

Land Acquisition in Transitional Hanoi, Vietnam

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Abstract

This paper examines the institutional changes in Vietnam's urban development that have emerged as the economy has been restructured in a deliberate national policy entitled Doi Moi. The main focus is on the issue of compensation in land acquisition. Data were collected from field reconnaissance surveys, key informant interviews and secondary sources. Findings revealed a clear move towards the establishment of private property rights on land use, illustrated by the changes associated with land law and the dynamic interplays among the main actors in this transition. The government's role in land acquisition has been minimised gradually. A coalition between the government and land developers was discernible in the case studies, often associated with a low compensation rate in land acquisition, which was proposed by the government in favour of the developers but at the expense of individual sitting tenants. At another level, the law enforcement behaviour of local authorities was shaped by considerations of possible rent-seeking and concerns about intervention from higher-level authorities. These attributes of the transitional institutions in urban development will remain in the foreseeable future if Vietnam continues its current Doi Moi policy for rapid economic growth.

Introduction

Since 1985, Vietnam has been set on the track for economic transition by its Doi Moi policy (i.e. renovation). The bureaucratically centralised planned economy has been steadily transformed to a multisector market

economy, which has been accompanied by the democratisation of social life and integration with the world economy (Boothroyd and Pham, 2000, p. ix). Doi Moi has generated remarkable changes, seen in accelerating economic growth, expanding export, attracting foreign investment and integrating

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the economy into the Asia-Pacific region (Dixon and Kilgour, 2002, p. 601). In fact, the annual growth rates of Vietnam's gross domestic product (GDP) averaged 7.6 per cent in the period 1991–2000 (Vu, 2002, p. 1). As a result, more than 20 million Vietnamese have been lifted above the poverty line of \$1 a day (Schmidt, 2004, p. 63). In 2004, the GDP maintained its growth rate at 7.6 per cent, while foreign investment reached US \$4 billion—a record high since the 1997 Asian financial crisis—and exports rose to US \$25.8 billion (Thayer *et al.*, 2005, p. 21).

These changes in the national economic system were reflected immediately in the urban development patterns (Quang and Kammeier, 2002, p. 373). Similar to what has happened in China, large cities such as Ho Chi Minh City and Hanoi have played leading roles in Vietnam's economic transformation. Hanoi, for example, has contributed 10.2 per cent to the national gross domestic product and has attracted 24 per cent of Vietnam's total foreign direct investment in the past five years (van Horen, 2005, p. 170). The urbanisation process has reflected the economic policy, resulting in rapid increases in urban population and urban built-up areas (Forbes, 1995, p. 793). In Hanoi, it is anticipated that the population will reach 5 million (from 3.1 million at present) by 2020 (van Horen, 2005, p. 164).

At the centre of the economic and urban transformation in Vietnam are changes in a range of institutions including the formal and informal rules, individual agents and actors, as well as organisations. Old institutions have been replaced by new ones. The top-down, Soviet-style economic and urban planning systems have been transformed by a more flexible strategic planning and urban management approach; the central state dominance in economic and social affairs has been restructured by a new division of administrative responsibilities between the central and local authorities; individual parties (i.e. investors and private enterprises) and

non-state sectors have evolved and have become an important component in the economy, adding to the reforms of the state-owned enterprises. Of special interest to this research, the vague property rights have begun to be clarified and redefined towards clearer property rights (van Horen, 2005; Kim, 2004; Gainsborough, 2003; Quang and Kammeier, 2002; Dixon and Kilgour, 2002; Coit, 1998).

As a result of these institutional changes, a complex situation has emerged in Vietnam's urban development. Quang and Kammeier observed that

while the formally rigid command-and-control system of urban management has already been simplified to some extent, inappropriate bureaucratic attitudes persist. This has resulted in a lack of authority, communication, and competency, while a thriving informal sector of urban development has emerged (Quang and Kammeier, 2002, p. 373).

Similarly, Leaf (2002, p. 27) noted that ambitious property rights and high administrative costs for official registration and permit applications have discouraged the vast majority of construction projects from going through formally established procedures. Not surprisingly, urban planning departments were unable to carry out predetermined plans due to illegal construction and the lack of enforcement of the master plans (Koh, 2004). Housing policies remain inadequate for the large population, resulting in large areas of slums (Coit, 1998). The real estate market still lacks proper legal titles, with the majority of the land occupancy having no 'pink certificate'—i.e. the Building Ownership and Land Use Certificate (Kim, 2004). Indeed, findings on Hanoi's French Quarter may well reflect the situation of the entire city

When the factors of privatisation, restoration of buildings and housing and general renovation of the district are considered together, the lack

of policies, administrative procedures and norms are obvious (Parenteau *et al.*, 1995, p. 169).

This paper examines one particular dimension of this broadly based set of institutional changes in Vietnam's urban development, focusing on the issue of compensation in land acquisition. Land acquisition is a fundamental process in urban development, as "before land can be developed, it must be acquired" (Werner, 2002, p. 212). It can be viewed as an institutional kaleidoscope that involves a variety of colourful elements which are the participating actors (the sitting tenants, the developers and the government), laws and regulations, and different patterns of interplays among the actors. At the centre of the process is compensation. Compensation emerges as an issue once there is a shift from the administrative land allocation system under the planned economy to a market allocation system. That shift involves compensation at a rate agreed to by the sitting tenants and the potential new users. The new system is, however, yet to be completed and function properly, because the roles of the participants and the regulating mechanisms still need to be defined accordingly. Clearer legal titles of properties and greater competency in land law making and enforcement are areas of improvement identified in the literature (Kim, 2004; Quang and Kammeier, 2002). Apart from its blunt legal dimensions, compensation has a sharp social and political dimension as it is in effect a means for wealth redistribution and a way that individual landowners feel the progress of Doi Moi. Hence an understanding of compensation has the potential to provide significant insight into the urban change process in Vietnam.

The main objectives of this paper are: to identify the issues surrounding compensation within current land acquisition; and, to examine the causes of these problems. Data were collected through field work in July and August 2005. The main data sources included first-hand data gathered in field reconnaissance

and interviews in two case study projects. They were enriched by secondary sources such as statistical publications, newspapers and unpublished documents. A third source was an analysis of an amendment to the Constitution, which involves an explanation of land laws and the various decrees to provide an understanding of the institutional changes at a formal level.

