

URBAN LEGAL CASE STUDIES

VOLUME 16

Rapid Assessment of the Legal Framework for Urban Development in the Socialist Republic of Vietnam

UN-HABITAT TECHNICAL ASSISTANCE REPORT



Planning • Housing • Land • Local Government



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INSTITUTIONAL STRENGTHENING AND CAPACITY BUILDING FOR SUSTAINABLE URBAN DEVELOPMENT IN VIETNAM (ISCB PROJECT)

Rapid Assessment of the Legal Framework for Urban Development in the Socialist Republic of Vietnam

UN-Habitat

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List of Acronyms

ADR: Alternative Dispute Resolution

AMR: Architectural Management Regulation

GDP: Gross Domestic Product

LBF: Land Based Financing

MNRE: Ministry of Natural Resources and Environment

MOC: Ministry of Construction

MOF: Ministry of Finance

MoT: Ministry of Transport

MPI: Ministry of Planning and Investment

NAV: National Assembly of Vietnam

NHDS: National Housing Development Strategy

NUDP: National Urban Development Plan

ODA: Official Development Assistance

PPC: Provincial People's Committee

Pre-FS: Pre-feasibility studies

SEDPs: Socio-economic Development Plans

SDGs: Sustainable Development Goals

SRV: Socialist Republic of Vietnam

TDSI: Transport Development Strategy Institute

UDA: Urban Development Agency, Vietnam

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INTRODUCTION

Over the last three decades of economic growth, urbanization has been accelerating rapidly in Vietnam and this trend is set to continue. The level of urbanization from has increased from 33% in 2014 to 41% in 2022 and is expected to rise to 50% by 2030.¹ Cities are major drivers of economic development and growth in Vietnam, as about 70% of Gross Domestic Product is generated in urban areas.² In relation to climate change, 70% or more of the carbon emissions and waste are generated in cities. Urban development has become an important priority for the Vietnamese government.³ The main challenges facing the urban sector arise from the absence of linkages between sectoral policies and urban policies, master plans and special plans. Efforts have been made to address shortcomings in urban planning and management, such as the drafting of the National Urban Development Strategy, reviewing the **Planning Law** (issued in 2017) and finalizing the upcoming **Law on Urban Development and Management**. The aim is to encourage decentralization of urban planning and development responsibility to include all government administration levels and to require stakeholder consultation with respective organizations, individuals, and communities. However, a major challenge is the lack of capacity of subnational authorities to plan and manage urban growth and development in an integrated manner, plan and operate urban infrastructure, and efficiently deliver equitable urban/municipal services. While policy changes have been made to promote decentralization, institutional reforms and local capacity development have not kept pace.

UN-Habitat, through the Regional Office for Asia Pacific and the Vietnam country office, is implementing the Institutional Strengthening and Capacity Building (ISCB) project in Vietnam to strengthen capacities of national and local institutions to promote, plan and implement innovative and participatory solutions for urban development in Vietnamese cities.

ISCB Project Outcomes:

1. The capacity of national and sub-national authorities to drive sustainable urban development improved.
2. Policy and legal frameworks promote integrated and participative urban planning and management.
3. Pilot projects contribute to the introduction of innovative approaches, promoting cross-sectoral strategic planning and participatory urban development.

The Policy, Legislation and Governance Section, UN-Habitat (PLGS) is supporting the project through technical legal assistance based on international tools and methodologies to ensure and promote rights-based legislation as well as functionally effective laws in Vietnam. The Vietnamese partner for this Technical Assistance is the Urban Development Agency (UDA) – an Agency under the Ministry of Construction (MOC), which is the focal point for the draft Urban Development

¹ Institutional Strengthening and Capacity Building for Sustainable Urban Development Project Document for Vietnam. <https://fukuoka.unhabitat.org/en/projects/2599/>

² Ibid.

³ Ibid.

and Management Law. To support the development of this Law and to modernize the urban legal system in Vietnam, UN-Habitat PLGS has conducted a rapid assessment of urban laws in Vietnam, contained in this report, highlighting in a structured and objective way, the strengths and weaknesses of the legal system focusing on the thematic areas of land, housing, planning and local government and providing high-level recommendations. The review required conducting a desk-review analysis of the following urban legal framework:

1. Constitution of Vietnam, 2013
2. Construction Law No. 50/2014/QH13
3. Law on Housing No. 65/2014/QH13
4. Land Law No. 45/2013/QH13
5. Law on Urban Planning No. 30/2009/QH12
6. Law on Planning No. 21/2017/QH14
7. Decree 37/2019/ND-CP detailing the Planning Law
8. Vietnam Building Code on Regional and Urban Planning and Rural Residential Planning (No 04/2008/QD-BXD) which has been repealed by the Vietnam Building Code 2021.
9. Implementing Resolution No. 06-NQ/TW dated January 24, 2022 of the Politburo on sustainable planning, construction, management and development of urban areas in Vietnam to 2030, with a vision to 2045.
10. Resolution NQ 148 on introducing the Government's Action Program for Materialization of the Political Bureau's Resolution No.06-Nq/Tw of January 24, 2022, on Planning, Construction, Management and Sustainable Development of Urban Areas in Vietnam Until 2030, with a Vision Toward 2045.
11. Decree No.11/2013/ ND-CP and Circular No.12/2014/TT-BXD which further elaborated on the roles and responsibilities of province-level and city-level urban development programs in the NUDP period.
12. Resolution No.1210/2016/UBTVQH13 – 2016 Resolution on Urban Classification provides a basis for the classification of cities into different classes.
13. Resolution No. 26/2022/UBTVQH15 – 2022 to adjust Resolution No.1210.

The analysis was conducted **before September 2023**, noting that from this period onwards, the legislative landscape in Vietnam has been rapidly changing in line with key sustainability targets. The analysis relied on the following two key aspects from UN-Habitat's [Planning Law Assessment Framework](#).

Technical aspects of planning, land and housing

This includes indicators on key aspects for sustainable development in these areas:



Planning:

planning hierarchies, planning at scale, public space, public participation and development rights.



Land:

the context of land regularization and tenure security, eviction and involuntary resettlement, dispute resolution, allocation and readjustment of plots, reduction of administrative and financial obstacles in land processes.



Housing:

mechanisms of producing affordable housing supply and social housing as well as the criteria for identifying the beneficiaries; rental housing regulations, tools for regularizing spontaneous and non-regulatory housing, resource-efficient measures, building development standards and permitting process, etc.

Functional analysis of legislation

Based on UN-Habitat legal methodologies on legislative effectiveness, the following was also analyzed: the clarity of drafting; ease and efficiency of the mechanisms, the coherence of policies and regulations as well as the organization of the institutional mechanisms in the various legal frameworks.



EXECUTIVE SUMMARY

The following are some of the key findings and recommendations from the rapid legal assessment.

In relation to the review of the **2015 Local Government Law**:

- A.** The division of responsibilities between different levels of government is not clear, which can lead to confusion and overlap in decision-making. This can create difficulties in implementing policies and regulations related to urban planning and development. For example, **Article 5(4)** states that *“The People’s Committee shall operate according to the collective system in which the People’s Committee is combined with the responsibilities of the President of the People’s Committee.”* This does not clearly indicate the functional role of the People’s Committee and the President of the People’s Committee.
- B.** The Act provides that management of the local government is consistent with the national administrative system (**Articles 11, 12 and 13**). However, the Act could better direct coordination among different units of local government as well as between higher levels of government who work on different sectoral issues affecting, e.g., economic, social, or environmental functions.
- C.** There is limited effective enforcement and accountability mechanisms to ensure compliance with laws and regulations related to urban planning and development. **Article 7** only provides for Standards of conduct of Delegates of the People’s Council but there is no provision on how to ensure compliance of the standards. Additionally, this is also seen in all administrative levels where there is no accountability mechanism.
- D.** According to **Article 8 (2)**, it seems that the Government has the authority to decide on the number of Vice Presidents in the People’s Committee. It states: *“The specific number of Vice Presidents of the People’s Committees at all levels shall be regulated by the Government.”* The law therefore is silent on the deciding criteria for selection which can lead to arbitrary discretion and decision-making.
- E.** The purpose of the Special Administrative Unit – Economic Unit is not clear. The reporting lines and criteria for the selection of the officials in this institution are not clear (who do they report to and if independent, to what extent are they independent).
- F.** The legislation does not provide for specific measures or quotas to ensure the representation of marginalized groups in the local institutional framework such as for women, youth, elderly, ethnic minorities, and people with disabilities. This is important to ensure that the views of the minorities are represented, voiced and heard in decision-making processes.

- G. **Article 78 (1)** provides that the People's Council should convene at least two plenary meetings every year and **Article 113 (1)** provides that the People's Committee should convene the meeting once a month. However, there is no provision or a requirement for the publication of the minutes of People's Council meetings, which can make it difficult for the public to understand how decisions are made. The Act provides for transparent governance under **Article 5 (2)** which states that one of the principles of the local government is to be, transparent, and work for the people, and be subject to the people's supervision. This, however, cannot be exercised without clear provisions for the same (such as referring to oversight bodies and their procedural rules).
- H. There are limited meaningful opportunities for the public to participate in decision making on legislative and budgetary matters. For example, **Article 19 (3)(b)**, the provincial People's council decides on government revenues in the province without any input from the public. They are mainly involved in voting of delegates.

In relation to the **Planning Legal Framework** (mainly **Law on Urban Planning, 2009 and Law on Planning, 2017**), the foundational element of the Vietnamese spatial policy framework is the 2009 Adjustment of Orientation Master Plan to Develop Vietnam's Urban System until 2025 with a Vision to 2050 (AOMP). This has been replaced by **Resolution No: 241/QĐ-TTg** on the Approval of the National Urban Classification Plan for the period of 2021-2030. Given that the new policy is yet to be fully implemented, the analysis focused on AOMP, hoping that these issues have been addressed in the new policy framework. A challenge is that the current policy model led by AOMP does not provide many tools and incentives to co-ordinate across other urban related policies and their supporting programs to ensure coherence. While the social and economic prerogatives of the Socio-Economic Development Strategy (SEDS) and the spatial focus of the AOMP should work in tandem, in reality, spatial master plans frequently lack considerations for social and economic questions. This lack of coordination between sectoral policies manifests itself even simply in the duration of the respective plans. For example, some sectoral master plans and transport plans have a longer duration than the SEDS, and therefore they frequently do not reflect the up-to-date socio-economic policy objectives of the country.

The current urban legislative framework, despite its considerable scope, is not performing as effectively as it should, due to a lack of clear hierarchical alignment among the networks of laws, government decrees and other policy documents. A key opportunity for Vietnam is to strengthen the framework by specifying government's policy position to guide the future growth and management of urban areas, in addition to serving as a guide on process and procedures. The expected new legislative framework on urban development management, which is currently under discussion led by the Ministry of Construction, will be a good window of opportunity for the whole government to address this challenge together. A more clearly formulated National Urban Policy as well as a National Spatial Strategy would help provide the Vietnamese legislative framework with a stronger hierarchical delineation and policy direction. It could also be a key tool to support the implementation of global frameworks in Vietnam, such as the New Urban Agenda and urban-oriented SDGs. It is timely to develop a clear and explicit urban policy direction, which could in turn be reflected in the new **Urban Development Management Law**, to ensure that the Law becomes an implementation mechanism for the National Urban Policy and the National Spatial Strategy.

It should be noted that there is no regulatory framework to complement the legislative framework for urban planning. Only one implementing decree has been put in place i.e., the Building Code. Consequently, the laws do not provide provisions to allocate adequate quantity and distribution of public space that is sensitive to ensure accessibility and enjoyment of the public space.

Looking at planning at scale, the law does not expressly provide provisions requiring urban plans to be developed considering expected demographic and migratory trends, linking them to the supply of affordable housing, an adequate supply of serviced land for different income groups. It is important to provide policies that ensure affordability of accommodation, which is a key feature of a well-managed city.

Vietnamese cities are classified hierarchically into six classes – Special and Class One (I) to Five (V) – based on a threshold of infrastructure development, population size and socio-economic characteristics. In 2022, there were 833 cities, with 2 Special cities and 22 class I cities, 31 class II, 48 class III, 88 class IV and 652 class V. This classification system has profound implications for administrative functions, tax collection and funding decisions. The greater autonomy and increased financial flexibility that comes with the higher classifications creates an incentive for attaining upward mobility within the scale. This may be seen as a positive factor in encouraging urban administrators to be ambitious on behalf of their cities and the provinces they serve, but it also carries certain disadvantages. For example, as the scoring system emphasizes infrastructure development and population growth, local infrastructure development is prioritized above adherence to other urban strategies which place stronger focus on sustainability. Monitoring and evaluation, along with the incentive mechanism coherent with the AOMP and other urban strategies, holds the key to ensuring that the classification system can emerge as a flexible and dynamic tool for urban management. Another possible improvement to the city classification system is that it could also value interconnections between cities within a metropolitan area, fostering a stronger metropolitan approach to development.

The review of the **Housing Legal Framework** has revealed that the construction and housing sector in the Socialist Republic of Vietnam is governed by a legal system whose main statutes are the **Construction Law** and **Law on Housing**. These statutes provide for the creation of an institutional mechanism to facilitate the process of housing construction as well as the mechanism of production of social housing. The **Construction Law** provides a mechanism for applying for and obtaining planning permits to construct, repair/renovate, relocate and demolish, which are essential to enforce the building standards set by law and planning documents. The timelines for procuring such permits are reasonable and the procedure seems void of most administrative hurdles. Urban sprawl and land speculation also have a significant impact on the housing needs of poor households. To remedy this, the **Law on Housing** has established essential incentives to ensure adequate supply of affordable housing. The law also provides measures to regulate housing prices and reduce costs of affordable housing to guarantee accessibility of housing to the most vulnerable groups in society including the poor and low-income groups.

However, the **Construction Law** and **Law on Housing** (and **Land Law**) do not adequately address regulation of informal housing. The laws do not recognize the existence of poorly constructed houses informally built without any building license. The law also fails to establish processes to ex-post formalize informal settlements by improving their basic safety and health measures. There is also a lack of regulations on post-investment management, as well as of regulations on urban renovation, embellishment and reconstruction. Such ex-post formalization processes acknowledge existence of informal settlements and puts in place measures to establish standards intended to achieve at the neighborhood scale, greater social and urban integration with improved public spaces, improved sanitary, better environmentally friendly conditions and strengthened social relations in aid to boost conditions of living within such informalities. The **Construction Law** needs to outline in detail the types of construction materials to be used in construction of both housing, commercial properties and social housing and detail the floor area ratio regulations etc. Stringent supervision and management of compliance with construction materials as to quality and standards is one way of reducing ex-post costs on maintenance of housing and commercial properties. The law should therefore stipulate the exact materials that ought to be used for certain types of constructions and if possible, have a separate regulation governing quality of construction materials.

In relation to the **Land Legal Framework** (mainly the **Land Law**, 2013), it recognizes a variety of tenure systems which ensures diversity and flexibility of ownership models. They include state land tenure, communal land tenure and private land tenure. Different tenure models catering for various groups ensures a holistic ownership model that can be accessed by all citizens and groups and offers maximum protection of land rights. It is important to note that the **Land Law** has codified communal land tenure which ensures that a group or community can have common rights to land. A key analysis to be undertaken through interviews with stakeholders ought to establish the impacts (both positive and negative) of communal land tenure and specifically the suitability of communal land to be used as a security in financing by financial institutions. Even though, the **Land Law** is neutral and fair as to ownership of rights by all genders and persons, interview analysis should seek to establish whether Vietnamese women and vulnerable groups encounter any difficulties in securing ownership of land and in exploiting land for economic gain. The law codifies the land use terms to include: land use for long stable term and land use for limited term. It also details the land use classification as either agricultural or non-agricultural land. These clear land principles ensure certainty of ownership and rights protected.

Additionally, the **Land Law** refers to a land registration organization tasked to undertake first registration and change registration. A major concern is that the law has neither detailed on the institutional nor functionality frameworks of this land registration organization. It has not defined its roles, jurisdictions and competencies with land administration and management systems in Vietnam. It is important that the law effectively captures the role of the land registration organization and clearly stipulate timelines within which certain roles need to be implemented e.g., timelines for registration of certificates of ownership, generation of certificates, generation of cadaster, amending etc.

The law details issues to do with cadastral records and it is noteworthy that Vietnam is undertaking a policy shift towards digitalization of cadastral records with the roadmap for change prescribed by the Ministry of Natural Resources and Environment. An examination should be conducted to determine the current position/extend of the digitalization, the implementation of the digital system and further the positives and negative impacts of digitalization to stakeholders. Digitalization of records ensures long-term transparency of records, accountability in transactions by registry staff, easy accessibility of records and both reduced costs and time on land transactions.

The **Land Law** has expounded on the procedures for land-use change. However, the law does not clarify the costs to be incurred during the change of use process given the fact that it forms part of the land-based financing options and can be subject to exploitation and misuse by public officials. The law also ought to clearly stipulate the timelines within which land use change can be undertaken to assist in eliminating complacency and procrastination by public officials during the change of user process. It is noteworthy that the **Land Law** has not detailed the concept of land readjustment as an alternative tool that can be adopted in land planning and management. Land readjustment is an important tool adopted during urban upgrading and urban regeneration and specifically during informal settlement upgrading projects.

In Vietnam, land regularization takes the form of grant of certificate of land use rights and ownership of houses and other land-attached assets which is made according to a single form used nationwide. An assessment ought to be undertaken to determine the costs one incurs during the regularization process and further the ease of procuring the certificate of ownership. It should also capture the hinderances that are existent and make it difficult for women and vulnerable groups to access the land regularization procedures. An existent gap in the land regularization process is that competence to grant certificates of land use rights and ownership of houses and other land-attached assets rests with provincial-level People's Committees and district-level People's Committees. These Committees are political establishments and may be inadequate in technical and professional expertise in land registration procedures. They may also be exposed to vices of corruption, complacency and clientelism in the performance of their roles. They also form part of the dispute resolution hierarchy in the event of land disputes which may result in issues of conflict of interest and/or granting land users undue hearing processes. Accordingly, it will be important to have separation of powers and grant the jurisdiction for land regularization purely to the land registration organization.

The **Land Law** adequately protects landowners/users from unlawful eviction and involuntary relocations by detailing provisions on land recovery and land requisition processes. Further, it outlines the procedures to be undertaken before compulsory inventory is undertaken by the State and issuance of adequate compensation mechanisms to affected persons. The law needs to strengthen protection mechanisms to ensure that public officials do not abuse the "*land recovery for public purposes*" criteria as a justification to acquire land for private benefits. Moreover, it is important to have strong deterrents that prevent public officials from misappropriating and misusing funds allocated for compensation. These two goals can be achieved by having strong criminal offences and/or punitive penalties applicable to state/public officials that abuse their powers and duty of care to Vietnamese citizens.

The law adequately addresses both alternative dispute resolution (ADR) and judicial mechanisms as redress mechanisms in the event of disputes. To incentivize ADR mechanisms, it will be important to make arbitral awards and mediation decisions to have a binding and enforceable force to ensure parties adopt such mechanisms. For judicial redress, the **Land Law** needs to outline the hierarchy and functional composition of the People's Courts mapping its competencies and jurisdiction. A recommendation is for Vietnam to establish a fully-fledged Environmental & Land Court that has both professional and technical expertise to handle land disputes.

Rapid Assessment of the Local Government Framework in the Socialist Republic of Vietnam

Vietnamese National Assembly-building, Hanói, Vitnam
Source: GMP Architects



INTRODUCTION

Governance has been defined in various ways. It refers to the process of decision-making and the process by which decisions are implemented.⁴ It has also been defined as *“the exercise of political and administrative authority and comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.”*⁵

Governance encompasses a diverse range of actors in decision-making as well as the formal and informal structures that have been set in place to arrive at and implement decisions. ‘Urban or local governance’ is thus the process by which governments and stakeholders collectively decide how to plan, finance and manage urban areas.⁶ It is *“the sum of the many ways individuals and institutions, public and private, plan and manage the common affairs of the city. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action can be taken.”*⁷

The Vietnamese government has spent a lot of efforts to build up a strong local government system, for example, through the issuance of the **Law on Organization of Local Governments in 2015**.



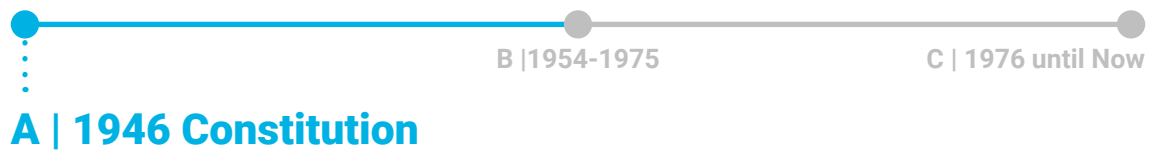
4 United Nations Economic and Social Commission for Asia and the Pacific, What is Good Governance?

5 United Nations Development Programme, Governance for Sustainable Human Development (New York: UNDP 1991).

6 William Robert Avis, Urban Governance (Birmingham, GSDRC, University of Birmingham 2016).

7 UN-Habitat, Global Campaign on Urban Governance: Concept Paper (Nairobi: UN-Habitat 2002).

History of Vietnam Local Government from 1946



After the August Revolution, on January 1st, 1946, the Vietnamese people voted for a Constitutional Congress, which was the first democratically Constitution in Vietnam.⁸

As provided in **Article 58 of the 1946** Constitution, due to war conditions, Vietnam was divided into three regions of management as Bắc bộ (the North), Trung bộ (the Central), and Nam bộ (the South). Each region was divided into three-tiers as province, district, and commune local authorities.⁹

In Viet Minh's area

During the First Indochina War, 1946-1954, in the rural regions controlled by Viet Minh (Việt Nam Dân chủ cộng hòa - Democracy Republic of Vietnam - DRV), local authorities were divided into zones (khu) and inter - zones (liên khu), which were divided into provinces.¹⁰

In State of Vietnam (Quốc gia Việt Nam)

On the other side of the First Indochina War, in May 1948, the French had followers with representatives from;

1. Chính phủ lâm thời Nam Việt Nam (Contemporary Government of South Vietnam);
2. Hội đồng An Dân Bắc Việt Nam (Council of North Vietnam);
3. Hội đồng An dân Trung Việt Nam (Council of Central Vietnam); and
4. the political factors in three regions authorized General Nguyen Van Xuan (President of Contemporary Government of South Vietnam) to establish the National Government.¹¹

After the Ha Long Accord, Bao Dai returned to lead the State of Vietnam ("*Cựu Hoàng hồi loan*" in Vietnamese) as the Head of State. His Decision (Dụ) No.1 dated July 1st, 1949, which Lê Đình Chân called "*Bao Dai Constitution*" and recognized the "*de facto*" Constitution of the State of Vietnam.¹²

The State of Vietnam, headed by Bao Dai which controlled the cities, especially Hanoi (the capital of the North), Saigon (the capital of the South) and Huế (the capital of the Central).

8 Pham Q.H, Local Government In Vietnam (1946 - 2000) In Comparison With China's And The United States' Systems: https://repository.vnu.edu.vn/bitstream/VNU_123/94789/1/KY-0023.pdf

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

Therefore, according to **Article 2** of Quốc trưởng (Head of State)'s Decision (Dụ) No.2 on July 1st, 1949, in State of Vietnam (État du Viet Nam in French) which French armed forces and Bao Dai's government controlled, local authorities were divided into three regions (phần): Nam Viet (Southern Region), Bac Viet (Northern Vietnam/Northern Region) and Trung Viet (Central Region). Each region had its public legal entity and head of each the region was "Thủ hiến" (Premiers in English and préfet in French) which was assigned by the Head of State of Vietnam (**Article 3**). Also, according to this Decision, Hanoi, Hai Phong, Tourane and Saigon Cholon cities were under mayor or district chief (**Article 9**).¹³

B | 1954 - 1975

The North of Vietnam

During the Second Indochina War, 1954-1975, in North Vietnam (DRV), according to the 1959 DRV's **Constitution** and the **Law on Organization of People's Councils and Administrative Committees** at all levels in 1962, the Vietnam administrative units include:

- I. provinces, autonomous regions and cities directly under the Central Government;
- II. the province is divided into districts, towns, cities, and
- III. the district is divided into communes and towns. A municipality of Vietnam was divided into neighbourhoods.¹⁴

Each of the above administrative unit was organized into the People's Council and People's Committee.

Pursuant to the 1980 Vietnam Constitution, the autonomous region has been abolished. From 1962 to 1980s, in the DRV, there was only one autonomous region ("Khu tự trị Tây Bắc" – The West North autonomous regions) which included Son La, Lai Chau and Nghia Lo provinces.¹⁵

C | 1976 until Now

Under the **1980 Constitution** and the **Law on Organization of People's Council and People's Committee** in 1983, amended in 1989, the Vietnam government was divided into three levels consisting of:

- I. provinces and cities under the central authority;
- II. the district, city and town in the provinces; and
- III. communes, wards and commune-level towns.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

All administrative units were considered as basic administrative units. The government's structural organization was completed, including the People's Council in each administrative unit.

Under the 1992 Constitution (amended in 2001) and the **Law on Organization of People's Council** in 1994 (amended in 2003), basically, the local governments were organized structurally similar to the government under the Constitution in 1980 and the Law on Organization of People's Council and People's Committee in 1983 (amended in 1989). However, the 1992 Constitution (as amended in 2001), did not specify categories of administrative units equivalent to provinces and cities under the central government, did not determine the basic administrative unit, organized as the completed authorities under the 1980 Constitution.¹⁶

Local Government under the Vietnam Constitution of 2013

The Vietnam **Constitution of 2013** provides for Local Government under Chapter IX. This Chapter has seven (7) Articles. **Article 111**, Section 2 defines it as *"local government level includes People's Councils and People's Committees which are organized in line with the characteristics of rural and urban areas, islands, and special administrative units by law"*.¹⁷

Article 110 to Article 116 of Vietnam Constitution 2013 provides the structure of Vietnam local government, as below:

"1. The administrative unit of the Republic of Socialist Vietnam is distributed as follows:

- I. The country is divided into provinces and central cities;
- II. The province is divided into districts, district-level towns and provincial cities. The central city is divided into districts, towns and equivalent administrative unit;
- III. The district is divided into communes and commune-level towns;
- IV. district-level towns and provincial cities divided into wards and communes;
- V. district divided into wards. Administrative special economic units shall be established by National Assembly.

2. The establishment, dissolution, merger, division, or adjust of the boundaries of administrative units should consult local people and comply with the order and procedures prescribed by law."

¹⁶ Ibid.

¹⁷ Article 111, Section 2, Vietnam Constitution 2013.

Local Government under the *Law on Urban Planning*

Article 14 (2) of the **Law on Urban Planning** provides that: “The Ministry of Construction shall take responsibility to the Government for performing the state management of urban planning; assume the prime responsibility for, and coordinate with state agencies in, performing the state management of urban planning.”

.....

Local Government under the *Local Government Act 2015*

To define Local Government under the Act, it provides:

Article 2: “Administrative units of the Socialist Republic of Vietnam shall include:

1. Municipalities and provinces (hereinafter referred to as province or provincial level);
2. Suburban, urban districts and provincial cities, and municipality-controlled cities (hereinafter referred to as district or district level);
3. Communes, wards or commune-level towns (hereinafter referred to as commune or communal level);
4. Special administrative – economic units.”¹⁸

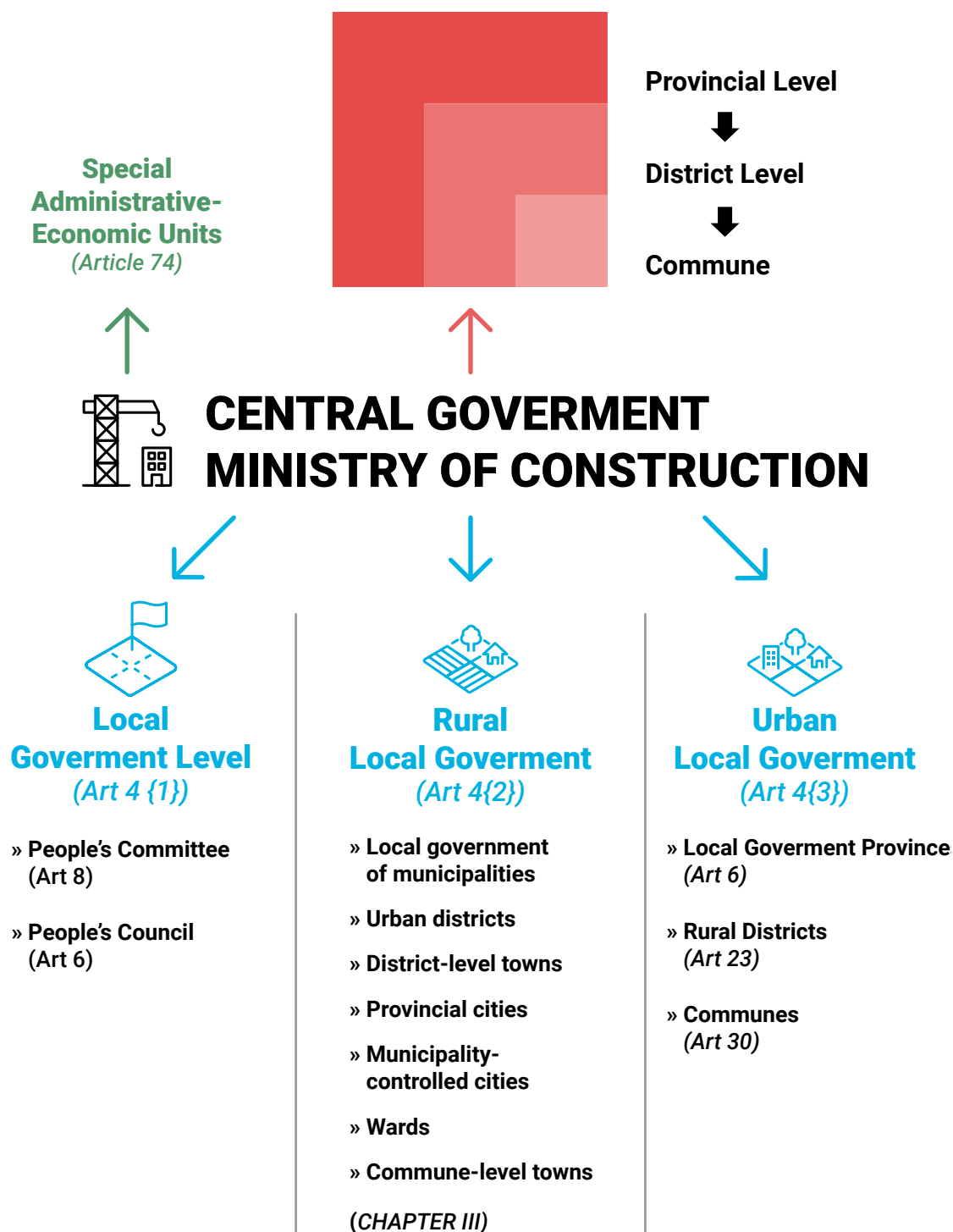
Article 4: “Organization of local government at administrative units

1. The local government level shall include the People’s Council and the People’s Committee organized at administrative units of the Socialist Republic of Vietnam as stipulated in Article 2 hereof.
2. Rural local government shall include the local government of provinces, rural districts and communes.
3. Urban local government shall include the local government of municipalities, urban districts, district-level towns, provincial cities, municipality-controlled cities, wards and commune-level towns.”¹⁹

¹⁸ Article 2, Local Government Act, 2015

¹⁹ Article 4, Local Government Act, 2015

Figure 1: Illustration of the urban institutional framework in Vietnam from the 2015 Local Government Act



REGULATION ON DECENTRALIZATION OF POWERS TO LOCAL GOVERNMENTS

Decentralization to Local Government

According to **Article 13** of the **Local Government Act 2015**, the decentralization of local government is as follows:²⁰

1. Based on working requirements, possibility and conditions, and specific states of each locality, central and locally-governed state organs should be entitled to decentralize one or several duties and powers within their competence to inferior-level local governments or state organs in a continual and regular manner, unless otherwise prescribed by laws.
2. Decentralization must adhere to principles stipulated in **Clause 2 Article 11 of the Act** and must be prescribed in legislative documents issued by decentralizing state organs which should specify duties and powers decentralized to local governments or inferior-level state organs, and responsibilities of decentralizing and decentralized state organs.
3. Superior regulatory agencies should, upon delegating tasks and powers to local governments or inferior regulatory agencies, ensure that financial and personnel conditions and other necessary conditions are satisfied to perform these delegated tasks or exercise these delegated powers, and inspect and provide guidance on performance of delegated tasks and exercise of delegated powers as well as bear responsibility for the result thereof.
4. Decentralized state organs should be held responsible for decentralizing state organs for implementation of decentralized duties and powers. Based on actual conditions of each locality, locally controlled state organs shall be entitled to re-decentralize duties and powers decentralized by superior-level state organs to inferior-level local governments or state organs but must obtain consent from initial-decentralization state organs.

