

CB-11

INSTITUTE OF CURRENT WORLD AFFAIRS

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WHOSE LAND IS IT ANYWAY? (Part 1)

Vietnamese peasants play poker with communism
and get ready to play monopoly

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Dear Peter,

It is a fragile document, hardly thicker than an onion skin. Nguyen Thi Vinh, a 37-year-old scrawny farmer from Quoc Tuan Commune, 100 km east of Hanoi, treats it as delicately as precious porcelain. With soft and meticulous care, her bony fingers smooth out the 8 1/2" by 11" grayish paper. She lays it down on the old wooden table. "We received it a few weeks ago," she says crossing her hands on her knees while we bend down to look at the flimsy sheet.

There on the table sits a *Bien Ban*, an official document telling Vinh that the six *sao* of land she grows food on to feed her two children are hers to work "for a long time." (A *sao* is a Vietnamese measure equivalent to 360 square meters.)

- "How long is a long time?" I ask.
- "*Lau dai*," she says, refusing to be more specific. "A long time."

A few hundred meters away, Vinh's neighbor Nguyen Huy Hoa thinks "*lau dai*" means five years. Other farmers think it means ten. At the People's Committee, the Vice-President says "*lau dai*" means three years. But many farmers are obviously gambling that "*lau dai*" means "forever." Here, in the North of Vietnam, where since 1945 a piece of land has been something authorities could take back and reallocate to somebody else with more "mouths" to feed or simply more powerful friends, the "long time" has unleashed tremendous forces and ignited an underground revolution yet to be documented.

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Since 1925 the Institute of Current World Affairs (the Crane-Rogers Foundation) has provided long-term fellowships to enable outstanding young adults to live outside the United States and write about international areas and issues. Endowed by the late Charles R. Crane, the Institute is also supported by contributions from like-minded individuals and foundations.



Holding her temporary Land Tenure Certificate,
Nguyen Thi Vinh meets French agronomist
Mathieu Bousquet and rural engineer Dong

"Nothing in the Law says what happens when that long time is up," reports a foreign expert who has worked in the countryside for the past two years, and who wishes to remain anonymous to protect his research. "In Vietnam there is still no private ownership of land. The land belongs to the people and is managed by the State. But with the issuance of user rights, a real market is developing fast."

According to him, land rights are being transferred and sold. Some peasants are concentrating land, hiring labor to cultivate it. "Peasants have observed the tendency of the reforms," he says. "They believe that if the same logic keeps being applied, ownership of land will be legalized before the next reallocation of land takes place. They will not say it, but their actions speak louder than their words. In the hills, in another province, one young farmer told me he would fight if the authorities wanted to reallocate his land to someone else. Reality is moving much faster than the Law. Last week I overheard a farmer saying he had sold his garden for 5 million dong (US\$500)."

Back in Hanoi, the National Assembly of Vietnam is discussing a new land law. Elected members from all over the country have gathered in the humid and sun-baked Vietnamese capital. A draft of the law was published in April, in Nhân Dân, the People's Daily. It took seven years and 70 drafts to come up with the present version. Debate is still fierce. "The land is the most important thing after water," says Cam Ngoan, Vice-Chairman of Vietnam's Union of Peasants, the official peasant umbrella organization. "When the people fought for independence they were fighting for the land." (1)

The new land law will not make dramatic headlines overseas. There will be no Russian-style "coup de théâtre." Lenin will not turn in his grave once again, and his statue will stand firmly in place on Dien Bien Phu Street, in front of Hanoi's War Museum. Article 1 of the Land Law of the Socialist Republic of Vietnam will remain unchanged: "the land belongs to the people under the management of the State." Private ownership of land will not be allowed. People can own houses, crops, trees but not land. Numerous amendments to the 1988 Land Law will be voted on. They have their importance and I will tell you about them, but they are not the main story.

Thi Vinh is the main story; she and thousands of others. Out there, behind the bamboo hedges, traditions, customs and the new demands of a market-economy are reshaping Vietnam land management. Often in spite of the law, or in varied interpretations of the law, people are acting according to what they perceive as their best interest. In the South some sell their land although it is illegal. In the North, they transfer it, exchange it, lease it. "In Vietnam people respect tradition and custom even more than the law," says Hanoi history Professor Vu Minh Giang. "This may not be a correct approach but this is a fact."

"The old people's aura is bigger than ever," says Mathieu Bousquet, a French agronomist working for *Groupe de Recherche et d'Etudes Techniques* (GRET) in conservative Hai Hung Province. "Some of them remember the years of market economy. Younger ones come to them for advice: how to choose the best crop, how to obtain market information, how to deal with middlemen." (2)

A French governmental aid organization, GRET came to Vietnam four years ago to do agronomic research. Engineers and agronomists quickly realized they had a lot to learn before they could understand the reality of what confronted them: peasants registered

(1) Ngoan does not like it when I use the word "farmer" to describe the Vietnamese working on the land. He prefers the word "peasant". He says the Vietnamese are not yet "farmers" but does not make clear when or how the change will occur. However, for the sake of understanding, I have used "farmers" all the way through this newsletter.

(2) Peasants need all the advice they can get. Last year, attracted by the high price of garlic (1500 dong a kilo), hundreds in the commune of Quoc Tuan planted the crop. Prices fell. This year's price for garlic is 500 dong a kilo.

as "users" in the commune land-registers were not, in fact, the ones farming the plot, brigades (working units) meant to receive water for their plots a certain day did not get it because other brigades had more power over the director of the water station. (3) Not much of what was "in the books" matched what they found on the ground. And few people were willing to answer their questions. "That's when we called in the sociologists and the ethnologists," says Pascal Bergeret, director of the GRET team.

