applied in practice.	<ul style="list-style-type: none"> a. Confirm requirement of reflecting both spouses' names on the LURCs for common property of both. b. Recognize customary land use and management practices of local ethnic minority communities and call for the Government to facilitate the issuance of community land use rights, where appropriate, and support the communities to exercise their rights effectively. 	<p>Enhanced gender equity.</p> <p>Protect land right for ethnic minority</p> <p>Improved balance among efficiency, equity and environmental sustainability in land use.</p>
10.	Issuing LURC and ensuring rights and benefits of the land users	Many provisions on issuances of land use rights certificates, but few provisions for withdrawal, except as related to mortgages, and changes of capital contributions. Settling of disputes is covered by different bodies, depending on the nature of the dispute.	<ul style="list-style-type: none"> a. The Court shall be designated as the only agency with the right to withdraw issued Certificates, except when land is recovered compulsorily according to the legal regulations. b. Authorize Land Registration Offices to make decisions on every issue related to land profiles, procedures and financial duties related to the initial issuance of Certificates. c. Exempt or reduce financial burdens related to the first-time registration for poor or low-income land users. d. Extension of the residential land category to include also garden or pool land on the same land parcel. 	<p>Enhanced social equity as land use rights of the poorer holders are secured.</p> <p>Land administration is improved leading to more efficient land use.</p>

No	Priority areas	Approach in current Land Law	Recommendations for revised Land Law	Contribution to Sustainable Development
11.	Amending the land management decentralization and building monitoring and evaluation system	A range of different bodies and levels of government are given different roles.	<ul style="list-style-type: none"> a. Fully decentralize the implementation of the State's legal rights on land and the land administration authority to Provincial People's Committees. b. Focus land administration and management at the central level on policy and program development and the supervision of its implementation. 	More efficient land administration and management and legislation enforcement.
IV. IMPROVING EFFECTIVENESS OF LAND GOVERNANCE				
12.	More flexible and effective land planning	The current Land Law (Art. 21-30) and subsequent legal acts attempted to clarify the land use planning system, but land use planning remains largely an internal government exercise, characterized by unclear relationships among different types of plans, and resulting in a fragmented and silo-based exercise.	<ul style="list-style-type: none"> a. Adopt the approach that land use planning should be made by integrating the best available evidence with planners' expertise and with other stakeholders' needs, values and preferences. b. Adopt concept of land use zoning or spatial planning and undertake it at the regional level and/or ensure coordination among neighboring provinces. c. Land use planning should be based on stakeholders' consensus on land use through participatory interactive consultations and dialogues. 	Improved balance among efficiency, equity and environmental sustainability in land use plans.
13.	Transparency of land and anti-corruption in land management	Most provisions on transparency are found in other laws and legal documents, such as the Anticorruption Law and the Ordinance on Grassroots Democracy.	<ul style="list-style-type: none"> a. Ensure greater access to land information by all stakeholders and their active participation giving priority to functions affecting people's rights and benefits most. b. Formalize and regulate the use of land information in electronic media and establish objectives and institutional arrangements for the development of the national land information system and national spatial data infrastructure. 	Improved land governance and enhanced social stability. More efficient land markets and land administration and management.

I. ENHANCING EFFECTIVENESS AND SECURING RIGHTS IN AGRICULTURE LAND USE

1. Prolonging the duration of agricultural land tenure

In Vietnam land ownership resides with the State, and not with individuals or firms. As such, strengthening and securing the land use rights of landholders - individuals, households and businesses - is the center piece of the land policy and legal framework. In this respect, a “bundle of use rights” associated with land holdings was established and then significantly broadened under the Land Laws of 1993 and 2003, respectively. However, unnecessary limitations imposed on agricultural land used by small landholders - largely the poorer and more vulnerable members of society are leading to the perception of land tenure insecurity. These limitations include limited duration and size of agricultural land holdings and pre-determined (allowable) land use purposes.

The 20 years duration of annual crop agricultural land tenure was determined first under the Land Law 1993. What to do upon the expiry of the term, as will happen with many land parcels in late 2013, has been a subject of concern for land users and policy makers for years. It is commonly agreed that the limited duration of agricultural land tenure negatively affects confidence of the land users when making investment decisions. Nation-wide, the share of agricultural investments in total investment has been steadily decreasing, from 13.2% in 2000 to 6.9% in 2009, despite the considerable need to replant aged tree crops, invest in soil fertility, and upgrade farm-related infrastructure to achieve a more competitive and environmentally sustainable agriculture. Indeed, the current relatively short-term tenure weakens the incentives to invest. Further, it is likely a factor preventing the application of good land and forest management practices that protect land and forest resources better (e.g. plantation of endogenous trees instead of commercial trees, e.g. eucalyptus, alone).

The limited term of agriculture land use was pursued in the Land Laws of 1993 and 2003 as an expression of a commitment to maintaining equitable land distribution. The term of use was set at 20 years for annual crop agriculture land and aquaculture production land; and 50 years for perennial crop agriculture land and production forestry land. The Laws also stipulated that those who use land “effectively” and strictly in compliance with the predetermined ‘land use purpose’ could be able to continue using it after the term expires. However, both effectiveness and compliance remain vague concepts without specific criteria. Even if the criteria exist, the costs associated with assessing and certifying the land use practices of millions of smallholder farmers would be enormous. Subsequent efforts to administratively redistribute land from the relatively negligent farmers whose land tenure would be discontinued to relatively better farmers would generate enormous social tensions and create temptations for the misuse of administrative authority. The costs of such a process would almost surely exceed the benefits. Moreover, even a long-term use will eventually become a short-term problem for land users, unless the duration is extended automatically several years before the term expiration. In other words, establishing termed land tenure duration has limited value.

