

Interpreting the Constitutional Debate Over Land Ownership in the Socialist Republic of Vietnam (2012–2013)

Toan LE*

Monash University

toan.le@monash.edu

Abstract

In 2012–2013, the people of Vietnam participated in a lengthy process of public consultation to amend the constitution and land law. This article analyzes the approach that party leaders took during the 2013 constitutional consultation and law-making period as the leaders responded to submissions calling for radical reforms of constitutional and legal arrangements of land ownership. This analysis will provide insights into how, if at all, the discussion in 2012–2013 was different from previous discussions in relation to reforming the constitutional and legal arrangements of land ownership in Vietnam. The article argues that despite unprecedented consultation and discussion, party leaders did not intend to make substantive changes to land ownership.

In October 2012, the Vietnamese government initiated an unprecedented process of public consultation and debate relating to the amendment of constitutional and legal arrangements on land ownership. A wide range of actors, including private citizens, intellectuals, retired officials, national assembly members, and not-for-profit organizations embraced the consultation and debate process. According to statistics, more than 15 million public submissions were received on the amendment of the constitution and over 7 million submissions on the amendment of the 2003 *Land Law*.¹

One of the key reasons driving the amendment of the two laws was tensions relating to land access. In Vietnam, land is owned by the “entire people”, which means that the

* Lecturer, Department of Business Law and Taxation, Monash Business School, Monash University. I am grateful to the anonymous reviewer for the feedback given to me. I am also grateful to Professors John Gillespie and Mark Sidel, Dr Bui Ngoc Son, Dr Nicola Charwat, Ms Narelle Aspery, Sunil Rao, and the ASJCL editors for reviewing my article. I also thank Professor Pip Nicholson, Professor Andrew Harding, and the presenters, moderators and participants of the “Constitutional Debate in Vietnam” conference held at the National University of Singapore for their valuable feedback on my presentation.

1. Government of Vietnam, “Hơn 15 triệu lượt góp ý kiến cho Dự thảo sửa đổi Hiến pháp 1992 [Over 15 million submissions to amend 1992 Constitution]” *Governmentnews* (25 March 2013), online: Governmentnews <<http://baodientu.chinhphu.vn/Tin-noi-bat/Hon-15-trieu-luot-gop-y-kien-cho-Du-thao-sua-doi-Hien-phap-1992/164855.vgp>>; 2003 *Land Law*, No. 13/2003/QH11 (adopted 26 November 2003).

State has the exclusive power to manage land; the people are merely provided with land use rights that are equivalent to a concessionary privilege to use land.² The relationship between the State and the people over land access has been tense in recent times, due to an increase in land development activities and the State's expropriation of land purportedly for economic development.³

The constitutional debates that occurred from late 2012 to November 2013 were intended to demonstrate that the Vietnamese government was genuine in listening to the views of the people on land ownership.⁴ Constitutional dialogue has occurred in Vietnam before, most notably, in 2001 and 2010.⁵ In an article analyzing the constitutional process in 2001, Sidel noted that the Vietnamese constitutional process was becoming a more open – albeit still controlled – platform for dialogue and debates.⁶ In 2012–2013, the Vietnamese people embraced the consultation and debate process, with many individual and group submissions calling for fundamental reforms of land ownership laws, including calls to recognize private land ownership. There was some hope for unmediated forums for discussion and debate. The government fed some of that hope by holding public meetings to collect opinions, and “debates” in the National Assembly were broadcast live on television.⁷ In the end, however, the 2013 *Constitution of the Socialist Republic of Vietnam* (2013 Constitution)⁸ and the 2013 *Land Law*⁹ retained the “entire people” land ownership regime, which means that the State still has exclusive rights to manage land.¹⁰ The power of the State to acquire land for economic development purposes was also retained.¹¹