That was only a few months ago. And GRET is far from knowing all the answers. But they have "inklings." "We think families are striving to reconstruct ancestral land patrimony," says one of GRET's workers. "We think clans hold lineage meetings and discuss strategies to regain land. But we are not sure. We will not know before the end of the study, in 1994."

We sit in the cluttered dining and meeting room of GRET's Rural Development Center in the province of Hai Hung. The power has been off since the morning. Laborers have stopped working on the showers. The main gutter is broken and gushes of water come crashing down near the kitchen. Shadows from the petrol lamps dance across the dilapidated walls. The long table is covered with finely drawn maps. Plots of land are neatly painted in watercolors representing different families of the commune. "This purple one is the head of a very big family," says Dong, the talented young Vietnamese engineer who drew the maps. "You can see how the plots surrounding the head of the clan are all purple too." (GRET has a map showing which family farmed which plot before the collectivization of the 1950's. They hope to compare it with maps of the land redistribution that followed the new Land Law of 1988 which took the land away from the cooperatives and gave it to households.)

For the French researchers, the consequences of the new Land Law soon to be voted in Hanoi cannot be foreseen without a profound understanding of the past and of local Vietnamese customs of land management. History and families, they say, are the key.

In early Vietnam, before the 15th century, the village had authority over the land. Climate was harsh in the North and life difficult. People depended on each other. "The land needed to be irrigated so people had to work together," explains history Professor Vu Minh Giang.

(3). Brigades are a structured social unit. A village may comprise a few brigades. Each brigade may comprise over a hundred families, sometimes more. During key cultivation periods, when the rice fields can not survive more than four or five days without water, brigades will receive water on alternating days. As the water must sometimes be pumped through one brigades's fields before it reaches the others, there are stories of brigades hiring guards to make sure the water is not "stolen" at night. Those guards sometimes get beaten up. A brigade comprising a strong core of people from the same family can often band together and apply pressure to get more water from the pumping station. To be of the same family as the director of the water station is always a plus.

During the 15th century, all land went to the State (then the King) which allotted it in order to maximize its use. "Compared to China, Japan or Korea, Vietnam had a low level of privatization," says Professor Giang. "During the 17th century, while in Japan 217 households controlled the land, the Vietnamese Emperors had no land as their own possessions."

King Lê Thái Tho (1428-1433) even put a limit to the amount of land an individual could own and distributed land to others who did not have enough. Not that everybody was equal but people of the same rank or social status were supposed to have equal amounts. The land reverted to the State for redistribution upon the "owner's" death. Under the Lê dynasty, land was redistributed every four years. "The land system worked reasonably well. It helped to keep land from becoming overly concentrated in the hands of a few," writes Ngo Vinh Long.(4)

There was "some" privatization, says Professor Giang. But it was never "perfect," never similar to the European concept. "The State could take the land away from people who had committed crimes, for example, or from people who did not work the land. The State would not allow land to be wasted for more than two years. There was always a sense of limit." The South, having been colonized much later, underwent very different patterns. (Many Vietnamese who emigrated to the South were fleeing the very strict land control of the North. In the South, land was up for grabs, just like in America's Far-West.)

Giang insists he does not mean to say Vietnamese peasants do not want to own land. "They prefer to be given land individually," he says. "It is the state control they do not like. Traditional control is accepted, such as by the elders or the commune."

The French takeover affected the ruler's supreme control of land and Vietnamese traditional land policy. In 1897, the Emperor renounced his rights on the land. All land not occupied by indigenous people was confiscated and redistributed to French settlers or friends of the colonial regime. More land was fraudulently obtained and rented to Vietnamese who became tenant laborers. Many Vietnamese fled their land to escape the violence of the French invasion; half of the North's peasants became landless.(5) A "real market for land" was born as recently as the 19th century, with written transactions and ownerships titles.(6)

In 1954, under HoChiMinh's communist regime, the land of "rich peasants" (one or two hectares) and "land owners" (three hectares) was confiscated. The land of poorer peasants (less than one

(4) Before the Revolution, The Vietnamese Peasants under the French, Ngo Vinh Long, Columbia University Press, New York, 1991.

(5) Ngo Vinh Long, *ibid.* p. 24

(6). "Thái Ninh et Ninh Dan - 100 ans de changements", par Mathieu Bousquet et Tran Quang Thong, Sept. 92 in Projet de recherche sur les systèmes agraires du bassin du Fleuve Rouge

hectare) was bought at a very low price. All land was then redistributed. "Criteria were vague and allocation depended often more on the person's commitment to the war than on his family's needs. Peasants did not perceive the allocation as equal." (7)

Peasants worked then in cooperatives. Their share of the cooperative production depended on how many "mouths" they had to feed and how many days they had worked, no matter how hard. Each farmer kept two *sao* for its house and its personnel garden.

Later on, in 1970, remuneration was linked to the number of hours peasants spent working. (Tougher jobs earned them more "work points." For example 30 points for building dikes and 15 points for planting rice.) But that system too bred discontent. In 1975, soldiers returning from the American war managed to get "work points" for fictitious jobs. Although the war was now over, peasants had even less to eat. The cooperatives' productivity fell. By the end of the 70's, close to 40% of the cooperatives did not produce enough to pay taxes.(8)

A major attempt at reform came in 1980, with Communist Party Resolution 100. Farmers signed contracts with cooperatives. The cooperatives supplied all equipment and fertilizers and determined an "expected" production for a certain plot of land. The farmer could keep for himself whatever he produced over that. The rest had to be given to the cooperative. Production increased but not enough. There were still too many "irritants." "Between 1980 and 1988, peasants clearly benefitted more from their work," says an Australian report on Land Management. "There were differences between cooperatives but the tendency was the same. However, "land status" remained insecure. Peasants wondered if the land they were investing in would be allotted to somebody else in three years, or even the following year."(9)

Another major attempt at reform came in 1988. The household replaced the cooperative as the main economic unit. Land Tenure Certificates (LTC) began to be issued in 1990. In 1991, the 7th Party Congress of the Communist Party, resolved to allow transfer of land use rights, inheritance of land use rights and the right to mortgage land use rights. (Two years later these rights are still widely misunderstood.)