On balance, it seems clear that unlimited- or longer-term use for agricultural land will alleviate the uncertainty and to create a new driving force for agricultural production, making farmers confident in long-term investment in order to improve productivity and yield. Abolishing or extending the term duration of land tenure will also save on the considerable administrative costs of land use assessment and reallocation of land tenure when discontinued. Concerns about increasing concentration of land and the emergence of a new landlord class would be better addressed by complementary measures such as taxes, targeted supports or market-based land redistribution, if necessary.

Recommendation 1:

Establish unlimited term of agricultural land use by households and individuals. In case of need to define a limited term, it is necessary to regulate clearly what the State will do when this term expires.

2. Facilitating economies of scale by raising the land holding ceiling and allowing greater land accumulation

Currently, agricultural land use in Vietnam is dominated by small land holdings. According to GSO, among 10.4 millions of farmer households, 70% of the households have less than 0.5 ha of land and only 3% have over 3 ha. This is particularly true in the Red River delta, where 94% of households have less than 0.5 ha (2009). These landholdings are typically comprised of multiple small plots. In the Red River Delta it is not unusual for a household's limited landholdings to consist of four to six tiny disconnected fragments. Thus, only a very small fraction of farmer households (particularly, those who have more than 2 or 3 ha) can survive on income from rice alone.

Even though economies of scale in Vietnam's agriculture is still the subject of intense debates among academics, it is well recognized that farmers with larger farm sizes tend to have higher labor productivity, manage available resources and risks more effectively, and are thus better off. Further, land accumulation (increasing the size of land holdings) facilitates agricultural efficiency by reallocating scarce land resources from less effective farmers to more effective ones. A possible negative side effect of allowing land accumulation is it would come at the expense of welfare of farmers who lose land if they are unable to find alternative stable sources of livelihood. However, if all of the transactions are voluntary, if the farmers who lose their land only do so completely voluntarily and with sufficient compensation, this risk is less serious. It is the goal and expectation of the government that over the course of the next decade or so the proportion of the Vietnamese population which is to rely predominantly on primary agriculture for income will fall from approximately 50 percent to 30 percent.

The current government policy putting a limit on land holdings was legalized first under the Land Law 1993 with the desire to maintain an equitable distribution of land among farmers and prevent the formation of new "landlords class". The Law limits for annual crop agricultural land holdings to 3 ha in the Mekong delta region and 2 ha in other regions. For perennial crop land, the limits are 10 ha in the river delta areas and 30 ha in the highland and mountainous areas. Under the Land Law 2003, the limits on land holdings were changed to limits on land allocation by the State, meaning that at maximum, the State may allocate up to such amounts of land to a household or individual (without collecting money). Those who want to have more land would therefore have to receive it from other land users who have agricultural land and are willing to sell their land use right. The Law also called for limits on the total amount of agricultural land a household or individual can accumulate through land transfers. The limits were determined to be twice the limit on land allocation by the State, according to a Resolution of the Standing Committee of the National Assembly in 2007.

These regulations aimed at limiting the size of land holdings are, however, not well enforced. First, there is no regulation on handling cases when the amount of transferred land is over the limit. Second, land management agencies do not have the capacity to inspect and detect those who are exceeding the limits in the whole country, and not surprisingly, they have made no effort to do so. In general, however, farmers do not dare to exceed the limits by much as this may risk losing the land due to the government's recovery of land for exceeding the limits.

There are two alternative policy choices under discussion in this respect. Some propose maintaining the land holding limits in order to protect poorer farmers from losing their land and the formation of a new landlord class. Alternatively, some propose that land holding limits should be abolished or substantively eased in order to encourage the development of medium and larger-scale farms which can achieve greater economies of scale, productivity and compliance with environmental and/or food safety standards.

On balance, the gains to be achieved by eliminating the artificial limits on the size of land holdings are substantial and outweigh the potential risks of agricultural land speculation. Concerns about land speculation and the emergence of a new landlord class are better handled through land taxation, targeted public interventions, including market-based land reform, when necessary, accompanied with improved land governance, as international experience shows. A country such as Vietnam which is setting ambitious goals for the modernization of its agricultural sector, needs to adopt less rigid constraints on the reasonable accumulation of farmland for production purposes.

Recommendation 2:

Abolish the agricultural land holding limits for households and individuals. In case of need to define a ceiling of land holding, the ceiling of agriculture land holding should be substantively eased with the State attaching a higher tax to land area over the land holding ceiling.