Delegation to Local Government

The decentralization of powers to local governments according to **Article 12** of the **Law on Organization of Local Government 2015** provides as follows:²¹

1. The delegation of powers to local government levels must be specified in the law. In this case, the law must stipulate specific tasks and powers that local governments may not decentralize or delegate to lower-level state agencies or other agencies and organizations.
2. Local governments are autonomous and self-responsible for the performance of their assigned tasks and powers.

²⁰ Article 13, Law on Organization of Local Government, 2015

²¹ Article 12, Law on Organization of Local Government, 2015

3. Superior state agencies, within the ambit of their tasks and powers, are responsible for inspecting and examining the constitutionality and lawfulness in the performance of tasks and powers delegated to local governments at all levels. direction.
4. Laws defining the tasks and powers of local governments and agencies under local governments must ensure the principles specified in **Clause 2, Article 11 of the Act** and be appropriate with the duties and powers of the local government.

The following are some key issues to consider:

1. **Unclear division of roles:** The division of responsibilities between different levels of government is not clear, which can lead to confusion and overlap in decision-making. This can create difficulties in implementing policies and regulations related to urban planning and development. For example, **Article 5(4)** states that *“The People’s Committee shall operate according to the collective system in which the People’s Committee is combined with the responsibilities of the President of the People’s Committee.”* This does not clearly indicate the functional role of the People’s Committee and the President of the People’s Committee.
2. **Vertical and horizontal institutional coordination (multi-level governance):** The Act provides that management at the local government is consistent with the national administrative system (**Articles 11, 12 and 13**). However, the Act could better direct coordination amongst different units of local government as well as between higher levels of government who work on different sectoral issues affecting, e.g., economic, social, or environmental functions.
3. **Standard of Conduct of Delegates:** There is a lack of effective enforcement and accountability mechanisms to ensure compliance with laws and regulations related to urban planning and development. **Article 7** only provides for Standards of conduct of Delegates of the People’s Council but there is no provision on how to ensure compliance of the standards. Additionally, this is also seen in all administrative levels where there is no accountability mechanism.
4. **Regulation by the Government:** According to **Article 8 (2)**, it seems that the Government has the authority to decide on the number of Vice Presidents in the People’s Committee. It states: *“The specific number of Vice Presidents of the People’s Committees at all levels shall be regulated by the Government.”* The law therefore is silent on the deciding criteria for selection which can lead to arbitrary discretion and decision-making.
5. **Special Administrative Unit – Economic Unit – This institution’s purpose is not clear:** The reporting lines and criteria for selection for the officials in the Special Administrative Unit are not clear (who do they report to and if independent, independent to what extent?)
6. **Representation of marginalized groups:** The legislation does not provide for specific measures or quotas to ensure the representation of marginalized groups in the local institutional framework such as for women, youth, elderly, ethnic minorities, and people with disabilities. This is important to ensure that the views of the minority are represented, voiced and heard in decision-making processes.

7. **Transparency in decision-making:** **Article 78 (1)** provides that the People's Council should convene at least two plenary meetings every year and **Article 113 (1)** provides that the People's Committee should convene the meeting once a month. However, there is no provision on a requirement for the publication of the minutes of People's Council meetings, which can make it difficult for the public to understand how decisions are made. The Act provides for transparent governance under **Article 5 (2)** which states that one of the principles of the local government is to be modern, transparent, and intended for the people, and be subject to the people's supervision, this however cannot be exercise without clear provisions providing for the same.
8. **Public Participation:** There is a lack of meaningful opportunities for the public to participate in decision making on legislative and budgetary matters. For example, in **Article 19 (3)(b)**, the provincial People's council decides on government revenues in the province without any input from the public. They are mainly involved in the voting of delegates.
-

Functions and Composition in each Administrative Level

Article 4 (1): The local government level shall include the People's Council and the People's Committee organized at administrative units of the Socialist Republic of Vietnam."



1. People's Council

Appointment

Article 6 (1): They are elected by the people in their respective localities.

The process of appointment and election varies depending on the level of the People's Council. For example, the members of the provincial People's Council are elected by the people within the province, while the members of the district and commune-level People's Councils are elected by the people within their respective districts or communes.

The election of People's Council members is conducted through a democratic process, with multiple candidates standing for election and voters casting their votes in secret ballots. The candidates are typically nominated by local political organizations or community groups.

After the election, the newly-elected members of the People's Council will convene and select their leadership, including the chairperson and vice-chairpersons of the Council. These leaders will then preside over the Council's meetings and represent the Council in its interactions with other organizations and government bodies.

Organizational Structure

The organizational structure of the People's Council in Vietnam is hierarchical, with different levels of councils corresponding to different levels of local government. The three main levels of People's Councils in Vietnam are:

1. **Provincial-level People's Council:** This is the highest level of the People's Council in a province or a centrally run city in Vietnam. The Provincial-level People's Council is responsible for enacting laws and policies that apply to the entire province or city, and overseeing the work of the lower-level People's Councils. The council is headed by a chairman and vice-chairman, who are elected by the council members.
2. **District-level People's Council:** This is the second level of the People's Council in Vietnam, corresponding to the district or town level of local government. The District-level People's Council is responsible for enacting laws and policies that apply to the district or town, and overseeing the work of the lower-level People's Councils at the commune level. The council is headed by a chairman and vice-chairman, who are elected by the council members.
3. **Commune-level People's Council:** This is the lowest level of the People's Council in Vietnam, corresponding to the commune or ward level of local government. The Commune-level People's Council is responsible for enacting laws and policies that apply to the commune or ward, and overseeing the work of the local government agencies and public services. The council is headed by a chairman and vice-chairman, who are elected by the council members.

The council members are composed of both elected members and ex-officio members.

The council members are organized into standing committees and ad hoc committees, which are responsible for overseeing specific areas of governance, such as economic development, social welfare, and environmental protection. The standing committees are permanent committees that operate throughout the term of the council, while the ad hoc committees are temporary committees formed to address specific issues or challenges facing the local government.

Functions

The Function of the People's Council are provided in **Articles 19, 26, 33, 40, 47, 54, 61 and 68**.

The People's Council has the following functions –

1. **Legislative function:** The People's Council has the power to enact laws, regulations, and resolutions within its jurisdiction. These laws and regulations must be consistent with the national laws and regulations of Vietnam.
2. **Budgetary function:** The People's Council is responsible for approving the local government's budget, including revenue and expenditure plans, and overseeing their implementation. The council also has the power to allocate resources and funds to different sectors and projects in the local government.

3. **Oversight function:** The People's Council is responsible for overseeing the activities of the local government, including monitoring its performance and ensuring that it operates in accordance with the law and regulations.
4. **Representation function:** The People's Council represents the interests of the local people and communities, and acts as a platform for their participation in the decision-making process. The council can receive petitions and proposals from the people and present them to the local government for consideration.
5. **Electoral function:** The People's Council has the power to elect or dismiss members of the People's Committee, which is the executive branch of the local government.

2. People's Committee

Appointment

The People's Committee is the executive branch of the local government, and its members are appointed by the People's Council at their respective levels.

The process of appointment of the People's Committee members is as follows:

1. The People's Council elects a chairperson, who is responsible for proposing a list of candidates for the People's Committee.
2. The proposed list of candidates is then reviewed by the People's Council, which can approve or reject the proposed list.
3. If the proposed list is approved, the members of the People's Committee are officially appointed and take up their positions.

The members of the People's Committee are typically chosen based on their qualifications, experience, and expertise in various fields, such as economics, finance, law, and public administration. The number of members on the People's Committee depends on the level of the local government, with larger localities such as the province level having more members.

Responsibility

The People's Committee is responsible for implementing policies and decisions made by the People's Council, as well as managing the daily operations of the local government. The chairperson of the People's Committee is the highest-ranking official in the local government, and is responsible for leading and coordinating the work of the Committee.

Organizational Structure

The organizational structure of the People's Committee in Vietnam is similar to that of the People's Council, with different levels of committees corresponding to different levels of local government. The three main levels of People's Committees in Vietnam are:

- 1. Provincial-level People's Committee:** This is the highest level of the People's Committee in a province or a centrally-run city in Vietnam. The Provincial-level People's Committee is responsible for implementing laws and policies passed by the higher-level People's Council and the national government, and overseeing the work of the lower-level People's Committees. The Committee is headed by a chairman and vice-chairman, who are appointed by the national government.
- 2. District-level People's Committee:** This is the second level of the People's Committee in Vietnam, corresponding to the district or town level of local government. The District-level People's Committee is responsible for implementing laws and policies passed by the higher-level People's Committee and the People's Council, and overseeing the work of the lower-level People's Committees at the commune level. The Committee is headed by a chairman and vice-chairman, who are appointed by the higher-level People's Committee.
- 3. Commune-level People's Committee:** This is the lowest level of the People's Committee in Vietnam, corresponding to the commune or ward level of local government. The Commune-level People's Committee is responsible for implementing laws and policies passed by the higher-level People's Committee and the People's Council, and overseeing the work of the local government agencies and public services. The committee is headed by a chairman and vice-chairman, who are appointed by the higher-level People's Committee.

At each level of the People's Committee, there are several departments and offices that are responsible for specific areas of governance, such as economic development, social welfare, public services, and environmental protection. The department heads and office directors are appointed by the chairman of the People's Committee, and they are responsible for implementing policies and programs in their respective areas of expertise.

In addition to the departments and offices, there are also specialized agencies and organizations that work closely with the People's Committee, such as the police, the courts, and the military, among others. These agencies and organizations are responsible for maintaining law and order, providing security, and ensuring the safety and well-being of the local communities.

Functions

The Function of the People's Council are provided in **Articles 21, 28, 36, 42, 49, 56, 63 and 70.**

The Function of the People's Committee is the:

1. **Implementation of laws and policies:** The People's Committee is responsible for implementing laws, regulations, and policies passed by the People's Council and the national government. This includes enforcing laws and regulations, issuing administrative decisions, and managing public services and facilities.
2. **Management of local resources:** The People's Committee is responsible for managing the local natural resources, including land, water, and forests, and for developing and implementing plans and policies for their sustainable use and protection.
3. **Economic development:** The People's Committee is responsible for promoting economic development in the local area, including attracting investment, developing infrastructure, and supporting local businesses and industries.
4. **Public services:** The People's Committee is responsible for providing and managing public services, such as healthcare, education, and social welfare, and for ensuring that these services meet the needs of local people.
5. **Disaster management:** The People's Committee is responsible for managing and responding to natural disasters and emergencies that occur within the local area, including coordinating relief efforts and providing support to affected communities.



Hanoi, Vietnam
Source: Tran Phu, Unsplash

Rapid Assessment of the Legal Framework for Spatial Planning in the Socialist Republic of Vietnam

Saigon, Ho Chi Minh City, Vietnam
Source: Create Travel TV, Unsplash



INTRODUCTION

Urban plans create a path for urban growth that seeks to maximize the positive and minimize the negative effects of urbanization. They help revitalize physical facilities in urban areas as well as develop and conserve areas of natural environmental significance (SDG 11). The New Urban Agenda (NUA) recognizes that rather than a technical tool, spatial planning is first and foremost a cross-sectoral and multi-stakeholder participatory decision-making process. The NUA also encourages effective and meaningful participation as crucial to ensuring that policies are designed in a socially just manner that respects the rights of communities and builds resilience. Thus, urban planning is the process for implementing sectoral policies, making it possible to plan and supervise the urbanization of territories with a view to economic and social development. It also makes it possible to propose sustainable forms of urban management through the definition of objectives, development principles and planning projects.

Urban planning makes it possible to formulate a long-, medium and short-term vision while rationalizing the means to achieve the goals set. It also makes it possible to link the needs for infrastructure and services with population growth or the demand for urban expansion with environmental protection. It allows a better involvement of local actors in the development of their territory.

The use of different planning instruments, usable at different scales, makes it possible to best respond to the challenges of urban development.

In the Socialist Republic of Vietnam, the urban planning system was developed predominantly from the doctrines and practices of the former Soviet Union; thus, it followed the basic structure of the Russian model that was designed for application under a centrally based economic framework.²² As Vietnam's economy rapidly transitions from a socialist to an open market economy, urban development activities have diversified from being state-run initiatives to private enterprises, activities bankrolled with foreign capital or other nongovernmental initiatives.²³

In the Socialist Republic of Vietnam, urban planning has had remarkable results, with urban growth taking place at a rate of (40% in 2022 compared to 30.5% in 2010) which has contributed to about 70% of the country's Gross Domestic Product (GDP). However, urbanization in Vietnam still has several limitations such as rapid growth without a global vision, urban infrastructures which are unparalleled with socio development and environmental protection, waste of land and natural/ human resources, lack of management capacity.²⁴

22 White, P. M. (1980). Soviet urban and regional planning. New York: St. Martin's Press; Shigehisa M (2017) New Approach and Issues for the Urban Planning System in Vietnam: - The Practice of the Newly Formulated Urban Planning Regulations in Ho Chi Minh City- . Urban and Regional Planning Review. https://www.researchgate.net/publication/316569207_New_Approach_and_Issues_for_the_Urban_Planning_System_in_Vietnam_-_The_Practice_of_the_Newly_Formulated_Urban_Planning_Regulations_in_Ho_Chi_Minh_City-

23 Ibid.

24 Seminar on Sustainable Planning and Development of Urban Areas (2023) (https://www.eeas.europa.eu/delegations/vietnam/seminar-sustainable-planning-and-development-urban-areas_en).

There is also a special link between urban planning and land management. The non-regularization of customary lands caught up by urbanization, the uncontrolled sprawl of cities, planning not keeping pace with urban growth are the factors of proliferation of informal housing in Vietnam.

The policy and legal framework relating to urban development in Vietnam is both complex and rapidly developing. It includes several laws, decrees and other provisions that are directly related to the urbanization process.²⁵

There are currently 862 urban areas in Vietnam (including five centrally run cities, 79 provincially run cities, 51 towns, 4 districts and 719 townships) that are related to urban development and management.

The implementation of the **2009 Law on Urban Planning** is intended to provide urban planning activities, organizing implementation of urban activities and managing urban development according to the approved urban planning.²⁶

Other texts supporting the **2009 Law on Urban Planning** include:²⁷

- **Decision 1659/QĐ-TTĐ** dated 7 November 2012 that approved the preparation of a National Urban Development Plan (NUDP) for the period 2012 – 2020 with vision 2050. It was intended to provide a basic policy framework for urban development that would guide individual cities and provinces in preparation of urban planning activities.
- **Decree No. 11/2013/NĐ-CP** and Circular No. 12/2014/TT-BXD which further elaborated on the roles and responsibilities of province-level and city-level urban development programs in the NUDP period.
- **Resolution No. 1210/2016/UBTVQH13** – 2016 Resolution on Urban Classification provides a basis for the classification of cities into different classes (5 classes plus a special class), based on a series of defined indicators. This classification of cities is used as a basis for defining the levels of budget support for which they are eligible.

The implementation of the **2017 Law on Planning** is to provide activities for the planning under the national planning system and the responsibility for state management of planning.²⁸

It should be noted that, despite these laws being in place, they have not been successfully implemented.

Vietnam urban sector has been the driving force for economic growth. However, cities are lacking capacity in terms of prioritizing planning and development needs to gain the dividends of progressive economic development. The centralized decision-making process hinders a more inclusive and participatory planning approach which can promote city competitiveness and sustainable development.²⁹

25 Report on Sustainable Urbanization in Vietnam: Recommendations to improve the Legal Framework (2019).

26 Ibid.

27 Ibid.

28 Art 1, Law on Planning (Law No. 21/2017QH14) (2017)

29 UN – Habitat – Vietnam - Challenges (<https://unhabitat.org/viet-nam>)

Despite its rapid growth on both economic and social context, Vietnam is one of the world's most vulnerable countries to climate change impact, including but not limited to; sea level rise, longer and more severe droughts, flooding and tropical cyclones; as is typical with climate change in this region, the poorest are the most exposed. By 2050, a 1–3% loss in real GDP is predicted from climate change impacts.³⁰

Also, the urban planning policy and regulatory instruments have not been implemented significantly because of the lack of human, material, financial resources and especially political will.³¹

To provide a correct response to this urban planning problem in Vietnam there is need to improve, in a participatory manner, the legal, regulatory and institutional framework for urban development at the national level and regional level.

To achieve this, an assessment of the national urban legal framework is needed to better understand the current legal context as well as the constraints on the country's urban planning which is being undertaken by UN-Habitat. The indicators used for the legal assessment are Planning at Scale, Public Space, Informal Settlement Upgrading and Building Codes. These indicators are related to the core areas of planning; which together provide an overview of urban planning issues relevant for Vietnam.



Hanoi Train Street, Trần Phú, Hàng Bông, Hoàn Kiếm, Hanoi, Vietnam
Source: David Emrich, Unsplash

30 Ibid

31 Chu T (2023). Infrastructure planning and implementation in Vietnam. <https://khoamoitruongdothi.neu.edu.vn/vi/cong-trinh-nckh/infrastructure-planning-and-implementation-in-vietnam>

Rapid Assessment of the Legal Framework for
Spatial Planning in the Socialist Republic of Vietnam

CHAPTER I

TECHNICAL ASPECTS OF SPATIAL PLANNING AND URBAN PLANNING

REGULATORY FRAMEWORK FOR SPATIAL PLANNING AND URBAN Planning Law

Planning Law

1. LAWS ON URBAN PLANNING

Planning in the Socialist Republic of Vietnam is regulated through several instruments.

These instruments are:

1. **Law on Planning (Law No. 21/2017/QH14)** which provides for formulation, appraisal, decision or approval, announcement, implementation, assessment and adjustment of the planning under the national planning system; responsibility for state management of planning. The Law applies to organizations and individuals involved in the formulation, appraisal, decision or approval, announcement, implementation, assessment and adjustment of the planning under the national planning system and other relevant organizations and individuals.³²
2. **Decree 37/2019/ND-CP** which details implementation of some articles of the **Planning Law**. This Decree details several contents in **Articles 15, 17, 19, 22, 23, 24, 25, 26, 27, 30, 40, 41 and 49 of the Law on Planning**.³³
3. **Land Law No. 45/2013/QH13** which prescribes the land ownership, powers and responsibilities of the State in representing the entire-people ownership of land and uniformly managing land, the land management and use regimes, and the rights and obligations of land users over the land in the territory of the Socialist Republic of Vietnam.
4. **Construction Law No. 50/2014/QH13** which prescribes the rights, obligations and responsibilities of agencies, organizations and individuals and the state management in construction investment activities.
5. **Law on Housing No. 65/2014/QH13** which stipulates ownership, development, management, and use of housing; housing-related transactions; state management of housing in Vietnam. Transactions in sale, lease, and sublease on commercial housing conducted by real estate enterprises or cooperatives should comply with regulations of law on real estate trading.

³² Law on Planning, Art 1

³³ Decree 37/2019/ND-CP

2. NATIONAL PLANNING SYSTEM

Vietnam's planning system is made up of different types of planning, that include: overall planning of socio-economic development at all levels with the management level operating under the Ministry of Planning and Investment; physical planning at all levels under control of the Ministry of Construction; land use planning follows the Ministry of Natural Resources and Environment; special planning under the specialized Ministries.

Article 5 of the Law on Planning for Vietnam provides for a National Planning System. This includes:³⁴

A. National Planning:³⁵

- National comprehensive planning: the national and strategic planning towards zoning and interconnecting regions of a territory, including mainland, islands, archipelagoes, territorial waters and airspace; urban and rural systems; infrastructure; use of natural resources and environmental protection; natural disaster management, climate change resilience, assurance of national defense and security and international integration.
- National marine spatial planning: the national planning that is aimed at realizing the national comprehensive planning for zoning of various fields and sectors within coastal areas, islands, archipelagoes, territorial waters and airspace that belong to sovereignty, sovereign rights and national jurisdiction of Vietnam.
- National land use planning: the national planning that is aimed at realizing the national comprehensive planning for allocation and zoning of land used by fields, sectors and areas on the basis of land potential.
- National sector planning: the national planning that is aimed at realizing the national comprehensive planning according to sectors based on interconnection of sectors and regions related to infrastructure, use of natural resources, environmental protection and biodiversity conservation.

B. Regional Planning: the planning that is aimed at realizing the national comprehensive planning at regional level in terms of spaces used for socio-economic, national defense and security activities, urban system and rural population distribution, development of inter-provincial regions, infrastructure, water resources of river basins, use of natural resources and environmental protection based on provincial interconnection.³⁶

C. Provincial planning: the planning that is aimed at realizing the national comprehensive planning and regional planning at provincial level in terms of spaces used for socio-economic, national defense and security activities, urban system and rural population distribution, land allocation, infrastructure, use of natural resources and environmental protection based on interconnection of national, regional, urban and rural planning.³⁷

D. Special administrative-economic unit planning: Special administrative-economic unit planning decided by the National Assembly.

³⁴ Law on Planning, Art 5.

³⁵ "What is planning? National planning system in Vietnam", Law Net (2022).

³⁶ Ibid.

³⁷ Ibid.

E. Urban planning and rural planning: urban planning entails the organization of space, architecture, urban landscape and system of technical and social infrastructure facilities and houses to create an appropriate living environment for people living in an urban center, which is expressed on an urban plan.³⁸ Rural planning with regard to rural construction planning entails the organization of space, land use, systems of technical infrastructure and social infrastructure works of a rural area.³⁹ The rural planning includes; construction general planning, which should be carried out for the entire administrative boundaries of communes; and construction detailed planning, which should be carried out for rural residential quarters.⁴⁰

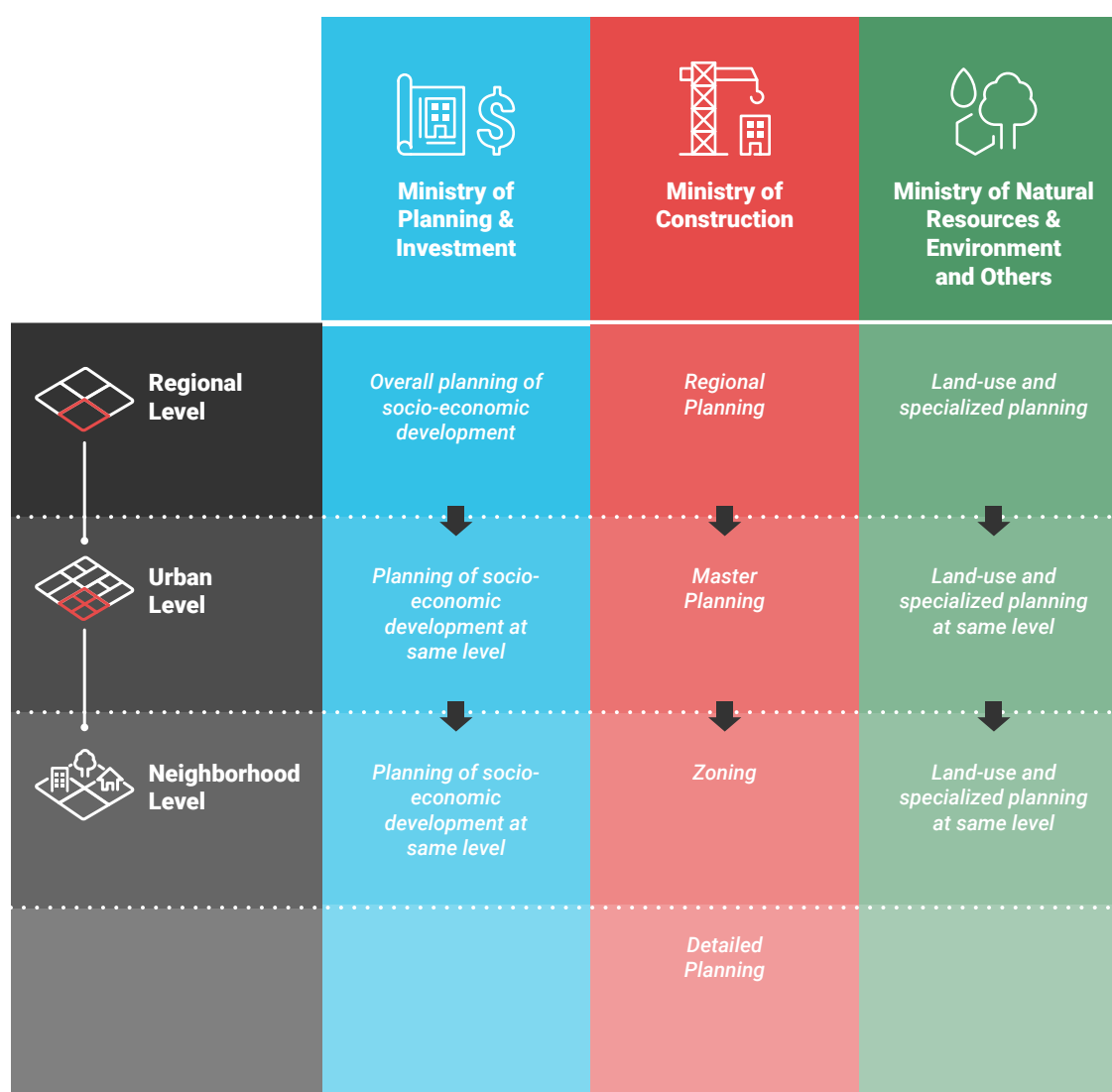


Figure 2: Illustration of Planning System in Vietnam⁴¹

38 Law on Urban Planning, Art 2.

39 The Construction Law, Art 3.

40 What are the types of construction planning in Vietnam? <https://lawnet.vn/thong-tin-phap-luat/en/khac/what-are-the-types-of-construction-planning-in-vietnam-117391.html>

41 Law on Planning, 2017, Art 5 https://www.researchgate.net/publication/327115027_Integrating_strategic_planning_values_into_urban_master_planning_process_in_Vietnam

Relationship between planning types is defined in **Article 6 of the Law on Planning 2017** as follows:⁴²

- The national comprehensive planning serves as a basis for formulation of national marine spatial planning, national land use planning, national sector planning, regional planning, provincial planning, special administrative-economic unit planning, urban planning and rural planning nationwide.
- The national sector planning should conform to the national comprehensive planning, national marine spatial planning and national land use planning.

If the national sector plan is inconsistent with the national marine spatial plan and national land use planning it should be adjusted and implemented according to the national marine spatial planning, national land use planning and national comprehensive planning.

- The regional plans should conform to the national planning while the provincial plans should conform to the regional planning and national planning.

If the regional and provincial plans are inconsistent with the national sector planning, they should be adjusted and implemented according to the national sector planning and national comprehensive planning.

If different regional plans are inconsistent with each other, and the different provincial plans are inconsistent with each other, they should be adjusted and implemented according to the planning at a higher level; in the event that the provincial planning is inconsistent with the regional planning, it should be adjusted and implemented according to the regional planning and national planning.

- The urban planning and rural plans should conform to the national planning, regional planning and provincial planning.

3. ASSESSMENT OF TECHNICAL CONTENT

A. National Planning

Art 6 of the Law on Planning, highlights that the National Comprehensive Planning will serve as a basis for the formulation of national marine spatial planning, national land use planning, national sector planning, regional planning, special administrative – economic unit planning, urban planning and rural planning nationwide.⁴³

According to the Act, the National Comprehensive Planning is to provide for the national and strategic planning towards zoning and interconnecting regions of a territory. ⁴⁴

Considering that this planning system serves as a basis for the different planning types, it poses a risk for gaps in implementation of the **Planning Laws**.

⁴² Law on Planning, Art 6

⁴³ Ibid

⁴⁴ Law on Planning, Art 2

Having come to effect in January 2019, it highlights that previous specialized **Planning Laws** will not be enforceable. This will cause problems and difficulties in completion of projects as the cannot be adjusted or approved according to the National Comprehensive Plan. This will affect investment and development.⁴⁵ The Law does not provide a provision on how projects under the old laws can be integrated and completed under the new law.

(PS: There is a National Master Plan for 2021 – 2030, Vision 2050, that was approved in November 2022. However, this Plan could not be accessed online)

B. Regional Planning

Regional planning is aimed at realizing the national comprehensive planning at regional level. There are 6 regions in Vietnam, northern midland and mountainous region; the Mekong Delta; the Central Highlands; the southeastern region; the northern and coastal central region; and the Red River Delta.⁴⁶

As of April 2022, only the Mekong Delta Master Plan had been approved.⁴⁷ However, the Mekong Delta Master Plan still poses a challenge. The absence of specific regulations and instructions on the content of the drawing documents such as the main map, the scale and the level of representation on the map such as marine space exploitation; the system of seaports, river ports, industrial parks, renewable energy development zone has caused an imbalance between industries in the Mekong Delta and among localities.⁴⁸

Additionally, there is lack of management apparatus, a coordination mechanism and a general operating mechanism of the region. This is equally not mentioned in the Law on Organization of Local Governments in the level of regional government.⁴⁹ Therefore, each region needs to have an apparatus to manage regional planning and regional linkage in accordance with the planning, based on regional operating regulations.⁵⁰

(Please note: this is not based on the author's interpretation of the Mekong Delta Master Plan, as it could not be accessed, thus, the findings have been based on online articles).