(7). Mathieu Bousquet et Tran Quang Thong, *ibid.* p.19

(8). J.-L. Sabatier, "Réflexions sur l'érosion et les systèmes agraires dans la zone des collines de la province de Vinh Phu", IRAT, 1987. According to Sabatier, during the 1960-70 period, peasants saw a form of "social differentiation" being recreated. In this case, belonging to one brigade instead of another, being chosen to keep the cattle, belonging to the family of a cadre, etc. brought differences in income. Moreover, power at the People's Committee and Cooperative was monopolized by certain families.

(9). Feasibility Study on Land Management System, Report #1, In cooperation with the government of Western Australia and the Institute of Land Management, April 1993. (Draft)

The present land tenure system is based on the Land Law adopted in 1988, Politburo decision no.10 and Government decrees no.30 and no.67 which give implementation instructions. Decision 201 of the General Department of Land Management lays out the rules for the issuance of Land Tenure Certificates.

To put it simply: the land is owned by the entire people of Vietnam and the State is designated as its manager. Land "users" obtain their right from the State. The land users are entitled to own the buildings erected on the land as well as the fruits of their labor (crops, fruit trees etc). The 1988 Land Law was a significant innovation not only in its content, but because it is a law not a decree. Until then the State had ruled land management through decrees it could easily change. "The 1988 Land Law is a radical change in Vietnam's political system because it redefines the relationship between the State and the people," writes Peter C.Bloch of Wisconsin University. "Both State and people are equally bound to observe the laws. It is also much more difficult to change a law than to issue a new decree."(10)

But the Law created as many problems as it solved. It took so long to be adopted that by then "the law had been overtaken by the speed of the renovation process".(11) Therein began the process



Lenin statue stands firm among the palm trees in Hanoi's Chi Long Park

(10). Peter C.Bloch, Land Tenure Center, University of Wisconsin and Tommy Oesterberg, Swedsurvey, Gävle, Sweden. "Land Tenure and allocation situation and policy in Vietnam with special reference to the forest development area."

(11). Australian Land Management Feasibility Study, Ibid. p.36

leading up to the new draft version now being discussed at the National Assembly.

"But this new Law will not solve all the problems either," admits lawyer Pham Huu Nghi, addressing a June seminar on the Land Law. "We have identified at least 23 major problems with it. And most likely the law will be adopted with those problems unsolved. The authorities are hoping that practice will help them develop solutions."

History professor Vu Minh Giang could not agree more. According to him, land management history and tradition is so diversified in Vietnam that the law, whatever it is about, will always be applied differently from one province to another, even from one commune to another. "There is not one history of land ownership," he says. "Each region has its own history." (Historically, for example, land in the North, being scarcer, was most often managed by the whole community with the aim of ensuring that every villager had some land to farm.)

I think of those differences as I ride at the back of a heavy Russian-made Minsk motorbike down the muddy roads of Dong Xuan commune, scaring away slow-moving buffalos and overcoming heavily-loaded bicycles. In many ways the countryside seems as peaceful as possible. Paddy-fields stretch from here to the horizon. As far as one can see, in all directions, these fields are dotted with conical straw hats. Over 1500 people live in the four villages that make up this commune.

Land allocation around here was done only a few months ago, even though the policy to redistribute the land of the cooperative to the household was adopted in 1988. Dong Xuan is one of three pilot communes where the process has been conducted. Forty kilometers away, in the An Binh commune, land has not been reallocated yet. Many other northern provinces are in the same situation.

When the Quoc Tuan commune announced the reallocation early this year, all heads of households quietly went to the meeting. Numbers corresponding to each of the commune's plots of land were drawn on small cardboard pieces. The pieces went into three boxes: one for the "good" land, another for the "average" land, and a last one for "poor" land. A special Committee had already classified land and calculated how much each family could get.(12) In Quoc Tuan, farmers stuck their hand in the boxes and pulled out numbers. The meeting lasted three hours (compared to six or seven in some hill communes where arguments were fierce.) Many plots changed hands. Some people got nothing. Others now have more than 10 *sao*.

Farmer Huy Ha farmed nine *sao* before the draw. He now farms six. That is because more people took part in the draw this year. In

(12) This process varies from commune to commune. Basically, the total amount of agricultural land (excluding garden, housing and other communal facilities) is divided by the number of eligible peasants. Different communes exclude different people (ex-prisoners, returning soldiers, laid-off factory workers, etc.) In Quoc Tuan alone, the whole process would require many pages of explanation.

Quoc Tuan, a sign of the importance of the ongoing poker game is the number of people who took part in the January draw. Previously, some inhabitants did not demand land. They preferred to earn a living trading or doing some other activities. In early 1993, when land was about to be reallocated they all entered a claim and took part in the process. "Obviously they think some perennation of land rights is going on," says the foreign expert. "They do not want to lose out on it".