3. Extending rights of agricultural land users to alter land use purposes

The land use rights of many Vietnamese rice farmers are unnecessarily limited by legal provisions that prevent altering the purpose to which land is used when the land parcel has been assigned to be rice production under land use planning, allocation and LURC issuance. This provision, introduced in the Land Law of 2003, was aimed to support food security, but there are good reasons to revisit this policy. First, at the national level, Vietnam has reached or exceeded most of its food security targets. The country now generates a large surplus in rice production, with more than one-third of the national crop (and some 70% of the crop in the Mekong Delta) going for export. In recent years, national aggregated rice consumption has begun to decline as urban and middle income households have begun to shift their dietary patterns and food expenditures to a variety of other foods. Second, as public policy, mandating that land be used for rice cultivation when other uses may be preferred by the farmers is inefficient, ineffective and inequitable. The present policy is inefficient because it locks land and other resources (labor, capital, finance) into a relatively low-value use. It is also ineffective as the remaining pockets of food insecurity are mainly due to poverty and lack of sustainable livelihood, not because of insufficient aggregate supply of rice. The country's existing food security challenges should be addressed from perspectives of nutrition, food safety, food affordability and livelihood supports comprehensively, rather than focusing narrowly on the amount of rice production. Finally, the policy is inequitable because it forces a large number of rice farmers to continue rice production that keeps them significantly poorer than they would be if they could use their land resources more productively.

According to experts, over the next two decades, Vietnam will maintain a large surplus of rice, even in the face of population growth and climate change impacts. The reason is that per capita consumption of rice is expected to decline by some 15% to 25% before leveling off at levels commonly seen in middle and upper middle income countries within Asia. Vietnam's rice surplus has thus become more of a trade issue than a food security one. As such, decisions on the expansion or contraction of its production should be taken more on commercial and not administratively determined grounds. Vietnam's food security issue today is no longer one

of national rice production (or surplus). It relates more to nutritional imbalances and the limited purchasing power of poor households. In this context, more rice is not the solution and may be part of the problem. Vietnam's future food security issues are likely to relate to its dependence on and volatile costs for imported animal feed and feed ingredients (such as maize, soybeans, and protein sources). Already in 2012, Vietnam's animal feed/feed ingredient imports will far exceed the value of its rice exports.

In this context, retaining large areas of 'rice designated land' is an obsolete policy—even though there is certainly a legitimate government interest to prevent the uncontrolled conversion of agricultural land to non-agricultural purposes. The latter is a separate issue which should not relate to 'rice land' specifically. At a national level, there is an evident need to release some less efficient rice lands for alternative better agricultural uses. For many individual households, the restrictions of the use of ('designated rice') land present an untenable choice between assured poverty and exiting agriculture altogether. Energetic young farmers will choose the latter if limited to these options. For an increasingly market-oriented agriculture, one can 'protect' Vietnam's surplus rice production by facilitating the modernization of the rice supply chain and the promotion of less costly and more sustainable production practices. These measures will enhance the economic attractiveness of commercial rice cultivation. And for the many households with very small landholdings, the best way to ensure their continued cultivation of rice (at least for one season) is to enhance their overall viability as a farming and rural household which depends upon income sources other than rice. Most of these farmers will continue to grow at least some rice as long as they can survive as farmers, but restricting their land use only to rice cultivation will virtually ensure their poverty.

Eliminating the limitation to alternative uses of 'rice land' (or, at least, the rice land other than specialized two-crop rice land where rice cultivation can be done in an economically viable manner) will release existing land, water, labor and other resources for other higher-value purposes. This, in turn, will support the development of more viable agriculture and more diversified rural economy. This will give the country an opportunity to meet its food security objective, raise people's nutrition status and at the same time improve rural incomes more effectively.

Recommendation 3:

Abolish the current limitation on alternative uses for so-called 'designated rice lands', at least for those rice lands where mono-crop cultivation is not economically viable.

II. TRANSPARENT AND EQUITABLE LAND ACQUISITION AND COMPENSATION

Compulsory land acquisition is one of the hottest issues in the country causing a lot of unfairness, dissatisfaction and long lasting complaint. There is a growing number of grievances from the affected people, who in some cases are impoverished, essentially making them victims of the process of economic development. International experience shows that fair compensation should be provided to those who give up all or part of their land and those who are adversely impacted by development processes. The compensation should cover: (i) lost or impacted land and other property, (ii) loss of income and livelihood; (iii) re-location costs; (iv) livelihoods rehabilitation; and (v) other losses incurred. This means that the compensation is not just a onetime compensation for lost assets, but should relate to the whole process of income and livelihood rehabilitation to ensure the affected people can restore and improve their livelihood after land acquisition. In many countries, an independent law on land acquisition is enacted, taking into account the critical importance of the issues. Based on the recent Bank's studies on the issues, there are several priority recommendations as set out below.

4. Clarification and Re-limitation of the State's Rights in Compulsory Land Acquisition

The current land legislation allows two forms of land conversion, which are compulsory land acquisition and voluntary land conversion. The first form of land conversion is applied not only for the purposes of national defense, security, and national and public interests, as stated in the 1992 Constitution¹, but also for some economic development purposes such as projects to construct infrastructure for economic areas, hi-tech parks, industrial zones, service zones, urban and rural residential areas, projects with 100% foreign investment (including ODA and FDI), and projects with a high level of investment funds, classified as Group A. Taking land in a compulsory manner and reallocating it for economic purposes often causes unfairness in benefit sharing between land users, investors and the State, inefficient land use, corruption, and prolonged complaints of the land users. This practice does not ensure the real right of the land users, which is in conflict with the 1992 Constitution. This needs to be changed to allow using compulsory land taking (also known as eminent domain) only for the purpose of national defense, security, and national and public interests as per the 1992 Constitution.