C. Provisional Planning

Many localities have reported on difficulties in making provincial plans due to Clauses 6 and 7, Article 1 of **Decree No. 148/2020/ND-CP dated December 18, 2020** of the Government on amending and supplementing a number of decrees detailing the implementation of the **Land Law** are inconsistent with the provisions of the **Planning Law**. (The full English Version of the Decree could not be accessed).

45 Quyhoachdothi, "Comments on the Law on Planning" (2022) <https://quyhoachdothi.com/en/comments-on-the-law-on-planning/>

46 "Politburo's resolutions give new boost to development of regions" (2023) <https://en.vietnamplus.vn/politburos-resolutions-give-new-boost-to-development-of-regions/246133.vnp#:~:text=The%20six%20regions%20are%20the,and%20the%20Red%20River%20Delta.>

47 Quyhoachdothi, 2022

48 Ibid

49 Ibid

50 Ibid

FOCUS ON URBAN PLANNING

1. LAWS ON URBAN PLANNING

Urban planning in the Socialist Republic of Vietnam is carried out through several instruments provided for by these laws:

1. **Law on Urban Planning (No. 30/2009/QH12)** which provides urban planning activities including elaborating, evaluating, approving and adjusting urban planning; organizing the implementation of urban planning and managing urban development according to approved urban planning. It applies to domestic and foreign organizations and individuals directly involved in or related to urban planning activities in Vietnamese territory.⁵¹
2. **Vietnam Building Code on Regional and Urban Planning and Rural Residential Planning (No 04/2008/QĐ-BXD)** which consists of regulations which must be complied with in the process of elaboration, evaluation and approval of construction plans; serves as a legal ground for management of the promulgation and application of construction planning standards and regulations on construction management under local planning.⁵²
3. **Land Law No. 45/2013/QH13** which prescribes the land ownership, powers and responsibilities of the State in representing the entire-people ownership of land and uniformly managing land, the land management and use regimes, and the rights and obligations of land users over the land in the territory of the Socialist Republic of Vietnam.⁵³
4. **Construction Law No. 50/2014/QH13** which prescribes the rights, obligations and responsibilities of agencies, organizations and individuals and the state management in construction investment activities.⁵⁴
5. **Law on Housing No. 65/2014/QH13** which stipulates ownership, development, management, and use of housing; housing-related transactions; state management of housing in Vietnam. Transactions in sale, lease, and sublease on commercial housing conducted by real estate enterprises or cooperatives should comply with regulations of law on real estate trading.⁵⁵

51 Law on Urban Planning, Art 1

52 Vietnam Building Code on Regional and Urban Planning and Rural Residential Planning, Art 1. https://binhdinh.eregulations.org/media/04_2008_QD-BXD_85111.pdf

53 Land Law, Art 1

54 Construction Law, Art 1

55 Law on Housing, Art 1

Urban Planning Structure

Orientations of the master plan on the national system of urban centers are formulated to determine the national network of urban centers as a basis for urban planning.⁵⁶

According to the **2009 Law on Urban Planning**, master planning projects are composed of 4 groups: cities under central authority; cities of province; towns, and new cities.

Nevertheless, all these groups are basically implemented in 4 stages: (1) problem identification, (2) analysis, evaluation, vision, and targets building, (3) strategy selection, action plans building (decision making), (4) implementations and reviews. Although the process is divided into stages under a precise schedule, the progress is rarely done on time. This is because urban projects management is made and appraised under a mechanism with rigid procedure, which follows traditional master planning based on intricate regulations and standards and capacity of experts, managers, and politicians. It is inflexible and unable to adapt to the urban complexity. Therefore, urban planning process remains largely unimplemented and there is a need to improve it to adapt with the development context of Vietnam and international integration process.⁵⁷

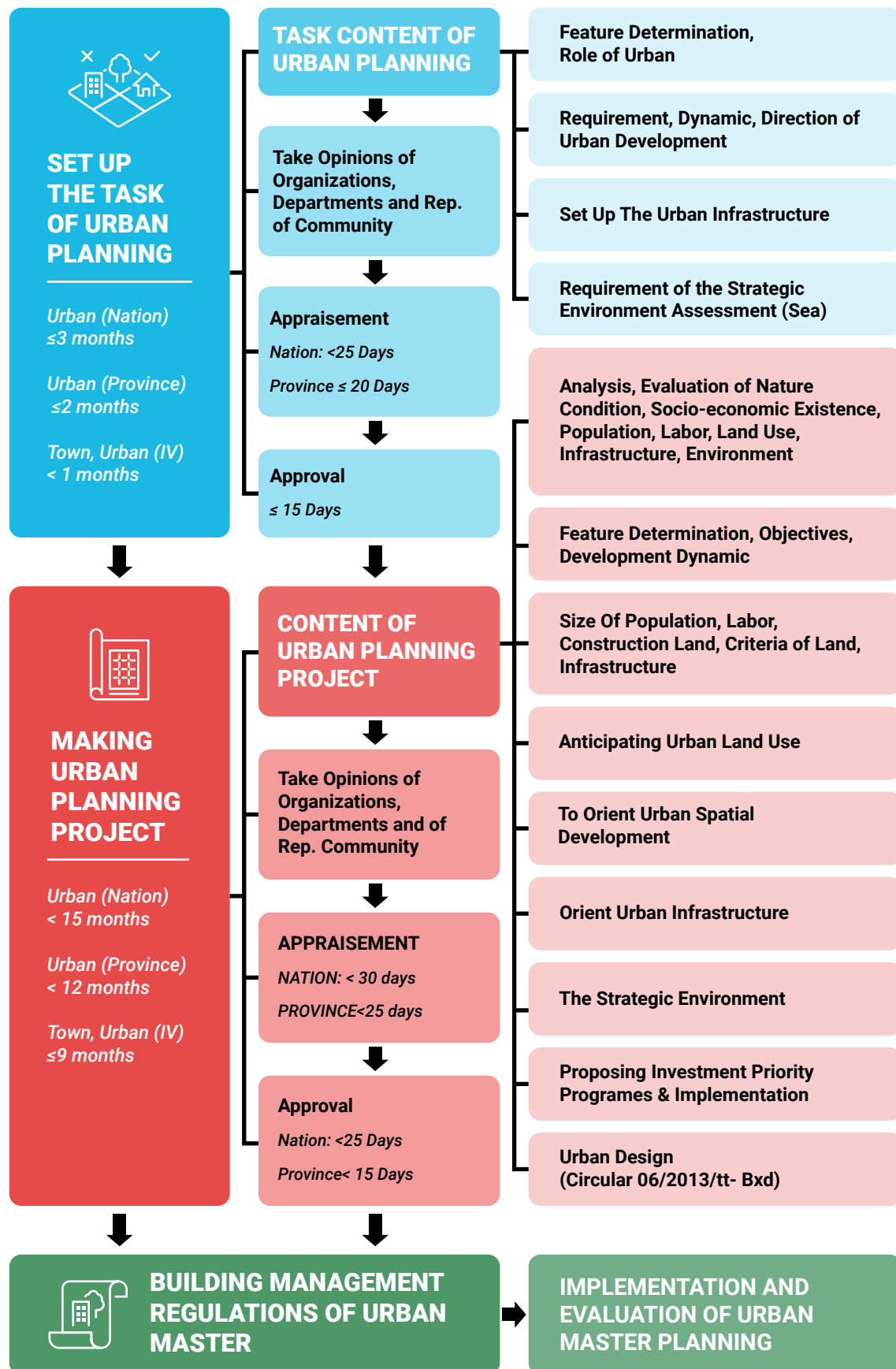


Ho Chi Minh City, Vietnam
Source: Jet Dela Cruz, Unsplash

⁵⁶ Law on Urban Planning, Art 17

⁵⁷ Phuc M, Vinh T (2018). Integrating strategic planning values into urban master planning process in Vietnam. https://www.researchgate.net/publication/327115027_Integrating_strategic_planning_values_into_urban_master_planning_process_in_Vietnam

Figure 3: Urban Master Planning Process⁵⁸



58 Ibid

The Law on Urban Planning under Chapter 2 describes the different types of urban planning activities and describes the responsibilities associated with each of these activities. The Law provides three types of urban planning activities:

- A.** General planning, which is made for centrally run cities, provincial cities, towns, townships and new urban centers;
- B.** Zoning planning, which is made for areas within cities, towns and new urban centers;
- C.** Detailed planning, which is made for areas to meet urban development and management requirements or construction investment needs.

Chapter 2 further provides for the urban planning responsibilities for different parties within the government.

Chapter 3 describes the different evaluation and approval processes associated with urban planning. This includes the contents of urban planning evaluations which ensure that development projects comply with guidelines for socio-economic development, defense and security requirements, and higher-level urban planning requirements.

It highlights that the urban planning evaluations apply to urban planning consultancy organizations. Different plans (the three indicated in Chapter 2) have different requirements that must be met. This law also provides the Ministry of Construction with authority to approve urban planning tasks and activities.

Chapter 4 of the Law describes processes for adjusting urban plans as follows:

- I.** There is an adjustment to the strategy or master plan on socio-economic development, defense and security, orientations of the master plan on the national system of urban centers, regional construction planning, higher-level urban planning and administrative boundaries greatly affecting the nature, function and size of the urban center or planned area.
- II.** A key project of national importance is formed, which greatly affects urban land use, environment and spatial and architectural layout.
- III.** The urban planning cannot be realized, or its realization is adversely affecting the socioeconomic development, defense, security, social welfare, ecological environment, historical or cultural relics according to review or evaluation results and community opinions.
- IV.** There is a change in climate, geological or hydrological conditions.
- V.** Serving national and community interests.

Adjustments may be made after a careful review of the prevailing conditions at the time and in a case where it is indicated that the conditions have changed, there is a requirement for new land reforms.

The Law under Chapter 5 further provides for the organization and management of urban development in accordance with urban planning. This chapter provides requirements for publicizing urban planning responsibilities and requirements. This law provides the following details for publication requirements of urban planning activities: within 30 days after being

approved, urban plans should be publicized in forms such as constant display of drawings and mock-ups at offices of urban planning-related state management agencies at all levels, urban planning exhibition and information centers and planned areas; information on the mass media and printing of publications for wide dissemination.

Regarding management and use of urban land according to urban plans, this law provides the principles of management of construction according to urban planning; cases required to have a planning license; management of developing new urban centers and urban quarters; and management of renovation or urban centers according to planning.

The Three Types of Urban Planning provided under Land Law 18:⁵⁹



1. General Planning

General urban plans must determine the nature and role of urban centers, basic requirements on studies to exploit the development potential, driving force and orientations, urban expansion, arrangement of the systems of urban social and technical infrastructure facilities in inner areas and suburbs: and requirements on strategic environmental assessment.⁶⁰

The Ministry of Construction assumes the prime responsibility for, and coordinates with the People's Committees of provinces and centrally run cities in, organizing general planning for new urban centers of a planning scope related to the administrative boundaries of two or more provinces and centrally run cities, general planning for new urban centers with a projected population equal to that of urban centers of grade III or higher, and other planning assigned by the Prime Minister.⁶¹

Public participation is done by the collection of comments from the communities on general planning tasks and the plans which should be conducted by consulting their representative in the form of distributing survey cards and questionnaires. Community representatives then synthesize the comments of their communities in accordance with the law on grassroots democracy.⁶²



2. Zoning Plans

Zoning plans must determine the boundary, area and nature of the planned area, the expected norms on population, land use and social and technical infrastructure; requirements and basic principles of zoning to ensure conformity in terms of architectural space and connection of technical infrastructure with the approved general planning and suitability with adjacent areas; and requirements on strategic environmental assessment.⁶³

⁵⁹ Law on Urban Planning, Art 18

⁶⁰ Law on Urban Planning, Land Law Art 23

⁶¹ Ibid. Art 19

⁶² Ibid. Art 21

⁶³ Law on Urban Planning, Art 23

The People's Committees of provinces and centrally run cities, provincial cities and towns, urban districts, rural districts of a centrally run city and rural districts of a province should organize zoning planning for zones of a scope related to the administrative boundaries.⁶⁴

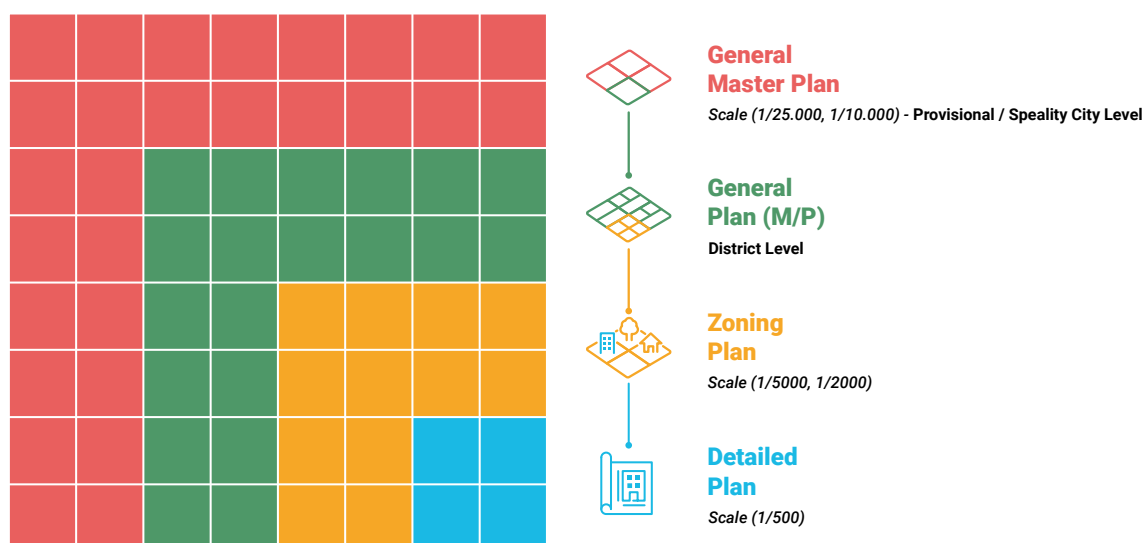
Public participation is carried out by collecting comments from the communities on zoning plans and should be conducted through opinion polls through public display or introduction of planning options on the mass media.⁶⁵

3. Detailed Planning

Detailed plans must determine the limits of land use and population: requirements and principles of organization of architectural space, social and technical infrastructure in the planned area, ensuring conformity with approved general planning and zoning planning and suitability with adjacent areas; requirements on strategic environmental assessment.⁶⁶

The People's Committees of provinces and centrally run cities, provincial cities and towns, urban districts, rural districts of a centrally run city and rural districts of a province should organize zoning planning for zones of a scope related to the administrative boundaries.⁶⁷

Figure 4: Vietnam's Urban Planning System⁶⁸



64 Law on Urban Planning, Art 44 (3)

65 Law on Urban Planning, Art 21

66 Law on Urban Planning, Art 23

67 Law on Urban Planning, Art 19

68 Matsumura S, Hoa N.T, Kien T.T, "New Approach and Issues for the Urban Planning System in Vietnam - The Practice of the Newly Formulated Urban Planning Regulations in Ho Chi Minh City" (2017) pg 62 https://www.researchgate.net/publication/316569207_New_Approach_and_Issues_for_the_Urban_Planning_System_in_Vietnam_-_The_Practice_of_the_Newly_Formulated_Urban_Planning_Regulations_in_Ho_Chi_Minh_City-

2. ASSESSMENT OF TECHNICAL CONTENT

Indicators assessed come from the UN-Habitat **Planning Law** Assessment Framework.

A. Planning at Scale

Article 46 of the Law on Urban Planning provides that urban planning should be periodically reviewed and evaluated in the course of implementation so as to be promptly adjusted in response to the socio-economic development situation in each period.

General and zoning planning should be reviewed once every five years and detailed planning once every 3 years, counting from the date they are approved.

People's Committees at all levels review approved urban planning. Urban planning review results are to be reported in writing to agencies with urban planning-approving competence.

Based on the socio-economic development and factors affecting the urban development process, agencies with urban planning-approving competence should decide to adjust urban planning.

However, the law does not expressly provide provisions requiring urban plans to be developed considering expected demographic and migratory trends, linking them to the supply of affordable housing, an adequate supply of serviced land for different income groups.

B. Public Space

The Building Code under regulation 2.8.2 provides that urban designs under detailed plan should identify building set-backs on streets.⁶⁹ The Code also provides a requirement on urban architecture management under detailed construction plans of 1:500 scale for management of landscape architecture of each work, street block, street line and region.⁷⁰

This provisions however, cannot be implemented as will be seen below under the assessment of **the Building Code**. Additionally, the provisions only provide for management and design, however, there is no clear understanding of the roles of different departments.

The legal framework on urban planning has inadequate provisions on streets and public spaces as there is a lack of adequate planning for urban expansion and inadequate provision in planning legislation and urban plans of standards for public spaces.

C. Zoning Plan

The Law on Construction provides a framework of 1:2,000⁷¹ for drawing scale detailed plans. However, the **Law on Urban Planning** provides for 1:5,000 or 1:2,000.⁷² Thus, there is inconsistency between the two laws which compromises enforceability, and it is not clear to users which law takes precedence.

69 Vietnam Building Code on Regional and Urban Planning. Reg 2.8.2. <https://faolex.fao.org/docs/pdf/vie86763.pdf>

70 Ibid

71 Law on Construction, Art 27 (2)(b)

72 Law on Urban Planning, Art 29 (2)

D. Architectural Management Regulation (AMR)

An Architectural Management Regulation (AMR) is established by the **Law on Urban Planning**.⁷³ However, there is no model regulation or guideline for the AMR. Each locality formulates its own regulations which require a high degree of professionalism. By 2018, there was no legal AMR except the case of Ho Chi Min City.⁷⁴

There is a need to develop a model regulation or guideline for formulating the AMR.

E. Building Code

- **Age of Building Code**

The **Vietnam Building Code** was lastly reviewed and updated in April 2008. The **Building Code** having come to force in 2008 and the **Law on Urban Planning** in 2009, it is important for it to be reviewed and updated considering new emerging risks and developments. It ought to be periodically reviewed considering its effectiveness in delivering safe and resilient housing.⁷⁵

- **Uniformity of Application**

The **Law on Urban Planning** does not establish a legal framework in which building regulations can be implemented. This, therefore, renders the **Vietnam Building Code on Regional and Urban Planning and Rural Residential Planning** a 'hanging' Decree. This poses a problem for implementation and enforcement of the Building Code.

There is a need to update and adopt the **Building Code** in the national legislation to ensure consistency and that is complementary.

Additionally, the **Building Code** still provides for a requirement on detailed urban construction plans of 1/500 scale which was abolished with the old urban **Planning Law**.⁷⁶

- **Scope for Local Materials**

The **Building Code** does not provide a scope for locally available materials. This therefore highlights that with no regulation in place, individuals/organizations independently decide on which materials to use which in turn, could increase dependency on imported industrialized building materials. This creates a high cost of compliance which creates a rigorous and unattainable standard that creates a major obstacle for the expansion of regulatory compliance.⁷⁷

⁷³ Ibid, Art 5

⁷⁴ Matsumura, 2017

⁷⁵ Planning Law Assessment Framework, UN-Habitat, pg 84

⁷⁶ Building Code, 2008 , Art 1.4.5

⁷⁷ Planning Law Assessment Framework, UN-Habitat, pg 54

URBAN PLANNING STANDARDS

The Urban Planning Standards in Vietnam are provided for in the **Vietnam Building Code- Regional and Urban Planning and Rural Residential Planning**. Vietnam takes a centralized approach to its building and construction regulatory system. The central government issues building and construction decrees and the Ministry of Construction converts them into building codes.⁷⁸

There are four levels of reference standards in Vietnam:

1. National standards, national technical standards, and local technical standards administered by the Vietnam Standards and Quality Institute (Directorate for Standards, Metrology and Quality);
2. Construction standards administered by the Ministry of Construction;
3. Ministerial standards administered by the central government; and
4. International codes and standards. These standards can replace any Vietnam Standards or be used where there is no applicable Vietnam Standard.

Energy Efficiency in Building Codes

Energy efficiency is incorporated into the **Building Code** through **Decree No. 102/2003/ND-CP** on thrifty and efficient use of energy.

In 2011, the government initiated development of a climate change strategy, the Vietnam Green Growth Strategy. The strategy is driven by the national policy agenda and Vietnam's desire to support international efforts to combat climate change. It is administered by the Ministry of Planning and Investment. The building and construction industry is one focus of the strategy. Its agenda includes biodiversity conservation, innovation in the efficient use of natural resources, and energy security. It is a means to accelerate economic restructuring for the efficient use of natural resources, reduce greenhouse gas emissions through research and application of modern technologies, develop infrastructure to improve economic efficiency, cope with climate change, reduce poverty, and support sustainable economic growth. This strategy may lead to development of mandatory green building standards in Vietnam.⁷⁹

⁷⁸ https://www.apec.org/docs/default-source/Publications/2013/8/APEC-Building-Codes-Regulations-and-Standards-Minimum-Mandatory-and-Green/2013_scsc_BldingCodeStudy-12July.pdf

⁷⁹ Ibid

Safety

Article 1.3 of the Building Code provides that construction or construction management planning must comply with specialized regulations on protection zones, sanitation and safety clearances, including: 1) Protection zones of technical infrastructure works. 2) Protection zones of historical and cultural relics, scenic places and beauty spots, and conservation zones. 3) Protection zones of security and defense works. 4) Segregation zones between civil areas; 5) Safety distances for fire prevention between different works; 6) Flight safety distances. 7) Safety distances for areas vulnerable to natural disasters or geological catastrophes (slumps, fractures, landslides, flash floods), radioactivity.⁸⁰

Article 1.4.1 of the Building Code provides for construction plans or renovation of urban areas, residential areas, industrial parks to achieve desired efficiency in ensuring safety for people working and residing in areas or works under construction or renovation.⁸¹

Article 2.8.1.16 of the Building Code provides that a filling station in an urban center must not affect traffic safety by ensuring that it must be at least 7m (counting from the outer edge of the plan view of the filling station) far from the building line (the red line).⁸²

Layout and Volume

In relation to urban design under detailed construction plan, the **Building code** under Art 2.8.4 provides that the minimum distances between separate construction works or adjoining houses (collectively referred to as terraces) in new construction planning areas are that the distance between the long sides of two terraces < 46m high must be $\geq 1/2$ of the work's height ($\geq 1/2h$) and must not be < 7m. For works of $\geq 46m$ high, this distance must be $\geq 25m$. Additionally, the distance between the two gables of two terraces < 46m high must be $\geq 1/3$ of the work's height ($\geq 1/3h$) and must not be < 4m. For works $\geq 46m$ high, this distance must be $\geq 15m$.⁸³

Location

Buildings and construction must have appropriate locations ensuring requirements on environmental and landscape protection, fire prevention and fighting, be conveniently interlinked by a rational and safety traffic system, and ensure service radiuses of public and service works and parks and greeneries.⁸⁴

- The law does not provide standards for public spaces and streets in the urban planning documents.

⁸⁰ Vietnam Building Code on Regional and Urban Planning, Art 1.3 (2008 version)

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid. Art 2.7.4

INFORMAL SETTLEMENT UPGRADING FRAMEWORK

Informal settlement upgrading in Vietnam is not provided for in the law. However, there have been efforts to deal with the growing population and rural to urban migration with regards to housing.

Foreign investment and development efforts focusing on industrialization of the major cities have resulted in increased rural - urban labor flows to the large cities and a strengthening of the informal economy which provides jobs for immigrants. This, however, has further increased demand for housing so that the policy has had *"a negative effect on housing the poor"*.⁸⁵

To ease the urgent need for low-cost housing for the poor, the central government adopted a policy of renovation of degraded areas, changing them into commercial areas and relocating squatters.⁸⁶

In this part, the assessment will consider the concept of informal area improvement in urban planning as well as urban renewal.

1. INFORMAL SETTLEMENT UPGRADING IN URBAN PLANNING

The Vietnam Urban Upgrading Project (VUUP) was launched in 2004 with the support of the World Bank using the approach of in-situ upgrading of low-income housing in Can Tho, Haiphong, Ho Chi Minh City and Nam Dinh (but not Hanoi).⁸⁷

The details of the spatial plans under the purview of the Ministry of Construction are conceived through four administrative mechanisms: The Master Plan Orientation for Vietnam's Urban System Development (national plan), the regional plans, (Ministry of Construction / provinces), the master plans (cities/provinces), and detailed plans (districts, wards, industry zones, or development projects). Vietnamese planning is prescriptive in character, laying out specific ways to use land in specific locations, unlike the rather regulative nature of Western land use planning.⁸⁸

All land was owned by the state, so it was only possible to purchase land-use rights but not ownership (under seven categories) for which certificates were issued. However, while land "is officially the collective property of the people of Vietnam, the right to use the land, and the right to build on it, gradually has been treated as property".⁸⁹ The permit system meant that legal land-

85 Coit, K. (1998). Housing policy and slum upgrading in Ho-Chi-Minh City. Habitat International, 22(3), 273 - 280. [https://doi.org/10.1016/S0197-3975\(98\)00011-3](https://doi.org/10.1016/S0197-3975(98)00011-3)

86 https://www.mypsup.org/library_files/downloads/Slum%20upgrading%20and%20urban%20governance-%20Case%20studies%20in%20three%20South%20East%20Asian%20cities.pdf

87 Coulthart, A., Quang, N., & Sharpe, H. (2006). Urban development strategy: Meeting the challenges of rapid urbanization and the transition to a market oriented economy. Hanoi: World Bank. <https://documents1.worldbank.org/curated/en/960751468317983615/pdf/371880VN0Urban01PUBLIC1.pdf>

88 https://www.mlit.go.jp/kokudokeikaku/international/spw/general/vietnam/index_e.html

89 Coit, K. (1998). Housing policy and slum upgrading in Ho-Chi-Minh City. Habitat International, 22(3), 273 - 280. [https://doi.org/10.1016/S0197-3975\(98\)00011-3](https://doi.org/10.1016/S0197-3975(98)00011-3)

use rights certificates are issued only where there is a family record book verifying permanent residency in an urban area for a significant period of time, and the local authority verifies that there was no disputed claim on the land, and there is verification that the state has no development plans for the area. Many households could not meet these requirements and therefore did not qualify for land-use rights.⁹⁰

In many cases where informal settlements had arisen on public lands, land and houses had simply been transferred in informal deals, without verification by the local authority.

Significant reforms were introduced under the **Land Law 2013**. There is now formal recognition of real estate markets, legal certificates for house ownership and devolution of responsibility to local governments for land administration and registry. Land-use certificates have been consolidated into a single type and there have been improvements in compensation procedures for expropriated land.⁹¹ This allows for limited public participation in planning and the adoption of land values that are close to market values instead of being set by the government.

The main challenges are in building the necessary capacities in local government for urban management to meet the changing needs in the city.

2. URBAN RENEWAL

The concept of residentialization emanates from the relative inefficiency of conventional rehabilitation operations on the living conditions of residents. This approach, which aims to reduce ill-defined problems to problems of urban form, proposes a program of urban integration by creating spatial entities that coordinate and work together.⁹²

Residentialization is synonymous with gentrification, which is often translated into Vietnamese as urban improvement which is a process of renewal of residential neighborhoods already depreciated or replaced by those which are more affluent (to ensure that there will be financially viable and profitable returns on the investments).

In Vietnam, there are several urban renewal trends in the form of residentialization:⁹³

- The renovation of old residential neighborhoods, including degraded housing, replaced by new housing projects. It is possible to call this renovation urban improvement. The typical example of this trend is the transformation of KTT model (Khu Tap The in Vietnamese, also known as collective housing estate) into KDTM (Khu Do Thi Moi in Vietnamese, also known as new urban area or new residential area);

90 https://www.mypsup.org/library_files/downloads/Slum%20upgrading%20and%20urban%20governance-%20Case%20studies%20in%20three%20South%20East%20Asian%20cities.pdf

91 Coulthart, A., Quang, N., & Sharpe, H. (2006). Urban development strategy: Meeting the challenges of rapid urbanization and the transition to a market oriented economy. Hanoi: World Bank. <https://documents1.worldbank.org/curated/en/960751468317983615/pdf/371880VN0Urban01PUBLIC1.pdf>

92 Golovtchenko, N. (2002). Article "résidentialisation". in Segaud M., Brun J., Driant J.-C. (Dir.) (2002), Dictionnaire de l'habitat et du logement, Paris: Armand Collin, 451p. ; Tran M (2018) Urban renewal applicable to an increase in density: Conceptualization of compact-KDT in Vietnam with Hanoi as a case study. https://www.researchgate.net/publication/327890995_Urban_renewal_applicable_to_an_increase_in_density_Conceptualization_of_compact-KDT_in_Vietnam_with_Hanoi_as_a_case_study

93 Ibid

- The transformation of former industrial estates or industrial parks (which used old technologies and polluted the surrounding areas), into residential neighborhoods, mainly in the form of KDTM, depending on the scale of re-development projects, which are normally large-scale;
- The transformation of existing public facilities into residential neighborhoods. These facilities were operated in the past, however, they no longer satisfy the current demand and become obsolete; and
- The transformation of other specific spaces into residential neighborhoods. Depending on the original functions of the transformed spaces, the corresponding type of residentialization will be established.

Urban renewal process in Vietnam was always associated with increasing density by maintaining the density of the building and establishing a new, higher floor area ratio to gain more profits from land redevelopment, especially when land in the city center is considered a valuable resource because of its scarcity and limitation.