Since January, farmers unhappy with their draw have exchanged land with neighbors or family members. Some have notified the People's Committee of the transaction. Others have not. Some have sold their right of use to another farmer who is now hiring labor to work the land.(13) Others again have sold their house and garden - and the land they stand on - and have gone to the central provinces to work on rubber plantations. Huy Hoa himself was offered ten million dong (US\$1000) to sell his garden and house to the member of a big local family. Officially, those cannot be sold. They must be returned to the cooperative which will reallocate them or resell them, nobody knows for sure yet. In Quoc Tuan, the average cost of good gardening land seemed to be around 300,000 dong (US\$30)a *sao*. When farmers attempted to transfer their rights to commune "outsiders", the authorities forbid the new user to farm.

In the dusty room of Quoc Tuan's People's Committee, Vice-Director Le Kha Khanh tells me people who sell land "do not respect the policy of the State." According to him this does not happen in Quoc Tuan, but he admits some "concentration may take place in the future because some farmers want the land as capital." Next to him, leaning on the wall, keeping silent for the whole hour of our meeting, sits the local head of the Communist Party. We all drink tea as usual. Questions proceed slowly. Cigarettes butts accumulate under the Vice-Director's chair. I begin to think of a poker game. Much is hidden. Farmers are gambling and the stakes are high.

Right now, Quoc Tuan farmers such as Vinh have only what some people call a "White Book." The real Land Tenure Certificate, emitted by the Vietnamese agency for Land Management, is a "Red Book," a rather well-designed cardboard booklet I saw once in Hanoi. According to Quoc Tuan's officials "Red Book" will be handed out "soon," once the provincial authorities have verified that all was done well. "Officials from the province or the district will come in the near future to distribute them," says Vice-Director Khanh, his bare feet hanging from his worn-out grey trousers. "We do not know when they will come." (14)

(13). According to farmers, mostly young men become hired labor. They roughly earn 7,000 dong (70 cents) for each *sao* they harvest, or 6,000 dong (60 cents) for each *sao* of replanted rice.

(14). Reasons for delaying the emission of the "Red book" are still unclear to me. Some people say the "Red books" can not be given out when the commune does not have a very clear *land register*, which is the case of numerous Vietnamese communes. Others says authorities tend to delay giving out the "Red books" as long as they can, hoping to keep some room to maneuver if they ever decided to change some of the land allocated.

Talking to local authorities about land allocation is a tricky process requiring much diplomacy. A few weeks ago, two French researchers were expelled from a district after they had worked there two months because they were finding out too much about the concentration of land in the hands of a few officials. "The Australians want to do the whole *cadastre* of the country?" says bewildered Mathieu Bousquet, a French agronomist working for GRET, after hearing about the United Nations backed Australian project. "I wish them good luck! In 1923, the last time the French tried to write a land register, riots erupted in some villages. To define a *cadastre* you have to know who has title to what land. And that is the most explosive issue right now in this country." (15)

For all their expertise, the GRET people were not invited at an informal sectoral non-governmental organization (NGO) meeting held in Hanoi June 7th to try to clarify the Land Law and its impact on NGO activities. Attendants at the meeting were mainly Australians, British, American and Swedish. "I have never heard about GRET," admits Ian Neave, a Care Australia worker and the organizer of the meeting. (The informal meeting of June 7th certainly showed how little the groups knew of the legal framework and even of the traditions regarding land.)

The GRET workers themselves do not go out of their way to share their knowledge. Some of them do not hide their dislike of the way the Swedish and the Australians approach their work. "They always work with the authorities," says one GRET worker. "They never go to see a farmer without an official. How can the farmer speak openly?"

The Swedish point of view is not to be easily discarded. They argue that their action points toward "institution building." They believe that by working in close association with the Vietnamese Land Management Office they will strengthen its capacity to fulfill its mandate.

Krister Rubensson, Director of the Swedish Forestry Project, says "we" when he refers to the General Department of Land Management--better known by its acronym GDLM, the official government agency responsible for land registration and allocation. (GDLM is an office belonging to the Government. Its Director has the authority of a Vice-Minister and attends Cabinet meeting but may not vote. He reports directly to the Council of Ministers.)

The Swedish and the Australians are cooperating on a project to assist Vietnam in the redesign and modernization of its land management system. Supported by the United Nations Development Program (UNDP), the Australian Land System Feasibility Study fits, according to UNDP's Rolf Herno, in a strategy of "strengthening the center" so that provinces "will fall in place."

The land register is not only a "political" issue. It is also a logistical nightmare. In a 345-page preliminary report completed

(15). The term "cadastre" is a French derivation of the Greek word "katastikhon" which means "line by line". By definition a land register cannot operate effectively without a cadastre.

early June 1993, a team of 20 Australian experts estimated - not considering social and political problems raised previously - it would take them two generations to complete the cadastral mapping. Still, they believe, it must be done if the country is to move forward and development is to come to the rural areas. "Lack of records results in the Government being unable to value land properly and to tax it effectively in order to raise much needed funds for public services," write the Australians. "A land information system is seen as critical in settling land disputes thereby releasing land for productive socioeconomic activities."(16)

The Hanoi office of the GLDM is a good example of the massive task ahead. The dilapidated office building sits at the end of an unpaved muddy alley, a few meters from Bach Mai Hospital, in the southern part of town. The only sign of it is a small blue sign with a white arrow pointing to the alley. "At first they asked us for a switchboard and some air conditioners," says Herno. "We could not believe they did not have a switchboard."

Documents deteriorate fast here. There are no air conditioners in the offices and documents grow mold. They deteriorate even faster in the rural areas. Title registering books are rewritten every few years. To help with document protection the Swedish Project is buying tin boxes and giving them to communes.