The two case study projects in Hanoi help to demonstrate the ways that individual actors in the game of land acquisition behave and interplay. Our findings show that this game involves three groups of actors: the farmers or the sitting tenants; the developers; and the local authorities. Severe tension was built up between the sitting tenants and the developers, with the government providing strong support for the developers from behind the scenes. This is different from observations of this process in China, where land appropriation also leads to violent conflicts and where parties in the front line are usually farmers and local authorities (Guo, 2001). There are, however, a number of similarities between Vietnam and China as observed in the institutional arrangement of land acquisition: in both countries, incompetent laws and regulations exist because of the speed of economic transformation; farmers are usually losers in land appropriation; and growth coalitions between the developers and the state are discernible in both countries.

The paper is organised into seven sections. The section immediately following this introduction is a conceptual framework for the discussions, viewing land acquisition as one prism in an institutional kaleidoscope. A review of the multiple actors and land policies follows in section 3, while section 4 outlines the changes of the formal rules governing land acquisition and compensation. Section 5 introduces the two project cases and their problems faced in compensation and site clearance. Section 6 analyses the problems. The last section summarises and concludes.

Land Acquisition as an Institutional Kaleidoscope

In legal terms, property

acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former (Verma, 1995, p. 256).

The title to or ownership of land is most often acquired by deed, will, inheritance, condemnation and adverse possession (Werner, 2002, p. 49). In countries where private landownership is allowed, land titles express these ownership rights and regulatory structures manage change in ownership. In countries without private landownership, land titles are usually about land use rights. Acquisition and transfer of land use rights can take place by means of administrative allocation (as happened in the former socialist countries) or by conveyance (as observed in the transition within China; see for example, Ho and Lin, 2003).

Participants in land acquisition can be divided into three main groups—namely, the expropriated owner/user who has an interest in the land, the prospective new owner/user and professionals and agencies involved in land transaction and administration. The first group of participants may include owners with a legal title, lessees, mortgage lenders, trust and land users who have occupied the land for some time but without legal title (Werner, 2002; MacKenzie and Phillips, 1989). The second group includes individuals, firms and agencies. The involvement of participants from this second group varies according to the type of development. For example, housing development in the UK is overwhelmingly the province of private-sector developers, although housing associations and public–private partnerships are also involved (Blake and Collins, 2004, p. 152). The third group includes lawyers, conveyance agents, appraisers

and bankers, as well as government agencies in charge of land registration and administration.

Mechanisms regulating the interplay among the participants in the exchange of land include the supply and demand conditions of a given property market, as well as laws and regulations designated for land acquisition. In market economies, land acquisition by private developers and individuals usually follows market practice—i.e. the existing owner of land voluntarily sells his/her land to the buyer at a price mutually agreed upon and transfers the legal titles and deeds according to the local laws/regulations. In the former socialist countries, there were no private developers, but land for work-units and individual housing was administratively allocated and registered. This allocation method is known as *huabo* in China (Ho and Lin 2003).

Land acquisition for public purposes introduces a new aspect and raises the issue of compensation for the first time. This activity is usually an expression of government power compulsorily to acquire land. In the US, this right is known as ‘eminent domain’. In Canada, the UK and Australia, the right and consequential action are collectively known as ‘expropriation’, ‘compulsory purchase’ and ‘compulsory acquisition or resumption’ respectively (Chan, 2003, p. 138). A study of land acquisition in Pacific Asian countries reveals that some countries (such as the US, Japan, Malaysia and Thailand) assign their governments compulsory land purchasing power in the constitution; others (such as Singapore and China) define this power in individual legislative acts (Kotaka and Callies, 2002, pp. 5–6).

Compensation in compulsory land acquisition is often calculated according to guidelines set by law. Many countries, such as the US, Japan, Australia (for federal land acquisitions only), Korea and Malaysia, require compensation to the private owner of rights in property in their respective constitutions (Kotaka and Callies, 2002, pp. 6–7). Others, such as Singapore, provide for it by statute.

The amount of compensation varies widely according to countries. In the US, the UK and most of the Commonwealth countries, there exists a just compensation principle in order to reimburse financially a dispossessed person adequately (Chan, 2003, p. 144). The market value of the subject property is held as just compensation in the US, while in the UK, compensation is based on the principle of value to the owner consisting of market value together with other losses suffered by the claimant. Singapore applies a seven-year rule in calculating the market value of land for compensation—i.e.

any increase in value due to development in the neighbourhood by the provision of roads, drains, electricity, water, gas or sewerage or social, educational, or recreational facilities within 7 years proceeding the date of notice/declaration will not be taken into account (Han, 2005, p. 79).

China and Australia provide compensation largely for raw land value only (Kotaka and Callies, 2002, pp. 6–7).

In transitional economies, compensation takes on a new meaning as the land exchange system is shifting from administrative allocation to market allocation so that the issue of compensation to the original users of the land arises. This is especially so where the change in use has been triggered by the economic restructuring process, led or sponsored by government, rather than by the decisions made by current owners, such as when agricultural land is to be acquired for industrial development. In most countries, laws and regulations are yet to mature, even though interest by individuals and groups in land and properties is continuously growing.

A case study of land acquisition around externally driven land use changes in China illustrates a number of the problems in the legal setting (Chan, 2003): the just compensation principle is not in place; consequential loss compensation is limited; interests in land are not defined; the right to claim compensation

is not explicitly given; a definition of market value compensation is lacking; and there are large variations among the provinces in compensation standards.

Guo's (2001) analysis of land expropriation in a village in Yunnan province, China, demonstrates vividly the consequences created in this uncertain institutional context. In this case, intensive conflicts were built up around the compulsory acquisition of 850 mu of farmland by the township government to establish a 'development zone'.¹ Villagers took violent action, including face-to-face combat, to stop the bulldozers sent by the government officials. Some villagers were more radical than others in leading the combat and fighting against the local officials. The latter were responding to the financial opportunity associated with land expropriation rather than maintaining the routine administration of property rights. Compensation was key in the episode, as the villagers received 5–10 per cent of the total payment for the land, while the balance flowed to the township and the county governments.

In the complex and confusing situation created by land use change in a transitional economy, participants in urban development often form growth coalitions in projects in order to meet their own interests. At the same time, the lack of established practice means that rent-seeking behaviour is commonly observed among officials (Han and Wang, 2003; Wang, 2004). It would seem that outcomes like this are beginning to emerge in Vietnam, as it shifts from a one-party to a multiactor situation.