Rapid Assessment of the Legal Framework for
Spatial Planning in the Socialist Republic of Vietnam

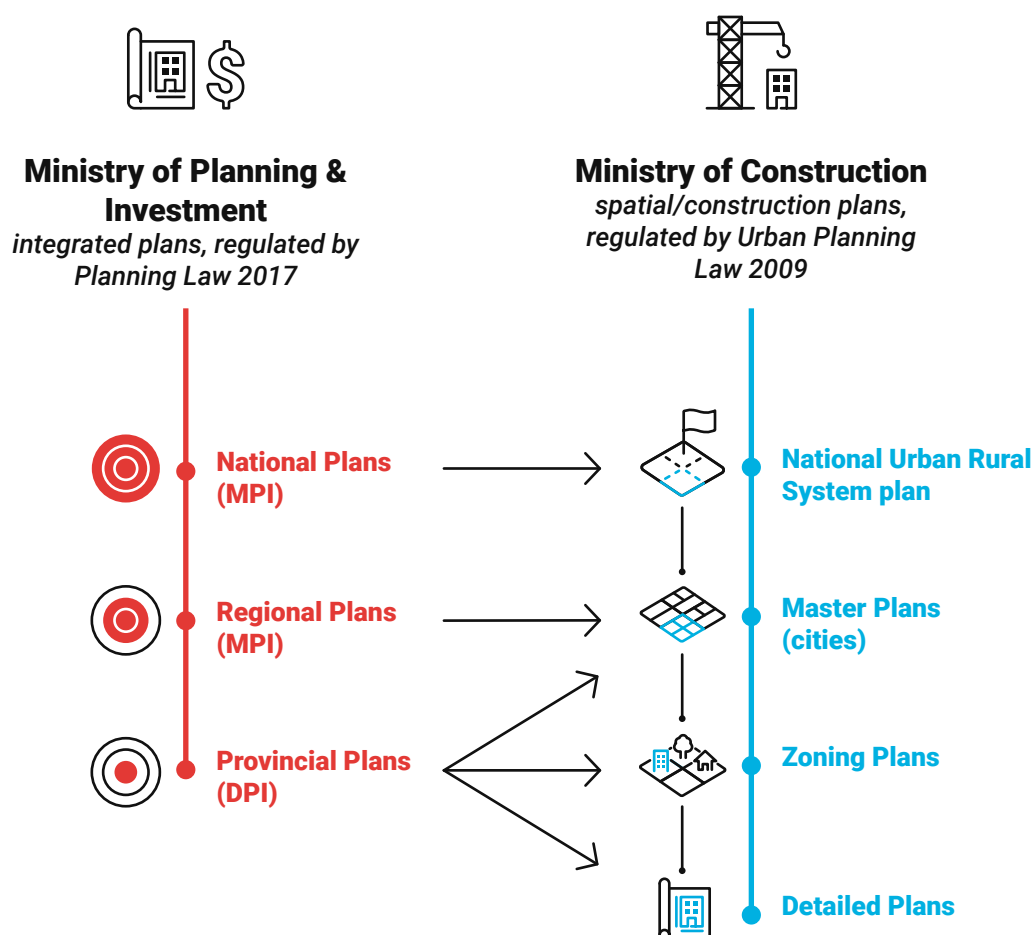
CHAPTER II

FUNCTIONAL ANALYSIS OF LEGISLATION

INSTITUTIONAL ORGANIZATION OF PLANNING AUTHORITIES

1. INSTITUTIONAL SYSTEM OF PLANNING AUTHORITIES

Figure 5: Legally established spatial planning system



Vietnam's urban development sector incorporates a range of responsible agencies at the national, provincial, and municipal levels. The following central government ministries are involved in sector planning and development:⁹⁴

- I. The Ministry of Construction (MOC) acts as the line ministry for urban development.
- II. The Ministry of Planning and Investment (MPI) allocates state budget, approves all major investment projects, and prepares the country's 5-year socio-economic development plans (SEDPs).
- III. The Ministry of Finance (MOF) distributes the state budget to sectors and projects, sets annual sector goals, and regulates accounting.
- IV. The Ministry of Natural Resources and Environment manages water resources, water use, and pollution, and oversees land-use planning.
- V. The Ministry of Transport manages roads, expressways, railways, and other transport facilities.

Ministry of Construction (MOC)

MOC has primary responsibility for technical oversight of the sector and manages construction, construction materials, housing, public works, architecture, and development planning.⁹⁵ Under MOC, there is:

» The Vietnam Urban Development Agency (UDA)

It prepares urban development strategies, national urban development master plans, and urban development projects of national significance. UDA issues legal documents and policies regarding integrated public investments and urban development, solutions for urbanization process management, and urban management models; it also monitors implementation of those regulations. In addition, UDA supervises investment activities in urban development following approved plans and appraises urban master plans prepared by local governments.

Each provincial government houses a representative body of the Provincial People's Council and an executive body of the provincial people's committee (PPC). PPCs have departments similar to ministries in the central government. They are responsible for urban infrastructure development and municipal service delivery through their Department of Construction (or Department of Architecture and Planning in Ha Noi and Ho Chi Minh City).⁹⁶

In several cities, public companies are responsible for wastewater treatment, solid waste management, and construction and maintenance of sewerage and drainage networks. The public companies report to the Department of Construction and other line departments as

94 Viet Nam: Urban Sector Assessment, Strategy, and Road Map, pg 3 <https://www.adb.org/sites/default/files/institutional-document/33714/files/vietnam-urban-sector-assessment.pdf>

95 Ibid

96 Ibid

needed. Like other government organizations under the provincial government, the companies' annual work plans and budget allocation are reviewed by the Department of Planning and Investment and the Department of Finance, and approved by the PPC. Due to budget limitations, the companies often face difficulties in improving service quality and are unable to maintain, upgrade, and expand their services.

.....

Ministry of Planning and Investment (MPI)

The MPI is tasked to take on a broad responsibility, with the participation of all line ministries and their respective counterpart agencies at local level, in finalizing and delivering the national socio-economic development strategies Local Resource Based Infrastructure Planning in Vietnam Final Report 19 and plans and in establishing economic management mechanisms and policies.⁹⁷

The MPI is also tasked to ensure that sectoral and local plans are consistent with the overall development directions described in national policies, strategies, and goals and targets provided for in the long-term development plans.⁹⁸

The MPI is also responsible for coordinating, managing and judiciously utilizing ODA as well as in monitoring socio-economic development plans of the various government agencies. The following describes the specific role of the MPI as provided in the Decree on Management of Investment and Construction.⁹⁹

- Study and develop mechanisms and policies for investment as well as for the State management of domestic investment, foreign investment in Vietnam and overseas investments by Vietnamese.
- Identify orientation and structure for investment capital to ensure the balance between the domestic investment and foreign investment, then submit to the Government for approval.
- Submit to the Government draft laws, ordinances and legal documents concerning the economic management mechanisms and policies, the promotion of domestic and foreign investment to achieve an economic structure suitable to the strategies, planning and plans for socioeconomic stability and development.
- Issue investment licenses and guide foreign invested enterprises to make investment preparation.

» Department of Local Economic Affairs

The department of local economic affairs is under the MPI and its functions are to take charge of supervising, analyzing and managing provincial socio-economic development plans. Major tasks are as follows:¹⁰⁰

97 Local Resource Based Infrastructure Planning in Vietnam Final Report, pg 19 https://www.ilo.org/dyn/asist/docs/F-1216535711/planning_viet.pdf

98 Ibid

99 Ibid

100 Ibid

1. Cooperate with the Strategic Development Institute and other departments of MPI to study provincial socio-economic development planning and strategies
2. Cooperate with the Department of General Economic Affairs to provide instructions for provinces and cities in planning process of short-term, medium term and long-term socio-economic development strategies, which are at par with state orientations for local and national socio-economic development.
3. Supervise, collect information and evaluate implementation of socio-economic development strategies in provinces and cities; propose implementation solutions for municipal and provincial plans; analyze and propose economic mechanism and policies to foster local socio-economic development and to secure sustainable local development; present evaluation of potentials and actual status of provincial and municipal socio-economic development at requests of the Government and the National Assembly.
4. Evaluate establishment of state-owned enterprises, evaluate investment projects (both domestic and foreign sources); study and compile local socioeconomic development projects; allocate Official Development Assistance (ODA) funded projects to provinces; allocate export quotas; participate in bidding appraisal in response to assignment of the Ministry's leaders.
5. Resolve unexpected problems in the process of project implementation of provinces; complete documents to allocate plans for provinces; generalize plans proposed by the National Committee of Minorities and Mountainous Areas.
6. Implement other assignments of the Minister of MPI.

» Department of Infrastructure

The Department of Infrastructure is under the Ministry of Planning and Investment. Its functions are to supervise and manage construction and infrastructure development projects as follows: ¹⁰¹

1. Study sectoral development planning of construction, public transport and transportation, telecommunication sectors; study urban design and planning including public utility, housing, infrastructure facilities for industrial parks across the country.
2. Generalize and compile short-term, medium term and long-term development strategies for construction, public transport and transportation, telecommunication and urban design and planning.
3. Propose planning mechanism in a bid to achieve objectives of sectoral development strategies; directly compile planning policies and mechanism under assignment of the Ministry's leaders; study and selecting domestic and foreign invested projects.
4. Evaluate establishment of state-owned enterprises; evaluate investment projects (both domestic and foreign sources), bidding appraisal, allocate ODA funds, manage projects and national programs in the sectors under its functions.

¹⁰¹ Ibid

5. Forecast, collect information and systematize economic information in support of sectoral development planning.
6. Summarize plans of the Ministry of Construction, Ministry of Transport and General Department of Posts.
7. Implement other assignments of MPI's leaders.

Ministry of Transportation (MoT)

The Ministry of Transportation is responsible for the State management of the transportation sector. MoT oversees planning activities for the 5 transport modes in the whole country. The Ministry has the Transport Development Strategy Institute (TDSI), a technical institute involved in policy studies and formulation, documentation of transport-related information, standards and design services, coordination of foreign and in-country organizations on the formulation of pre-feasibility (pre-FS) and feasibility (FS) transfer of transport technology to units at local level, and the provision of investment and consultancy services.¹⁰²

MoT provides services in forecasting, research, transport development planning, prices and norms, information and international relations. It has a Center for Research and Development of Transport in the south. It is involved in the formulation of a strategy for transport development in Vietnam until 2020, planning and transport development of some provinces, conduct of pre-FS and FS, and on the study of urban transport development.¹⁰³

IMPLEMENTATION CAPACITY

The regulatory framework on urban and rural planning has basically been creating an important legal corridor to organize the implementation of planning and urban and rural development, contributing to improving the quality of space, architecture, landscape and living environment of people, making important contributions to socio-economic development, environmental protection, national defense and security assurance.¹⁰⁴

Approved planning projects are one of the effective tools for implementing state investment management, adjusting activities in the field of construction and directing, operating and implementing tasks and objectives of socio-economic development in each period.¹⁰⁵

However, in the context of development and international integration, several legal provisions on urban planning and construction planning have revealed shortcomings and limitations that need to be studied, corrected and supplemented to unify and synchronize with the newly promulgated legal system, in line with reality, and improve the efficiency of state management of planning and

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Workshop to summarize the implementation of the law on planning and propose policies in the Law on Urban and Rural Planning, (2023) <https://moc.gov.vn/en/news/75446/workshop-to-summarize-the-implementation-of-the-law-on-planning-and-propose-policies-in-the-law-on-urban-and-rural-planning.aspx>

¹⁰⁵ Ibid

promote decentralization in the implementing organization.

Regarding human resources, the academic training of some officials often does not correspond to the missions assigned to them. The number of planning professionals is also low in both the public and private sectors. A need for training and upgrading is still felt at all scales of urban planning in Vietnam.¹⁰⁶

There is also a weak coordination of the actions of the various departments, which leads to a certain inconsistency or even contradiction between the services. The division of responsibilities between different levels of government is not clear, which can lead to confusion and overlap in decision-making. This can create difficulties in implementing policies and regulations related to urban planning and development.¹⁰⁷

CONCLUSION AND INITIAL FINDINGS

The foundational element of the Vietnamese spatial policy framework is the 2009 Adjustment of Orientation Master Plan to Develop Vietnam's Urban System until 2025 with a Vision to 2050 (AOMP). This has been replaced by the **Resolution No: 241/QĐ-TTg** on the Approval of the National Urban Classification Plan for the period of 2021-2030. Given that the new policy is yet to be fully implemented, the analysis focused on AOMP, hoping that these issues have been addressed in the new policy framework. A challenge is that the current policy model led by AOMP does not provide many tools and incentives to co-ordinate across other urban related policies and their supporting programs to ensure coherence.

While the social and economic prerogatives of the Socio-Economic Development Strategy (SEDS) and the spatial focus of the AOMP should work in tandem, in reality, spatial master plans frequently lack considerations for social and economic questions. This lack of coordination between sectoral policies manifests itself even simply in the duration of the respective plans. For example, some sectoral master plans and transport plans have a longer duration than the SEDS, and therefore they frequently do not reflect the up-to-date socio-economic policy objectives of the country.

The current urban legislative framework, despite its considerable scope, is not performing as effectively as it should, due to a lack of clear hierarchical alignment among the networks of laws, government decrees and other policy documents. A key opportunity for Vietnam is to strengthen the framework by specifying government's policy position to guide the future growth and management of urban areas, in addition to serving as a guide on process and procedures. The expected new legislative framework on urban development management, which is currently under discussion led by the Ministry of Construction, will be a good window of opportunity for the whole government to address this challenge together.

A well-designed National Urban Policy can promote linkages between sectoral policies, provide a basis for co-ordination within and amongst ministries responsible, and thus address urban challenges in a more comprehensive way.

¹⁰⁶ Chu T. (2023). Infrastructure planning and implementation in Vietnam. <https://khoamoitruongdothi.neu.edu.vn/vi/cong-trinh-nckh/infrastructure-planning-and-implementation-in-vietnam>

¹⁰⁷ Law on Organization of Local Government. Art 5(4)

It should be noted that there is no regulatory framework to complement the legislative framework for urban planning. Only one implementing decree has been put in place i.e. the **Building Code**. Consequently, the laws do not provide provisions to allocate adequate quantity and distribution of public space that is sensitive to ensure accessibility and enjoyment of the public space.

On the planning at scale framework, the law does not expressly provide provisions requiring urban plans to be developed considering expected demographic and migratory trends, linking them to the supply of affordable housing, an adequate supply of serviced land for different income groups. It is important to provide policies that ensure affordability of accommodation, which is a key feature of a well-managed city. They accommodate future demographics and migratory projections.

A more clearly formulated National Urban Policy would help provide the Vietnamese legislative framework with a stronger hierarchical delineation and policy direction. It could also be a key tool to support the implementation of global frameworks in Vietnam, such as the New Urban Agenda and urban-oriented SDGs. It is timely to develop a clear and explicit urban policy direction, which could in turn be reflected in the new Urban Development Management Law, to ensure that the Law becomes an implementation mechanism for the National Urban Policy.

Vietnamese cities are classified hierarchically into six classes – Special and Class One (I) to Five (V) – based on a threshold of infrastructure development, population size and socio-economic characteristics. In 2022, there were 833 cities, with 2 Special cities and 22 class I cities, 31 class II, 48 class III, 88 class IV and 652 class V. This classification system has profound implications for administrative functions, tax collection and funding decisions. The greater autonomy and increased financial flexibility that comes with the higher classifications creates an incentive for attaining upward mobility within the scale. This may be seen as a positive factor, in encouraging urban administrators to be ambitious on behalf of their cities and the provinces they serve, but it also carries certain disadvantages. For example, as the scoring system emphasizes infrastructure development and population growth, local infrastructure development is prioritized above adherence to other urban strategies which place stronger focus on sustainability.

Monitoring and evaluation, along with the incentive mechanism coherent with the AOMP and other urban strategies, holds the key to ensuring that the classification system can emerge as a flexible and dynamic tool for urban management. Another possible improvement to the city classification system is that it could also value interconnections between cities within a metropolitan area, fostering a stronger metropolitan approach to development.

Under the unprecedented urbanization process, access to affordable and high-quality housing is one of the foremost challenges for Vietnam's urban areas. Formal housing in Vietnam today is out of reach for large segments of the population, while the informal housing market is expanding rapidly. Catering to the urban poor and unregistered rural migrants, the informal sector embodies an estimated 75 per cent of housing production. There is a need to introduce provisions that ensure urban regeneration.

It is urgent to consider policy options for increasing supply of affordable housing for middle- and low-income households in the formal housing market. The current national strategy for housing, the National Housing Development Strategy to 2020, with a vision to 2030 (NHDS), and the **Housing Law** may need to address this problem and provide an explicit strategy for the informal housing sector. Options to be considered include strengthening inspection and guidance to improve the housing quality and developing financing mechanisms such as micro-credit for low-income homeowners to fix their housing problems.

Rapid Assessment of the Housing Legal Framework in the Socialist Republic of Vietnam

Trang, Vietnam
Source: Jordan Opel Nha, Unsplash



INTRODUCTION

It is estimated that by 2050, 7 out of 10 people will likely live in urban areas¹⁰⁸ and if cities are not well-planned and managed, urban areas will experience a shortage of affordable housing, insufficient infrastructure, limited open spaces, unsafe levels of air pollution and increased climate and disaster risk. Indeed, more than 1.8 billion people worldwide lack adequate housing and the number of people living in informal settlements has surpassed a billion. In fact, the manifestation of informal areas is a consequence of the weak institutional, legislative and regulatory frameworks, and their effectiveness needs frequent evaluation.

Housing is a fundamental human right and the Sustainable Development Goals (SDGs) recognize its catalyst role in the sustainable development agenda. In particular, SDG 11 aims to achieve sustainable, inclusive, safe and resilient cities and communities with UN-Habitat being the main institutional body tasked to oversee its implementation. SDG 11 aims to achieve 5 objectives being: eradication of informal settlements by ensuring supply of sustainable affordable housing; advocating for environmental and climate conservation in cities; improving access to essential infrastructure within cities; undertaking proper waste disposal mechanisms; and establishment of adequate open public spaces and social facilities within cities. In relation to the first objective, in 2015, UN-Habitat set out a global approach, 'Housing at the centre', which puts people and human rights at the foreground of sustainable urban development policies to leave no one and no place behind. A more coherent and comprehensive framework of affordable housing is necessary to ensure broad access to this necessity of life, one which facilitates cooperation across socio-economic backgrounds and creates shared interests in a safe community, a strong economy, and a vibrant social scene to harness the framework's transformative potential.

To complement the above, the New Urban Agenda's objectives include inter alia:

*"the promotion of adequate and enforceable regulations in the housing sector, including, as applicable, resilience building codes, standards, developments permits, land-use by-laws and ordinances, and planning regulations, combating and preventing speculation, displacement, homelessness and arbitrary forced evictions and ensuring sustainability, quality, affordability, health, safety, accessibility, energy and resources efficiency, and resilience. The promotion of differentiated analysis of housing supply and demand based on high-quality, timely and reliable disaggregated data at the national, subnational and local levels, considering specific social, economic, environmental and cultural dimensions."*¹⁰⁹ and

*"the promotion of the implementation of sustainable urban development programmes with housing and people's needs at the center of the strategy, prioritizing well-located and well-distributed housing schemes in order to avoid peripheral and isolated mass housing developments detached from urban systems, regardless of the social and economic segment for which they are developed, and providing solutions for the housing needs of low-income groups."*¹¹⁰

108 United Nations: The Sustainable Development Goals Report 2022 pg. 48.

109 United Nations: New Urban Agenda, 2017 paragraph 111.

110 Ibid, paragraph 112.

The evaluation of legislative framework of the urban development of the Socialist Republic of Vietnam on housing and construction will be based on the parameters established under Paragraphs 111 and 112 of the New Urban Agenda and SDG 11.

Mechanisms to facilitate household housing construction and the production of social housing must be promoted by the State through an effective institutional, legal and political system framework. This would not only satisfy the needs of the population in terms of housing but also combat the development of substandard and informal housing.

The anarchic development of human settlements and the predominance of under-equipped housing are often the consequence of the non-application of urban planning and construction legislation and above all, a lack of state vision regarding the evolution of cities to provide a correct response to the needs of populations in terms of housing and access to basic services.

Based on the population census conducted in 2019, the total population of Vietnam was approximately 96,208,984 persons with the urban population standing at approximately 33,122,548 equating to 34.4 per cent of the total population. The proportion of urban population increased by 4.8 per cent over the last decade.¹¹¹ To put this in context, Vietnam has made gradual improvements on housing as can be evidenced from the ratios of population growth against housing and housing area per capita parameters. The table below captures a comparative analysis in data certified from Vietnam's population census conducted in 1999, 2009 and 2019, which results shows that with proper and long-term housing policies and regulations, a state can achieve proportional growth between housing and population increase.

Year	1999	2009	2019
Total population	76,000,000	85,808,984	96,208,984
Population growth	-	1.18% per year	1.14% per year
Households without dwellings	6.7 households per 10,000 households	4.7 households per 10,000 households	1.8 households per 10,000 households
Households with permanent and semi-permanent dwellings	63.2%	84.2%	93.1% (currently 98.2% rate in urban areas)
Housing area per capita	-	16.7m ² /person	23.5m ² /person (for urban areas 24.9m ² /person)

111 Genral Statistics Office, Socialist Republic of VietNam : Press Release Preliminary Results the 2019 Population and Housing Census, <https://www.gso.gov.vn/en/data-and-statistics/2019/10/press-release-preliminary-results-the-2019-population-and-housing-census/> Accessed on 7th April, 2023.

A preliminary and light review of the above data and specifically the results of the 2019 census indicate the relative success and efficiency of numerous laws established by the Socialist Republic of Vietnam. These include: **the Land Law No. 45//2013/QH13, Law on Housing No. 65/2014/QH13, Law on Construction No. 50/2014/QH13, Law on Urban Planning No. 30/2009/QH12 and Law on Planning No. 21/2017/QH14** which have key provisions that have resulted in improved, sustainable and affordable housing in Vietnam. This evaluation will analyze some of these policies within the legislative frameworks referenced above, outline the institutional frameworks, identifying any policy gaps and lastly, propose mechanisms and amendments to make the housing and construction regimes more efficient and effective.

The legal framework for construction and housing in the Socialist Republic of Vietnam has undergone major reforms through repealing and amendment of laws. Currently, the main legislative frameworks governing the construction and housing sector include:

1. **Construction Law No. 50/2014/QH13** which took effect on 1st January, 2015. The law prescribes the rights, obligations and responsibilities of agencies, organizations and individuals and the state management in construction investment activities.¹¹²
2. **Law on Housing No. 65/2014/QH13** which took effect on 1st July, 2015. This law stipulates ownership, development, management, and use of housing; housing-related transactions; and state management of housing in Vietnam.¹¹³

Additionally, there are other legal regimes, laws, regulations and policies that are applicable in the governance of the housing and construction sector, majorly: **Land Law No. 45//2013/QH13, law on real estate trading No. 66/2014/QH13, law on civil procedure** etc.

It should be noted that these legislative reforms have strived to achieve the fundamental parameters and objectives under Paragraphs 111 and 112 of the New Urban Agenda.

The aim of this evaluation of legislative framework is to provide recommendations and proposals to *“improve, in a participatory manner, the legal, regulatory and institutional framework of urban development at all level of government in the Socialist Republic of Vietnam.”*

To achieve this, an assessment of the national urban legal framework in the housing and construction sectors is needed to better understand the current legal context as well as the constraints on the country’s urban development. In this context, UN-Habitat, the lead implementing entity of the Project, is undertaking an analysis of the relevant laws and highlighting areas of proposed amendments. Apart from the desk review analysis, the degree of implementation of the said statutes and other related frameworks and regulations can only be determined through interviews with stakeholders and representatives of institutional bodies tasked directly and indirectly with management of construction and housing sectors within Vietnam.

¹¹² Construction Law, Article 1

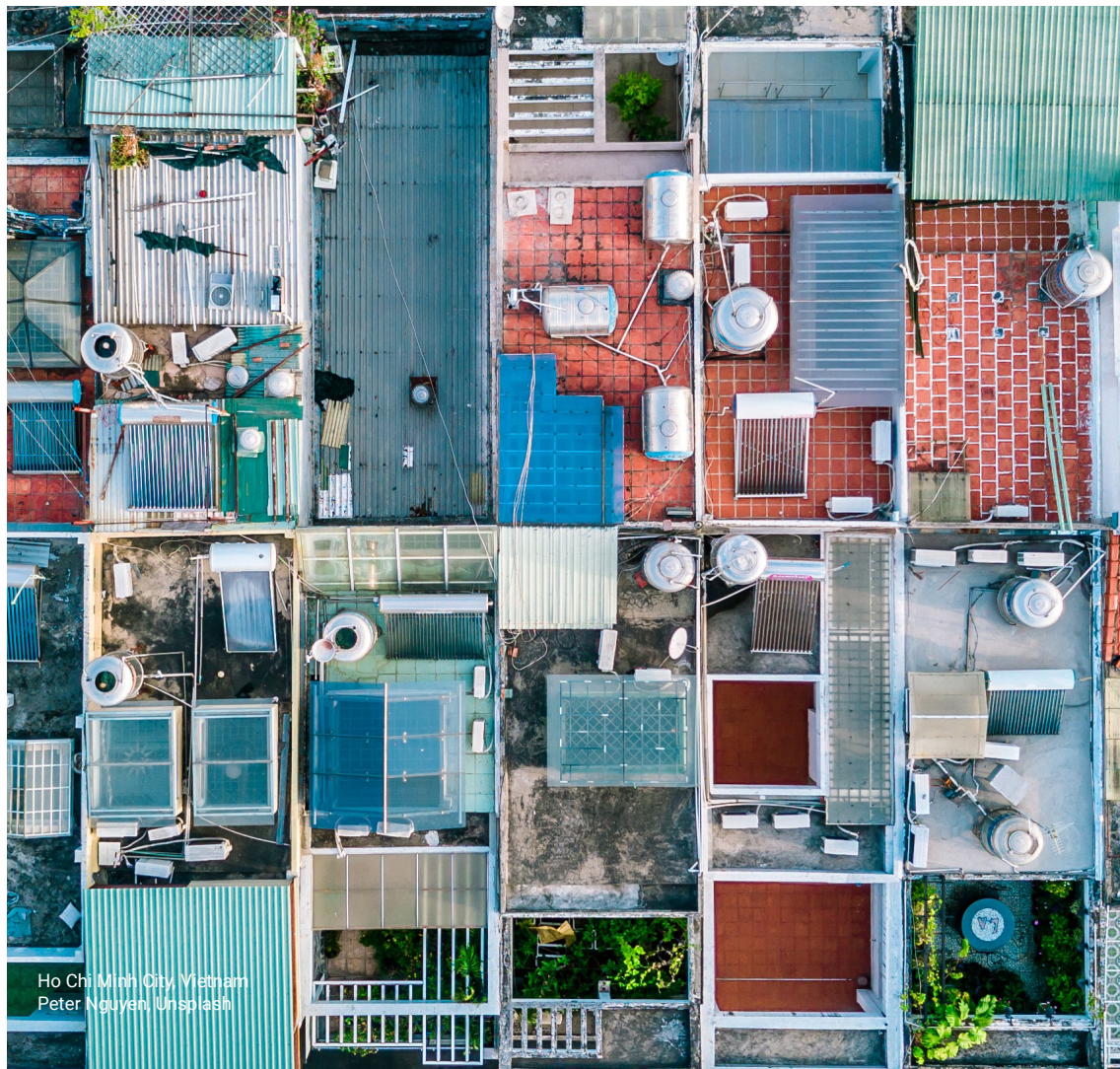
¹¹³ Law on Housing, Article 1

METHODOLOGICAL APPROACH

The current evaluation of the legal framework for construction and housing in Vietnam was based on a review of secondary sources from peer-reviewed journal articles. The indicators used for the technical assessment are; **Supply of Affordable Housing for Sale and Rent; Legislative Framework for Rental Housing; Flexible Building Regulations; Development rights; Regularization of Informal Housing.**

It will be important that the report is supplemented and updated by interviews and surveys with key stakeholders.

The cross-referencing of information from the interviews and the analysis of the various legal and strategic documents will allow UN-Habitat to best meet the requirements of the terms of reference. This can also be done through a national workshop with key stakeholders to validate the legal findings and recommendations.



Rapid Assessment of the Housing Legal Framework
in the Socialist Republic of Vietnam

CHAPTER I

TECHNICAL ASPECTS OF HOUSING

REGULATORY FRAMEWORK FOR CONSTRUCTION IN VIETNAM

1. REQUIRED BUILDING PERMITS

Any construction operation in Vietnam is subject to prior authorization issued by the competent authorities discussed under Chapter IX of the **Construction Law**. The **Construction Law No. 50/2014/QH13** is the main legislative text governing the construction sector detailing: the construction planning, the construction permits and the construction of works. The **Construction Law** also expounds on the formation of construction contracts and further the responsibilities of state agencies in management of construction investment activities.

A. Construction planning

Construction planning is demonstrated through construction plans consisting of diagrams, drawings, mock-ups and explanations. Construction planning is classified into 4 types: regional construction planning,¹¹⁴ urban construction planning; particular-function zone construction planning¹¹⁵; and rural construction planning.¹¹⁶ **Article 14** of the **Construction Law** outlines some of the principles on construction planning which include: conformity with the objectives of strategies and master plans on socio-economic development; national defense and security maintenance; integration of science, technology and innovation in development; protection of environment, climate and sensitivity to disaster risk reduction and response; and compliance with occupation, safety and health requirements.¹¹⁷

The **Construction Law** of Vietnam mandates that the construction planning review period should be 10 years for regional planning, 5 years for general planning and zoning planning and 3 years for detailed planning. The periodical examination, review and implementation process of construction planning is meant to align the planning to the suitable socio-economic development situation in each period.¹¹⁸ The People's Committees at all levels of governance are tasked with the obligation of reviewing construction planning. **Articles 16 and 17** of the **Construction Law** outline a detailed procedure on public participation in the preparation of construction planning requiring agencies and project owners to collect, summarize and assimilate comments of individuals and communities on construction planning and decision making.

114 Means the organization of systems of urban and rural areas and particular-function zones and systems of technical and social infrastructure works within the administrative boundaries of a province or a district, inter-provinces or inter-district, which meets the socio-economic development requirements in each period (Article 3.31).

115 Means the organization of space, architecture and landscape, systems of technical and social infrastructure work within a particular-function zone. It covers general construction planning, construction sub-zone planning and construction detailed planning (Article 3.32).

116 Means the organization of space, land use, systems of technical infrastructure and social infrastructure works of a rural area. It covers commune general construction planning and rural residential quarter construction detailed planning (Article 3.33).

117 Construction Law, Article 14

118 Construction Law, Article 15

Article 47 details the procedure for issuance of a construction planning permit which is a document granted by a competent state agency to the owner of a construction investment project in a particular-function zone which serves as a basis for detailed planning or project formulation when the sub zone planning, or construction detailed planning is not yet approved. A construction planning permit must cover: the scope and size of the planning area; the permitted construction-planned land use quota; the requirements on land exploitation and use; organization of architectural space; ground and underground technical and social infrastructures; landscape and environment protection in the project area; and project validity duration.

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1. Construction investment projects

In Vietnam, construction investment projects are classified by size, characteristic and type of construction work and funding source. For instance, projects classified by size, characteristics and type of construction works include national important projects, group A projects, group B projects and group C projects which are detailed under the law on public investment. **Article 7 of the Law on Public Investment No. 49/2014/QH13** defines national important projects as independent investment projects or cluster of closely combined projects that meet one of the following criteria: projects using a sum of above VND 10,000 billion (USD 426,302,888.20) as the budget capital for public investment; projects creating or facing the possibility of creating substantial impacts on the environment i.e. nuclear power plants, use of land that requires the conversion of land use purpose i.e. wildlife sanctuary, forests etc.; projects utilizing a land parcel covering an area of 500 hectares requiring conversion of land use purpose from “wet rice” agriculture with more than two crops; projects migrating or resettling more than 20,000 residents at mountainous regions and more than 50,000 residents at other areas; and any other projects that require the application of special regulations and policies which are subject to the National Assembly’s decisions. **Article 8 of the Law on Public Investment** categorizes Group A projects depending on two major parameters: (1) the sector of economy within which such investment is being undertaken and (2) the total investment amount of the project which includes, projects that cost either; more than VND 2,300 billion (USD 98,049,664.29), VND 1,500 billion (USD 63,945,433.23) and VND 800 billion (USD 34,104,231.06). As per **Article 9 of the Law on Public Investment**, Group-B projects are also determined by the respective sectors and total investment amounts being costs ranging between: VND 120 billion (USD 5,115,634.66) to below VND 2,300 billion (USD 98,049,664.29); VND 60 billion (USD 2,557,817.33) to below VND 1,500 billion (USD 63,945,433.23); VND 60 billion (USD 2,557,817.33) to below 1,000 billion (USD 42,630,288.82); VND 5 billion (USD 213,151.44) to below VND 800 billion (USD 34104231.06). Finally, **Article 10** details the classification criteria for Group-C projects which are also determined using the parameters of sector and costs of total investment amounts ranging between: below VND 120 billion (USD 5,115,634.66); below 80 billion (USD 3,410,423.11), below 60 billion (USD 2,557,817.33) and below 45 billion (USD 1,918,363.00). Of significance, in considering project classifications as Group-A, Group-B and Group-C, emphasis must be placed on the two referenced parameters/criteria of sector of the economy the project is being implemented vis-à-vis the total investment amount to be used to implement the project. These two parameters are determined cumulatively and hence, the reason why a project might be costly and categorized as Group-B whereas another project might be low cost and be categorized as Group-A. The sector of economy the project is classified is the predominant parameter.