Cadastre cadres in the communes are paid between 5,000 and 10,000 dong a month (50 cents to \$1US). They are alone to do a massive and difficult mapping task. "The process of issuing LTC is outstripping the capacity of the surveyors," clearly states the Australian report. So some provinces are issuing "temporary" certificates while waiting for the mapping to be done.

Krister Rubensson who has studied Vietnam's land management for over eight months admits he still does not know how many different types of "Land Tenure Certificates" there are.

Hanoi officials are often as puzzled as he is. During the informal NGO meeting held in Hanoi, officials from the Forestry Ministry saw for the first time a small "Pink Book" used as a Forest Land Tenure Certificate in a Northern province. "They tell me it is obviously issued by provincial authorities, and does not have the strength of a Red Book," says Ian Neave.

All over the country the 1988 Land Law was applied differently. Ian Neave who has worked for the past two years in a northern province has not yet seen a Red Book. "None of the farmers I work with know how long the land will be his to use," he says.

At the Union of Peasants, socioeconomic adviser Dang Tho confirms that the duration of the user right "depends on each area."

Various reasons are given for those differences. "In many provinces they simply do not have a cadastre precise enough to issue Land Tenure Certificates," says Rubenssen. Others disagree.

Cadastre in the South - until recently a pioneer country where land was up for grabs - are said to be much less detailed than the Northern ones but more LTC have been issued in the South than in the North. "Power, tradition and money are the big issues," says Mathieu Bousquet.

Another source of confusion is the lack of coordination between ministries. The Ministry of Agriculture, the Ministry of Water Resources, the Ministry of Forestry, the Ministry of Energy - to name a few - all have their "land use plan". The same plot of land may be listed as agricultural land at one ministry, and as forestry land with another ministry. Many authorities issue their own maps (including the Army). "The overlap is mind boggling", says Paul Fortin, a Canadian lawyer now assisting the Vietnamese in the drafting of Vietnam's Mining Law. "And they do not talk to each other. There is an urgent need for some coordination."

Another foreign expert is even harsher. "Their administrative structure is a huge problem," he says. "It is like a Vietnamese soup, you do not know where it begins and where it ends, who has responsibility for what. It is a good way to diffuse power, to make sure nobody concentrates too much information, but it is also not very efficient."

The confusion is breeding disputes. Tons and tons of them. Southern farmers whose land was confiscated following reunification are now claiming it. Children are claiming parents' land. Vietnamese lawyers quickly acknowledge the need for a system of administrative courts to resolve disputes of all kinds. "Our legal system was clearly not prepared for all the changes brought by the transition to market economy," says Hoang The Lien, Vice-Director of the Institute of State and Law. "Those questions will take many years to be resolved." (Presently, property disputes are solved by People's Courts, land disputes are solved by People's Committee.)

Lien and other lawyers, judges, and law enforcers gathered in Hanoi in June for a four-day long seminar on "Law and Society" funded by the Asia Foundation, an American non-profit organization. "The rule of law must be responsive to change," said Foundation Bangkok director Richard Blue, addressing the seminar. "However elegant a law can be, it will not be relevant if it is not responsive to the needs of the people. The law must enable people to act with the assurance that the law will protect them."

Some encouragement came from Dr. Pisawat Sukonthapan, a Law Professor from Thailand, who recalled the very recent process of modernization of Thailand's Laws. "Art.4 of our Commercial Code says that if we do not find what we need in the law we can use custom," she said. "We keep modernizing our laws. Citizens must know exactly what the law says. Laws should be easy to find and understand."

Everybody agrees this is far from the case in Vietnam today. "There is no harmony in their body of laws," says a Western lawyer. "Their new laws were drafted with the help of many countries. They have borrowed from many different traditions. There is a need for

harmonization. And an even bigger need for education. People simply do not know what is in the law."

The emergence of "individual" rights is also puzzling for the Vietnamese lawmakers. Land, according to the 1988 Land Law, was allocated to "households." A Land Tenure Certificate is made under the name of the head of the household but the whole family is "the user". But then what happens when the husband goes to work in town? Who "inherits" the land use right when he dies?

A house can be disposed of by will. It is not the case for land use right. The land use right passes on to an "appropriate person" in the household. The "appropriate person" is determined by the People's Committee in application of inheritance laws. The ability of a person to inherit the land depends upon her capacity to take over the farming. (I have not seen the Ordinance on Inheritance. More on this in a future newsletter)

So many problems have arisen that many Vietnamese are now pushing for "individual user rights" instead of "household ones". Vietnam Women's Union has complained that women - especially ethnic ones - are being shortchanged by the procedure. In some provinces, even though they are often the ones working the land, the names of the male head of household is often the one appearing on the certificate. Women wanting a loan can not get it without the signature of the head of the household. (In Dong Xuan, on the contrary, many women's names appear on the LTC and authorities say it is normal because they are the ones working on the land)(17)

At the Union of Peasants, Dang Tho admits peasants are divided on the question of land ownership. "The rich peasants want to invest in the land. They want to own it."

This trend is worrying Vietnamese authorities. "In Bangladesh and India, 40% of the peasants are landless," says Tho. "We do not want this to happen in Vietnam. Through land redistribution we hope to avoid that. Maybe, when the rural areas are more industrialized, when there are jobs for peasants and the food output does not decrease, it will be different."