2. AUSAID, *Vietnam: Land Administration Working Paper 4*, (Canberra: Ausaid, 2000); Toan LE, “Perspectives of land grabbing Vietnam” in Andrew HARDING and Connie CARTER, eds, *Land Grabs in Asia: What Role for the Law?* (London: Routledge, 2015) 150 at 158–164 [Le, “What Role for the Law”].
3. John GILLESPIE, “Social Consensus and the Meta-Regulation of Land-Taking Disputes in Vietnam” (2014) 9(3) *Journal of Vietnamese Studies* 91.
4. National Assembly, “Lấy ý kiến nhân dân về dự thảo Luật đất đai [Public consultation on the draft Land Law]” *National Assembly* (December 2012), online: Duthaoonline <http://duthaoonline.quochoi.vn/DuThao/Lists/TT_TINLAPPHAP/View_Detail.aspx?ItemID=975>.
5. Mark SIDEL, “Analytical Models for Understanding Constitutions and Constitutional Dialogue in Socialist Transitional States: Re-Interpreting Constitutional Dialogue in Vietnam” (2002) 6 *Singapore Journal of International and Comparative Law* 42; Huong Thi NGUYEN, “Pursuing Constitutional Dialogue within Socialist Vietnam: The 2010 Debate” (2012) 13 (1) *Australian Journal of Asian Law* 1.
6. Sidel, *ibid* at 59–89.
7. National Assembly, *supra* note 4.
8. 2013 *Constitution of the Socialist Republic of Vietnam* (adopted 28 November 2013).
9. 2013 *Land Law*, No. 45/2013/QH13 (adopted 29 November 2013).
10. 1992 *Constitution of the Democratic Republic of Vietnam* (adopted 25 April 1992) [1992 *Constitution*], art 17.
11. Seventy percent of all complaints received by government agencies relate to land matters and seventy percent of complaints on land matters concerned the use of state powers in relation to land that were recovered in the name of economic development. See Government of Vietnam, “70% đơn khiếu nại, tố cáo liên quan đến đất đai [70% of complaints relate to land]” *Governmentnews* (31 March 2015), online: Governmentnews <<http://baochinhphu.vn/Hoat-dong-Bo-nganh/70-don-khieu-nai-to-cao-lien-quan-den-dat-dai/223712.vgp>>; World Bank, *Improving Land Acquisition and Voluntary Land Conversion in Vietnam* (Hanoi: World Bank, 2009), online: World Bank <<http://documents.worldbank.org/curated/en/178261468329368583/pdf/519420PNT0P1141yNote1Final10Nov091E.pdf>> at 8. For a discussion of the phenomenon of land grabbing in Vietnam, see Le, “What Role for the Law”, *supra* note 2.

The limited changes raise questions as to whether the consultative forums established by the State were merely a vehicle to appease critics in the short term, or whether there was indeed a genuine and strategic commitment from the State to change the constitutional arrangement of land ownership. The article will address the questions above by analyzing the extent to which the Communist Party of Vietnam (CPV) genuinely supported the call for private land ownership to be abolished and by evaluating whether the ground rules of the constitutional discussion permitted unmediated discussion about private land ownership.

The article will proceed as follows. Part I examines the constitutional discussions about land, with a focus on the attitudes of the State towards the question of private land ownership over four decades of socialist rule. Part II analyzes the 2012–2013 constitutional discussions, focusing on the key discourse groups, the ground rules for discussion, and the question of whether those ground rules permitted discussion about radical change such as private ownership.

I. CONSTITUTIONAL DISCUSSIONS OF LAND AND THE ABOLITION OF PRIVATE LAND OWNERSHIP FROM AN IDEOLOGICAL AND POLITICAL LEGITIMACY PERSPECTIVE

This part proceeds in two sections. Section A demonstrates the important role of the constitution as an instrument of governance in relation to land ownership. It notes that the constitution in Vietnam has been used to consolidate the State's power to manage land and to limit the rights of citizens to access land. In addition, it shows that as a matter of tradition, the party leadership of the CPV has been opposed to the recognition of private ownership for two reasons. Firstly, communist states are defined by state ownership of the means of production. Vietnam, as a communist state, is no exception. Secondly, opposing private land ownership has proven to be a popular position for the CPV to adopt in various periods in Vietnam's political history. The discussion notes, however, that the demands resulting from economic development in the past three decades have forced the party leadership to rethink its approach to land ownership in the search for new legitimacy.¹² Section B discusses the impact of major land protests in eroding the legitimacy of the CPV and the CPV's ongoing internal ideological divisions over recognizing private land ownership.