Construction investment is categorized into 3 phases: project preparation; project implementation; and construction completion to put the project's work into exploitation and use.¹¹⁹ Any construction project must adhere to the following requirements:

- I. Construction must conform to the socio-economic development master plan, sectoral development master plan, construction master plan, land use master plan and plans in the locality where the construction investment project is established.
- II. Construction must have appropriate technological and construction designing plans. Construction must integrate innovation incorporating modern scientific and technological advancements in exploitation of natural resources.
- III. Construction must guarantee quality and safety in construction, operation, exploitation and use of its works, fire and explosion prevention and fighting and environmental protection and response to climate change. Environmental sustainability, occupational safety and health parameters are essential pre-construction considerations.
- IV. Construction must ensure the adequate allocation of funds strictly according to its schedule, ensuring its financial efficiency and socio-economic efficiency.

The formulation of construction investment projects mandates project owners to undertake and prepare the following reports as part of the project preparation phase:

A. Construction investment pre-feasibility study report

Applicable for national important projects and group A projects. The report captures the following details: the necessity and conditions for construction investment; the projected objective, scale, location and form of construction investment; land and natural resource use demand; the preliminary design on construction, explanation, technology, techniques and appropriate equipment; projected time for project implementation; the preliminary total investment amount, capital raising plan; recoverability of invested funds, capacity to pay loans and a preliminary determination of socio-economic efficiency and evaluation of the project's impact.¹²⁰

B. Construction investment feasibility study report

Construction investment feasibility study report is applicable to most construction projects in Vietnam and contains most of the details included in the pre-feasibility study report. The construction investment feasibility study report is the document that sets-up for a comprehensive regulatory oversight of any construction because it foresees most compliance requirements within construction. Its uniqueness is that it details contents on the basic design which achieves the project's objectives, suit construction works of the project and ensures synchronism between works when they are put into exploitation/use. A comprehensive basic design comprises explanations and drawings expressing the following contents:¹²¹

¹¹⁹ Construction Law, Article 50(1)

¹²⁰ Construction Law, Article 53

¹²¹ Construction Law, Article 54

- I. the construction location, direction of the line of works, list, sizes, types and grades of works on the whole construction ground.
- II. selected technological, technical and equipment plans.
- III. architectural solutions, ground plans, cross-sections and vertical sections of construction works and their sizes and main structures.
- IV. construction solutions, major materials to be used, estimated construction cost of every work.
- V. plan on connection of technical infrastructures inside and outside the works, fire and explosion prevention and fighting solutions.
- VI. the applied standards and technical regulations and construction survey results for making the basic design.
- VII. the necessity for investment, investment policy, construction investment objectives, construction location and to be-used land area, capacity and form of construction investment.
- VIII. the capability to ensure factors for project implementation such as use of resources, selection of equipment and technology, use of labour, technical infrastructure, product consumption, exploitation and use requirements, implementation duration, plan on construction ground clearance and resettlement, solutions to organizing management of project implementation, work operation and use and environmental protection.
- IX. assessment of the projects impact related to land recovery, ground clearance and resettlement; protection of landscape and ecological environment and safety in construction.
- X. total investment amount and capital raising, financial analysis, risks, expenses for exploitation and use of the work, evaluation of socio-economic efficiency of the project; recommendations on coordination mechanism, policies on incentives and support for project implementation.

C. Construction investment economic-technical report

The construction investment economic-technical report is applicable to small construction projects and works. It details the construction drawing designs, technical designs and construction estimates. It may also factor some of the details listed for the construction investment feasibility study.¹²²

The 3 construction investment reports are subjected to appraisals by the relevant agencies, however, for national important projects, the State Appraisal Council that is set up by the Prime Minister appraises their pre-feasibility study reports and construction investment feasibility study reports.¹²³ This is because of the magnitude works, financial input and public interest associated with such projects. **Article 59 of the Construction Law** details the time limits for appraising a project with the period starting from the date the appraising agency or organization receives a

¹²² Construction Law, Article 55

¹²³ Construction Law, Article 57(1)

complete and valid dossier from the applicant. The appraisal timelines are 90 days for national important projects, 40 days for group A projects, 30 days for group B projects and 20 days for group C projects as well as projects only requiring construction investment economic-technical reports. The express stipulation of the timelines helps in advancing principles of accountability and efficiency in service delivery in the construction industry.

The **Construction Law** has also factored in provisions for adjustment of construction investment projects. An adjustment can be necessitated due to: force majeure factors; appearance of factors likely to bring about higher efficiency for projects; change of construction planning; change in construction price index or price inflation affecting the approved total investment amount of the project.¹²⁴

1. Construction permit

A construction permit is a mandatory statutory document granted by a competent state agency to a project owner before commencement of construction works.¹²⁵ The **Construction Law** provides for 3 types of construction permits: new construction permit; repair/renovation construction permit and relocation permit.

The major components of a construction permit include:

- I.** Name of the work under the project.
- II.** Name and address of project owner.
- III.** Location and position for the work construction; the work construction line, for works built in lines.
- IV.** Types and grade of the work.
- V.** Work construction level.
- VI.** Red-line and construction boundaries.
- VII.** Construction density.
- VIII.** Land use co-efficiency.
- IX.** For civil works, industrial works and separate houses, their construction permit must contain content on total construction area, construction area of the first (ground) floor, number of stories (including basement, attic, technical story and staircase roof) and maximum elevation of the entire work.

Upon issuance/grant of a construction permit, construction must commence within a period of 12 months from the date of grant of the construction permit.

¹²⁴ Construction Law, Article 61

¹²⁵ Construction Law, Article 89

1.A. New construction permit

A dossier of application for a new construction permit must comprise:

- I.* an application for a construction permit.
- II.* a copy of the papers proving land use rights as prescribed by the **Land Law**.
- III.* construction designing drawings.
- IV.* a written commitment to ensure safety for adjacent works.
- V.* a copy of the project approval or investment decision.
- VI.* declarations on the capabilities and experiences of designing organizations or individuals in charge of construction designing, enclosed with copies of practice certificate of design manager.

1.B. Construction permits for repair and renovation of works

A dossier of application for construction permits for repair and renovation of works must contain:

- I.* an application for a permit for repair and renovation of a work.
- II.* a copy of one of the papers proving the right to own, manage or use the work or house in accordance with law.
- III.* drawings or photos of the part or item of the work of house to be renovated.
- IV.* a written approval of a state management agency in charge of culture of the necessity of construction and the size of work, for ranked historical and cultural relics and scenic works and technical infrastructure works.

1.C. Construction permit for relocation of works

A dossier of application for construction permits for relocation of works contains the following documents:

- I.* an application for a permit for relocation of a work.
- II.* copies of papers proving the rights to use land to which the work is relocated and paper on lawful ownership of the work as prescribed by law.
- III.* work completion drawings (if any) or design drawings describing the actual state of the work to be relocated, showing the ground, cross section of the foundation, and drawings of the main force-bearing structure; drawing of the total ground of the location to which the work is relocated; drawings of the ground and cross section of the foundation of the location to which the work is relocated to.
- IV.* A report on results of the survey assessing the current quality of the work conducted by a fully capable organization or individual;
- V.* The relocation plan prepared by a fully capable organization or individual, covering: drawings showing construction measures to relocate the work; and description of the current state of the work and the area to which the work is relocated; relocation solution, plan on arrangement and use of means, equipment and labour; solutions to ensuring safety for the work, people, machinery, equipment and adjacent works; assurance of environment sanitation; relocation schedule; organizations and individuals to relocate the work.

- VI.** It is noteworthy that the **Construction Law** makes provisions for the following processes:
- VII.** Adjustment of construction permits which under **Article 98** provides for instances/conditions during construction that may necessitate a project owner to request for adjustment of construction permit e.g., changes of the external architecture of the work, adjustment of the interior design of the work etc.
- VIII.** extension of construction permit which as stipulated under **Article 99** mandates that a construction permit can only be extended no more than twice with each extension not exceeding 12 months.
- IX.** **Article 100** outlines provisions on re-grant of construction permits in instances where a construction permit is torn, ragged or lost.
- X.** Withdrawal or cancellation of construction permits is detailed under **Article 101** wherein it outlines instances that a permit may be withdrawn to include inter alia: instance where the construction permit is granted ultra vires¹²⁶ and when a project owner fails to remedy the construction or is in violation of the construction permit and fails to comply with any remedy notices issued by a competent state agency within the prescribed time indicated in the notice.

Timelines for assessing grants, re-grants, adjustment and extension of construction permits

Procedurally, a project owner submits 2 sets of dossiers of application for a construction permit or request for adjustment of construction permit to the agency competent to grant construction permits. The relevant agency proceeds to check the dossiers and writes a receipt on the validity of the dossiers.

Article 102(1c) expressly states timelines as follows:

- I.** Upon receipt of the dossier, that the competent agency must organize appraisal of the dossier and conduct field inspection within 7 working days of receipt of the dossier.
- II.** If the dossier is incomplete, improper or untrue to reality, the competent agency should inform the project owner for supplementation and competition of the dossier. Should the supplemented dossier still fail to meet the notified requirements, the agency, within five working days, should issue a written notice to the project owner guiding them on further improving their dossier.
- III.** In the event the supplemented dossier still fails to satisfy the notified contents, the competent agency, within 3 working days, should notify the project owner of the reason for refusal to grant a permit.
- IV.** For a complete dossier, the agency should examine the size, characteristics and category of the work and site of construction stated in the dossier of application for a construction permit against the conditions prescribed in Law and send written requests for opinions of state management agencies in charge of fields related to the construction work.
- V.** The state management agencies are statutorily mandated to issue written replies on the contents under their respective management functions within a strict timeline of 12 days. Should the 12 days lapse without action and no opinions issued, the state management agencies should be considered to have agreed to the dossier contents and should take responsibility for its contents.
- VI.** The expectation under **Article 102(1e)** is that the competent agency should grant either the construction permit or adjustment of construction permit or relocation permit within 30 days from date of submission of dossier.
- VII.** If the agency needs more time for examination beyond the 30 days' timeline, the agency must notify in writing, the reasons to the project owner and at the same time report it to the direct management agency for consideration and direction, but the notice must be within 10 days after expiration of the 30 days statutory period.

¹²⁶ Describes actions taken by government bodies or corporations that exceed the scope of power given to them by laws or corporate charters.

VIII. For the processes involving extension and re-grant of construction permit, the competent agency should, within 5 working days, after receipt of an extension or re-grant dossier, consider and allow the extension of the extension of the construction permit or re-grant the construction permit.

Project owners are mandated to pay a statutory fee upon submission of a dossier application for construction permit. As this fee is not known, it is vital to ensure affordability and rationalization of such fees to incentivize investments within the construction sector.

1.D. The demolition permit

Any demolition operation in part or in whole of a building requires the approval of a competent agency. **The Law on Housing No. 65/2014/QH13** contains provisions on demolition of apartment buildings (**Articles 110, 112**) and further provisions for housing demolition. Housing demolition is undertaken under the following instances: when a house is seriously damaged, in danger of collapse or unsafe for its occupiers which is declared in the decision on quality assessment issued by housing authority of province where house is located or in case of state of emergency or response to disaster; any house subject to land clearance for land withdrawal according to the decision of the competent agency; and any house built in the area banned from construction or on the piece of land other than residential land under the planning approved by the competent agency.

The responsibility to undertake housing demolition rests with the homeowner or the occupier or investor in cases of land clearance to rebuild.

2. Resource-Efficient Measures

The use of resource-efficient measures in construction is often called “*green building practice*” as the goal is to reduce greenhouse gas emissions using sustainable building materials and design.¹²⁷ UN-Habitat advocates for inclusion of energy and resource-efficiency into building codes and laws, which measures include:

- I.** Environmentally friendly design incorporating green building concepts and regulations.
- II.** Use of climate adapted and sustainable building materials.
- III.** Use of energy efficient appliances such as mandatory use of solar hot water, lighting, air conditioning and ventilation, and HVAC.
- IV.** Water efficiency including rainwater harvesting, water reuse and recycling.
- V.** Renewable energies i.e. solar, wind, geothermal and waste-to-energy.
- VI.** Site planning e.g., sewage separation and treatment, waste management, land/vegetation and landscaping, drainage, urban layout and street orientation and erosion prevention.
- VII.** Energy certification of buildings.

127 UNHABITAT: Planning Law Assessment Framework, Urban Law Tools; Vol.1 2018 pg 55

One way the **Construction Law** incorporates resource-efficient measures is through placing mandatory environmental measures and the use of sustainable and local construction materials. **Article 14 of the Construction Law** details requirements and compliance principles on construction planning which include: (14.1b) organizing and arranging territorial space on the basis of rationally exploiting and using natural resources, land historical relics, cultural heritages and other resources; (14.1d) protecting the environment, responding to climate change, minimizing the adverse impact on community; (14.1dd) establishing bases for exploiting and using regional construction works, particular-function zones and rural areas.

Part of the analysis on the contents of construction investment pre-feasibility study report is to ensure that compliance with protection of landscape and ecological environment and safety in construction.¹²⁸

Article 79 lists one of the requirements on construction design as designs that comply with artistic appearances, environmental protection and response to climate change. **Article 79(4)** mandates that designs ought to take advantages and limiting unfavorable impacts of natural conditions by prioritizing the use of local and environmental-friendly materials.

The Government of the Socialist Republic of Vietnam issued a **Decree about Building Materials Management No. 09/2021/ND-CP**¹²⁹ which extensively details on the management of developments, production of building materials and use of building materials in construction works by ensuring safety, efficiency, sustainable development and protection of environment and saves resources. **Article 4** of the Decree stipulates the strategy for development of building materials to ensure efficiency, sustainability, environmental protection and rational use of natural resources. **Article 5** provides that the State encourages and creates favourable conditions for organizations and individuals to research, develop, apply science and technology, invest in the production of building materials and save mineral resources, saving energy, friendly to the environment **Article 7(3)** of the Decree also stipulates the incentives to encourage the use of unburnt building materials, resource-saving, energy-saving, environment-friendly building materials and domestically produced building materials for construction works that can be built.

Article 9 of the Decree also details on issues of management of treatment and use of waste in the production of building materials.

In conclusion, the law has incorporated resource-efficient measures during construction that are aimed at promoting environmental and climate change conservation.

Summary

The Construction Law contains extensively details on the types of construction permits, the procedures for application of each permit and the documents needed for approval.

Significantly, the **Construction Law** expressly stipulates the expected timelines within which permits should be granted, the fair administrative procedures required in instances where permits are declined or the competent agency requires supplemental information for approval of permits.

¹²⁸ Article 54(2c)

¹²⁹ <https://lawnet.vn/vb/Nghi-dinh-09-2021-ND-CP-quan-ly-vat-lieu-xay-dung-718C8.html>

The institutional and regulatory frameworks for construction is well espoused in the law and the hierarchy of institutions allows for accountability, oversight and efficiency in service delivery.

The data from the World Bank's 'Doing Business Archive, Ease of Doing Business in Vietnam'¹³⁰ indicates that timelines stipulated for procuring permits as discussed above were largely accurate from the research and finding conducted in Ho Chi Minh City.

Regarding the costs for applying and procuring permits, the data indicates that the amounts and cost are relatively affordable and, in any event, no charges are incurred in most oversight responsibilities by the competent state agencies.

The report also ascertains that there are various quality control measures both at pre-construction phase, construction phase and post-construction phase. These points to the competent agencies efforts to ensure compliance with construction legal frameworks.

However, a consequential gap that was evident in the data from the World Bank is that both the **Construction Laws** and construction practice do not detail on liability and insurance parameters and especially on parties to be held liable by law for structural flaws or problems in the construction once it is in use. The **Construction Law** need to detail on issues of latent defect liability and/or decennial liability.¹³¹ Further, the law needs to expressly provide for which parties are required by law to obtain an insurance policy to cover for structural flaws.

The Construction Law has also not detailed on issues of building materials applicable in construction or providing alternative regulations to guide construction materials. This leaves the onus of self-governance and compliance to project investors and owners which may compromise quality control by state agencies.

It is noteworthy that the Government of Vietnam is actively engaged in digitalization of construction processes to streamline efficiency in application of permit processes, improve accessibility in planning and construction data and other construction related activities. Accordingly, in 2020, the Government issued the **Official Dispatch No. 9854/VPCP-KSTT**¹³² which was aimed at integrating services, providing planning information and building permit services. The Ministry of Construction is engaged in coordinating with the Government Office to complete process restructuring, construction, integration, testing the provisions of online public services for provision of construction planning information and the issuance of construction permits for individual houses on the National Public Service Portal on a test environment (UAT). This evaluation is tasked with establishing the status of compliance with the Official Dispatch, determining its advantages and disadvantages within the construction industry and lastly in evaluating the level of public participation and sensitization in the digitalization process.

130 Doing Business in Vietnam - World Bank Group

131 Decennial liability is a ten-year liability imposed upon persons responsible for the design and construction of buildings and other fixed installations mandating, either severally or jointly, liability to compensate the construction owner for any: total or partial collapse; defects affecting stability, safety of building, occurring or discovered in the ten-year period following delivery for use. Decennial liability is a form of strict liability.

Decennial Liability Insurance, Holman Fenwick Willan LLP, 2018 <https://www.hfw.com/Decennial-Liability-Insurance-Dec-2018>

132 <https://lawnet.vn/cv/Cong-van-9854-VPCP-KSTT-2020-tich-hop-cung-cap-dich-vu-cung-cap-thong-tin-quy-hoach-xay-dung-6FDF3.html>

FRAMEWORK FOR ACCESS TO HOUSING IN VIETNAM

The State of the Socialist Republic of Vietnam has invested heavily in establishing and implementing policies intended to incentivize investments in the housing sector targeting various players in the construction and housing industries. The main objective of these policies is to attract investment in housing construction by ensuring the States retains effective management of the housing sector by ensuring compliance with construction standards and ascertaining affordability and accessibility to housing in Vietnam. As outlined in **Article 13 of the Law on Housing No. 65/2014/QH13**, the policies include inter alia:

- I. State providing residential land resources by granting approval for land-use planning, urban planning, particular area planning or rural area construction planning.
- II. State issuing policies on planning, land, finance, credit, science and technology application, new building materials to invest in renovation or reconstruction of apartment buildings.
- III. State issuing policies on tax exemption and reduction, exemption and reduction in land levies, land rents, long-term credit with preferential interest rate, other financial incentives and grants from capital resources of the State to carry out incentive policies on social housing
- IV. State formulating policies on research and issuance of typical designs regarding every type of housing in conformity with every area, region and with incentive policies on energy-saving housing development.
- V. State mandating province-level management and investors in commercial housing projects to reserve residential land for social housing construction.

Housing development in Vietnam must conform to the strategy for national housing development, construction planning and land-use planning and local housing development planning. Housing development must comply with the regulations of law on housing pertaining to the standards and quality of construction, requirements on prevention of fire and explosion and response, satisfy the requirements regarding architecture, landscape, hygiene, environment and safety during construction progress and response to disaster and climate change, save energy and land resources. For urban areas, housing development is mandated to conform to specific construction planning and the project ensuring the allocation of population and gentrification in accordance with the urban classification system of the urban area.¹³³

In Vietnam, the urban classification system is a determinant for allocation of land resources for housing development and is categorized under Class 1, Class 2 or Class 3 urban areas. This categorization determines the types of housing developments and the project-based housing construction to be established within the urban area. Types of housing development include:

¹³³ Law on Housing, Article 14(4)

commercial housing development; social housing development; official residence development; housing serving relocation development; and housing of household or individual development. The types of project-based housing construction include: development of housing invested by real estate enterprises for lease, lease purchase, or sale; renovation and reconstruction of old housing areas and/or apartment buildings; development of housing serving the relocation; and development of state-owned housing.

Vietnam has integrated the concepts of urban system development and urban landscape in its framework which mandates residential architecture to conform to requirements pertaining to natural conditions, disaster response, scientific and technical standards, historical and cultural conditions and specific planning for construction approved by the competent agency. For residential architecture in urban areas, it must meet the requirements pertaining to harmonious combination between renovation and new construction, separate housing and overall architecture of the urban area or urban design and regulations on management of urban architecture planning.¹³⁴

This evaluation will focus on social housing and development of state-owned housing as the main type of housing development and project-based housing construction development used by the State to achieve affordability and accessibility of housing for disadvantaged groups within Vietnam.

1. SOCIAL HOUSING PRODUCTION FRAMEWORK

Access to decent housing is one of the essential conditions for improving the living environment of a given population. In the Socialist Republic of Vietnam, the production of affordable housing is a core mandate of the State which has invested in developing policies on development and management of social housing for lease, lease purchase or sale. The policies on social housing are designed to offer incentives to 2 groups: (1) populations disadvantaged in ownership of land and or housing acquisition within the free market to procure housing ownership; and (2) incentivize parties/investors to invest in the construction and development of social housing. The **Law on Housing** has extensively mapped out the frameworks for social housing production, beneficiaries of social housing and management of social housing within Vietnam.

Article 53 of the Law on Housing identifies 3 forms of social housing developments:

- I. State invests in social housing construction funded by government budget, national bonds, bonds, official development assistance and concessional loans;
- II. Enterprises or cooperatives invest in social housing construction and receive State's incentives; and
- III. Households or individuals invest in social housing construction and receive the State's incentives.

¹³⁴ Law on Housing, Article 20

ELIGIBILITY CRITERIA FOR INCENTIVES ON SOCIAL HOUSING

Article 49 of the Law on Housing identifies the following categories as persons/entities eligible for incentive policies on social housing to include inter alia: households living in poverty or near poverty in rural areas; households that are often affected by natural disasters or climate changes in rural areas; individuals living in low income, poverty or near poverty in the urban areas.

The State implements incentive policies on social housing to these groups through: (1) offering support in construction or renovation of housing according to the target programs for housing; (2) allocating residential land with reduction or exemption from land levies or gift housing to the groups; and (3) granting preferential loans through social policy banks or credit institutions appointed by the State to build or renovate their housing.¹³⁵

To be eligible for the above incentives, the entities and/or persons must fulfil the following requirements:

- I. Entity must not have any house under their ownership and/or concluded any agreements on social housing purchase, lease or lease purchase.
- II. They must not have benefitted from any policy on housing or residential support in any shape or form at the place where they live.
- III. The house under their homeownership has a floor space per capita in the household which is lower than the minimum space standard regulated by the Government in every period or every area.
- IV. Have permanent residence in the province where the social housing is located.
- V. For individuals living in low income, poverty or near poverty in the urban areas, they are required to be not subject to regular income tax as prescribed in law on personal income tax.

The implementation of incentivization policies on social housing must entail a participatory approach involving a combination between the State, communities, relatives and beneficiaries of the policies during implementation of the policy phase. For transparency and accountability, such policies must be publicized under the scrutiny and inspection of competent agencies and communities.

The policies on social housing only apply to entities or individuals that meet the eligibility criteria cumulatively and not partially on certain requirements. Such application ensures that the most vulnerable and disadvantaged persons in the community are given preference and priority in grant of social housing.

The Law on Housing also identifies the economic and social limitations faced by women and persons with disability in society and accords them priority in grant of social housing in the event there are many entities meeting the eligibility requirements.¹³⁶ For, households with more than one entity benefiting from the policies, they can only benefit from one policy applying to that household.

¹³⁵ Law on Housing, Article 50

¹³⁶ Law on Housing, Article 52 (c & d)

Article 49 also covers the following entities eligible for incentive policies on social housing: people with meritorious service; officials and civil servants prescribed in law on officials and civil servants; commissioned officers, professionals and technical no-commissioned officers, standing army, and workers; employees working in enterprises inside and outside the industrial zones; employees who have returned official residence; students eligible to use social housing during the duration of their study.

POLICIES ON DEVELOPMENT AND MANAGEMENT OF SOCIAL HOUSING

A. Land used for social housing

As part of the urban systems development and development of new urban area, the **Land Law** provides for adherence to the land use master plans and plans. The **Land Law** details the use of non-agricultural land and specifically on urban residential land which must conform to the land use master plan and urban construction master plan already approved by competent state agencies.¹³⁷ It further stipulates that urban residential land should be allocated in synchrony with land for construction of public facilities and non-business facilities, ensuring environmental sanitation and modern urban landscape. **Article 144 of Land Law** bestows an obligation on the State to develop land use master plans for purpose of urban housing construction and policies to create conditions for urban residents to have accommodation.

Article 56 of the **Law on Housing** provides that when approving and planning for urban area construction, a planning for rural area construction or a planning for industrial zones, the People's Committee in charge of planning approvals should determine the areas of pieces of land used for social housing construction. This mandatory allocation for social housing construction is part of the policies that ascertain proper governance of the housing sector in Vietnam.

The **Law on Housing** also mandates that the area of land and information about locations used for social housing development must be announced on the websites of the People's Committee of provinces and housing authorities of provinces to ensure access to information by third parties and ensure transparency and proper utilization of social housing land resources.

B. Incentives for investors in social housing projects

The incentives for investors in social housing projects is dependent on the form of social housing development which ideally determines the investors establishing the social housing scheme. The investor could be the State, enterprises/cooperatives or households/individuals. Since the State is the holder of most resources including land, most of the incentives are driven towards non-state investors to encourage investment in the social housing sector by private sector actors.

¹³⁷ Land Law, Article 144

The incentives for investor in social housing include:

- I. Exemption from land levies and/or land rents on the piece of land allocated or leased for social housing construction by the State.
- II. Exemption and/or reduction in VAT and/or corporate income tax in accordance with regulations of law on taxation.
- III. Qualification for reduction in VAT and/or corporate income tax regarding the social housing construction for lease much more than the social housing construction for lease purchase or sale.
- IV. Access to concessional loans granted by banks for social policies or credit institutions operating in Vietnam and preferential loans regarding the social housing construction for lease with lower interest rates and longer terms in loan agreement than the social housing construction for lease purchase or sale.
- V. Qualification for entire or a portion of funding for technical infrastructure construction within the scope of the project for social housing construction provided by People's Committee of the province; or qualify for the entire funding regarding the social housing construction for lease.

C. Determination of selling prices, rents and lease purchase price of social housing

It is noteworthy that for social housing construction undertaken by enterprises/cooperatives and households/individuals benefitting from the incentives listed above, the State provides for caveats to ensure that the housing is affordable as per the social housing market. **Article 58 (2c)** provides that the housing's selling price, rent or lease purchase price will be determined according to the price bracket issued by the People's Committee of the province where the housing is located. **Article 61** outlines the mechanism of calculation of the rents, lease purchase prices or selling prices considering the expenditure costs on housing maintenance, capital recovery, interest on loans, profit quotas etc. The investor constructs the social housing and then requests the People's Committee of the province where the social housing is located to carry out the appraisal of housing rents, lease purchase prices or selling price before they are announced.

For social housings invested by the State, the Ministry of Construction is bestowed with the power to promulgate the rents and lease purchase prices of social housing.¹³⁸

D. Model of access to social housing

Access to social housing can be through:

- I. **Housing under social housing lease agreements (rent model):** The lessee under this model is granted a term of at least 5 years subject to execution of a housing agreement in writing detailing the terms under **Article 121 of the Law on Housing**. The Lessee is not authorized to sell, sublet or lend the house during the term of the agreement. If the lease term is not renewed and term has expired, the housing reverts to the owner.

¹³⁸ Law on Housing, Article 60

- II. Housing under lease purchase agreement (rent and buy model):** The lessee under the lease purchase agreement is granted a minimum term of 5 years duration within which to rent and buy the housing by paying the total amount of the remaining purchase price within the lease term. Equally, the lessee is not authorized to sell, sublet or lend the house during the term of the agreement. If the lease term expires and the lessee is not desirous of purchasing, the housing reverts to the owner. When the lease purchase term expires and the lessee has paid off the total amount as agreed, the lessor is required to request the competent agency to grant the Certificate to the Lessee.¹³⁹
- III. Housing under outright sale agreements:** Under this model, the ownership of the transfers directly to the lessee/purchaser upon payment of the purchase price and a Certificate of ownership is granted subject to **Articles 97 and 99 of the Land Law**.

The outright sale model is not applicable to social housing invested in by the State. Access to social housing invested by the State is only through lease agreement or lease purchase agreement.

It is noteworthy that financing of the purchase of housing under lease purchase agreement and sale agreement can be through financing/mortgages from financial institutions.

E. Regularization of informal housing

Article 65(1) of the Law on Housing supports the regularization processes of housing by stipulating that the State should support households or individuals in renovation and repair of targeted programs for housing. One of the mechanisms to be adopted by the State to enhance regularization is to allocate and make available preferential loans granted by banks for social policies for social housing development. **Articles 87 to 97** detail procedures for undertaking home renovations and home demolitions by protecting the rights of both the homeowners and lessee during the regularization process.

The Law also controls the regularization process by mandating that renovation must comply with the **laws on planning, architecture and management of cultural heritage**.¹⁴⁰ **It must not change the status quo** of the villas¹⁴¹ and must conform to the same architecture, materials, building density, number of storeys and the height of the old villa.¹⁴² There are restrictions on creation of structures to increase area or expand or appropriate the outside space of the villa. **Article 90** extensively details on maintenance or renovation of state-owned housing.

Article 110 provides for the procedures for demolition of apartment buildings for renovation or reconstruction and the issue of housing relocations during demolition. As stated in **Article 112**, the investor must first, make a plan for relocation then send a report to the People's Committee of the province where the apartment building is located for approval. There is a mandatory obligation for the relocation plan to be informed to residential areas where the apartment building to be demolished is located, or announced by means of local mass media or website of the People's Committee or the housing authority of province.

¹³⁹ Law on Housing, Article 134(2)

¹⁴⁰ Law on Housing, Article 87(3)

¹⁴¹ Law on Housing, Article 87(4a)

¹⁴² Law on Housing, Article 87(4b)

F. Financing for Housing Development

Chapter V of the **Law on Housing** details provisions on the financing for housing development. Aside from the privately raised capital mechanisms, the State incentivizes investment in housing sector by granting capital including central capital and local capital which is granted to support beneficiaries of social policies in housing according to target programs for housing and social housing construction for lease or lease purchase. The State has also placed stringent policies on utilization of capital for the intended purposes, be it private, state or foreign acquired capital with serious consequences for misapplication of capital. The State has also incentivized investment in social housing by granting preferential loans with low interests and long term through funding provided banks for social policies which loans are accessible to both investors and social housing purchasers.