On the other hand, for many projects applying voluntary land transfer methods, there are often some current land users who are unwilling to cooperate with the investor in assigning the remaining land area after the investor has already received the major part of the land by voluntary land transfer. Although the economic principle of voluntary exchange should be the norm, interim provisions for dealing with land users who hold out for exorbitant prices and risk derailing projects, may be justified.

Based on international experience and current practice in some parts of the country, as well as to be in line with the 1992 Constitution, the recommendation is that compulsory land acquisition should only be allowed for the purposes of national defense, security, and for projects that are for the general public's benefit such as roads, parks, schools, etc., and no longer be applied for economic projects.²

¹ Article 23 of the 1992 Constitution states that "The legal property of individual or organizations shall not be nationalized. The State may, when necessary for reasons of security and national defense and for the national interest, purchase or requisition with compensation at current market prices the property of individuals or of organizations".

² This was a key recommendation of *Vietnam Development Report 2010 - Modern Institutions* and the Bank's study on *State's land acquisition mechanism* in 2009, published in 2011.

Recommendation 4:

Allow State's compulsory land acquisition only for the purposes of national defense, security, and projects with general public benefits, such as roads, parks, schools, etc.

5. Land Compensation Price in Compulsory Land Acquisition

According to Article 23 of the 1992 Constitution, as mentioned above, when necessary the State will “purchase or requisition with compensation at current market prices the property of individuals or of organizations”. Although the Land Law states that the State's land prices should be in line with market prices and the Government decrees 17/2006/ND-CP, 123/2007/ND-CP and 69/2009/ND-CP require that the land compensation price reflect market prices, in practice, there is no concrete guidance on how to implement this policy and actually, land compensation prices are generally much lower than prevailing market prices. This leads to dissatisfaction of land users whose land is acquired. Long lasting complaints at the government agencies at different levels happen more and more often³ leading to long delays of development projects, negatively affecting both economic development⁴ and social stability, as well as reducing the attractiveness of Vietnam's investment environment. Ho Chi Minh City is a notable exception in paying compensation rates closer to market rates. For every municipal investment project which requires land acquisition, the city hires an independent land appraiser to determine appropriate compensation. The City's experience demonstrates the advantages of the approach in terms of (i) more timely agreement with the affected people, thus speeding up the compensation and resettlement process; (ii) enabling people to freely choose the place to relocate and quickly restore and stabilize their new lives and (iii) substantially reduce complaints issued by affected parties.

Based on international experience and Vietnamese regulations and practice, the recommendation is to regulate application of the mandatory requirement to assign a land valuation service provider to determine land market prices for compensation. The land valuation service provider should be selected on the basis of consensus between the affected people and related parties having both interest and obligations in land acquisition. The land compensation price should be appraised and decided by independent boards at Central and Provincial levels. The name of “the State's compulsory land acquisition” should be changed to “the State's compulsory land purchase (or requisition)” to be in line with the 1992 Constitution.

Recommendation 5:

- a. Apply mandatory requirement to assign a land valuation service provider to determine land market prices for land/property compensation, selected based on consensus between the affected people and related parties.
- b. The land price to determine value of compensation should be appraised and decided by independent boards at Central and Provincial levels, based on the results of the land valuation.

³ In 2005, almost 50% of all complaints received by the government, were related to land compensation when land is acquired by the State. In 2010, some local authorities reported that this kind of complaints make up almost 90% of the complaints in their provinces. A case study in 2010 showed that more than 80% of affected people were not satisfied with land compensation price paid for their land acquired by the State (WB, 2011).

⁴ A study showed that with the land acquisition delay, the economic losses are much bigger than the differences between actual land compensation price and market price, not saying about social instability caused (WB, 2011).

6. Benefit sharing

Benefit sharing mechanisms are applied in many countries for large hydropower projects which have significant impacts on local communities. This approach can also be applied to other kinds of investment projects which have considerable impacts on local communities. Two examples relevant for Vietnam are mining exploration/development and the construction of irrigation systems. Benefit sharing goes beyond mitigation and compensation for the lost assets. It includes a wide range of both monetary and non-monetary tools such as the long term sharing of the revenue received by investors (direct payment/revenue sharing; preferential electricity rates; payment for environmental or ecosystem services; community development funds; equity sharing) or non-monetary measures to enhance the income, livelihoods and living environment of the affected people and their communities (project design and operation, watershed management; ancillary investments; employment creation).

The World Bank has conducted a study on benefit sharing and issued an Operational Guidance Note to enhance development of the local communities as well as investment effectiveness. It is recommended that a provision on benefit sharing between beneficiaries and affected people should be added to the Law to allow long term rehabilitation and development of the livelihoods of local communities affected by large hydropower, mining or similar-nature projects.

Recommendation 6:

Provide a provision on benefit sharing between beneficiaries and affected people for long term rehabilitation and development of the livelihoods of local communities affected by large hydropower, mining or similar-nature projects.