Multiple Actors and Land Policies

High Level Institutional Changes

A transitional economy is defined as an economy experiencing changes from a centrally planned to a market economy (Khan, 1996). Vietnam, like many socialist countries, has undergone this transition during which the

government has constantly redefined its role in order to achieve the balance between political co-ordination and economic freedom. Dang and Beresford (1998) summarised three main such changes: a relative retreat by the Party from direct involvement in economic life; a new focus of the working emphasis on a better legal framework; and, a shift towards 'arms-length' economic management, through macroeconomic instruments and 'rule by law' (as opposed to direct personal intervention by leading personalities).

Economic transition has made it possible for multiple actors (i.e. the Party, the state, state-owned-enterprises, individuals and firms) to participate in economic decision-making. In present-day Vietnam, the Party is still at the centre of economic and political control; the Party overshadows the government at all levels in the administration (Coit, 1998, p. 275). The central state is still powerful in setting up the directions of development at the macro level, or in intervening in development at the project level. The state-owned enterprises (SOEs) have become more independent from the government in decision-making; they are acting as profit-making entities, rather than agents of the government (Pham, 1995; Vu, 2002). Private-sector businesses have grown in many sub-sectors such as agriculture, trade and services, although in the industrial sector SOEs continued to dominate (Pham, 1995, p. 2). These broad changes have some serious consequences for land use, ownership and management.

A report by the Australian government's Overseas Aid Program (AusAID, 2000) claims that the various actors have different attitudes towards new rules and regulations guiding the land and housing market. The government has a positive attitude towards the formulation of a land registration system with legal titles as this would provide a means to control illegal construction and land transfer. It will also provide an administrative base for property

tax collections as the titling system could increase the reach and efficiency of land taxation (AusAID, 2000, pp. 2–3). At the local level, however, authorities are generally ambivalent about land titling, as "There is little public demand for the system and procedural clarity may reduce rent-seeking opportunities" (p. 3). SOEs are main land users that occupy land with currently legal titles. However, land titles are not especially important to SOEs as land is rarely traded or used to secure loans. Households might not view the land titling system a desirable development as official registrations of land and housing lead to additional cost in transactions—taxation for property transfer by the government. For foreign investors, clear land titling is most welcomed for reducing uncertainties in ownership and is often needed for projects to gain financial backing.

Land and Housing Policies

It has been widely observed that the land and housing policies in Vietnam have gone through drastic changes since the introduction of Doi Moi (Kim 2004; Quang and Kammeier, 2002; Coit, 1998; Pham, 1995). New land laws promulgated in the late 1980s and the early 1990s assigned additional land rights to users. Although landownership still remains in the hands of the state, land users are given the rights to lease, transfer and mortgage the land under the new laws. However, there have been many problems in practising these rights, as the legal titles of land are not clearly defined. In 1999, almost 90 per cent of urban households did not have land use certificates (Quang and Kammeier, 2002, p. 376). It is a complicated process to acquire the certificate known as the Building Ownership and Land Use Certificate (Kim, 2004). Applicants have to present various legal documents and be free from disputes associated with the ownership or boundary of the property. There are a number of considerations which have

made the land use certificate less attractive to users: possible variations in the legal papers issued by different government offices; the high tax required for transfer of the land use titles; and the overall legal scrutiny to which the land use certificate is subjected (Kim, 2004, pp. 286–287).

Housing reform since 1986 has seen the state abandoning free/subsidised housing, with firms and individuals assuming the responsibilities of housing provision (Quang and Kammeier 2002; Coit 1998). Trinh *et al.* (2000, p. 95) found that, after a decade of Doi Moi, the subsidised housing system has been gradually replaced by a new market-oriented system of housing supply, with diversified sources of housing supply in place of the original government monopoly. Local governments, in the form of People's committees, often act as developers with their own budget and administrative resources (for example, issuing building permits). Nevertheless, the main constructors remain private households and those in the informal sectors (Koh, 2004). Despite what appears to be a promising transition to a market economy, the lack of uniform urban planning, urban management and land law has hindered the progress and development of proper housing and has probably facilitated illegal construction, as Koh's (2004) detailed study on illegal construction in Hanoi has shown.

Vietnam's Land Law

Landownership and Users' Rights

Upon declaration of independence in 1945, there were three forms of landownership in Vietnam: state ownership, group ownership and private ownership. After the agriculture reforms in 1954 and the introduction of co-operatives in 1958, all private ownership was eliminated, giving rise to consolidated ownership at the co-operative level. In 1980,

state and collective landownership rights were affirmed in Clause 19 of the 1980 Constitution, stating that the "land belongs to the People" but under the state's control. Using such a definition, Land Law 1987 was endorsed to detail further the government's and the users' rights. The government represented the People to own and to distribute land to users. The land users had two rights: the right to produce and run businesses on the land allocated and the right to receive benefits from these businesses. However, buying and selling land were strictly forbidden and the government had the rights to acquire land that had been distributed out (Truong, 2005).

A major improvement in defining property rights was introduced by Decree 10 in April 1988, when household farming was legalised (Lavigne, 2000). This was similar to the rural reforms in China in the late 1970s when communes/rural collectives were dismantled and land was leased to farmers using the household as the unit of operation and management. The farmers were given the rights to use the land for production, to transfer the land and to pass on the land to their heirs. In 1993, a revised version of Land Law 1987—Land Law 1993—was endorsed. Land Law 1993 confirmed the rights itemised in Decree 10 in April 1988 and added five rights over the land for users: change of land use, transfer of land, rent of land, inheritance of land and collateral of land. The use of land for production and profit generation became two obvious rights to mention. By having been attached with the rights of land transfer and rental in 1988 (Decree) and 1993 (Land Law), land became an asset to the users. The latest Land Law—Land Law 2003—has expanded the users' rights further by granting rights to use land as a gift as well as a capital input in business, and to claim for compensation when land has been acquired by the government (Figure 1). Hand-in-hand with the land use rights are obligations that users have to