Summary

The evaluation of the social housing framework extensively details the criteria for identifying beneficiaries eligible for social housing. However, a concern is that the process may be open to abuse through favoritism of beneficiaries, allocation of housing to parties that may not meet the eligibility requirement, corruption and other vices if not regularly audited to improve and streamline governance and regulatory frameworks.

The mechanisms put in place by **Law on Housing** for the production of social housing correspond to the essentials under the **Construction Law** which determines the standards and technical aspects of the construction of social housing.

The Law on Housing provides for mechanisms to regulate pricing of rent, lease purchase and sale of social housing to enable affordability and accessibility to the target groups including low-income and poor persons.

The law provides several incentives for the involvement of the private sector to invest in the social housing developments sector.



2. LEGISLATIVE FRAMEWORK FOR RENTAL HOUSING

One of the models for access of social housing is through social housing lease agreements under **Article 129 of the Law on Housing**.¹⁴³ Under this model, the lessee is given possession of the housing on condition of remittance of a defined rental amount to the housing owner.

The tenure for social housing lease agreement is a term of at least 5 years.¹⁴⁴ The establishment of a minimum term protects the lessees from exploitation and eviction by the lessors without due reasons that meet the conditions for termination of lease.

For there to be a contractual relationship arising from a social housing lease, the contracting parties must enter into a housing agreement made in writing that entails the provisions stipulated under **Article 121** of the **Law on Housing**. The agreement entails the following details: a description of the characteristics of the house and the piece of land attached to that house; the value of contributed capital or the transaction price of the housing; deadline for and method of payment regarding transaction in housing lease; rights and obligations of contracting parties; commitments of contracting parties; effective date of the agreement; and signatures of the contracting parties.

Regarding the obligations of the parties to the contract, the owner is required to deliver the house in good condition, guarantee peaceful possession of the rental housing and to undertake throughout the duration of the rental, any repair work of the structural works. The tenant is required to maintain the building and carry out minor maintenance and repairs including painting, electricity, plumbing and sanitary facilities, due to the use of the building. Major repairs are the responsibility of the owner.

Protection of Lessee's rights during lease term

A. Pre-emptive right on sale of housing

Article 127 offers a blanket protection to lessees whereby, if a homeowner intends to dispose of through sale a house, the homeowner is mandated to notify the lessees in writing of the sale and the requirements for the intended sale. In the event the lessees have paid off their rents up to the date on which the notification is sent, then the lessees will acquire pre-emption rights to buy the house. If 30 days from date of receipt of notification the lessees have not bought the house, the homeowner is entitled to sell it to a third party. The mandatory pre-emptive right procedure is a fundamental mechanism in controlling unnecessary evictions by homeowners during processes of transfer of ownership rights.

¹⁴³ Law on Housing, Article 117

¹⁴⁴ Law on Housing, Article 62(2)

B. Rent hikes

One key term of the housing lease agreement is the provision on transaction price of housing including rental amount. The agreement sets the rental amount at commencement of the agreement and all parties are mandated to abide by the agreement. A well drafted agreement must define instances where the owner can increase rent, the procedure for notifying the tenant and timeline the rent increase takes effect.

As previously captured, for social housing programmes invested by the State, rental price is promulgated and regulated by the Ministry of Construction.¹⁴⁵ For social housing programmes invested by individuals and households, rental price is determined according to the price bracket issued by the People's Committee of the province where housing is located.¹⁴⁶ In social housing, rental prices are controlled by the State and therefore, an increase in rent will be subject to appraisals by the relevant authorities.

In the event an owner/lessor renovates the house with the consent of the lessee before the expiry of the lease term, the lessor is entitled to adjust the housing rents. The law further provides that the new rent should be agreed by the contracting parties but if there is no consensus, the lessor is entitled to unilaterally terminate the lease agreement but pay compensation to the lessee.

C. Termination of lease agreement

Article 131 of the Law on Housing outlines the conditions for termination of lease agreement. For a lessor to terminate an agreement, the reasons should meet one or several conditions outlined under the law as stipulated under **Article 132** to include unilateral termination of the agreement, expiration of lease term, frustration by natural causes etc. In the event one condition is met, the lessor must notify the lessee of the termination of lease agreement in writing before 30 days as prescribed.

For unlimited term agreements, the lessor can only terminate an agreement after 90 days from the day on which the lessor notifies the lessee of the termination of lease agreement.

Article 132(1) sets a general rule stipulating that during the lease term, the lessor may not unilaterally terminate the lease agreement and withdraw the house except for the statutory outlined reasons. Equally, **Article 132(3)** allows for the lessee to unilaterally terminate the lease agreement under the following conditions: lessor does not repair the house when it is seriously damaged; the lessor increases the rents unreasonably or increases the rents without notification to the lessee; and the right to enjoyment of the house is restricted by interests of a third party.

In the event any party unilaterally terminates the lease agreement, it ought to give the other party a 30 days' notice.

Article 133 also mandates that in the event of the death of the homeowner/lessor, the lessee has the right to continue renting the house for the rest of their lease term and the heir is required to keep performing the lease agreement.

¹⁴⁵ Law on Housing, Article 60(4)

¹⁴⁶ Law on Housing, Article 58(2c)

In the event the homeowner transfers ownership of the house under lease agreement before expiry of lease term, the lessee has right to continue renting for the rest of their lease term and the new owner must keep performing the lease agreement.

In the event the lessee dies before expiry of lease term, the survivors and persons living with the lessee have the right to continue renting for the remainder of the term.

Regarding agreements on lease purchase of social housing, if the lessee dies, any lawful heir living in that house with the lessee has the right to continue renting and buying the house. If the lessee has lawful heirs but they do not live together in that house, and the lessee has paid two-thirds of the lease purchase term, the lawful heirs are entitled to pay off the total amount in proportions to one-thirds of the remaining lease purchase term and the heirs should be issued the Certificate of ownership.

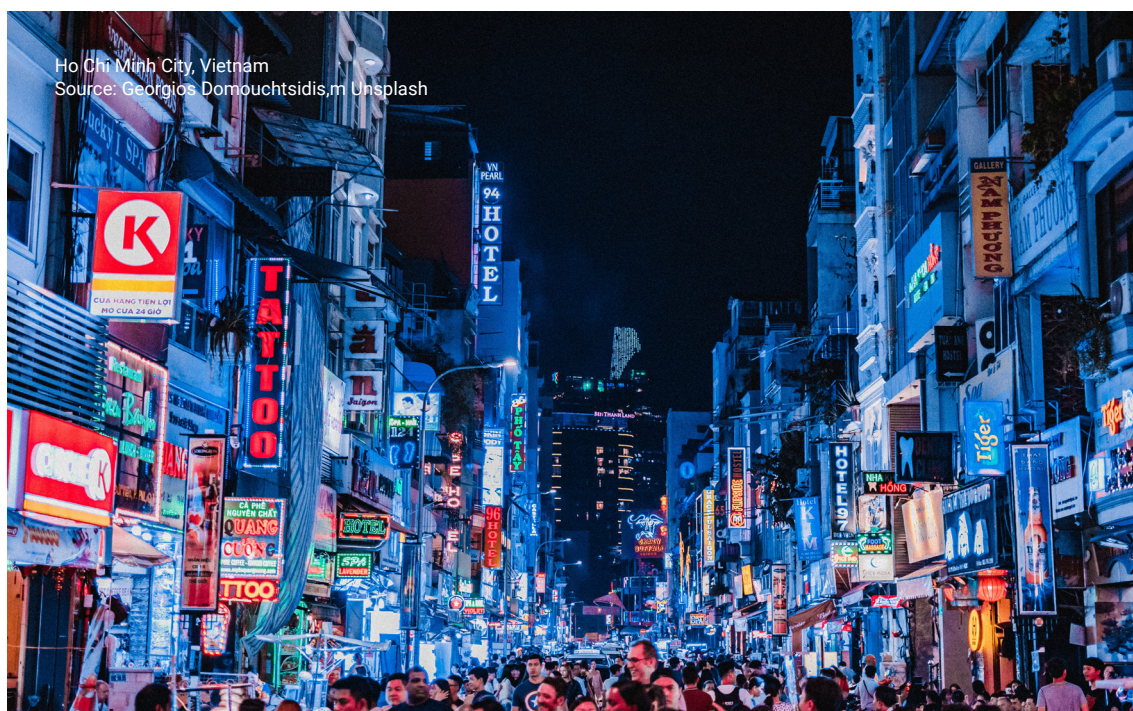
Article 146 entitles the homeowner to mortgage the house under lease agreement provided that they notify the lessees of the mortgage in writing in advance and the lessees are entitled to keep renting for the rest of the term.

Summary

The **Law on Housing** outlines legal protections against arbitrary evictions.

The State regulates the determination of rent prices, hence regulation against arbitrary rent hikes.

The law outlines the rights and obligations of both the lessor/owner and lessee/tenant. It further details provisions for termination of housing agreements which offer protection to parties against arbitrary breach of contractual relationships.



Ho Chi Minh City, Vietnam
Source: Georgios Domouchtsidis, m Unsplash

CHAPTER II

FUNCTIONAL ANALYSIS OF LEGISLATION

A

INSTITUTIONAL ORGANIZATION OF HOUSING AND CONSTRUCTION ACTORS

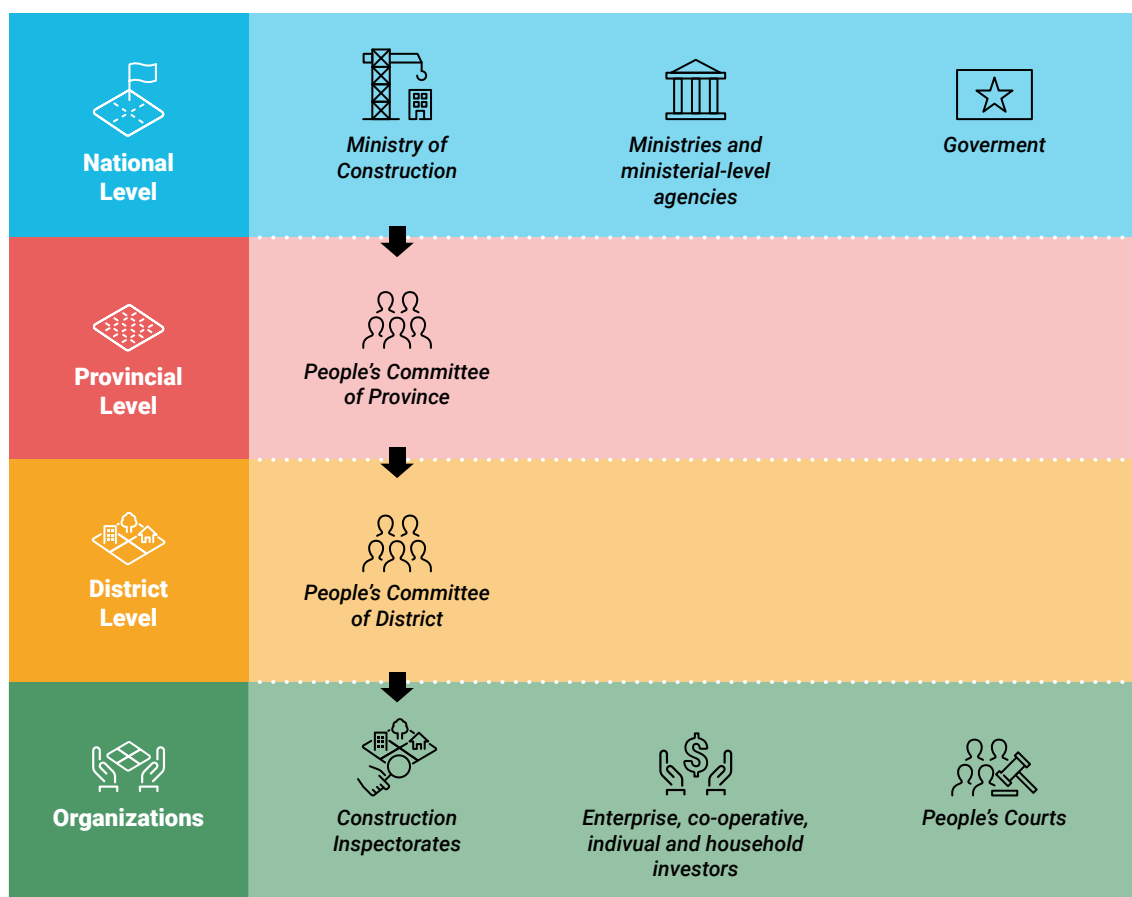


Figure 6: Institutional organization of housing and construction actors

1. INSTITUTIONAL SYSTEM AND MECHANISMS FOR HOUSING



A. AT THE NATIONAL LEVEL

1. National Government

Article 161 Construction Law stipulates the responsibilities and obligations of the national government to include inter alia:

- I. To unify the state management of construction investment activities nationwide; to direct the formulation and implementation of strategies and plans;
- II. Promulgate and organize the implementation of legal documents on construction, construction standards and technical regulations.
- III. To direct ministries, sectors, localities in implementing the law on construction; to assign and decentralize the state management to ministries, sectors and localities; to direct the settlement of important issues, complicated problems and difficulties in the course of management of construction investment activities.

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2. Ministry of Construction

The Ministry of Construction should take responsibility for performing the unified state management of construction investment activities as stipulated under **Articles 160, 161 and 162 of the Construction Law**. The core functions include:

- I. To assume the prime responsibility for formulating and submitting to the Government and the Prime Minister legal documents, strategies, schemes, master plans and plans on development of the construction market and capacity of the construction sector.
- II. Promulgate and organize the implementation of legal documents on construction according to its competence; to promulgate national technical regulations on construction and documents on construction technique according to its competence.
- III. Organize and manage construction planning, project management activities and appraisal of construction projects and designs; to promulgate and publicize construction norms and prices.

Article 81(2) of the Law on Housing bestows onto the Ministry of Land the management and use of state-owned housing. As the central level actor, its key responsibility is to manage most of the responsibilities to be performed by the State as the main driver of housing development policies in Vietnam. Its roles include:

- I. assessing and formulating the plans for official residence and determining their demands.
- II. determination of area of land used for official residence in administrative divisions.
- III. oversight over the quality of housing serving relocation.
- IV. selecting investors to construct social housings invested by capital resources regarding central investment related capital.
- V. promulgating the rents and lease purchase prices on social housing invested by the State.



B. At the Provincial level

1. Provincial-level People's Committee

At the Provincial level system, housing management and administration is governed by the People's Committee of provinces. People's Committees of provinces have distinct and well-defined roles in shaping housing management and administration within provincial level governance units entailing:

- I. Making and approving plans for official residence development in the plan for local housing development
- II. Allocating land plots for official residence construction at the request of the Ministry of Construction
- III. Providing guidance and inspection of the quality control of housing serving the relocation in the province.
- IV. Providing a portion of or entire funding from the budget to households and individuals preserving or renovating housing in the area which is required to preserve its artistic, cultural or historical value.
- V. Selecting investors to construct social housings invested by capital resources regarding local investment related capital.
- VI. Regulating the housing selling price, rent or lease purchase price for social housing construction invested by households or individuals according to the price bracket issued by the People's Committee of the province.

VII. Establishing councils including representatives of agencies of the province in charge of architectures, construction and/or culture, professional partnership and related scientists to determine criteria and list of housing possession art, cultural, and/or historical value in the provincial approval.

VIII. Issuing the decisions on enforcement of apartment building demolition and relocation

Article 164 (1) of the Construction Law details the responsibilities of the People's Committees of provinces to include co-ordination with and support ministries, agencies and related organizations and People's Committees of all levels in the process of implementation of specialized construction investment projects in issues under their management and



C. At the District level

1. District-level People's Committee

Subject to **Article 164(2) of Construction Law**, they perform the state management of construction investment activities in their localities as decentralized entities; organize professional training and retraining in construction investment for cadres and civil servants of attached agencies and units. District and commune-level People's Committees coordinate with and support People's Committees of higher levels in their implementation, monitoring, examination, and supervision of construction investment projects in localities under their management.

The District-level People's Committee is not heavily involved in the governance of the housing sector. Their sole role is to issue the decision on enforcement of house demolition for land withdrawal and separate house demolitions. They also implement the enforcement of housing demolitions pursuant to the decision on enforcement of housing demolition.



D. Professional organizations/institutions

Several other professional organizations and institutions are involved in land, housing and construction administration and management mechanisms in the Socialist Republic of Vietnam. These are mainly the construction inspectorates, People's Courts which are tasked with adjudication of disputes within the Socialist Republic of Vietnam.

Management boards of the apartment buildings or single-owner buildings are tasked with management of the apartments including performing the roles listed under **Articles 104 and 105 of the Law on Housing**.

2. Analysis of the institutional mechanism

The **Law on Housing** has well defined and detailed the institutional framework governing housing administration and management in Vietnam. Further, it assigns each institution with respective roles and responsibilities within particular jurisdictions. Hence, an institution can only undertake its roles and responsibility within the boundaries of its jurisdiction if the action required strictly affects that particular region. This clear mapping reduces instances of overlap and/or duplicity of roles in implementation of both the procedural and substantive aspects of **Housing Law**.

The coherence between the organization of institutions against competence to implement as the implementation power is undertaken at the relevant governance level can only be ascertained by conducting interviews with key stakeholders with the housing sector in Vietnam.

The **Construction Laws** have equally detailed the hierarchy of competence of institutional bodies and further aligned the rights, obligations and responsibilities of each institution. This enables each institution to undertake its vital responsibility over the construction sector.



ANALYSIS OF STANDARDS AND POLICIES

1. COHERENCE OF POLICY OBJECTIVES

A comparative analysis of the **Land Law, Construction Law and Law on Housing** presents an essential coherence of policy objectives. The States control over land as a resource is meant to achieve proper land-use based on a proper land planning regime. The principal objectives advanced by the **Land Law** are then applicable in ensuring construction is undertaken within these land use and land planning regimes. Achieving proper housing is then a consequence and result of strict compliance and implementation of the **Land Law** and **Construction Law**.

Compliance with national master plans and plans is one of the policy objectives that is coherent in all three laws and the reasoning of the legislative framework.

The drafting of the laws is also consistent with the core fundamental policy objectives. The drafting is also precise, concise and easy to understand. There are minimal typographical errors, but they do not result in misinterpretation of the legal provisions i.e., **Article 34(1c)** of the **Law on Housing** omitted the word “by” whereas 34(2) omitted the word “an” official. **Article 58(2b)** has repeated the wording “housing area standards.”



Hanoi, Vietnam
Source: Silver Ringvee, Unsplash

CONCLUSION AND INITIAL FINDINGS

These statutes provide for the creation of an institutional mechanism to facilitate the process of housing construction as well as the mechanism of production of social housing.

The Construction Law provides a mechanism for applying for and obtaining planning permits to construct, repair/renovate, relocate and demolish, which are essential to enforce the building standards set by law and planning documents. The timelines for procuring such permits are reasonable and procedure is void of most administrative hurdles.

The institutional framework is also governed by these various texts. They define the roles and responsibilities of institutions in the processes of construction and occupancy of houses.

Urban sprawl and land speculation also have a significant impact on the housing needs of poor households. To remedy this, the **Law on Housing** has established essential incentives to ensure adequate supply of affordable housing. The law also provides measures to regulate housing prices and reduce costs of affordable housing to guarantee accessibility of housing to the most vulnerable groups in society including the poor and low-income groups.

The Law on Housing has detailed comprehensive protective legal mechanisms to prevent arbitrary eviction, rent hikes and negligence by landlords. This legislative framework is essential especially where there arises a tenant-landlord relationship.

Further, the **Law on Housing** has established a precise regulatory framework for transparent identification and verification system and the eligibility criterion for determination of most needed group for social housing considering beneficiaries income and needs.

Shortcomings of the Construction Law and Law on Housing

Mechanisms to upgrade informal settlements: **The Construction Law and Law on Housing (and Land Law)** do not adequately address regulation of informal housing. The laws do not recognize the existence of poorly constructed houses informally built without any building license. The law also fails to establish processes to ex-post formalize informal settlements by improving their basic safety and health measures. There is also a lack of regulations on post-investment management, as well as of regulations on urban renovation, embellishment and reconstruction. Such ex-post formalization processes acknowledge existence of informal settlements and puts in place measures to establish standards intended to achieve at the neighborhood scale, greater social and urban integration with improved public spaces, improved sanitary, better environmentally friendly conditions and strengthened social relations in aid to boost conditions of living within such informalities.

The **Construction Law** needs to outline in detail the types of construction materials to be used in construction of both housing, commercial properties and social housing and detail the floor area ratio regulations etc. Stringent supervision and management of compliance with construction materials as to quality and standards is one way of reducing ex-post costs on maintenance of housing and commercial properties. The law should therefore stipulate the exact materials that ought to be used for certain types of constructions and if possible, have a separate regulation governing quality of construction materials.

Rapid Assessment of the Land Law Framework in the Socialist Republic of Vietnam



H. Mù Cang Chải, Vietnam
Source: Hai Tran , Unsplash

INTRODUCTION



Land is the cornerstone of all spatial planning, whether urban or rural. An effective system of land ownership enables governments to better organize human settlements. Effective use of land resources is based on a good land administration system, enactment of a concise, simplified and comprehensive land legislative regime and further, the establishment of proper and stable institutional frameworks to govern the management of land resources. Good land management entails: establishment of mechanisms that secure land ownership/tenure; a legal framework that details landowners' rights and obligations; a system that guarantees incentives for clear investment frameworks; a fiscal cadaster that outlines the basis for land valuation and taxation regimes; and an effective dispute resolution framework that solves land disputes.

The importance of land cannot be overstated. It is considered the anchor of social and economic activities in most societies and is also a source of cultural identity. It is the basis for housing, food production, livelihoods and environmental health. Its relevance is recognized in the New Urban Agenda, which envisages cities and human settlements that ***"fulfil their social function, including the social and ecological function of the earth"*** (para. 13(a)). It also recognizes the promotion of tenure security as one of the elements of sustainable and inclusive urban development (para. 14(b)).

These commitments are consistent with development research and practice that has shown that tenure security is essential for development and is directly relevant to the achievement of several Sustainable Development Goals, including SDG 1, SDG 2, SDG 5 and SDG 15. Laws identify available forms of land status, protect property rights, define land registration procedures, and provide dispute resolution mechanisms. In the urban context, these functions of the law are expected to strengthen the ability of urban dwellers to access land and secure their properties. However, in some cases, the law leads to the opposite effect. The right to tenure security is compromised when the law recognizes forms of property that are inaccessible to most people or that do not correspond to local realities. Cumbersome and costly land registration procedures are also an obstacle to land tenure security. In addition, the law can prevent the full enjoyment of land rights by creating inadequate protections against involuntary evictions and relocations and limiting the range of dispute resolution mechanisms accepted.

The Socialist Republic of Vietnam (SRV), a Southeast Asian country, has continually grappled with the search for an ideal equilibrium between the doctrines of the communist control over land vis a vis the capitalistic market-led economy approach.¹⁴⁷ There still lays a radiation of ideological differences between the traditional socialists ideals centered on people owned and state managed property pitted against the progressive neoliberal ideals advanced by private property rights earmarked by free market forces approach to land management.¹⁴⁸ It must be noted that this struggle of ideologies is one of the main constraints to the administration of good land administration systems within the SRV.

Considering the historical, social and economic contexts of land issues in Vietnam, there has slowly been radical and major reforms in the SRV's **Land Law** regimes characterized by repeals and numerous amendments to the countries **Land Laws** to conform to current global socio-economic trends and market realities all while retaining the co-basic structures of the historical land contexts that duly shaped Vietnam's **Land Law** landscape.

The evolution of the **Land Law** framework in Vietnam can be analyzed through the following historical periods. Land management commenced in the 1930s and radically reformed in 1945 post war, which resulted with the confiscation of land from French colonialists and their supporters to be distributed to poor farmers and public land redistribution.¹⁴⁹ The next phase of reforms was in the periods between 1955-1975, where the State focused on encouraging agricultural production and restoring the postwar economy by approving policies of building pilot agricultural production cooperatives and subsequently converting them to high-level agricultural cooperatives. Between 1976-1985, reforms focused on completing whole-commune cooperatives and large agricultural production organization with the objective being improving cooperative management. The most radical reforms in Vietnams' **Land Laws** were initiated within the period 1986-2013, which commenced with the policies of "*Doi moi*" which centered around the principle of adopting a market economy model managed by the State. This process adjusted agricultural land policy by allocating agricultural land owned by agricultural cooperatives to households and individuals for stable and long-term use without collection of land use fees. In 1993, focus was shifted to resolutions on industrialization and modernization of Vietnam which resulted in promulgation of two Ordinances on the rights and obligations of domestic and foreign organizations using land. Between 1994-1998, the Government issued several decrees to regulate matters relating to land use change, non-agricultural land use, land prices, land use planning etc. which still form part of Vietnam's current land regimes. All these prior reforms and amendments coupled with the detailed discussions on appropriate land ideologies finally culminated with the enactment, in 2013, of **the Land Law No. 45/2013/QH13**, which forms the primal legislative **Land Law** regime within Vietnam and mirrors an improvement of the **Land Law 2003**. The apex of **Land Law** reforms in Vietnam was achieved with the **Land Law 2013** which details: the land use regimes; the State's power to allocate land use rights, lease land use rights and recover land; rights of land users; land conversion measure; and land finance.

It is noteworthy that a preliminary perusal of the **Land Law 2013**, largely conforms to conventional principles and doctrines of **Land Law** as will be highlighted in this report. Further, the **Land Law 2013** outlines a systematic and hierarchical institutional framework that effectively ought to

147 Kaitlin Hansen: Land Law , land rights, and land reforms in Vietnam: A deeper look into "Land Grabbing" for public and private development (2013), Independent Study Project (ISP) Collection. 1722 pg. 1.

148 Ibid pg. 1.

149 Lee, Seong & Trinh Thi Kieu Trang: A study on land policy and Land Law in Vietnam after 1945 (2017) Journal of Cadastre & land informatix Vol. 47 No. 2 pg. 255-268.

govern land regimes. However, as a disclaimer, the degree of implementation of the said statute and other related **Land Law** frameworks can only be determined through interviews with land users, stakeholders and representatives of institutional bodies tasked directly and indirectly with land management within the SRV.

The aim of this evaluation of legislative framework is to provide recommendations and proposals to *“improve, in a participatory manner, the legal, regulatory and institutional framework of urban development at all levels of government in Vietnam.”*

To achieve this, an assessment of the national urban legal framework is needed to better understand the current legal context as well as the constraints on the country’s urban development. In this context, UN-Habitat, the lead implementing entity of the project, will undertake an analysis of the relevant law and highlight areas of proposed amendments.

METHODOLOGY

The current Rapid assessment of the legal framework for land management in Vietnam was based on a desk review of the existing **Land Laws**, complemented by secondary sources from peer-reviewed journal articles. It will be important that the report is supplemented and updated by field investigations in the form of interviews with key stakeholders.

The technical Indicators used for the legal assessment are mechanism of Tenure and Regularization of Land; Land Use Indicators Management Mechanism; Eviction and Resettlement Mechanisms; and Dispute Resolution Mechanisms.

The cross-referencing of information from the interviews and the analysis of the various legal and strategic documents will allow UN-Habitat to best meet the requirements of the terms of reference. This can also be done through a national workshop with key stakeholders to validate the legal findings and recommendations.

Sa Pa, Vietnam
Source: Hiep Nguyen, Unsplash



Rapid Assessment of the Land Law Framework
in the Socialist Republic of Vietnam

CHAPTER I

INSTITUTIONAL ORGANIZATION OF LAND ACTORS

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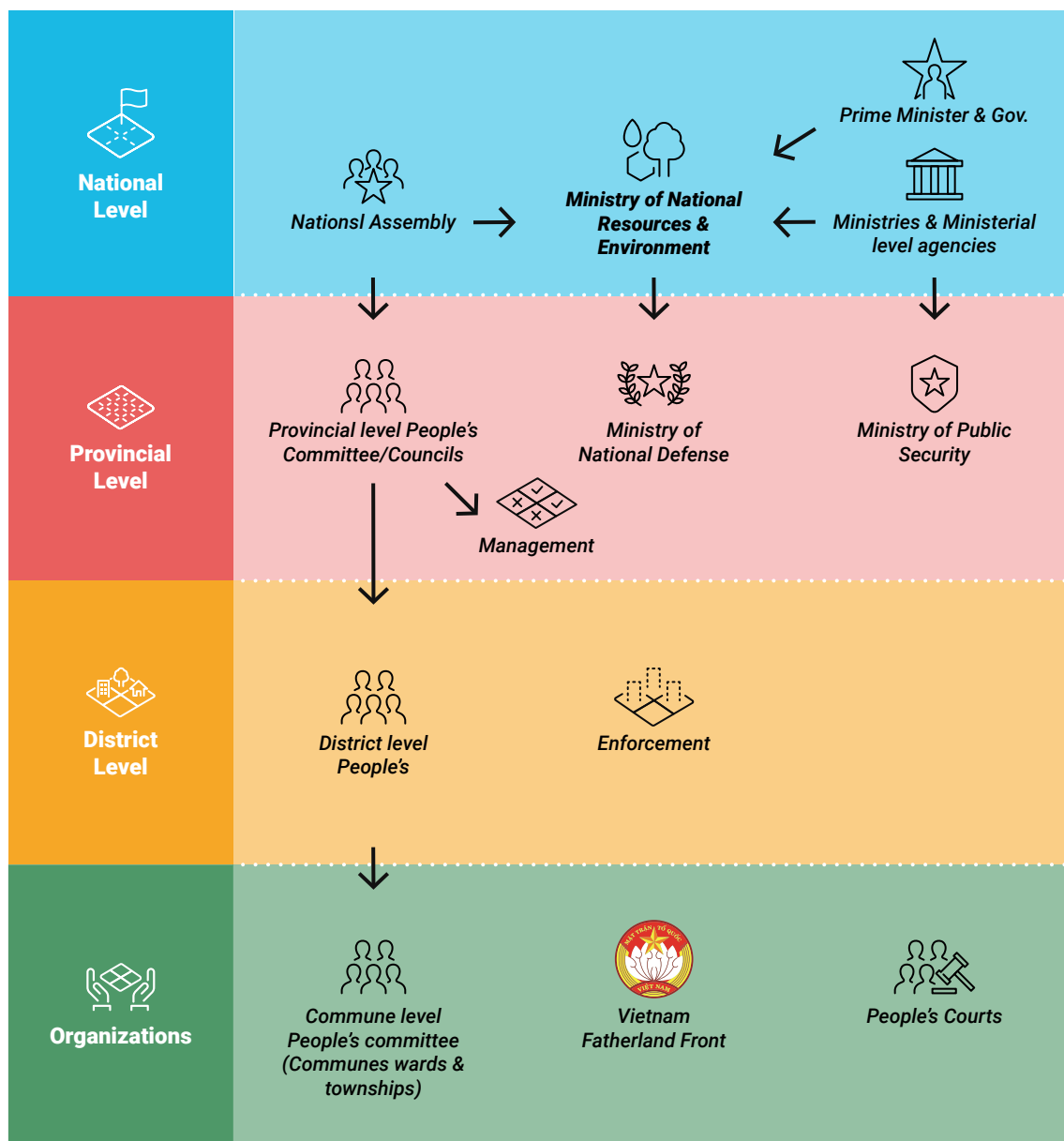


Figure 7: Institutions involved in land management¹⁵⁰

¹⁵⁰ Institutional framework derived from the Land Law, Law Organizing the Local Government & the Constitution of the Socialist Republic of Vietnam 2013

INSTITUTIONAL ACTORS



A. At the national level

1. The National Assembly of the Socialist Republic of Vietnam (NAV)

The National Assembly is established under Chapter 1 **Article 6** of the Constitution of the Socialist Republic of Vietnam 2013 as being the highest government organization and the highest-level representative body of the people. The NAV is constitutionally empowered to draw up, adopt and amend the Constitution and to make and amend laws. Its composition entails 499 elected deputies. The National Assembly promulgated the **Land Law No. 45/2013/QH13** as the key legislative framework to govern land regimes in Vietnam.