7. Land pooling and land readjustment

In principle, there should be measures to tie land acquisition with the benefits of the affected people such as making the land users among the project owners and direct beneficiaries. In fact, this kind of measures has the potential of reducing the need for land acquisition. One of these measures is “land pooling and land readjustment”, based on the consensus among the land users and local authorities to convert the whole underdeveloped areas to infrastructure-developed ones. This approach has proven to be very efficient and successful in many countries in leveraging land values for development in an inclusive, efficient and transparent way, especially in the peripheral areas of cities. For instance in Japan, by the end of 2006, 11,808 projects involving a total land area of 394,484 hectares (ha) had been undertaken by this method under the provisions of the City Planning Law, 1919 and the Land Readjustment Law, 1954. This accounts for about 33% of the urbanized land area of Japan. In South Korea, the Seoul City Government produced 11,478 ha of urban land in the years of 1950s-1980s, through a total of 41 large-scale land pooling and readjustment projects. Within East Asia, Taiwan, Malaysia, and Indonesia have also used such schemes. In the Indian state of Gujarat these schemes have been called ‘town planning schemes’ and have also met with widespread success.

The scheme ensures that original owners of land retain their ownership – so no land acquisition is required. The principle is that residents will give up a part of their land for infrastructure development and for sale to recover the project cost. In return, their remaining land will have much higher value after the scheme is completed as a result of the infrastructure investments and re-zoning. By and large such schemes have 1) prevented ad hoc,

patch-work and irregular urbanization on the urban fringe (and the high infrastructure inefficiencies and costs associated with this), 2) unlocked finance for infrastructure and public services (in some cases, low income housing as well) through the gains from higher land values and the rezoning of land to residential/commercial use, 3) created a basis for urban connectivity and the sensible extension of transport networks and 4) ensured that the original rural landholders equitably participate in the gains of urbanization as they retain their claim to the land through the scheme, when accompanied with transparency and good governance.

The World Bank has implemented a land pooling and readjustment project in Bhutan, and will expand to other countries to help promote this efficient tool.

Recommendation 7:

Provide a provision on land pooling and readjustment as an effective tool for peri-urban development without the need of land acquisition.

8. Reducing complaints related to land acquisition

As mentioned above, the most part of the complaints are related to land acquisition, so if investment projects could adequately resolve the grievances at the project level, it would help reduce the number of administrative complaints that have to be resolved in accordance with the law. The grievance redress mechanism at the project level is widely implemented in Bank-funded projects throughout the world and this process is just now being piloted in Vietnam.

The recommendation is to establish an efficient grievance redress mechanism at the investment project level to resolve the grievances in a fair, responsible and timely manner, which will help reduce the complaints to speed up the project implementation as well as to facilitate social stability.

Recommendation 8:

Establish efficient grievance redress mechanisms at investment project level to resolve the grievances in a fair, responsible and timely manner.

III. ENABLING EFFECTIVE AND EFFICIENT ADMINISTRATION OF LAND

9. Ensuring the land use rights of vulnerable groups, such as women, the poor and ethnic minorities people

Although Land Law of 2003 and its subsequent implementation regulations advanced a number of aspects of land rights for vulnerable groups in Vietnam, the new Land Law could reaffirm and strengthen these efforts in a more comprehensive and consistent manner. In particular, the revisions of the Land Law offer the opportunity to confirm the requirement that both spouses' names be reflected on the LURCs when they are tenants in common.

Given the critical role that land and forest resources play in the livelihoods of ethnic minorities, the concept of community land use introduced under Land Law 2003 needs to be further advanced under the revised Land Law by recognizing customary land titles in areas of residential, forest and "unused" land dominated by ethnic groups with largely intact traditional social structures. First, there is strong demand from local people for recognition of their customary land use and management practice. In mid-2000s, it was estimated that some 2.5 million ha of forest land in Vietnam were de facto managed by communities. As the long tradition of Vietnamese communities, particularly ethnic minorities, to manage their land – especially communal forest land and unused land – has been confirmed by research and gradually acknowledged in various legal documents, this land is already partially allocated and contracted to local communities by Provincial People's Committees (PPCs) and certain forest-management rights and obligations have been specified since then. Results so far indicate that in general communities welcome the allocation of the land and forest resources to them and can manage their forest land and forests well after the allocation.

Second, customary land use rights are often found as the most appropriate tenure solution for such land, taking into account social (equity, conflict resolution), economic, and environmental objectives. In particular, issuing of LURCs to communities for land and forest resources on it would help confirm their existing rights, alienate potential illegal or quasi-legal occupants or claimants, and thus support social stability where overlapping rights may occur. Their allocation to communities as community property is often socially more acceptable and economically more viable than allocation to individuals. Clear allocation to communities would lead to more responsible utilization of the economic and environmental potential of the forest areas, give them incentive to increase investment and lead to greater economic benefits. For the State, the environmental functions of the land and forest are secured with less costs than if the allocation had been to individuals. However, there also exist risks associated with improper community land titling such as continuing and new conflicts, reduction in forest areas after the land allocation, gender bias and lack of transparency and community participation observed in some communities. Thus, the new Land Law should provide flexibility in the implementation of customary land use rights by requiring the Government to specify the legal framework and criteria for granting community LURCs and establish the administrative structure and sources of funds in support of community's customary land use practice and management and their rigorous impact assessment.

Recommendation 9:

- a. Confirm requirement of reflecting both spouses' names on the LURCs for common property of both;
- b. Recognize customary land use and management practices of local ethnic minorities communities. The Government is to set up the legal framework and criteria for issuance of LURCs to the communities and establish administrative structure and funds in support of community customary land use practice and management and their impact assessment.