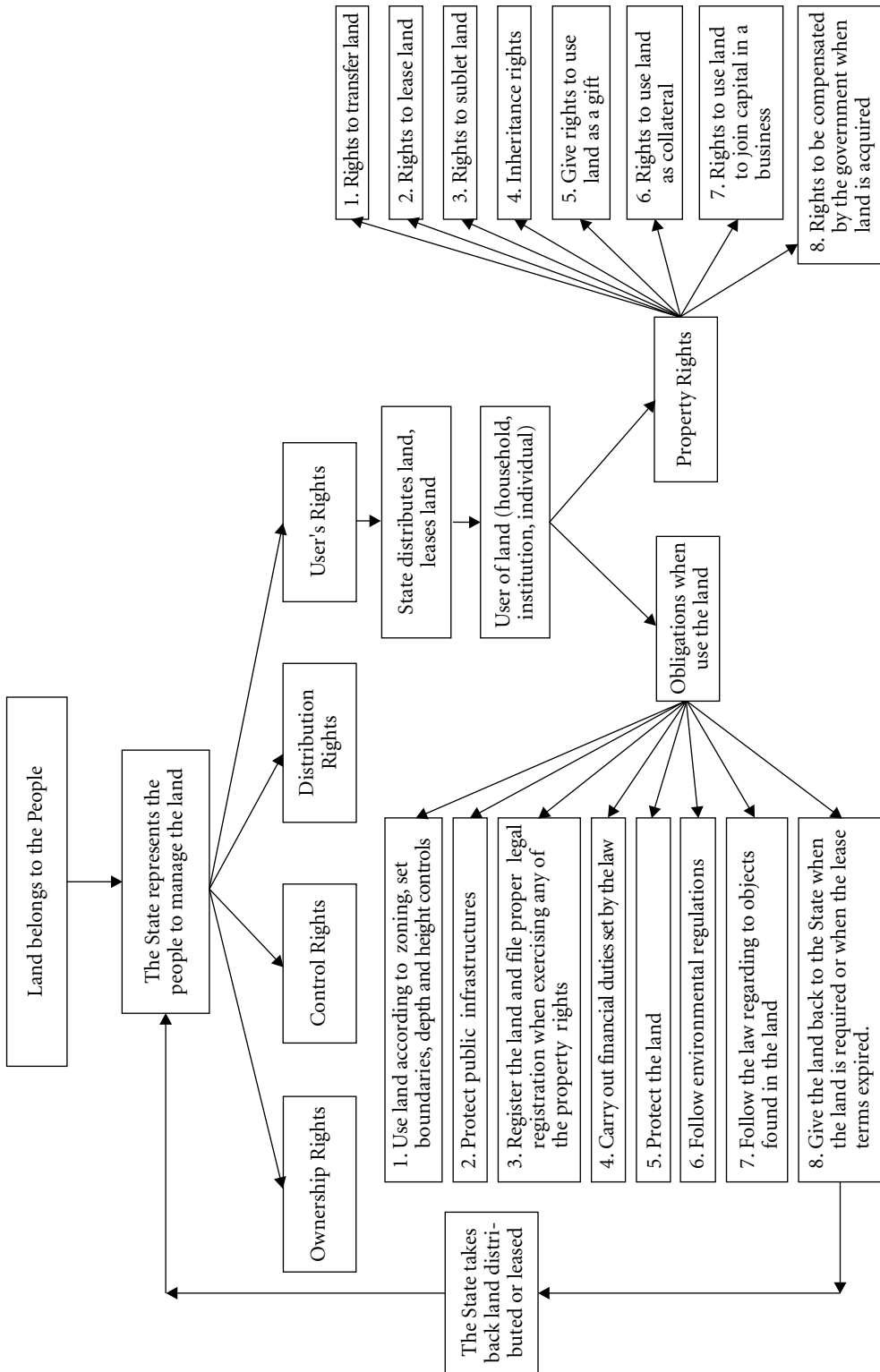


Figure 1. Land use rights and obligations in Land Law 2003.

observe. The overall principle is that all the rights associated with land use are subject to the fulfilment of the obligations. Thus, land has to be used according to zoning plans for type of use, intensity and physical layout; users have to: protect infrastructure in making use of the land; register the land use and complete the proper legal documents; fulfill financial duties set by the law; protect the land and observe environmental regulations; follow the law regarding objects found on the land; and, return the land to the state when the land was acquired or when the lease terms expired (Figure 1).

The state is authorised to own, to control and to distribute the land, and to administer the users' rights. State allocation of land to users is known as the primary land market, whilst the transfer of land among users forms the secondary land market. For both primary and secondary markets, Land Law 2003 tried to make procedures and fees transparent. Land Law 2003 attempted to create a 'one-stop' centre for matters associated with land, such as the sale and lease of land and the endorsement of the 'pink permit'. By defining such a centre, all individuals and business entities only have to go to the Ministry of Resources and Environment (MRE) in order to get all their land-related legal paperwork. In terms of the fees, there are detailed guidelines for itemised charges associated with an application and its processing.

A further development of Land Law 2003 was about the formulation of a site clearance committee in the land acquisition process. This change meant that government authorities would not normally involve themselves in site clearance tasks for private projects. Only large public projects would need a site clearance committee including government authorities. This was affirmed by Decree 26 implemented on 18 February 2005. This new decree explained the site clearance procedures and the parties involved (Figure 2). Large public projects that qualified for the

use of a site clearance committee would be those approved as public security or public welfare projects, including projects with foreign investment. If the project was not a public security or public welfare project, the developer would not set up a site clearance and compensation committee as in step 3 in Figure 2. The developer would have to negotiate with the residents on the basis of the government price framework. If an agreement was reached, the developer would submit a site clearance and compensation plan to the district governor for approval. In other words, local developers followed the same procedures in the compensation and site clearance processes, but they did not have the help of the district site clearance and compensation committee. They would have to negotiate by themselves.

Rules about Land Compensation

Compensation in land acquisition was not an issue in Vietnam's urban development until the early 1990s. From that time, it became more broadly accepted that land had value as an asset and the volume of construction accelerated to new heights. The way compensation has been handled has evolved over this period. Decree 10 in 1988 and Land Law 1993 in particular affirmed that land was a valuable resource, which could be transferred to the financial benefit of the users.

Compensation procedures and pricing in the period 1994–98 were regulated by Decree 90/CP which was endorsed on 17 August 1994. The importance of this decree lies in its price table which guides government officials and developers in determining the compensation rates. From 1998 to 2003, local authorities used a second decree 22/1998/ND-CP, endorsed on 24 April 1998, to calculate the amount of compensation. Decree 22 also required the setting up of a clearance site committee in the government to assist developers in the compensation process associated with projects. These approaches to compensation expressed