Article 20(1) of the **Land Law** assigns the National Assembly the mandate to:

- I. promulgate laws and resolutions on land.
 - II. decide on national land use master plans and plans.
 - III. exercise the power of supreme oversight of land management and use nationwide.
 - IV. make final decisions regarding disputes over administrative boundaries amongst administrative units.
-

2. The Government & Office of the Prime Minister

The Government is established under **Article 94 of the Constitution and Article 1 of the Law on Organization of the Government 2001** as the executive body of the National Assembly and the highest State administrative agency of the Socialist Republic of Vietnam. The Government is accountable to the National Assembly and reports on its activities to the National Assembly; the National Assembly's Standing Committee and the State President. Subject to **Article 3 of the Law Organizing the Local Government**, the Government is composed of: the Prime Minister who is the head of government, the Deputy Prime Ministers, the ministers and heads of the ministerial-level agencies.

The Office of Prime Minister works in liaison with the respective Ministries and under land management is tasked with the following roles:

- I. Perform the unified state management of land nationwide.
- II. Providing oversight to most of the activities driven by the Ministry of Natural Resources and Environment as the main agency supervising and overseeing land management across the inferior hierarchy of land management.

- III. Submit reports on land use/management to the National Assembly and be oversighted by the National Assembly.
- IV. Establishing appraisal boards for national land use master plan and plans.
- V. Allocate land use targets for provinces and centrally run cities, the Ministry of National Defense and the Ministry of Public Security.

3. The Ministry of Natural Resources and Environment (MNRE)

As espoused under **Article 23(2) and 24(2) of the** , the Ministry is the core land administrative agency tasked with centrally organizing land administration. As the central level actor, its key responsibility is to implement all the ordinances promulgated, laws ratified or decisions passed by either the National Assembly or the Office of Prime Minister relating to land management. This Ministry's rights and obligations over land are well and succinctly defined under **Chapter II of the Land Law** which summarizes the land administrative functions, legislative and policy implementation functions and legislative compliance functions. The Ministry of Natural Resources and Environment:

- I. Performs the unified state management of land in Vietnam.
- II. Implements the provisions of the **Land Law**, acts as chief enforcement and compliance institution in land management.
- III. Provides oversight over the functions of the People's Committees, local level institutions and land-related public service organizations.
- IV. Develops and establishes the numerous Government Regulations referred to within the **Land Law**.
- V. Prescribes cadastral records, the establishment, editing and management of cadastral records and providing a roadmap for change from paper to digital cadastral records.

4. Ministries and Ministerial Agencies

Forming the composition of Government as per **Clause 3 of the Law on Organization of Government 2001**, various ministries and ministerial agencies are mandated to collaborate and co-ordinate with the Ministry of Natural Resources and Environment in providing oversight in land management but only to the extent of their respective functions within land administration and management.

Thus, the main objective is to develop a clear framework of hierarchical reporting, cooperation and partnership mechanisms that will facilitate for effective land administration, void of duplicity of roles, and eliminate lacunar in implementation formalities of **Land Laws**. The most referenced Ministries under the **Land Law** are the Ministry of National Defense and Ministry of Public Security which are tasked with protecting the State's interests as far as security and public interest is concerned. The management and use of land allocated to the security entities fall within the jurisdiction of the two ministries but only to the extent of approvals from the National Assembly and Prime Minister oversight.



B. At the Provincial level

1. Provincial-level People's Committee

At the Provincial level system, land management and administration are governed by the Provincial-level People's Committees which as articulated under **Article 24(2) of the Land Law**, have jurisdiction over provinces and centrally run cities. As per the administrative system in Vietnam, there are 5 cities and 58 provinces. Provincial-level People's Committee is the central actor in implementing and overseeing compliance with the provisions of the **Land Law** within the provinces. Provincial-level People's Committees have a distinct and well-defined role in shaping land management and administration within provincial level governance units entailing:

- I. Demarcation of administrative boundaries and making of administrative maps.
- II. Investigation and assessment of land.
- III. Formulation, appraisal, adjustment and implementation of land use masterplans and plans.
- IV. Allocation, leasing and approval of change of land use rights.
- V. Undertaking recovery of land and the corresponding administrative due processes including organizing compensation.
- VI. Development and implementation of resettlement projects.
- VII. Granting certificates of land use rights and ownership of houses and other land-attached assets.
- VIII. Determination of specific land prices.
- IX. Organizing the development, management and exploitation of land information system and land database.

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2. Provincial-level land administration agencies (*Management boards and Appraisal boards*)

The Provincial-level Peoples Committees have the power to establish appraisal boards which have the mandate in appraising land use master plans and plans within both the provincial and district levels and further in organizing the examination and field survey of the areas for which the land use purposes are planned to change.¹⁵¹

The Provincial-level Peoples Committees also have the power to establish management boards which are allocated land in the hi-tech zones¹⁵² and economic zones¹⁵³ for their management as per the provisions of the **Land Law**.

¹⁵¹ Land Law, Article 44(1c)

¹⁵² Land Law, Article 150

¹⁵³ Land Law, Article 151



C. At the District level

1. District-level People's Committee

At the District level system, land management and administration is governed by the District-level People's Committees whose jurisdiction covers the urban districts, rural districts, cities/towns and rural districts. District-level People's Committee is the central actor in implementing and overseeing compliance with the provisions of the **Land Law** within the districts. Each District-level People's Committee has a distinct and well-defined role in the process of land management and administration within their district-level governance units entailing:

- I. Demarcation of administrative boundaries and making of administrative maps.
- II. Investigation and assessment of land.
- III. Formulation, appraisal, adjustment and implementation of land use masterplans and plans.
- IV. Allocation, leasing and approval of change of land use rights.
- V. Undertaking recovery of land and corresponding due process procedures including organizing compensation.
- VI. Enforcement of decisions on compulsory inventory and establishment of enforcement boards.
- VII. Development and implementation of resettlement projects.
- VIII. Granting certificates of land use rights and ownership of houses and other land-attached assets.

2. District-level land administration agencies (*Enforcement boards*)

The District-level Peoples Committees have the power to establish enforcement boards which assist the District-level People's Committees in executing the enforcement orders during the processes of land recovery detailed under **Article 71 of the Land Law**.

Professional organizations/institutions

Several other professional organizations and institutions are involved in land administration and management mechanisms in the Socialist Republic of Vietnam. These are mainly the People's Courts which are tasked with adjudication of land disputes within the SRV, the Vietnam Fatherland Front established under **Article 9 of the Constitution** and local socio-political organizations. The Fatherland Front derives its powers to supervise land management and use from provisions of **Article 198(2) of the Land Law**.

These professional organizations and institutions each play a role in land management mechanisms either at the level of the identification and demarcation of parcels, or at the level of the authentication of acts or the judicial procedure for managing disputes.

Analysis of the institutional mechanism

The **Land Law No. 45/2013/QH13** has detailed the institutional framework governing land administration and management in Vietnam and further assigned each institution with respective roles and responsibilities within particular jurisdictions. Hence, an institution can only undertake its roles and responsibility within the boundaries of its jurisdiction if the action required strictly affects that particular region. These clear mapping reduces instances of overlap and/or duplicity of roles in implementation of both the procedural and substantive aspects of **Land Law**.

Importantly, the institutional hierarchy established plays a significant role in enforcing the principles of accountability and transparency because the higher-level institutions play an oversight and implementation role over the lower-level institutions. However, the **Land Law** does not delve into the composition and term limits of the stipulated committee and board members (provincial and district levels).

Regarding coordination across the various governance levels, ministries, institutions and organizations, the legislative and regulatory framework provides coherent terms of collaboration and engagement mechanism within which the different levels can undertake implementation of their roles. The defined institutional hierarchy assists in the coordination process which fast-tracks correspondence and implementation of responsibilities. The law gives precise timelines within which actions should be implemented by each level of governance specifically when an action is needed from another higher-level institution. The bulk of overall oversights over land management within Vietnam rests with the Ministry of Natural Resources and Environment which centralizes and streamlines any needs for policy reviews, amendments or enactment of laws within a singular institutional body. Thus, this makes it easier for harmonization and coordination of functions and obligations which strengthens collaboration amongst the differing levels.

There is coherence between the organization of institutions against competence and capacity to implement as the implementation power is undertaken at the relevant governance level. **Articles 198-209 of the Land Law** give guidance as to the implementation framework between the various institutions. **Article 23 of the Land Law** clearly stipulates that Government should perform the unified state management of land nationally, the Ministry of Natural Resources and Environment should take responsibility before the Government for the unified state management of land, related ministries and ministerial-level agencies should assist government and finally the People's Committees at all levels should perform their state management of land in their localities according to their competence.

Disclaimer

Assessment of challenges, gaps and duplicity of roles can only be discussed and mapped by undertaking extensive interviews with the key staff and stakeholders within the land institutions and further reviewing the referenced Government Regulations (later in this document) and their implementation rates.

A preliminary review of the substantive content of the **Land Law** reveals some legislative gaps that may need further substantive analysis to effectively protect the rights and interests of landowners. For instance:

1. A key concern within the land management system is the absence of mechanisms and/or accountability measures to ensure unallocated land or land under management boards is not misappropriated through land grabbing or use for private benefits by government officials and private actors.
2. There is risk that the recovery of land process (expropriation) can be abused by state actors for private purposes by using the provision of “*recovery for public purposes*” which could result in dubious intervention by the government and infringement of rights of current property owners.
3. The procedure for compensation during recovery of land has not elaborated on protection actions to prevent exploitation of citizens during appraisal processes and grant of compensation. There is risk that compensation will be inadequate as the state is the entity conducting the appraisal and allocating the compensation, especially pending legal modalities that guide officials (e.g., requirement to base the compensation on the market value of the land).
4. The **Land Law** does not define any statutory consequences for noncompliance or non-conformity with the provisions of this **Land Law**. The law is silent and unresponsive about remedies or actions for breach of statutory provisions i.e., stipulating the offences and the corresponding consequence, applicable fines, prison timelines etc.
5. The dispute resolution process makes reference to the People’s Court but does not detail the technical and professional expertise of the court, its jurisdiction and the range of judicial remedies and redress that can be sought from the courts. It also needs to detail the court procedures. It might be worthwhile to explore the establishment of a fully-fledged Land and Environment Court that strictly deals with land matters which will help reduce land case backlogs, save time and costs within the adjudication system. The Court may also be granted the authority to initiate court-induced mediation, as part of the mandatory land dispute resolution procedures.
6. The Law also does not contain institutional mechanisms for redress of historical and communal land injustices. For instance, injustices to persons of Vietnamese ancestry whose lands were taken away during nationalization of land rights after 1945.

2. IMPLEMENTATION CAPACITY

From a preliminary review of the **Land Law**, there are substantive and procedural standards to govern the **Land Law** regimes in Vietnam. Further, there is an elaborate institutional framework to oversee the implementation of these substantive and procedural standards.

However, the adequacy of the human and fiscal capacity of the various governance institutions can only be ascertained through interviews. The interviews would also help to understand the success and rate of legal implementation of the **Land Law** especially the following key provisions:

1. **Article 123 (5)** – land digitalization process
2. **Article 143 (4)** – policies to restrict expansion of residential areas on agricultural land
3. **Article 164 (3)** – government regulation on management of unused land.

Rapid Assessment of the Land Law Framework
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CHAPTER II

TECHNICAL ASPECTS OF LAND MANAGEMENT

MECHANISM OF TENURE AND REGULARIZATION OF LAND

The Land Law 2013 provides for two modes of land regularization/securing of proprietary ownership rights: (1) Land registration in the land cadastral book, which is an administrative tool for identifying, mapping and managing land properties at the State level. Subject to **Article 96**, the cadastral book details cadastral records included in paper or digital documents which show detailed information on each land parcel, people assigned to manage the land, the land user, the owner of any land-attached asset, land use rights and change of land use rights and the ownership of land-attached assets; and (2) Land registration in the land register and land titling which is the main and compulsory statutory requirement mechanism to securing property rights. Land titling entails the issuance of a certificate of land use rights and ownership of houses and other land attached assets granted to those who have land use rights and the ownership of houses and other land attached assets, which is made to a single form used nationwide.

Registration of land includes the first registration and change of land use registration are processes conducted at the land registration organization under the land administration agency in the form of paper or electronic registration.¹⁵⁴

In undertaking this comprehensive evaluation of the legal framework for **Land Law** in Vietnam, focus must be extended to analyzing the extent of the digitalization of land processes specifically regarding digitalization of cadastral records, land registration process and implementation of digital systems including security of the systems and use of personal data. The objective of the evaluation will be to measure compliance with the following principles:

- I. Accessibility, transparency and accountability of land data.
- II. Public participation, sensitization and simplicity of operating land systems by land users.
- III. Reduction of bureaucratic processes aimed at streamlining/smoothing land registration processes and mechanism for time and cost effectiveness.
- IV. Security and integrity of land systems in data protection.

¹⁵⁴ Land Law , Article 95(2)

1. TENURE RIGHTS AND RECOGNITION OF OWNERSHIP

Land tenure systems

“Land tenure is the relationship, whether legally or customarily defined, among people as individuals or groups with respect to land. It can also be defined as an institution of rules invented by societies to regulate behavior which rules of tenure define how property rights to land are to be allocated within societies, the rights to use, control, transfer and associate responsibilities and restraints.”¹⁵⁵

The land tenure system in Vietnam is of a hybrid nature and is well defined under **Articles 4 and 5 of the Land Law** to include:

1. **State ownership:** All land within the jurisdiction of Vietnam belongs to the people with the State acting as the owner’s representative and uniformly managing land and having the sole authority to grant land use rights to land users. In Vietnam, state ownership tenure is the predominant tenure system which is characteristic of socialist legal systems. Management of land is centralized around State controlled institutions and agencies which have the mandate to allocate land and devolve other forms of tenure systems, but which are still inferior to the state ownership tenure.

These State controlled institutions are also granted property rights to manage public land, unallocated land or land set aside to for public purposes otherwise defined as public land tenure system.

2. **Communal land tenure:** **Article 5(3)** of the **Land Law** recognizes communal land tenure whereby the rights of common¹⁵⁶ exist within the communities residing in the same village, street quarter or similar residential area sharing the same customs and practices or the same family line.¹⁵⁷ In Vietnam, the communal land tenure system is governed under the commune-level People’s Committees where each member has a right to use independently the holding of the community’ rights. **Articles 167(2), 169(1)(l) and 181** detail the rights and obligations of communities using land and group of land users sharing land use rights.
3. **Private land tenure:** In Vietnam, private land tenure is recognized where the State assigns rights to private parties who may include domestic households or individuals, domestic organizations, religious institutions, overseas Vietnamese and Foreign-invested enterprises.¹⁵⁸ **Article 179** protects and details the rights and obligations of households and individuals using land.

¹⁵⁵ FAO, “What is land tenure?” <https://www.fao.org/3/y4307e/y4307e05.htm>

¹⁵⁶ Shelley Alan: ‘Common Rights’ – What are they? An investigation into rights of passage and rights of land use (or rights of common); 2000, Cheltenham & Gloucester College of Higher Education pg 4-6

¹⁵⁷ A right of common is a person’s heritable right, from a grant or award, or acquired by prescription of custom, to take from land of which he is not the owner, part of one of the land’s natural products.

¹⁵⁸ Land Law Article 5(1, 2, 4, 5, 6 and 7)

Land classification/land use

Land classification in Vietnam is dependent on the land use purpose being the following:

1. **Agricultural land:** Article 10(1) of the **Land Law** details the categories of agricultural land. Articles 129-142 outline the procedure for allocation quotas for agricultural land based on the land users and agricultural use purpose.
2. **Non-agricultural land:** Article 10(2) details the categories of non-agricultural land which includes, inter alia, residential land, including rural residential land and urban residential land. Articles 143-163 outlines the use and management of non-agricultural land.
3. **Unused land:** Article 164 details on management of unused land which is managed and protected by the Commune-level People's Committees who are mandated to register such unused land in cadastral records. The evaluation with key stakeholders will expound on the compliance of Article 164 (3) which calls for the management of unused land as per the Government regulations to ensure unused land is not misappropriated through grabbing or misused for private use by state officials or third parties. The **Land Law** needs to expound on allocation of unused land as per Article 164(6) to prevent discrimination and clientelism during allocation.

The importance of appreciating land classification systems in Vietnam is that it lays the core foundation for land management, administration and control. The State exercises unfettered control to ensure that agricultural land is preserved to guarantee food security of the nation and further, that nonagricultural land is used according to the masterplans and spatial plans to ascertain controlled and sustainable development. For instance, **Article 143 (4)** mandates the State to adopt policies to create conditions for rural residents to have accommodation by making full use of the land in existing areas and to restrict the expansion of residential areas on agricultural land. Classification also guarantees a level of equity rights by ensuring the maximum number of households and individuals can access land through restricting the maximum quotas that can be allocated to an individual of household or third party.¹⁵⁹

Land classification plays a vital role in strengthening capacity building for sustainable urban development in Vietnam. **Article 146** effectively captures the critical concepts of urban upgrading and urban regeneration and the development of new urban areas. The State mandates for setting aside of land for urban improvement and development which includes land for improvement of existing inner urban areas and land planned for existing urban areas or developing new urban areas. **Article 144** expounds on the allocation of urban residential land which should conform with the land use master plan for the purpose of urban housing construction. The **Land Law** also controls urban residential development by stipulating that the provincial-level People's Committees should base their allocation on the land use master plan, urban construction master plans and the local land fund, determine the allocation quota of residential land to each household or individual for their own housing construction in case they are not eligible to be allocated land in an investment project on housing construction; and prescribe the minimum area for the division of a residential land parcel. **Article 144(3)** mandates the State to develop land use master plan for the purpose of urban housing construction and to adopt policies to create conditions for urban residents to have accommodation.

¹⁵⁹ Land Law, Article 129, 130, 132(1), 143(2)

Land classification also influences the quality of housing within Vietnam by providing that provincial-level People's Committees determine the land allocation quota to each household or individual for housing construction in rural areas and the minimum area for the division of a residential land parcel.

Land use term

Land use term can be defined as the definite duration/period of time within which a natural or legal person is granted rights to utilize land for the purposes allocated. The **Land Law** has categorized land use term to include:

1. **Land use for long and stable term:** details the cases within which land users may use land for a long and stable term which include inter alia: residential land used by households or individuals and agricultural land used by communities. In a comparative analysis with other legal systems, this may equate to the grant of a freehold interest over land¹⁶⁰.
2. **Land used for limited term: Article 126** extensively details instances with which land users may be granted use of land for limited term. Comparatively, in other legal systems, this form of land use term may be defined as grant of leasehold interest over land¹⁶¹.

It is noteworthy that the land use term is an influencer on investment over land. The timelines for lease term granted under **Article 126** may inhibit investment by certain categories of land users, for instance, granting foreign-invested enterprises a land allocation or lease capped at a maximum term of 50 years may be an inhibitor to economic growth and inflow of foreign direct investment. A review of the land use term may be necessary as a strategy to attract more foreign investors and assure their certainty over their investment projects.

Equally, the **Land Law** needs to codify the important principle of priority rights during renewal of lease terms. The language in **Article 126(2)** stating *"the State shall consider an extension which must not exceed the term prescribed"* indicates an option for extension from the State. Priority rights entails the land user having the first right of refusal to extension otherwise the extension of term is as a right.

3. **Land use term in case of transfer of land use rights:** This use term basically reiterates the rights of third parties who have acquired subsequent rights arising from transfer of land use rights either from a user who had land use for long and stable term or land used for limited term. In the latter case, the subsequent owner is granted automatic rights to use the land for the remainder of the term.

In summary, the land tenure systems and recognition of ownership within the legal framework of the **Land Law** is comprehensive and detailed to secure the proprietary interests of land users. The law grants both natural and legal persons the fundamental rights to ownership of property. This right is extended to the right to have peaceful and quiet possession of land through the various land use terms. The law also extensively outlines the rights and obligations of the state over land,

160 Prof. Kasimbazi, Emmanuel: Land tenure and rights for improved land management and sustainable development (2017) UNCCD Global land outlook working paper pg 9

161 Ibid pg 9

and under Chapter XI, the rights and obligations of land users which provisions offer adequate protection of both private and communal land rights within the SPV.

2. LAND PLANNING AND ADMINISTRATION

The land plan is the first step in securing ownership. The registration of a property on the land plan allows the observation of its existence (physical). It is different from the registration on the land register, which is the main means of securing property and the real rights attached to it.¹⁶² In Vietnam, land planning and administration is composed of four distinct processes: (1) delineation of administrative boundary maps at the national level; (2) establishment of the cadastral maps; (3) the development of the land use master plan and land plan; and (4) land-based finance.

A. Administrative boundary maps

The development of the administrative boundary maps commences with Government's identification of administrative boundaries and the compilation and management of administrative boundary records at all levels throughout the country. The Ministry of Home Affairs prescribes the order and procedures for identification of administrative boundaries; and the management of boundary landmarks and administrative boundary records at all levels. The Ministry of Natural Resources and Environment prescribes the technique and economic-technical specifications for placing administrative boundary landmarks and compiling administrative boundary records at all levels. The Provincial, District and Commune-level Peoples Committee's manage administrative boundary landmarks in their respective localities.

The administrative boundary records include paper and electronic documents showing information on the establishment and adjustment of an administrative unit and boundary landmarks and boundary lines of that administrative unit. These records are archived at the People's Committee of such level, the superior People's Committee, the Ministry of Home Affairs and the Ministry of Natural Resources and Environment.

Article 29(4) of the Land Law details the dispute resolution procedures for disputes arising from the mapping and delineation of administrative boundaries.

The institutional framework for making administrative maps entails provincial-level People's Committees of provinces and centrally run cities organizing the making of administrative maps of districts, towns and provincial cities.

¹⁶² Land Law, Article 97

B. Establishment of cadastral maps

The cadastral is a technical and financial tool for land management. It makes it possible to make a complete, permanent, descriptive and evaluative inventory of land properties and an identification of owners and occupants.

As described above, it has four main roles:

1. **Land identification and description:** the cadastral records detail the lands geospatial georeferencing and survey data to ascertain the physical position of the property within the administrative boundaries.
2. **Define and describe land ownership:** the cadastral records capture the parcels land tenure, ownership details, land use term and land use purpose.
3. **The assessment and determination of the value of land and the tax base:** cadastral records determine investigations and assessments relating to: land quality and potential; land degradation and pollution; making of land statistics and conducting land inventories and making statistics on land prices; and monitoring land price changes
4. **Records change of registration:** the cadastral records detail all subsequent changes that are undertaken on a parcel after the first registration. This change registration could be because of changes in the land identification and description and/or the definition and description of land ownership.

Land use master plans and plans

Land administration further entails the development of the land use master plan and plan which are formulated from the master level to detailed level. The synergy of laws necessitates the land use masterplan of the subordinate level to conform to the land use master plan of the superior level.

System of land use master plans and plans is governed by an institutional hierarchy composing the national, provincial-level, district-level and commune-level governance stipulated under **Article 45**.

The Land Law provides a specific period of land use master plans and land use plans being 10 and 5 years respectively after which duration amendments and reviews ought to be conducted to conform with current land needs.

It is noteworthy that **Article 43** advances the principles of public participation and inclusivity in the processes of formulation of land use master plan and plans. The public consultations with public on land use masterplans and plans must be conducted within 30 days after the competent state agencies decides to conduct consultations and the agencies must thereafter prepare reports on summarization assimilation and explanation of the public opinions for submission to the appraisal boards.

Land-based finance (LBF)

Land-based finance refers to the various ways in which land and property development are used to raise revenue for local authorities or other public entities.¹⁶³ Effective harnessing of land-based financing has the potential to generate adequate revenue to support and sustain urban development as well as contribute to positive socio-economic changes in the society.¹⁶⁴ The rationale is to implement a land-based financing system that guarantees tapping of the value of land to ensure for local authorities' accessibility to financial resources for local development and the public accruing a benefit through improved infrastructure, service delivery etc.

Article 107 of the Land Law details some of the mechanisms within which revenue from land-based financing is raised. Financial revenues from land include:

- I. Land use levy upon land allocation by the State.
- II. Land revenue from permission for change of land use purpose.
- III. Land rental upon land lease by the State (land rent fee).
- IV. Land use tax (land rates).
- V. Income tax on transfer of land use rights (capital gains tax, stamp duty).
- VI. Revenue from sanctions of administrative violations of the .
- VII. Indemnification to the State for damage caused during land management and use.
- VIII. Charges and fees in land management and use.

The Government is obligated to prescribe in detail the collection of land use levy and land rental, sanctioning of administrative violations of **the Land Law**, and indemnification to the State for damage caused during land management and use.¹⁶⁵ The guidelines on collection of land-based financing must be centralized to enhance transparency and accountability in access and utilization of such funds.

It is noteworthy that the **Land Law** provides for bases and time for calculation of land use levy and land rental. It also expounds on the exemption from and reduction of land use levy or land rental. One consequential exemption in land-based financing involves lands utilized for implementation of policies on houses and residential land for poor households and land for households and individuals of ethnic minorities living in areas with especially difficult socio-economic conditions.¹⁶⁶ The exemption under these two categories is coherent with the provisions of the Law on Housing which is meant to incentivize investment in social and affordable housing.

¹⁶³ UNHABITAT: Planning Law Assessment Framework, Urban Law Tools; Vol.1 2018 pg 58

¹⁶⁴ Ibid pg 58

¹⁶⁵ Land Law , Article 107(2)

¹⁶⁶ Land Law, Article 110(1b)

3- REGISTRATION IN THE LAND REGISTER

Under the **Land Law**, land registration is compulsory and includes (a) the registration of cadastral records and (b) land regularization. The land register is a land management and registration tool. It is managed by the land conservator who defines the land titles and records of a parcel of land.¹⁶⁷ A glaring gap within the **Land Law** is that it has not detailed the formation, jurisdiction, powers and obligations of the land registration institution referenced under **Article 95(2)**. There needs to be a comprehensive legal and procedural framework governing the establishment of a land registry to oversee the registration formalities, and outlining its powers and obligations.

A. Registration of cadastral records

The land regularization process entails registration in the cadastral book. **Article 95(7)** affirms that the registration of land and land-attached assets takes effect on the date of registration in the cadastral book.

Cadastral records include paper or digital documents which show detailed information on each parcel, people assigned to manage the land, the user, the owner of any land-attached asset, land use rights and changes of land use rights, and ownership of land-attached assets.

One of the key aspects of this evaluation is to determine compliance with the provisions of **Article 96(9)** which require the Ministry of Natural Resources and Environment to provide a roadmap for change from paper to digital cadastral records (digitalization of cadastral records). It is crucial to determine the extent of digitalization procedures, implementation framework and the pros/cons of the digitalization process. Further analysis should focus on whether the digitalization has promoted accessibility to cadastral records, guaranteed the transparency and authenticity of cadastral records, simplified the system for land users to initiate cadastral records changes, reduced the time and costs incurred in processing cadastral records etc.

B. Land regularization

Under **the Land Law**, land regularization takes the form of grant of certificate of land use rights and ownership of houses and other land-attached assets which is made according to a single form used nationwide.¹⁶⁸ This evaluation will benefit from an assessment on whether the land titling captures the ownership interests i.e. land use for long and stable term or land use for limited term, the ease of procuring the certificate and time/costs incurred in the procuring process.

The **Article 98** recognizes the various proprietorship principles including sole proprietorship, joint proprietorship and tenancy in common.

¹⁶⁷ Land Law, Article 95(2)

¹⁶⁸ Land Law, Article 97(1)

The construction of **Article 101** appreciates the doctrine of adverse possession of land and granting certificate of land use rights to persons occupying land without proper documentation on land use rights.

It is noteworthy that competence to grant certificates of land use rights and ownership of houses and other land-attached assets rests with provincial-level People's Committees and district-level People's Committees.¹⁶⁹ These Committee's are political establishments and may be inadequate in technical and professional expertise in land registration procedures. Being political establishments, they may be exposed to vices of corruption, complacency and clientelism in the performance of their roles. They also form part of the dispute resolution hierarchy in the event of land disputes which may result in issues of conflict of interest and/or granting land users undue hearing processes.

It is on this basis that the legal reform process should focus on the structure of the land registration institution referenced to in **Article 95(2)** to ascertain its capacity, independence and jurisdiction as the centralized land registry and whether it is better placed to issue the certificate of ownership.

For the State's withdrawal of a granted certificate, the **Land Law** should contain principles of due administrative processes including: issuance of notice detailing the reasons for revocation; adequate duration of response to the notice; and fair hearing to the land owner.

Evaluation during interviews should ascertain whether the Ministry of Natural Resources and Environment has complied with **Article 97(1)** regarding the issuance of the specific regulations on the certificate of land use rights and ownership of house and other land-attached assets. It will be important to scrutinize the regulations to ensure its provisions reinforce the principles of accountability, transparency and inclusivity within the registration and generation of certificates process.

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C. Registration Procedure

The **Land Law** does not detail the procedural aspects of the registration process at the land registration institution. This can only be evaluated through interviews and review of other related land legislative and regulation documents.

Analysis of the registration procedures should focus on the whether the registration process has any barriers including: high costs in registration and generation of certificate of titles; excessive bureaucratic formalities that slow registration processes; the flexibility of timelines in the registration cycle; and the authenticity/verifiability of the title documents after registration procedures to confer ownership in land to the registered owners.

Specific interest must be placed in appreciating inhibiting factors that affect the poor, marginalized and women in undertaking effective registration procedures and specifically how costs and inefficient registration formalities hinder their access to grant of certificate of titles and ownership of land in Vietnam.

¹⁶⁹ Land Law , Article 105(1) (2).

LAND USE MANAGEMENT MECHANISM

Land use management can be undertaken through either investment in land use planning or land readjustment. Both processes are aimed at controlling growth of urban areas ensuring improved and sustainable development of new urban areas and expansion into urban outskirts. They can also be used to regulate densification in urban areas to facilitate for planning for service delivery i.e., infrastructure and social amenities.

LAND READJUSTMENT

The demand for the reorganization of urban structures and land patterns can be achieved using one of two tools: application of eminent domain/expropriation (discussed later on); and land readjustment. This sub-topic will focus on land readjustment, its applicability and objectives as a control tool for improved and sustainable urbanization.