10. Issuing LURC and ensuring rights and benefits of land users

The issuance of a Land Use Right Certificate (LURC) constitutes the legal recognition and protection of rights and benefits of respective land users by the State and thus represents an important measure to ensure the long-term rights of land users. Completion of the issuance of LURCs nation-wide has been a priority of the State of Vietnam since 2006, although this ambition has not been achieved and will not be able to be completed in the near future. According to the Ministry of Natural Resources and Environment, LURCs have been granted to 80% of agricultural land, 65% of forestry land, 75% of residential land in rural areas, and 65% of residential land in urban areas. The main shortcomings of the current LURC issuance include:

- Limits on holdings of residential land including gardens or pond areas create extremely complicated constraints to the issuance of LURCs for residential land in rural areas;
- Completion of the LURC issuance is prevented largely by the requirement for documentary evidence on land use rights. Users of land engaged in informal land transactions in the past have had difficulty providing such evidence. The process is also slowed by the high costs of the cadastral survey and mapping and registration;
- Current land registration regulations are unnecessarily complex and cumbersome. It is unnecessary to have four agencies, namely the Land Use Right Registration Office, the Tax Office, the State Treasury and the Notary Office involved in each real estate transaction registration. This complexity increases corruption risks in LURC issuance.⁵
- The taxes, levies and fees currently imposed on LURC issuance are high and often unaffordable for many land users, especially the poor.
- The capacities of Provincial and District Land Registration Offices are limited.

The issuance of LURC was introduced first under Land Law 1987 and many subsequent laws have improved the framework. In 2009, the Law on Capital Construction Investment, Land Law 2003 (Article 4) and the Housing Law (Article 5) were amended and supplemented with a provision on the issuance of unified Certificates of the land use rights and ownership right on houses and other assets attached to the land. This made the current legal framework on Certificate issuance and registration of land transactions in Viet Nam compatible with international standards. However there still exists a basic shortcoming concerning the withdrawal of Certificates in that the agencies which issued Certificates have full authority to withdraw them. This was introduced by the government (Decree 84/2007/ND-CP of 25 May, 2007) on the premise that mistakes on land parcels and land

⁵ Corruption risks were examined in World Bank, Denmark and Sweden (2011).

users were common. However, the lack of recourse for land users imposes serious risks to the security of land tenure of land users.

Further improvement of legislation for Certificate issuance needs to focus on: (i) protecting the legal rights of Certificate holders; (ii) further streamlining and simplifying the administrative procedures for Certificate issuance; (iii) clarifying the concept of residential land category to avoid complexity in defining boundaries between residential land and garden land; (iv) increasing the transparency, community participation, and accountability of local authorities in the Certificate issuance and land transaction registration process.⁶

Recommendation 10:

- a. The Court be designated as the only agency with the right to withdraw issued Certificates, except for cases where land is recovered or acquired compulsorily according to the legal regulations.
- b. Streamline processes by providing Land Registration Offices with authority and responsibility for making decisions on every issue related to land profile, procedures and financial duty for the initial issuance of Certificates.
- c. Exempt or reduce financial burdens of first-time registration and Certificate provision for land users being the poor, the people with low income.
- d. Extend the residential land category to include not only land for house building, but also garden land, pool land on the same land parcel.

11. Amending the land management decentralization and building a monitoring and evaluation system

The other key dimension to be given priority in improvement of good land governance in the context of Vietnam is enhancement of the accountability of government agencies involved in land-related decision making and policy implementation through further decentralization of land administration and management, and strengthening their performance monitoring and evaluation.

Decision making functions in many aspects of the implementation of land law and regulations have been largely decentralized to the provincial and district levels through the process of renovating the land policy and legal framework since Land Law 1993. The Land Law established the four-level land administration and management system from the central level to provinces, districts and communes which exercise the State's rights on land (i.e., the State allocates, leases and recovers land). According to this system, the Central Government still holds the right to make decisions on land for investment projects using more than 1 ha of non-agricultural land. The provincial level makes decisions on non-agricultural land, which does not belong to the central authority and the district level which has rights on agricultural land.

As per the amendment and supplementation to the Land Law in 1998 and 2001, respectively, the Central Government keeps only the right to make decisions on land in case of projects which exchange land for infrastructure and land use for defense and security purposes. Land Law 2003 further decentralized the land

⁶ These tasks can be expedited with its cost kept at a reasonable level by undertaking alternative approaches and more effective methods of cadastral survey and mapping, and land registration (e.g. air- or satellite-photography or community-based land registration and administration) in line with actual needs for their accuracy. For example, the data accuracy applied to agricultural land in vibrant peri-urban areas is unlikely needed for agricultural land in remote areas where land market transactions are much less likely.

administration and management by establishing that the provincial level issue LURCs for managed land used by organizations, religion bodies, foreign investors and the district level did those for households, individuals and communities. Today, two main shortcomings of this system have been seen as follows:

- Management of land at two levels, namely provincial and district levels, creates fragmentation in the land information management and inconsistency in cadastral records. Experience of other countries shows that land management should be given entirely to the local authority but not split into several levels. Land Law 1993 was designed to follow this principle, but at that time it was not feasible because the large volume of cadastral records and initial issuance of LURCs was beyond the implementation capacity of provincial land management agencies. Now the cadastral records have been updated and LURCs issuance has been done for 70% of the total areas and many of them are digitalized. The recent development of information and communication technology and their application in land administration makes the more efficient model stipulated under Land Law 1993 feasible now.
- Too much delegation to the district level without sufficient capacity development and supervision has led to poor implementation of the Land Law, regulations and other policies and guidelines at the local level, especially at the district level. The role of the provincial level should be enhanced to cover all aspects of the State's rights on land recovery, land allocation and land lease with the MoNRE's strengthened monitoring and evaluation system to guarantee legislation enforcement and ensure legal consistency. In fact, the 1993 Land Law gave the district level the right to decide on agricultural land because the volume of work to allocate agricultural cooperative land to households and individuals were too large, exceeding the capacity of the provincial level. At the present, the work has been largely completed.

The tasks of inspection and supervision were specified in Land Laws 1993 and 2003. Great efforts have been made to enforce land inspection by the administrative apparatus and supervision by elective bodies such as the National Assembly and People's Council at all local levels and mass organizations outside the Government (such as the Fatherland Front of Vietnam). The Ministry of Natural Resources and Environment also founded a "hot line" to encourage citizens and enterprises to participate in supervising land legislation implementation. However, these have not produced significant effects yet as violations are still quite common even among government agencies and State's officials.

According to international experience, supervision would produce good results only if it is implemented by a national monitoring and evaluation system in a nationally-consistent manner. Monitoring represents the tracking of planned progress benchmarks, while evaluation refers to the comparison of development outcomes achieved with the objectives originally set. However, both functions require systematic data collecting, monitoring, analysis and reporting. The information can be collected from numerous sources including local authority reports, various inspection and oversight reports, individual/community feedback, social surveys, and physical surveys/maps. As outlined above, it is necessary to improve the current decentralization of land administration and management in accordance with the following principles: (a) focusing the central level on policy and program development and on supervision of their implementation through the monitoring and evaluation system; (b) entirely decentralizing the implementation of the State's rights on land and land administration authority to the provincial level only.

Recommendation 11:

- a. Entirely decentralize the implementation of State's legal rights on land and the land administration authority to Provincial People's Committee only, not to District level.
- b. Focus the central level land administration and management on policy and program development and operation of the monitoring and evaluation system in support of legislation enforcement at localities.

IV. IMPROVING THE EFFECTIVENESS OF THE LAND GOVERNANCE SYSTEM

12. More flexible and effective land planning

Land use planning was first stipulated in the Land Law of 1987 (Article 11) with the system of four administrative levels (nation, province, district, and commune) and specific regulations on land use planning methodology. These included definitions of the amounts of land to be used by each category in each administrative level to meet requirements for land in the social-economic development plan of each locality for each planning period. The Land Law of 2003 and subsequent legal acts attempted to clarify the land use planning system.⁷ Compared with other aspects of land administration and management, relatively few substantive changes have been introduced in land use planning since the start of *đổi mới*. Land use planning remains largely an internal government exercise, characterized by considerably unclear relationships, hierarchy, timing, and accountability among different types of plans such as the Socio-economic Development Plan, Land Use Plans, Urban Development plans, and various sectoral plans, especially at the provincial and district levels. As a result, land use planning represents a very fragmented and silo-based exercise without adequate integration and coordination across either functional or spatial jurisdictions. Many of the current land use plans are unrealistic and are never implemented for a variety of reasons, including lack of budget and coordination among the levels and institutions within the government.

With conflicting demands for scarce land resources, efficient, equitable and environmentally sustainable management of land resources is impossible without the deployment of an integrated and evidence-based analysis of land use demands across all sectors concerned and the development of viable alternatives. The example of restrictions to changes in land use purpose imposed on rice land for the sake of food security, described earlier, shows the need for an evidence-based analysis in order to design the policies needed to achieve the development objectives of the Government as laid out in its long-term socio-economic development strategy and plan for 2011-15 with a vision to 2020. The Vietnam Urbanization Review of 2011 argues that evidence-based urban land use planning will ensure a much more efficient allocation of land use by more accurately responding to the dimensions and locations of demand for different land uses in urban areas. In addition, an integrated approach to urban land use planning enhances the efficiency of the urban form and the benefits of long-term economic agglomeration.

Land use planning could also be improved by applying the concept of spatial planning or land use zoning. The current land use planning methodology focuses exclusively on defining the total area of land to be used by each category in each administrative level, not taking into account the spatial location of the land. This causes many deficiencies, including:

- Conflicts among socio-economic development planning, land use planning and construction planning (including urban planning). In particular, the relation between land use planning and construction planning has not been defined yet.
- The lack of information on the location of land also effectively prevents economic, social and environmental assessments of potential effects of the land use plans as well as people's active participation in land use planning and land use plan implementation and monitoring.
- The current regulations only require the participation of the community in land use planning at the commune level. Land use planning at higher local levels only requires the participation of the People's Council. As a result, community participation in land use planning is still very limited, despite the fact that land use planning has a huge impact on each community and each citizen.

⁷ Articles 21-30 in Land Law 2003, decrees 181/2004/ND-CP of 29 October 2004 and 69/2009/ND-CP of 13 August 2009, and MoNRE's Circular No 19/2009/TT-BTNMT of 02 November, 2009.