To control the phenomenon, the new draft of the Land Law proposes to allow transfer of land use right but sets a limit on the level of "land use right" purchase each farmer is allowed. But "land allocation" can be unfair too. "Land allocation" can be done in favor of the strong or the rich as British forester Sam Edwards noticed in the northern province of Song La. "Only richer peasants can make the capital investment needed to plant coffee, so the land is allocated to them. The ones who may need the land most do not get it because they have no access to credit." During a recent

(17). A 1989 Survey showed that women of child-bearing age bear a greater share of agriculture work than men do. The situation is particularly difficult as Vietnamese men working in the cities, for example, often have, apart from their legitimate wife on the farm, a "minor wife" (*vo le*) and even sometimes a "local wife" (*lay le*) in the city where they work.

forestry NGO meeting, Edwards asked the Ministry's officials to comment on that. He received no response.

"Land allocation" is a wildly complex process. The general idea is that all land (except land on which a house is built, and land used for private gardens) is put back in a "pot" and authorities re-allot fields using a variety of criteria. For example: young families with children should have more land than older men who need less and are able to work less; families of wounded soldiers should have advantages, etc. From province to province, and commune to commune, the process seems to vary immensely. Nobody seems to know how often "reallocation" should occur. In some places, it was ritually done every seven years or so. The new Land Tenure Certificates might change all that. But nobody knows for sure. "Farmers want to know exactly what will happen when their certificate expires," says a Swedish forester. "Nobody knows. And even the new draft law does not tell."

In one northern commune where land was allocated in 1992, indebted peasants were not allocated land. Or rather, the land they would have been allocated was temporarily given to somebody else while the peasants repaid their debt. In some communes, peasants' debts to the cooperatives are very high. When the cooperatives redistributed land, it also sold its animals and equipment. Most of the peasants, having no money, were "credited" their acquisitions and are now still in debt to the cooperative.

No matter how hard the authorities try to avoid it, social differentiation continues to increase. In 1990, in Ninh Dan commune, three peasants each bought a car, 115 built brick houses between 1990 et 1991 while others still live in mud huts and had to sell some of their belongings to survive.(18)

But not everybody thinks land concentration is wrong. Lawyer Hoang The Lien believes "some land concentration may be the only way to develop the countryside, to industrialize food processing. The new land law must be suitable to the market mechanism."

It is early morning in Hanoi and over 30 people have gathered in a stuffy meeting room under the watchful eyes of a huge portrait of HoChiMinh. Lien, and another young lawyer, face about 30 Vietnamese and foreigners. The reports they give after a few months of studying land allocation in five northern provinces are unanimous: allotting land to peasants was a good decision. However, because the farmers do not know how long their land use rights will last, they hesitate to make "in depth investment." "We must guarantee them stable utilization," says Dao Tri Uc, Director of the State and Law Review. "Farmers should also be allowed to change the use of the land they were allotted. For example, they should be allowed to grow food on forestry land if it is in their interest."

Land in Vietnam is presently classified under general categories: agricultural, forestry, residential, specialized, and unused. Specialized land covers salt marshes, historical places, cemeteries, mines, etc. Lawyers are suggesting that people who wish

(18). Bousquet, Ibid. p.51

to use land for a different purpose than the classified one pay "adequate compensation".

The lawyers' vision obviously irritates some of the Vietnamese participants. Many whisper between themselves and even argue loud enough to disturb the seminar. "This may lead to the cooperatives being dissolved and people reclaiming their land," protests Du Yen, white-hair Director of Land Management for Vinh Phu Province, west of Hanoi. "This would bring instability in the rural areas".

Young lawyer Huu Nghi is not moved. "The cooperatives are already on the verge of dissolution," he says, patiently cleaning his glasses. "Members have already asked to get back the land they contributed to the cooperative. The cooperative only exists in form not in fact. The Law does not dissolve the cooperatives. It leaves it up to them to prove their effectiveness, to find a new role, maybe as a provider of services."

Lan, a Vietnamese engineer working for the Swedish Forestry Project, sees contradictions in the lawyers' reports. "You are saying land should be given to individuals and not be allotted by State agencies, but the Party Congress said the State sector should play a leading role in land management. How do you reconcile this?" she asks.

Lien begins to answer. But Lan is not listening. She is arguing with another Vietnamese behind her. She has brushed away with a snarl Lien's first argument. Lien keeps on talking to her. "In the past," he says, "forest state farms were very large. The state played a leading role, but the farms were so large they could not be managed and large areas were abandoned." According to Lien, allotting them to individuals is simply an adjustment to reality. And the adjustment should go further. Presently, because foresters do not know how long they will manage a specific part of the forest, they do not invest much. "Foresters should be given long-term tenure," insists Lien. "Forest farms should become service centers providing tools, advice, and new seedlings."

Other have different complains. Mr Toan, Vice-Director of Agro-Forestry in Lao Cai province (near the Chinese border) opposes the lawyer's proposition that State Farms move farther up the mountains. "To make a profit, State Farms need to be near commercial areas," he argues. "Why would they leave the best areas to the private sector?" Toan is also angry because the provinces are being asked to issue more "Red books" (Land Tenure Certificates) but not given more resources to do the job. "If we are to issue those, we need to conduct cadastral surveys. How will we do it?"

The Land Management Director from a mountainous province sarcastically says that the new Land Law does not consider different land management traditions among ethnic minorities. Small group discussions flare up again, disturbing the main speaker.

The minorities are a thorny question for Vietnamese lawmakers. As population pressure increases demand for land, more and more young "flatlanders" - as the rice-growing Vietnamese are often called - climb up the hills. (In some communes, there is simply no land left

to allocate to young families.) "The hills are also where many flatlanders find ferns to burn for fuel," says Mathieu Bousquet. "Once those lands are cultivated where will they go?"