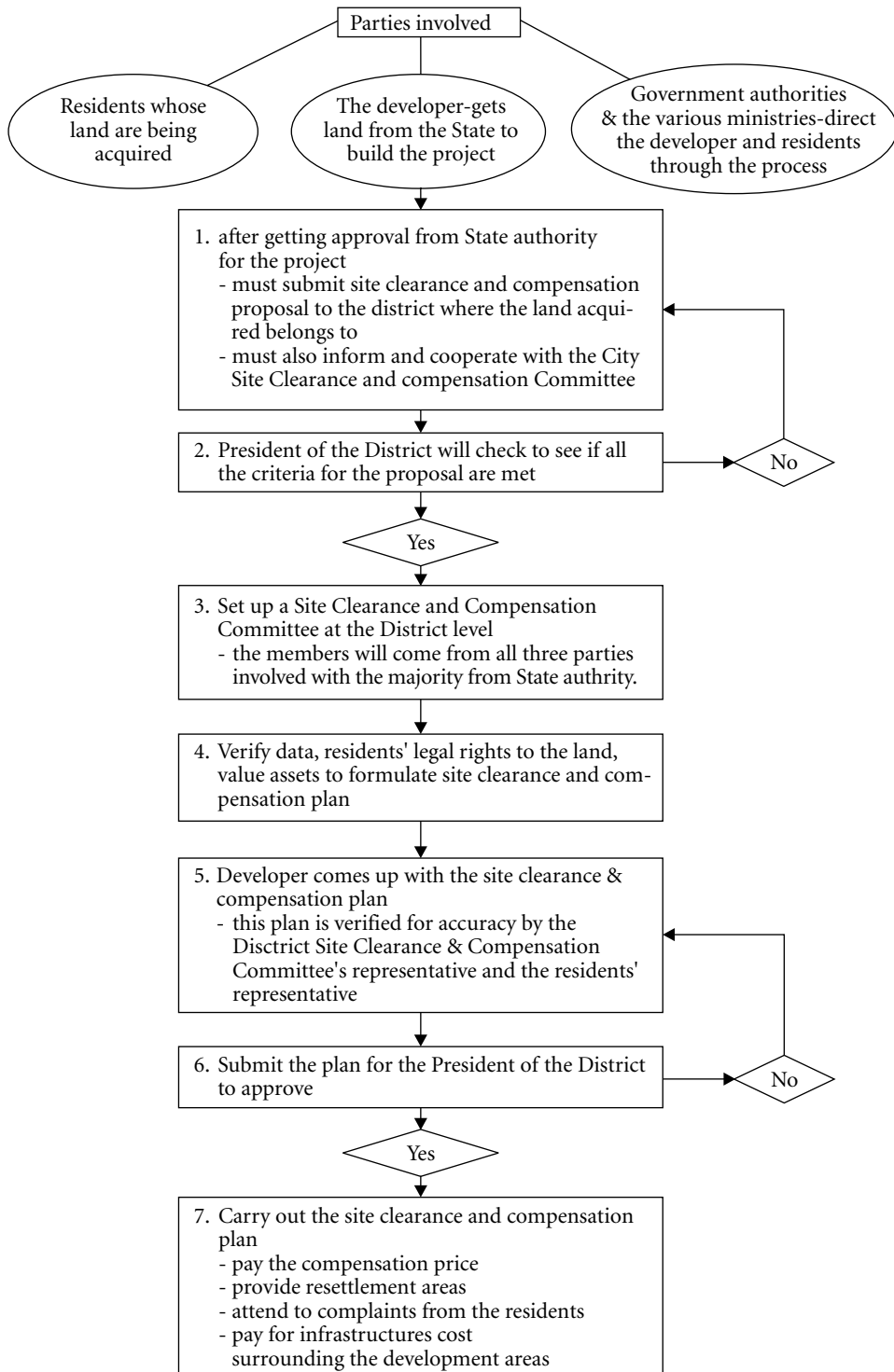


Figure 2. Site clearance procedures

the intention to facilitate project development in Vietnam, as these projects were deemed crucial to national development.

Land Law 2003 integrated and fine-tuned these various compensation decrees and the legal provisions dealing with land. Its approach involved establishing a price framework that was a close match to the market price. On average, the prices listed in the tables were supposed to be about 70–80 per cent of the market prices. The price table was adjusted every year on 1 January. Decree 87-CP also allowed for a variable *K* to adjust the price table according to different projects with different infrastructure requirements and according to the economic conditions in a particular locality. This variable *K* could range from 0.8 to 1.2 times the value in the price table.

This national perspective had a local parallel. In Hanoi, for example, the city government put into effect decree 26/2005/QĐ-UB on 18 February 2005. This decree spelled out the procedures, papers and committees in charge of the compensation and relocation of tenants within Hanoi City. The decree included 5 chapters and 42 clauses. The rights and responsibilities of the parties (developer and consulting company, committee of site clearance, local authority, individuals or groups whose land was acquired) involved in the compensation process and site clearance were defined clearly. With this decree, the compensation process would appear to have become totally transparent. The government now only helps land acquisition for public security and welfare projects, including projects that involve foreign investments. Thus, this decree has passed over all the negotiations concerning site clearance and compensation negotiations to the local developer and the sitting tenants. The government is no longer involved in the compensation process for these private projects. The case studies outlined in the next section will investigate the working of this system.

Compensation and Site Clearance in Two Project Cases

Selection of the Two Projects

Two projects were used in this study: the Manor and the Van Tri Marsh Golf Course. These projects are located in the western and northern suburbs of Hanoi respectively (Figure 3). A number of considerations were taken into account in the selection of these two cases. First, the projects were developed on acquired land and thus there was a component of compensation in the land acquisition process. Secondly, the projects were large ones, involving multifaceted compensation problems. Thirdly, both projects are located in Hanoi and thus they are comparable. Fourthly, the projects were of different development types, including a mix of residential, office, commercial and entertainment functions. Fifthly, the projects involved various types of developer such as private, local and joint ventures. These aspects were taken into account in order to have a fair representation of the various compensation issues in this study. Table 1 lists the main features of the two projects.

Six key informants were interviewed. Four of the informants were developers and two were government officials. They were all involved in at least one of the two projects. In addition to the interviews, marketing brochures and media reports of the projects were gathered. Each site was visited once in August 2005 in order to verify the size, mix of activity and current stage of development of the projects.

The Manor in Hanoi

The Manor is conveniently located in the western side of Hanoi in District Tu Liem. It is about 15 minutes away from downtown Hanoi, travelling by car or motorbike at a moderate speed. Within a 3–5 km radius there are large shopping centres, such as the Big C and Metro shopping centres. This is



Figure 3. Location in Hanoi of the two projects: the Manor and the Van Tri Marsh Golf Course

a mixed development targeting high-end living. It is the first of its kind in Vietnam to emphasise a luxurious lifestyle; the design is classic French architecture. The site area is 4.2 ha, divided into two implementation phases and five building clusters (Figure 4). Cluster A included two high-rise towers for mixed uses (offices and residential units); clusters B and C are condominiums; cluster D is a townhouse cluster; and cluster E is for villas and townhouses. All high-rise towers and condominium buildings have basement car parks and ground-floor retail shops.