Land readjustment can be implemented through the technique which brings groups of neighbouring landowners in a partnership for voluntary land contribution or sharing, joint planning and the servicing of their adjoining plots.¹⁷⁰ Alternatively, land readjustment may entails the government pooling and assembling the various privately owned land parcels in a given area and preparing a land use plan for the overall area including designating spaces for public infrastructure and services such as roads and open spaces.¹⁷¹ This is a tool utilized by local governments to take on regeneration projects through increased value while engaging and involving the original residents and landowners as stakeholders of land to enables the assembly and planning of privately owned land at the peri-urban fringe, as well as the delivery of infrastructure and services on such land.¹⁷²

Land readjustment is mainly applicable in areas where land has been heavily subdivided resulting in fragmented ownerships with high density populations. To enable the fragmented owners access efficient service delivery, the local authorities together with the land owners adopt land readjustment for effective planning, mapping and implementation of social projects within the larger region.

From a preliminary review of the **Land Law** of Vietnam, the concept of land adjustment has not been captured as an alternative tool that can be adopted in land planning and management. It must be noted the land readjustment can be an important tool adopted during urban upgrading and urban regeneration and specifically during informal settlement upgrading projects.

170 UNHABITAT; Participatory and Inclusive Land Readjustment; https://unhabitat.org/sites/default/files/download-manager-files/1407237675wpdm_Land%20Readjustments.pdf pg. 2

171 World Bank Group; <https://urban-regeneration.worldbank.org/node/31> Accessed on 2nd May, 2023

172 Ibid.

LAND USE PLANNING

A unique characteristic of the , **Construction Law** and **Law of Housing** is the coherence with which the State has exercised unfettered control on land use and management within Vietnam. The main control tool the State has used is the development, mapping and implementation of the land use master plans and plans. **Article 13(1)** of the **Land Law** reinforces this position by listing the right to decide on land use master plans and plans as the States priority and main right over land.

Article 35 of the **Land Law** outlines some of the principles of formulation of land use master plans and plans which must conform to socio-economic development, national defense and security. It also prescribes that land use master plan of the subordinate level must conform to the land use master plan of the superior level. **Articles 36, 42 & 45** detail the institutional governance framework for development, approval and oversight compliance with land use master plans and plans. As per **Article 37**, the period of land use master plans is 10 years. The period for land use plans at the national and provincial levels, for national defense and security is 5 years. At the district level, land use plans must be made every year.

Article 46 of the Land Law provides for the adjustment of the land use master plan and land use plan in instances where there are adjustments to the strategies for socio-economic development, national defense and security or masterplan for development of socio-economic regions and such adjustments result in change of land use structures.

In summary, the **Land Law** has sufficient provisions which detail the formulation of land use master plans and plans, the institutional framework for competence to decide and approve land use master plans and plans. Lastly, the Law details the principle of public participation in consultations during formulation of land use master plan and plans.¹⁷³ Having well formulated and implemented land use master plans and plans helps in governance of sustainable urban developments.



Che Cu Nha, Vietnam
Source: DoanTuan, Unsplash

¹⁷³ Land Law, Article 43, 47 & 48

EVICTIION AND RESETTLEMENT MECHANISMS

Codification of proprietary rights is recognized under **Article 32** of the **Constitution of the Socialist Republic of Vietnam**, 2013 which states verbatim that:

“everyone enjoys the right of ownership with regard to his lawful income, savings, housing, private possession, capital and assets in enterprises or other economic organization.” The right of private ownership is therefore protected under the law.

The Land Law reaffirms proprietary rights by detailing the rights and obligations of land users which include, inter alia, the right to be granted the certificate of land use rights, right to enjoy the results of the labour and investment on land and the right to be protected by the State against other infringements of their lawful rights and benefits related to land.¹⁷⁴

However, there is a corresponding acknowledgment that the right to own property can be deprived only by the State under certain codified circumstances. **Article 32(3) of the Constitution 2013** states:

“In cases made absolutely necessary by reason of national defense, security or national interest, in case of emergency and for protection against natural calamity, the State can make a forcible purchase of or can requisition pieces of property of individuals or organizations against compensation, taking into account current market prices.”

The above provision underlines the doctrine of expropriation which is a right granted to the State to acquire land from citizens. The most common form of expropriation is compulsory acquisition of land by the State. Compulsory acquisition is the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner.¹⁷⁵ However, some legal systems recognize the power of the state to expropriate land without compensation, which is a right exercised under unique circumstances. There are different forms of expropriation being direct expropriation and indirect expropriation. Vietnam's **Land Law** recognizes two forms of expropriation: land recovery and land requisition.

LAND RECOVERY

Under international law¹⁷⁶, certain conditions must be met for expropriation to be legal: (a) property must be taken for a public purpose; (b) acquisition must be on a non-discriminatory basis; (c) conducted in accordance with due process of law; and (d) acquisition must be accompanied by compensation.

¹⁷⁴ Land Law, Article 166

¹⁷⁵ Lindsay, Jonathan Mills : Compulsory acquisition of land and compensation in infrastructure projects; (2012) An explanatory note on issues relevant to public-private partnerships, PPP Insights, Vol. 1 Issue 3 pg.1

¹⁷⁶ United Nations Conference on Trade and Development : Expropriation, UNCTAD series on issues in international investment agreements II, (2012) pg. 27

A. Property has to be taken for a public purpose

Articles 61 and 62 of the Land Law conform to the requirement that property taken by compulsory acquisition must be utilized for a public purpose. In Vietnam, this process is termed as land recovery. **Chapter VI, Section 1 of the Land Act** recognizes that land recovery can only be initiated for the following reasons:

- I. Land recovery for national defense or security purposes.
- II. Land recovery for socio-economic development in the national or public interest.
- III. Land recovery due to violations of **Land Law**.
- IV. Land recovery due to termination of land use in accordance with law, voluntary return of land or risk of threatening human life.

The 4 listed reasons form the bases on which land can be recovered from third parties by the State in Vietnam. All the above reasons have a rationale of public interest in their reasoning as essential reasons for State to deprive of the constitutional right to own private property under **Article 32 of the Constitution of Vietnam**.

Regarding urbanization, it is noteworthy that **Article 62(3d)**, (which details land recovery for socio-economic development in the national or public interest) recognizes that land recovery can be implemented to acquire land needed for projects construction of new urban centers and rural residential areas; on improvement of urban areas and rural residential areas; industrial clusters etc. This buttresses land recovery process as a facilitator to State implementing policies aimed at Development of New Urban Areas and Urban Upgrading & Urban Regeneration. Public purpose further entails land recovery for projects on construction of industrial parks, export processing zones, hi tech-zones, economic zones and projects for construction of national technical infrastructure including transport, irrigation, water supply and drainage, electricity, oil and gasoline pipelines and depots etc. Simply, the public purpose criteria must be understood to mean that the end result of the land recovery must accrue a beneficial interest or incentive much greater to the public than the private rights to the landowner.

As captured under **Article 66 of the Land Law**, the legal competence to initiate, implement and enforce land recovery processes in Vietnam is vested singularly on two institutions: the Provincial-level People's Committee and District-level People's Committee.¹⁷⁷

B. Acquisition must be on a non-discriminatory basis

The **Land Law** does not directly address the substantive aspects for application of this criterion. The law should consider protecting land users from arbitrary, selective and discriminatory practices of state officials during the land recovery process. However, a reading of **Article 74** details the principles of compensation upon land recovery by the State to include that the compensation upon land recovery by the State must be made in a democratic, impartial, equal, public, timely and lawful manner. These principles must also be applicable and enforceable in land recovery processes.

¹⁷⁷ Land Law, Article 66

Significantly, the **Land Law** further emphasizes principles of public participation and consultation as per **Article 69 (2a)**. Context must be established in understanding that land recovery does not mandate public participation or consultation on whether land should be recovered but rather, public participation and consultation from the moment a decision is made that land recovery should be exercised. Accordingly, there is a legitimate expectation that when land is earmarked for recovery, all persons within the delineated land should progressively be treated with equality.

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C. Conducted in accordance with due process of law

Adequate Notice

Article 67(1) mandates competent State agencies to notify the land users of the intended land recovery either 90 days (recovery of agricultural land) or 180 days (non-agricultural land) before issuance of the decision on land recovery. The notice ought to stipulate the land recovery, investigation, survey, measurement and inventory plan.

Under Article 69(1a), the notice of land recovery must:

- A. be sent to every land user whose land is recovered. This ensures mandatory inclusivity and participation of all parties whose lands will be affected in decision making specifically in appraisals for land compensation.
- B. publicized in the meetings with people in the covered area and through mass media, posted up at offices of the commune-level People's Committee and at common public places of the residential areas of which land is recovered. Publicization may be a mechanism to uphold the principle of non-discrimination during land recovery as the affected persons will raise concerns on discriminatory and clientelism practices.

This sensitization and publicization practices also advance the principles of transparency and accountability during the land recovery process by ensuring that institutions overseeing the land recovery adhere to good governance practices during the land recovery process.

The **Land Law** makes it mandatory for Commune-level People's Committee and the affected land users to coordinate with the organizations in charge of compensation and ground clearance in conducting investigations, survey and measurement of land area, inventory of houses and other land-attached assets to develop plans for compensation, support and resettlement. This is essential to achieve voluntary land recovery that ensures fairness to the affected parties and can only be achieved by adhering to the principles of public participation and inclusivity in the making of administrative decisions.

If land users in the covered area do not cooperate with the organization in charge of compensation and ground clearance within 10 days after the mobilization and persuasion, the chairperson of the district-level People's Committee should issue a decision on compulsory inventory. In event of non-compliance with the decision, the District-level People's Committee should issue a decision on enforcement of the decision on compulsory inventory and organize the enforcement in accordance with **Article 70 of the Land Law**.

D. Acquisition must be accompanied by compensation

Article 32(3) of the *Constitution of the Socialist Republic of Vietnam* recognizes the right of land users to receive compensation for investment in land during the land recovery process. The right to compensation is reiterated under **Article 166 (6) of the Land Law** as a fundamental right of land users. It is a core principle that compensation and support upon land recovery by the State must be made in a democratic, impartial, equal, public, timely and lawful manner.¹⁷⁸

Articles 74-94 extensively detail some of the forms of compensation applicable under Vietnamese *Land Law* to include:

- I. Allocation of an alternative new land with the same land use purpose, land use tenure and term as the recovered land. Though not captured in statute, it is important to note that the alternative land must be approximately equal to value and strategic location as by the preference of the land owner/user.
- II. Compensation in form of money calculated according to the specific land price of the type of recovered land which is decided by the Provincial-level People's Committee at the time of the recovery decision.
- III. Compensation for remaining investment costs on the land, applicable in cases where subject land is not eligible for compensation for land.
- IV. For agricultural land, landowner is eligible for both compensation for land and remaining investment costs on land.
- V. Compensation for damage to assets, production and business
- VI. Compensation for transportation costs upon land recovery.
- VII. Support from the State for stabilizing livelihood and production.
- VIII. Support for vocational training, occupation change and job seeking for cases of recovery of agricultural land from households and individuals directly engaged in agricultural production, land for trading and services of households/individuals.
- IX. Support for resettlement in case of recovery of land from households, individuals and overseas Vietnamese who have been relocated.

It is important to note that the *Land Law* statute codifies a time limitation of 30 days from the date of decision on land recovery by a competent state agency within which compensation, support and/or resettlement must be paid to the people whose land is recovered.¹⁷⁹ It will be important to know, through interviews, if this is operationalized in practice.

¹⁷⁸ Land Law, Article 74(3) & 82(5b)

¹⁷⁹ Land Law, Article 93

Public participation

Article 69(2) expounds on the principles of public participation and inclusivity in decision making that affects land users by mandating compulsory consultations on the plans for compensation, support and resettlement. It is a mandatory obligation on the Commune-level People's Committee and the organizations in charge of compensation and ground clearance to coordinate with the land users during conducting of investigations, survey and measurement of land area, inventory of houses and other land-attached assets to develop plans for compensation, support and resettlement.

Public participation and consultation takes the following forms:

- I. Meetings between landowners/users, Commune-level People's Committees and organizations in charge of compensation and ground clearance.
- II. Posting up of plans for compensation, support and resettlement at offices of the Commune-level People's Committee and at common public places of the residential areas of which land is recovered.
- III. The consultation and/or public participation results must be recorded in minutes which must be certified by representatives of the Commune-level People's Committee and Vietnam Fatherland Front and land users whose land is recovered.
- IV. The organization prepares written summarization of opinions which clearly specifies the numbers of opinions for, against and other opinions regarding the plans for compensation, support and resettlement; coordinates with the Commune-level People's Committee in the locality in organizing dialogues with those who have objections on the plans for compensation, support and resettlement; and improve the plans for compensation, support and resettlement for submission to competent agencies.

Competent agencies proceed with the appraisal of the plans for compensation, support and resettlement before submitting them to the competent People's Committee for decision on land recovery. The People's Committee should issue a decision on land recovery and a decision on approval of the plans for compensation, support and settlement on the same day.

The organization in charge of compensation and ground clearance coordinates with the Commune-level People's Committee to publicize and posts the decision on approval of the plans for compensation, support and resettlement at the Commune-level People's Committee offices and at common public places of the residential areas of which land is recovered. The organization also sends the decision on compensation, support and resettlement to each person whose land is recovered. The decision contains the following details:

- I. Clearly show the level of compensation and support.
- II. Arrangement of the resettlement land or house (if any).
- III. Time and place of payment for compensation or support.
- IV. Time to arrange resettlement land or house (if any).
- V. Time to hand over the recovered land to the organization in charge of compensation and ground clearance.

Enforcement of decisions on compulsory inventory (*eviction procedures*)

Upon issuance of decision on land recovery, all land users/owners ought to comply with the provisions of such order within the stipulated timelines if stated. In the event the land users/owners whose land is to be recovered fails to hand over the land to the organization in charge of compensation and ground clearance, then the Commune-level People's Committee and the Vietnam Fatherland Front in the locality and the organization should mobilize and persuade the land users to hand over the said lands.¹⁸⁰ The rationale for this provision is to exhaust all post decision alternative dispute resolution procedures (ADR) which include mobilization and persuasion of land users by the local administrative units.

However, should all ADR mechanisms fail, it falls under the competence of the chairperson of the district-level People's Committee to issue a decision on enforcement of land recovery and to organize the enforcement of the decision.

In enforcing the decision on compulsory land recovery, the authorities ought to abide by the following principles¹⁸¹:

- I. The enforcement should be conducted in a public, democratic and objective manner.
- II. It should be orderly, safe and lawful in compliance with the provisions of the **Land Law** and Constitution.

Article 70(2) offers protection to landowners/users against unlawful eviction by stipulating that an enforcement may only be conducted when the following requirements are met:

- I. Land users whose land is to be recovered do not comply with the decision on compulsory inventory after the mobilization and persuasion (ADR has failed).
- II. The decision on enforcement of the compulsory inventory is posted up publicly at the office of the commune-level People's Committee and at common public places of the residential areas of which land is recovered.
- III. The decision on enforcement of the compulsory inventory decision has taken effect.
- IV. The person who is to be coerced has received the effective decision on enforcement.

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Execution of decisions on compulsory inventory

Article 70(3) bestows the competence to execute decisions on compulsory inventory on the chairperson of the District-level People's Committee. The chairperson who issues the decision on enforcement is obligated to execute the decision on compulsory inventory and to organize the execution of the decision on enforcement.

¹⁸⁰ Land Law, Article 69 (3d)

¹⁸¹ Land Law, Article 70

The order and procedures for executing the decision on enforcement of compulsory inventory mandates the organization assigned to conduct the enforcement to mobilize, persuade and organize dialogues with the coerced people. In the event the coerced persons comply with the decision on enforcement, the organization assigned to conduct enforcement should make a written record to acknowledge the compliance, and conduct investigation, survey, measurement or inventory.

In the alternative, if the coerced persons fail to comply with the decision on enforcement, the organization assigned to conduct enforcement should execute the decision on enforcement in accordance with the provisions of **Article 71** on enforcement of land recovery decisions. The organization must comply with the following principles during execution:

- I. Ensure that the enforcement is conducted in a public, democratic, objective, orderly, safe and lawful manner.¹⁸²
- II. The commencement time for starting the enforcement falls within working hours.
- III. The chairperson of the District-level People's Committee is mandated to establish an enforcement board which should be responsible for undertaking another round of mobilization, persuasion and conducting dialogues with the coerced persons.

Should the coerced persons comply, the enforcement board must prepare a written record to acknowledge the compliance in which instance the land must be handed over within 30 days from the date of taking the minutes.

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Handling of property during enforcement of land recovery

In the event the coerced persons fail to comply again, the enforcement board has the power to ask coerced persons and related people to leave the coerced area and to move their properties out of the land areas by themselves. Failure to comply with the removal of property orders, the enforcement board ought to move the coerced persons, any related people and their properties out of the area.

In instances where the coerced persons refuse to receive their properties, the enforcement board are mandated to make a written record, preserve the properties in accordance with law and notify the properties owners to get the properties back.¹⁸³ The Commune-level People's Committee of the locality collaborates with the organization in charge of the compensation and ground clearance in sealing and moving the properties of the coerced people. The preservation cost of the properties is always borne by the property owners.

During implementation of the enforcement procedure, the police is obligated to maintain social order and safety in the process of organizing the execution of the decision on enforcement of land recovery.¹⁸⁴

182 Land Law, Article 70(1a)

183 Land Law, Article 71(4c)

184 Land Law, Article 71(5c)

LAND REQUISITION

The Vietnamese **Land Law** introduces the concept of land requisition which is a form of expropriation but applicable by the State for a temporary execution of a public interest issue. Land requisition is exercised in cases of extreme necessity to perform the tasks of national defense or security, or in a state of war or emergency, or of prevention and combat of natural disasters. It is exercised where the requisitioning agency and or institution cannot undertake the due procedures stipulated for land recovery due to time constraints/urgency and further, when the land being requisitioned is for temporary utilization.¹⁸⁵

Decisions on land requisition must be made in writing and do take effect from the time of issuance of the decision notice. Duration within which land requisition can be exercised must not exceed 30 days from the time the decision on land requisition takes effect¹⁸⁶, however, the timeline can be subject to extension dependent on merit of circumstances for extension.

The agencies which have the competence to decide on land requisition should allocate the requisitioned land to organizations and individuals for efficient and proper management and use; return the land when the requisition duration expires; and make compensation for any damage caused on the land which compensation is strictly paid within 30 days from the returning date.¹⁸⁷

The remedies granted to a landowner/user whose land was subject to requisition include:

1. Compensation in case the requisitioned land is destroyed or his/her income is lost as a direct consequence of the requisition and the land cannot be reimbursed.
2. If requisitioned land is destroyed, monetary compensation based on price of land use rights transferred in market at time of payment.
3. Compensation for actual loss of income from the handover date to the returning date of the requisitioned land, consistent with the income incurred from the requisitioned land in normal conditions.

Summary

It is noteworthy that from a preliminary review of the substantive aspects of the **Land Law**, it outlines some of the fundamental principles applicable during expropriation. However, conclusive evidence of implementation of the principles during actual expropriation processes can only be ascertained through interviews with institutional stakeholders and actual persons previously involved in either land recovery or land requisition. The law provides adequate remedies to landowners in instances of land recovery which include compensation, resettlement procedures and other support mechanisms like vocational trainings.

The **Land Law** has also stipulated time limits within which certain actions must be undertaken within the land recovery or land requisition processes. The timelines aid in eliminating bureaucracy, delays and unfairness within the land recovery process.

¹⁸⁵ Land Law, Article 72(1) &(2)

¹⁸⁶ Land Law, Article 72(4)

¹⁸⁷ Land Law, Article 72(6) & (7)

However, a concern within the recovery process from a practice perspective is that the **Land Law** may not comprehensively put in place adequate measures to protect land users from abuse/misuse of the land recovery processes by persons/state officials. The intricate balance between public versus private appropriation of land in Vietnam is a key issue especially in appropriation of communal land. A good instance is that the law cannot govern on morality issues where state officials use the smoke screen of “*public purposes in recovery of land*” when the ulterior motive is land recovery for private purposes and gain.¹⁸⁸

Further, in practice, the law needs to tighten its grip during valuation of land to determine compensation. Compensation must be based on valuation of property at the market value, however, a glaring gap is that land appraisal is conducted by the State, which may result in conflict of interest at the detriment of the land users.¹⁸⁹

To address this legislative anomaly, public participation, inclusivity and sensitization by the State must be extensive and meaningful during land recovery process to cushion landowners from exploitation by foreign investors and developers. A more radical proposal would be to have a percentage (80%) consensus among landowners regarding appropriateness of compensation before land recovery is finalized.

The **Land Law** should expressly call for stiff consequences for persons found guilty of violating the law in the land recovery process. Punitive penalties may work as a deterrent.



188 Kaitlin Hansen: Land Law, land rights, and land reforms in Vietnam: A deeper look into “Land Grabbing” for public and private development (2013), Independent Study Project (ISP) Collection. 1722 pg.16

189 Ibid pg. 13

DISPUTE RESOLUTION MECHANISMS

The Vietnam **Land Law** advocates for a two-prong dispute resolution mechanism: amicable dispute settlement procedures and judicial redress via recourse to People's Courts.

A. Amicable settlement

Amicable settlement is the first mode of dispute management that is advocated for under **Article 202(1) of the Land Law**. The State is tasked with providing an enabling environment for disputing parties to conciliate themselves. Dispute settlement is through negotiations.

The law also advocates for mediation as a dispute settlement procedure by encouraging the parties to have their land disputes settled through grassroots conciliation.¹⁹⁰

In the event negotiation and/or mediation is unsuccessful, arbitration formalities become applicable where parties send a petition to the commune-level People's Committee of the locality where the disputed land is located for reconciliation. The commune-level People's Committee chairpersons organize conciliation of land disputes in their localities where they co-ordinate with the commune-level Vietnam Fatherland Front Committee and its member organizations and other social organizations.¹⁹¹

The arbitration conciliation procedures carried out at the commune-level People's Committees should be completed within 45 days from the date the commune-level People's Committees receive a petition for settlement of land dispute.

The arbitration conciliation process must be recorded in a written record with signatures of all parties and certified by the commune-level People's Committee on the result as either a successful or unsuccessful conciliation. The conciliation minutes should then be sent to the involved parties and archived at the commune-level People's Committee concerned.

¹⁹⁰ Land Law, Article 202(2)

¹⁹¹ Land Law, Article 202(3)

B. Judicial settlement

If the conciliation at a commune-level People's Committee fails, for land disputes in which the concerned party possesses a certificate or any of the papers prescribed in **Article 100 of the Land Law**, the dispute should be settled by the People's Court.¹⁹²

For the land dispute in which the concerned party does not possess a certificate or any of the papers prescribed in **Article 100 of the Land Law**, the parties may choose between the following two options of settlement: Filing a written request for dispute settlement with a competent People's Committee or Filing a lawsuit with a competent People's Court in accordance with the law on civil procedures.

In summary, it is commendable that the **Land Law** expressly advocates for use of Alternative Dispute Resolution in management of conflicts arising out of land use and administration. However, the law does not clarify on the enforceability of arbitral and/or mediation determinations. Making arbitral and mediation awards final and binding will assist in reducing backlog of cases at the People's Courts and encourage use of ADR as a final dispute settlement system.

It is noteworthy that the **Land Law** has not expounded (in detail) on the structure of the People's Court, its jurisdictions to handle land disputes and the powers that can be exercised by the court during adjudication of land disputes. This is important to enable parties and land users to have certainty on the operations of the court systems. It will also be important to have the **Land Law** detail the remedies applicable to land users for infringement of land rights and further expound on judicial protective measures available as well as legal aid mechanisms to accommodate access to justice for vulnerable groups i.e., minority communities, women and persons with disability.



Vietnam
Source: Tran Phu, Unsplash

¹⁹² Article 202 (8),

CONCLUSION AND INITIAL FINDINGS

This section will succinctly recap the principles of Land Law discussed within the legislative text, map the functional and technical gaps from assessing the Land Laws and finally propose some recommendations that can be incorporated to enhance better land governance and management in Vietnam.

A. Legal Mapping

Land administration and management in the Socialist Republic of Vietnam is governed by the **Land Law No. 45/2013/QH13**. The **Land Law**, in its preamble precisely outlines the objectives and scope of regulation of the **Land Law**.

Through a wholistic reading of the **Land Law**, it is clear that there is a consistency of policy objectives in the drafting and reasoning of the provisions of the **Land Law**. The law is expressed in a simple and plain manner to render it understandable by all parties within and outside of Vietnam. The law also conforms to the most substantive international norms and principles of land governance. Within Vietnam, it is grounded on sound policies that consider the socio-economic realities, reflect local need and challenges of the Vietnamese people.

There is clarity in the standard of drafting as the legislative language is plain, certain, clear, grammatically correct and gender neutral. The simplicity of the language makes it easier for third parties to interpret the law easily.



B. Institutional Analysis

This legal text provides for the establishment of an institutional framework to facilitate land administration and management at all levels of government, including the national, provincial, district and commune levels. The **Land Law** has mapped the regulatory institutional framework, defined the institutional roles, their powers and jurisdictions.

A clear institutional hierarchy system is important as it ensures oversight, implementation and execution of roles across the hierarchy. The superior level institutions ensure compliance with the provisions of the **Land Law** and each is accountable to a superior organ with the National Assembly being the ultimate oversight body. This also enhances checks and balances between levels and prevents arbitrary actions by relevant institutions.

Within this defined institutional framework, our preliminary analysis did not point out any glaring instances of overlap or duplicity of roles in the framework. This speaks to the consistency of drafting. However, there is need to conduct comprehensive audit interviews to ascertain whether in practice, institutions and their officers have any overlaps/duplicity of roles.

Issues of capacity for implementation by the relevant institutions can only be addressed through interview analysis conducted with the core stakeholders in land administration and management with major focus being on considerations for the human and fiscal resources and how each factor affects compliance requirements.

C. Land indicators

1) Flexibility and social responsiveness of tenure systems

The **Land Law** recognizes a variety of tenure systems which ensures diversity and flexibility of ownership models. They include state land tenure, communal land tenure and private land tenure. Different tenure models catering for various groups ensures a holistic ownership model that can be accessed by all citizens and groups and offers maximum protection of land rights.

It is important to note that the **Land Law** has codified communal land tenure which ensures that a group or community can have common rights to land. A key analysis to be undertaken through interviews with stakeholders ought to establish the impacts (both positive and negative) of communal land tenure and specifically the suitability of communal land to be used as a security in financing by financial institutions. Even though, the **Land Law** is neutral and fair as to ownership of rights by all genders and persons, interview analysis should seek to establish whether Vietnamese women and vulnerable groups encounter any difficulties in securing ownership of land and in exploiting land for economic gain.

The law codifies the land use terms to include: land use for long stable term and land use for limited term. It also details the land use classification as either agricultural or non-agricultural land. These clear land principles ensure certainty of ownership and rights protected.

II) Land registry

The **Land Law** refers to a land registration organization tasked to undertake first registration and change registration. A major concern is that the law has neither detailed on the institutional nor functionality frameworks of this land registration organization. It has not defined its roles, jurisdictions and competencies with land administration and management systems in Vietnam. It is important that the law effectively captures the role of the land registration organization and clearly stipulate timelines within which certain roles need to be implemented e.g., timelines for registration of certificates of ownership, generation of certificates, generation of cadaster, amending etc.

The law details matter to do with cadastral records and it is noteworthy that Vietnam is undertaking a policy shift towards digitalization of cadastral records with the roadmap for change prescribed by the Ministry of Natural Resources and Environment. An examination should be conducted to determine the current position/extend of the digitalization, the implementation of the digital system and further the positives and negative impacts of digitalization to stakeholders. Digitalization of records ensures long-term transparency of records, accountability in transactions by registry staff, easy accessibility of records and both reduced costs and time on land transactions.

III) Land use change

The **Land Law** has expounded on the procedures for land-use change. However, the law does not clarify the costs to be incurred during the change of use process given the fact that it forms part of the land-based financing options and can be subject to exploitation and misuse by public officials.

The law also ought to clearly stipulate the timelines within which land use change can be undertaken to assist in eliminating complacency and procrastination by public officials during the change of user process.

IV) Land readjustment

It is noteworthy that the **Land Law** has not detailed the concept of land readjustment as an alternative tool that can be adopted in land planning and management. Land readjustment is an important tool adopted during urban upgrading and urban regeneration and specifically during informal settlement upgrading projects.

V) Land regularization

Land regularization takes the form of grant of certificate of land use rights and ownership of houses and other land-attached assets which is made according to a single form used nationwide.

An assessment ought to be undertaken to determine the costs one incurs during the regularization process and further the ease of procuring the certificate of ownership. It should also capture the hinderances that are existent and make it difficult for women and vulnerable groups to access the land regularization procedures.

An existent gap in the land regularization process is that competence to grant certificates of land use rights and ownership of houses and other land-attached assets rests with provincial-level People's Committees and district-level People's Committees. These Committees are political establishments and may be inadequate in technical and professional expertise in land registration procedures. They may also be exposed to vices of corruption, complacency and clientelism in the performance of their roles.

They also form part of the dispute resolution hierarchy in the event of land disputes which may result in issue of conflict of interest and/or granting land users undue hearing processes. Accordingly, it will be important to have separation of powers and grant the jurisdiction for land regularization purely to the land registration organization.

It is on this basis that the legal reform process should focus on the structure of the land registration institution referenced to in **Article 95(2)** to ascertain its capacity, independence and jurisdiction as the centralized land registry and whether it is better placed to issue the certificate of ownership.

For the State's withdrawal of a granted certificate, the **Land Law** should contain principles of due administrative processes including: issuance of notice detailing the reasons for revocation; adequate duration of response to the notice; and fair hearing to the land owner.

VI) Eviction and Involuntary Relocation

The **Land Law** adequately protects landowners/users from unlawful eviction and involuntary relocations by detailing provisions on land recovery and land requisition processes. Further, it outlines the procedures to be undertaken before compulsory inventory is undertaken by the State and issuance of adequate compensation mechanisms to affected persons.

The law needs to strengthen protection mechanisms to ensure that public officials do not abuse the "*land recovery for public purposes*" criteria as a justification to acquire land for private benefits. Further, it is important to have strong deterrents that prevent public officials from misappropriating and misusing funds allocated for compensation. These two goals can be achieved by having strong criminal offences and/or punitive penalties applicable to state/public officials that abuse their powers and duty of care to Vietnamese citizens.

VII) Mechanisms to resolve disputes

The law adequately addresses both alternative dispute resolution (ADR) and judicial mechanisms as redress mechanisms in the event of disputes.

To incentivize ADR mechanisms, it will be important to make arbitral awards and mediation decisions to have a binding and enforceable force to ensure parties adopt such mechanisms.

For judicial redress, the **Land Law** needs to outline the hierarchy and functional composition of the People's Courts mapping its competencies and jurisdiction. A recommendation is for Vietnam to establish a fully-fledged Environmental & Land Court that has both professional and technical expertise to handle land disputes.

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