In Bac Thai Province, where the French GRET will soon begin to work, researchers admit they do not fully understand the migration patterns of the ethnic inhabitants. Ethnic minorities such as the Hmong or the Thais, clear land, cultivate it for two or three years and then move elsewhere to start all over again. "The members of their group know whose land that is," explains a Swedish forester. "There is no need for land registration. Somebody else may work the land while he is away, but when the man who has cleared the land comes back, the land must be given back to him."

"It is a total mess up there," says Karin Ralsgard, a Swedish agronomist who works in the area. For centuries, the Kinh, the dominant Vietnamese ethnic group, only valued land good for growing rice. As a consequence, cadastre and land registrations in the mountains was almost non-existent. Ownership of mountainous land was not legally declared.

"The government may want to fix nomadic populations," says Pascal Bergeret. "This could be a very valuable objective when you see how much ecological damage they cause with their slash-and-burn technique."

But it is obviously not simple. "When we ask mountain people if they want to be given land, they tell us to give it to the elder of the village," says Dao Tri Uc. "They have land reserved for religious purposes, and other lands they consider public. It is very complicated."

In Vietnam, as in so many other parts of the world, the "helpers" may mean well but they not always do well. In Vinh Phu province, some NGO's are increasingly worried that the lack of coordination between the different aid organizations might be leading the province to a serious catastrophe in the next few years. "We are all there giving them fruit trees and helping them take care of them," says a Canadian NGO worker. "But nobody is thinking about commercialization. What will happen in five to six years when all those trees begin to bear fruits? Will there be a market for them? Will prices fall? Are we really helping or preparing a disaster? Nobody knows."

Some NGO's have clearly chosen their camp. They believe the cooperatives are slowing down the farmers efforts and initiatives and must be "squeezed out." Others believe the cooperatives are still the only hope of the poorer farmers and must be supported. "The cooperatives belong to a disappearing order," says one NGO worker who wants to remain anonymous. "The peasants do not trust them. They know how corrupt some of them were. What they trust is the reemerging power of the families. That is the power we should build alliances with, the one we should support. Therein lies the emerging country."

Some coordination effort is being done somewhere but the results may be slow coming. Mid-May 1993, a team of six foreign experts (Australian, Canadian, Dutch) arrived in Hanoi and settled down in

the large pink office building housing the Ministry of Science, Technology and Environment, right behind our house. They are the coordination group of the Red River Delta Master Plan, a much-larger team of both Vietnamese and foreign experts who will try in the next two years to develop a master plan for the development of the Red River Delta, the cradle of Vietnamese civilization. "It is a massive undertaking," says one member of the team. "The same piece of land could be used for so many different economic activities. We will be looking at agriculture, hydro-power, transport, fishing, handicrafts and urban development." (During the two-year project, at least 26 foreign experts will be involved and over 60 Vietnamese)

The experts' first few weeks in Vietnam were enough to change some of their perceptions. Most of them thought agriculture would be the big issue of the Master Plan. Well, it will not. "The big issue is employment," says one of them. "Employment and urban growth."

They are 18 million people now in the Red River Delta. Demographers estimate there may be 45 million in 50 years. There is already not enough food and not enough jobs for the 18 millions. "Hanoi is most likely to attract tens of thousands of those young unemployed," says one of the team members. "Their impact on urban growth will be phenomenal."(19)

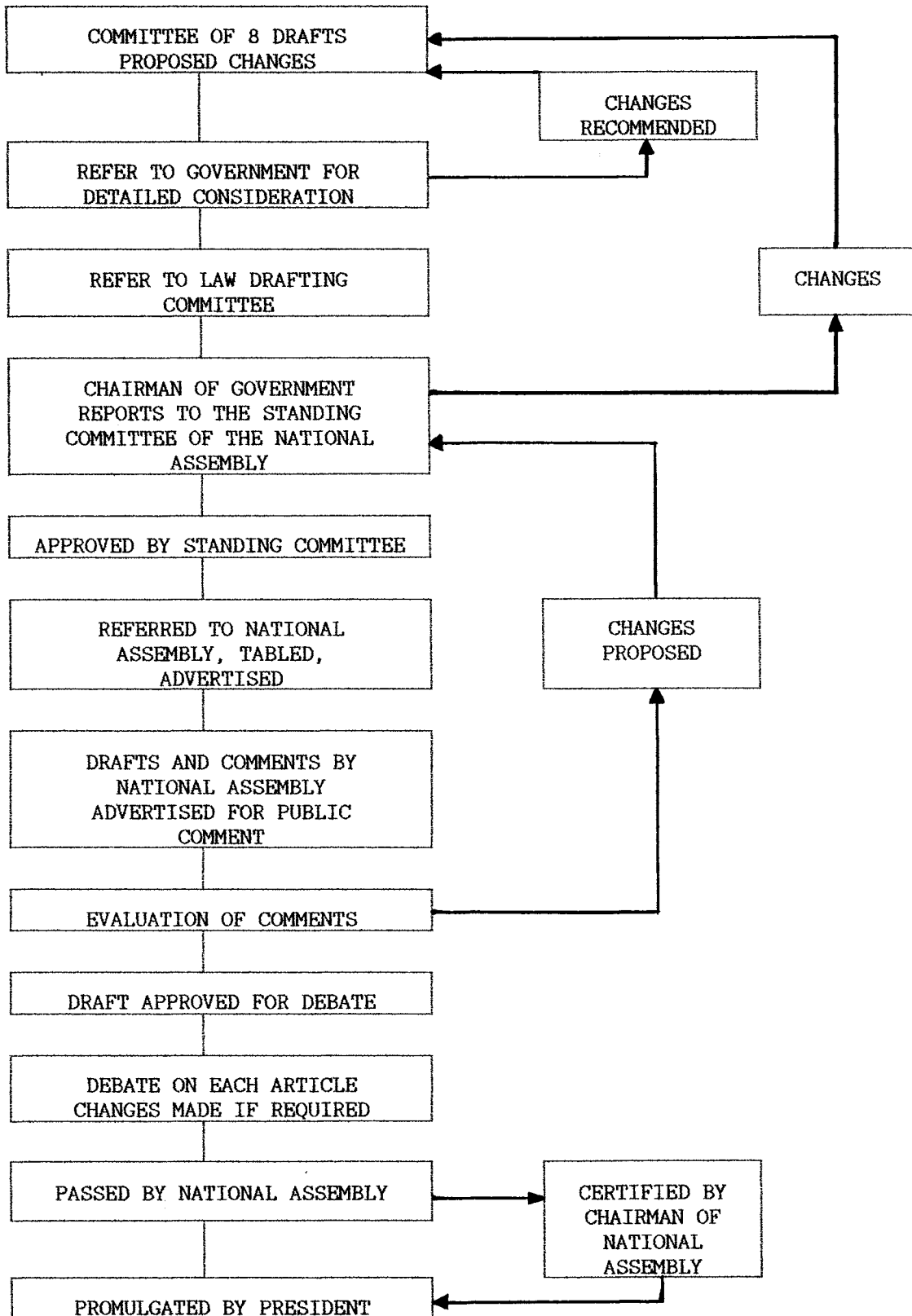
Drafting a new law and getting it through the National Assembly is an amazingly long process. (For a quick preview see the table on the following page.) The process takes forever because it must get approval from many different level but also because, in the case of the Land Law, major questions are at stake. "I told the vice-minister I would go up to the 5th draft, not more" says Paul Fortin who is now completing his third draft of the new mining law. The Land Law took 70 drafts, the Oil Exploration one close to 20.