- The current law has regulations to disclose all approved land use plans. In fact, this regulation has not been fully carried out. A World Bank survey in 2010 showed that explanatory reports on land use planning were made public only in 34 of 66 government units surveyed (including 63 Provincial People's Committees and 3 Government Ministries) (52%), maps of current land use were made public only in six units (9%), and maps of land use planning were made public only in 15 units (23%)⁸.

The rich body of international experience on this subject shows that the present system of land use planning should be replaced by land use zoning which is characterized by spatial planning. The system also makes use of geographic information system (GIS) to analyze economic, social, environmental effects and suitable solutions to cope with their challenges, including those emerging with climate change^{9, 10}. An application of this approach will require completely restructuring the existing planning framework to allow it to provide a more sustainable and future-oriented use of land. The framework should incorporate broad zoning at the provincial level, supported by a detailed land use plan at the district level and a hierarchical-based land classification system.

Such a planning tool would include multi-stakeholder consultations, cross-sectoral economic, social, and environment analyses, and joint problem identification and solving. Further, the land use plan cannot be a one-time-suits-all exercise as there is no requirement to conduct land use planning for a specific planning period. When there is demand for the plan and enough accurate information on the respective region, than the land use plan for this region will be approved and effective. It is not necessary to “enforce” the aggregates prescribe by the current system of land use planning if there is not enough justification for spatial zoning.

In this respect, land use planning is continuous based on dialogue between all participants aiming at the achievement of a consensus on the plan that facilitates effective and sustainable land use and its monitoring and evaluation in the future. An important set of policy reforms includes piloting and implementing the new land use planning methodology in environmentally fragile watersheds, river basins, coastal zones, and urban fringes, given the dynamics and complex interfaces among economic, social, and environment issues there. In particular, the use of integrated spatial planning methods will help specify the areas affected by climate changes and the intensity of the impacts for defining appropriate adaptation and/or mitigation measures. Furthermore, making available current data and maps derived from land administration, environmental management, socio-economic characteristics, urban development, agricultural and forestry practices, and infrastructure and services is essential for sound planning. Finally, recognizing that the plans in one province may have impacts on other provinces, planning at the regional level, and coordination during the planning process is essential.

Recommendation 12:

- Adopt the approach that land use planning should be made by integrating the best available evidence with planners' expertise and with other stakeholders' needs, values and preferences to ensure an appropriate balance between efficiency, equity and environmental sustainability;
- Restructure the current land use planning framework to adopt the concept of land use zoning or spatial planning; undertake such planning at the regional level and/or ensuring coordination among neighboring provinces;
- Reaffirm that land use planning is a participatory interactive process of consultations and dialogues among stakeholders involved to achieve their consensus on land use.

⁸ World Bank, UK-Aid, DEPOCEN, 2010, Survey report on information disclosure of land management regulations.

⁹ Julian Conrad Juergensmeyer, Thomas E. Roberts, 2007, Land use planning and development regulation law, Thomson West.

¹⁰ Jane Silberstein, Chris Maser, 2000, Land use planning for sustainable development, Lewis Publishers.

13. Transparency and anti-corruption in land management

Weaknesses in land governance, involving a combination of weak institutional capacity, inconsistent implementation of laws and regulations, and corrupt practices, are undermining political and public confidence, detract from investment, weaken the operation of transparent land markets, adversely impact environmental and natural resources and deny equitable, accessible and affordable social justice. Improvements to rules and regulations governing land administration are meaningless if they are not implemented and translated into improved services to the public, especially land users. Completing the first-time registration through the issuance and reissuance of LURCs or joint Property Ownership and LURCs and to update and digitize land profiles is essential.

Ensuring stakeholders' access to land administration information is critical for good land governance as it allows land users and concerned stakeholders to exercise their rights and participate more effectively in the land management processes. In addition, it also helps improve provision of land administration services and state management of land resources. In this aspect, in addition to MoNRE's development of the Environment, Ocean, Mineral Resources, Water and Land Information System, the establishment of a broader National Spatial Data Infrastructure (including strategy, regulatory and institutional tools, and interoperability standards) will provide greater transparency and participation of all stakeholders.

In this respect, the new Land Law should set up the development and operation of an electronic land administration system (e-land administration) in support of land data and information sharing both within the government and between the government and people/enterprises. The Law needs to lay out clear institutional roles and responsibilities, specify data sets and rules for access to them, and deal with other pertinent matters. More generally, the difficulties in implementing transparency provisions that are already embodied in existing laws suggests the need for an enforcement mechanism. The Law on Access to Information, if passed, could establish such a mechanism, making transparency and access to information related to land management, and other sectors, the rule rather than the exception.

Recommendation 13:

- a. Provide provisions to ensure greater access of all stakeholders to land information and their active participation in land administration and management, with priority given to the functions that affect people's rights and benefits such as the first-time land registration; preparation, appraisal and approval of land use planning; the State's decision-making on land; supervision and inspection of land legislation enforcement; and resolution of land-related disputes, complaints and denunciations.
- b. Provide legal provisions to formalize and regulate the access of land information through electronic media; and establish objectives and institutional arrangements for the development of the land information system and the national spatial data infrastructure of Vietnam based on this.

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