Townhouses and villas are of four storeys and three storeys respectively. The total floor area is designed to be 152 491.38 square metres. This indicates that the project has a plot ratio of 3.6.

The project was expected to be complete by the end of 2006. Since 2004, the developer has launched a series of marketing activities for pre-sales. It has integrated project marketing into the development process, creating show-rooms built to international standards. The level of income targeted by the project can be seen in its rental prices: for a two-bedroom

Table 1. Main characteristics of the two projects

<i>Name of project</i>	<i>The Manor</i>	<i>Van Tri Marsh Golf Course</i>
Developer	Bitexco	Daeha (Daewoo and Hanel; later Nobel and Hanel)
Type of developer	Private local	Joint venture (foreign and local)
Position of the person interviewed	Project manager	Project Vice-president
Location	Hanoi	Hanoi
Starting date	Quarter 4, 2004	1995
Expected/completion date	Quarter 4, 2006	Quarter 4, 2006
Type of project	Offices, residential, and commercial	Entertainment and resort
Land area (square metres)	42 407	1 280 000

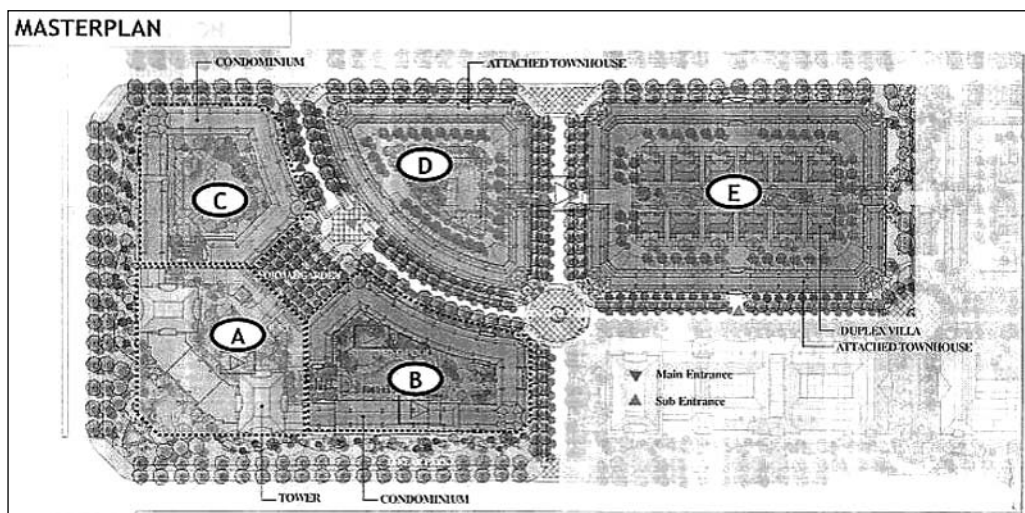


Figure 4. Layout of the Manor

Source: company brochure (courtesy of Pho Minh Thu).

unit, rents range from US\$1500–2200 per month; US\$2000–3500 for a three-bedroom unit per month; and US\$3000–4000 for a four-bedroom unit per month (<http://www.binhminh-houseservices.com/themanor/>).

The Binh Minh Import–Export Production and Trade Company (Bitexco), the private developer of the Manor, did not deal with the sitting tenants directly.² It contracted a state-owned enterprise, SUDICO, as its agent to handle the compensation and site clearance.³ This was because Bitexco did not want to be bogged down by the complex processes of land acquisition and believed that SUDICO, with its connections in the Party and administrative systems, could handle the land acquisition more effectively. Indeed, SUDICO was able to use its reputation as a large SOE with strong connections with the government agencies and the police force in acquiring land for not only Bitexco, but also for other major projects (such as the highway project and the official stadium for the SEA Games 2003) in the same area.

There were two groups of tenants in the area designated for the project: those who had lived in the area for many years; and those who had recently acquired the land use rights of parcels in the area. Making speculative decisions, many people (including government officials) bought land in the area in 1999 and 2000, believing it would be transformed into urban uses and thus that the price would increase drastically. These transactions were between individuals (rather than between an individual and a company) so that the transaction prices were mutually agreed among the parties with reference to the government compensation guidelines. In other words, the transaction prices were higher than the rates set by the government.

The acquisition process was a dramatic series of events. SUDICO could not reach a deal with either of the two groups of tenants. In 2002, when SUDICO began the land

acquisition process, both groups had high price expectations. However, SUDICO's starting-point, following the price framework set by the government, was at the level of compensation set for agricultural land. Thus, a tug-of-war started between SUDICO and the sitting tenants. People holding the land use rights in particular complained that the compensation offer was too low. However, SUDICO had no funds for an upward adjustment. When SUDICO demanded a compulsory acquisition, tenants rioted. Many projects in the area were affected by this problem in the land acquisition process.

The resolution of the problem was provided by Mr Phan Van Khai, then Vietnam's Prime Minister. He became involved as part of the broader land acquisitions by SUDICO in the area included in a corridor for a strategic road linking the SEA Games stadium with the main road network. The tug-of-war in land acquisition for the Manor Project delayed the acquisition of land for this road, which would have a negative effect on the SEA Games stadium. The Prime Minister voiced his concern to the Hanoi People's Committee and ordered a quick solution. With this order in their hands, SUDICO renegotiated with the tenants and convinced 70 per cent of the tenants to move out the area voluntarily. The remaining 30 per cent of the tenants were evicted later with the use of police force.

Van Tri Marsh Golf Course (VTMGC)

VTMGC is an 18-hole golf-course-cum-resort and recreational centre located in Kim No in Dong Anh district, about 18 km north of Hanoi and approximately 25 minutes drive from the city centre. About 9 km further to the north is the Ha Noi International Airport. This golf course is 128 ha in total area, including 93 ha of land and 35 ha of water. Van Tri Marsh Golf Course is the first international-standard golf course in Hanoi; it is a joint venture development by the Daeha Company utilising Korean (Daewoo) and Thai capital.