Land tax and agricultural taxes are other hot issues debated at the National Assembly. The Union of Peasants admits some farmers "demonstrated" in the past few months in some districts. "Not against the government," insists socioeconomic adviser Dang Tho, "but against the low prices of agricultural products and about the taxes. They say taxes must be fairer."(20)

(19). Many households in the Red River Delta have excess labor and insufficient land to provide an income for all the household members. In Hanoi, there is already a well-known temporary labor market. Men come from the countryside and wait on the sidewalk for a contractor to come and hire them for the day or for a few hours.

(20). The Union of Peasants says the country is "in a bind." Because of the country's low wages, food prices must be kept low so the urban population can eat. But in order for the rural areas to develop, peasants must receive a better income. "We are not sure how to go about this," says socioeconomic adviser Dang Tho. The tax system does not take into consideration distance from markets, or costs of needed inputs. Incomes of Mekong Delta farmers, for example, are higher than those of Red River Delta farmers, the southern land requiring less input because it is more fertile. Tax collection is presently the same.

PROCEDURE FOR ENACTING THE LAND LAW



In one northern commune, for example, villagers do not farm some non-irrigated but good paddy field. Instead they farm some lower quality land on the slopes. "The paddy field is registered at a high value and the tax on it would be too high considering the lower yield they would get," explains Swedish agronomist Karin Ralsgard. "The yield on the slopes is lower but that land is not registered and therefore not taxed. At the end, they keep more."

The tax situation varies so much from one province to another, and even between communes, that it is impossible to be general about it. Let's take Thai Ninh cooperative for example: (following table) Clearly, between 1981 and 1992, the tax burden of the farmer has been eased. The services he used to get from the cooperative have also disappeared. He must now pay to rent the plowing buffalo he was getting previously for free.

DATE	COOPERATIVE TAX	STATE TAX	TOTAL TAX	PEASANT'S SHARE
1981	55 to 65%	12%	67 to 77%	23 to 33%
1987	55 to 65%	12%	67 to 77%	23 to 33%
1988	44%	12%	56%	44%
1989	44%	12%	56%	44%
1990	8%	5%	13%	87%
1991	8%	5%	13%	87%
1992	2%	10%	12%	88%

Evolution of contract land taxation in Thai Ninh 1981-1992

Source: Bousquet et Thong, *100 ans de changement*

The 1988 Land Law is silent on the issue of valuation. The last draft of the 1993 Land Law does not mention it either. In Hanoi, at the School of Architecture, an economist has developed a "rational" system to calculate urban land value. "It is very sophisticated," says Jean McNeil, a Canadian housing-economist involved in a cooperation project with the Ministry of Construction. "But it is useless. They do not understand that the only way to evaluate land is to observe it, to see how much people are willing to pay for it."

In Hanoi, all land is classified and no matter where a piece of land is located within a certain concentric circle, it technically has the same "value." "The fact that a special piece of land would have more value for somebody because of the use planned, or because it is nearer a road, or nearer some services, is not considered," says McNeil. Another problem with land evaluation is the lack of information on current transactions. Most people are not telling.

And when they tell they often do not tell the real price they paid. But the market is there.

In the corridors of the National Assembly, Vietnamese deputies are now trying to figure out a way to resolve all these difficulties. Skepticism runs high even among well-educated Hanoians. "I do not follow the debate on the Land Law," says a well-dressed Hanoian I meet on the way back from Hai Hung to Hanoi. "Article 1 forbidding land ownership is the main problem and the new law does not plan to change that. All other changes are useless."

Anyhow, the National Assembly will vote. So, more soon.

A handwritten signature in cursive script, reading "Carole Beaulieu".

Carole Beaulieu
Hanoi, June 24th, 1993