The project was one of the earliest large urban development projects involving foreign investment. It was licensed back in July 1993. On September 1995, the Prime Minister's decision (No. 559) approved the joint venture's acquisition of 93 hectares of farm land from Tho Da village, Kim No, District Dong Anh of Hanoi to construct a golf course and 215 villas for lease. After the approval, Hanoi city approved the compensation plan submitted by the Daeha Company on 2 February 1996. The level of compensation was set according to decree 90/CP which classified the land as public use since the project is part of the effort to stimulate Hanoi's urban growth (Trong, 2003). The price was 22 405 dong per square metre which was considered fair and in range with the compensation price paid by other projects nearby (Trong, 2003).⁴ There were disagreements as the villagers claimed that the compensation was too low, but with an assurance from the government that the prices were in line with the compensation guidelines, some extra monetary support from Daeha as well as promises of job opportunities for a member of each household after the project was completed, all compensation deals were settled by November 1998 (Trong, 2003).

By February 1999, when the ground was finally broken, Daeha had paid a total of US\$3.3 million for clearance and compensation. However, soon after its start, project construction halted because Daewoo had financial difficulties in infusing further capital investment (i.e. the US\$14.5 million) planned for the project. These difficulties eventually led to the withdrawal of Daewoo from the project (*Vietnam Investment Review*, 2002). The site was left idle for about two years until the ownership was restructured and the project restarted in 2001. In the mean time, the government decree on compensation rates had been redefined, providing a new table of higher prices in 1999 and 2000. Many of the villagers who formerly lived on the site

realised the differences between the new rates and the old ones. They moved back to the site and reoccupied the land. In 2001, when the project resumed with a new partner—the Thailand Noble's Development—these villagers refused to move out. The orders from the district government and the Hanoi People's Committee to clear the site were ignored. At that point in time, the project site housed 616 households. Residents set up barricades to prevent the entry of the developers and the construction workers. Added to the problem of disagreement over the compensation price, a new issue—the removal of new graves buried in the rice field on the site—emerged. According to local custom, fresh graves cannot be removed until 3–5 years after the burial and relocation can only take place in January or February. These delays added unplanned costs to the joint venture.

Attempts by the developer to resume the project led to fighting with the villagers, reported as headline news on 28 December 2004 in the *An Ninh* (Security) newspaper and the *Ha Noi Moi* newspaper as a 'riot' involving approximately 200 villagers from Tho Da Village (Ha, 2004; Anh, 2004). The reports indicated that the villagers brought along with them weapons such as knives, sticks, gas bottles, shovels and axes and attacked the security and the construction workers. Police were called in and 16 people were arrested. Some security and police men had minor injuries while others had to be hospitalised.⁵ After this incident, the police called for an official investigation to put the leaders of the riot on trial. The episode was finally closed when the developer paid an additional 6 million dong (US\$375.00) to each family, as well as contributing 3.4 billion dong to help build infrastructure in their new settlements. Although this provided a settlement to the dispute and helped construction work resume, the joint-venture company insisted that additional compensation was a

goodwill payment and insisted that, in legal terms, the villagers had violated the official compensation law.

Discussion

Two major questions arise from these two projects. First, why was there a big gap between the compensation set by market conditions and that set by following the government guidelines? The change towards a multisector market economy was supposed to remove government control on price and to use demand and supply conditions to determine transaction prices (AusAID, 2000), yet developers in both projects attempted to use government-set price guidelines in pricing land for acquisition. Secondly, why did the local government fail to reinforce the official rules of compensation? Doi Moi was designed in part to change the government's responsibilities, with more power being decentralised to the local states (Dixon and Kilgour, 2002; Coit, 1998), yet these cases show that local authorities have not become more capable of law reinforcement. In both projects, the resolution of the dispute was taken out of the hands of the local authorities, by Prime Ministerial decree or due to the pressure of adverse publicity. Hence it seems that the reality of compensation negotiations is the opposite of what was supposed to occur. We provide an explanation of that reality using the growth coalition concept and further investigation of the way in which local authorities approach law enforcement in major urban projects.

Evidence of a Growth Coalition between Developers and the State

In both projects, we observe three main players: the tenants as individuals, the developer as the firm and the authorities as the state. At first glance, there seems to be no common ground or foundation for an alliance. Each party blamed the others for

causing the dispute in the compensation process. Villagers/speculators pointed their fingers at the developers and the government for using lower compensation at low rates and at the government for their lack of support of the villagers' cause. Developers and the government blamed the villagers for their ignorance of the price guidelines, as well as their violation of the settlement agreements. Both the developer and the government supported low-rate compensation, but they clashed on other aspects: local authorities claimed that many developers did not look after the resettlement housing for the relocated tenants, while developers maintained that the government should give them more support in adhering to the (lower) compensation guidelines.

Yet both projects had pro-growth coalitions between the developers and the government, as both had a common interest in the rapid completion of the new development. There was a political gain (the road access to the official stadium of the SEA Games 2003 and the demonstration effect of a major project involving foreign investment) for the government, while the developers were concerned with early revenue returns.

The foundation of this coalition can be detected in the comments on the compensation rate by Mr H, one of the government officials interviewed

The price framework for compensation currently is not only used for site clearance, but also used as guidelines for all land-related valuations in the country. These include buying, selling, renting land and using land as contributions to joint-venture enterprises. If the price in the framework is too high, this will discourage foreign investments in Vietnam. It will also increase the operating costs of businesses as properties will be more expensive in the rental market (translation from interview).

The government compensation rates had other attractions. Operational difficulties in

valuation in a transitional economy where changes were occurring at a very rapid pace meant that the official rates provided some certainty. The price framework was only adjusted once a year, so developers could have an advantage created by the price gap due to a lagging effect. Finally, land was often overpriced by speculators where public infrastructure improvement had been made; the official rates provided a base to dampen down those expectations. As a result, compensation prices were used intentionally by developers and the government to achieve mutual benefit.

Reasons for Limited Law Enforcement by Local Authorities

The lack of prompt and effective support for compensation policy by local government can be explained by two factors. The first is the still-ingrained hierarchical authority in decision-making where higher-level governments are able to overrule decisions made by the lower-level governments, even in local affairs. This may be a survival from earlier Soviet-style management practice. Koh's (2004) research on local authorities dealing with illegal constructions found that local authorities purposely slowed down their actions in correcting development violations in order to minimise the possibility of being overruled by higher-level officials or authorities. Koh (2004) reported that in many cases the offenders might mobilise their network of connections to find an official with an administrative rank higher than the local law enforcement authority to intervene on their behalf. Thus, in the Manor project, local authorities did not make a move to help the site clearance until they received instructions from the Prime Minister. Before that, SUDICO acted alone as an agent in land acquisition, while local officials kept their hands off the process. After the Prime Minister showed his concern, the local officials and the police force acted promptly. There was no

uncertainty about possible interventions from a rank higher than the Prime Minister. In the Van Tri Marsh Golf Course project, the local authorities closed their eyes when the villagers moved back to the site after being relocated with an agreed settlement deal. As the conflicts got more exposure in the media, the chances of intervention from higher-ranking officials in favour of the villagers, who in this case had infringed a formal agreement, became slim. Public pressure including that from the higher-ranking authorities, together with the additional compensation award, brought the episode to an end.

The second reason for the lack of enthusiastic action by local governments is directly associated with monetary income or rent-seeking by law enforcement officers. The benefit of keeping one eye closed in law enforcement and of moving slowly in carrying out the required actions (such as inspections, issuing warnings, stopping construction) was to let the illegal development activities become a reality. In order to keep the structure, which was usually badly needed by the occupant, the offenders would be keen to pay a fine. This could come in the form of bribery to an individual law enforcement officer or his superior, or with official receipts for the organisation's revenue. Officials serving at the ward and district government levels were observed to use this approach for rent-seeking. In effect, the system was administered to collect fine payments which were linked with the income of the law enforcement officers.

Clearly, local officials sometimes drag their feet for rent-seeking and/or for avoiding potential confrontations with higher-ranking government officials who might be invited by tenants to intervene in the tenants' favour. Once the uncertainties are removed, by either media exposure or the presence of the highest-level authority, the same local officials can in fact move quickly to facilitate the land acquisition process.

Summary and Conclusion

Vietnam's cities have experienced major development since the mid 1980s, as a result of economic and institutional changes aimed at transforming the economy from centralised control to one that is market-led. Economic restructuring, growth and the consequent demand for land and labour have been part of this rapid urban expansion. In the case of land development, all these changes occurred without the guidance of a predetermined set of explicit policies and guidelines. Rather, a trial-and-error approach was used (Pham, 1995). In effect, as the old rules have been fading away, the new rules are yet to be established (Quang and Kammeier, 2002). So while the single-party state continues to affirm its commitment to state control over the economy (Dixon and Kilgour, 2002, p. 599), a private market-led land and housing market is emerging with ambiguous property rights inhibiting its functional operations (Kim, 2004; Koh, 2004; Leaf, 2002; Coit, 1998).

This paper has used two cases of land acquisition to show that the ambiguity surrounding property development has a complex new dimension associated with the compensation of existing owners. The government's intention in promulgating new land laws and decrees was to let market forces determine the allocation of land (and the prices paid) among owners and users. Thus, negotiations were expected to become more transparent; and the government has become less involved in the operational stages. However, the two cases demonstrate clearly that the facilitation of major projects, especially those involving foreign investment, reverted to compensation rates set by the government. One reason is the commercial interest of the developer allied to the political interest of the government, for whom government rates potentially offer a lower-cost outlet in negotiations with individual tenants, particularly farmers. The

latter are often the losers in land acquisition projects and are often portrayed as the 'bad guys' to be evicted and relocated by the police force. Ambiguity emerges at another level where the confusion in values and management of processes in the new land development business introduces tensions between different ranks of the administrative hierarchy, especially where local authority officials see opportunities for rent-seeking.

Several broad lessons can be learned from the Vietnamese experiences. First, it shows that the desire for maximising financial gains that is unleashed by economic development can limit and constrain local outcomes in the absence of a systematic and functional legal environment. Local outcomes suffer first due to delays to projects which are felt by government and the developers alike. Secondly, the lack of certainty and difficulty of receiving 'real value' mean that farmers are often unable to move and re-establish elsewhere, so that urban development dismantles the existing communities and potentially generates additional urban poor. The lack of resettlement housing and employment opportunities for the evicted farmers adds to a disadvantaged class in the cities in Vietnam. Social stratification is an unavoidable consequence here, itself creating problems for government policy in the future. Thirdly, disputes and riots resulting from unsatisfactory compensation in land acquisition challenge the legitimacy of the government which has an expressed interest in more rapid urban change. Locally, the lack of protection of the rural poor will weaken the base of the Communist party which has relied upon workers and peasants as its main building-blocks.

Together, these aspects of the problem elevate what is a local and purchase question to high levels of national policy requiring the government to address issues that have been debated widely in other contexts concerning equity and growth, social stratification and

the political economies in urban development. As the rapidly growing number of cases of land price compensation problems experienced in China has shown, the consequences of poorly managed local and development questions can begin to undermine a broader development agenda. This is especially so in circumstances where development is funded by foreign direct investment. Where the future of a project is uncertain for the basic reason that it is not possible to agree on costs of compensation, nor even possible to find a system to arbitrate between competing estimates of compensation, global funding sources will mark down opportunities and begin to look elsewhere.

This could prove to be a more serious problem as Vietnam's transition towards a market economy begins to be felt in land use changes in established urban areas especially involving the old industrial undertakings run by SOEs and other urban tenants. Development projects here will introduce a different set of actors and a new set of power relations in future compensation arguments. The number of non-state players in the land and housing market will increase as the volume of transactions grows and land will move into the centre of business concerns for both public and private decision-making. In these circumstances, it may not be enough for the government to rely upon the market to set compensation rates. Rather, it might be called upon to express some more formal rules governing economic and urban development transactions, providing clarity, comprehensiveness and transparency in purchases driven by economic restructuring. Although this might seem a step back from their desire to free up the market, it will be a step closer to the circumstances that rule in the more certain land transactions in cities and rural areas of the developed world. In future research, it will be interesting to analyse the local political and economic tensions that emerge as land development begins in complex redevelopment areas.

Notes

1. A mu is a Chinese unit for area measurement: 1 hectare equals 15 mu.
2. Bitexco is a 100 per cent domestically owned company specialising in textile production and trade. The company focuses on exports to Europe and the US as well as Asian countries. Bitexco is also the owner of the bottled mineral water brand Vital (*Asia Times* on-line, 10 December 2003 http://www.atimes.com/atimes/South-east_Asia/EL10Ae05.html; accessed on 9 Feb 2006).
3. SUDICO is a state-owned enterprise affiliated to the Ministry of Construction. It was set up in 1960 with major businesses of investing in and constructing hydropower plants, electricity transmission lines, transformer stations and large industrial and civil works. Currently, the corporation is focusing on investing and building urban areas and industrial parks, aiming to become a powerful economic consortium (*ICT for Business*, 2005).
4. US\$1 was about 16 000 dong in 2005.
5. It was not mentioned in the report whether there were injuries sustained by the protestors. We were unable to contact the people involved in the riots to check this.

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