A. The Constitution and the Arrangement of Land Ownership

State leaders in socialist Vietnam have long been conscious of the powerful role of the constitution as an important instrument of governance and as a means of validating the legitimacy of the CPV. The first president of the Democratic Republic of (North) Vietnam, Ho Chi Minh, took ownership of drafting the *1946 Constitution of the Democratic Republic of Vietnam* (1946 Constitution) to set up the legitimacy of the

12. John KANE, Hui-Chieh LOY, and Haig PATAPAN, "Introduction to the Special Issue: The Search for Legitimacy in Asia" (2010) 38(3) *Politics & Policy* 381 at 387.

State's rule and to coordinate the State's ruling institutions. The 1946 Constitution had four chapters, with Chapter 2 of the Constitution devoted to the protection of citizens' rights. One of the protected rights was the right to own property, which included private ownership of land.¹³ The 1946 Constitution was drafted at a time when North Vietnam was in a state of war, and the enlisting of peasant soldiers was crucial to the long-term goal of reunifying North and South Vietnam. Vietnam's second constitution, which was enacted in 1959, was a closer reflection of the CPV's attitude towards private land ownership in contemporary times. This constitution strengthened the power of the State to manage the economy; it introduced socialist central planning and prioritized the socialist form of ownership in leading the economic sector. While the right to land ownership was preserved in the constitution, land collectivization occurred throughout the countryside, and edicts were issued to prohibit private accumulation of land.¹⁴ According to the narrative constructed by the CPV's senior leaders, opposing private land ownership would liberate the peasants from feudal oppression, and party leaders used socialist land tenure reform policies to motivate the peasant troops to support the political revolution that ushered in socialism in Vietnam.¹⁵

In 1975, the North Vietnamese troops were able to march to victory in South Vietnam. The reunification of the country led to the creation of a Socialist Republic of Vietnam and a new constitution in 1980.¹⁶ The *1980 Constitution of the Socialist Republic of Vietnam* (1980 Constitution) abolished private land ownership and imposed a public (i.e. state) ownership regime.¹⁷ From 1976 to 1986, land collectivization was applied in South Vietnam. In each of the three constitutions adopted until 1980, there was little evidence that the party leadership allowed deliberative practices in the constitution-making process. For example, the 1980 Constitution was widely known as "Le Duan's Constitution" as he was the dominant decision maker and imposed his will on the abolition of private land ownership, despite deep reservations from constitutional drafters.¹⁸ In a speech delivered to senior cadres, General Secretary Le Duan expressly linked the abolition of private land ownership and the establishment of a "people land ownership regime" in the 1980 Constitution to socialist ideology and political legitimacy. He said:

If the capitalist production regime originates from feudal society, then the socialist production regime originates from the State's firm belief in collective ownership. This belief is most correct in order for our nation to advance directly to full socialism, bypassing the stage of private capital accumulation.¹⁹

13. *1946 Constitution of the Democratic Republic of Vietnam* (adopted 9 November 1946), art 12.

14. *1959 Constitution of the Democratic Republic of Vietnam* (adopted 31 December 1959), art 16.

15. Phuong TRAN, "The Land Reform" (1965) 7 *Vietnamese Studies* 153 at 165.

16. *1980 Constitution of the Socialist Republic of Vietnam* (adopted 19 December 1980), art 12.

17. *Ibid*, art 19.

18. Huy DUC, "Tinh Than Hien Phap [The Spirit of the Constitution]", *Sài Gòn Tiếp Thị [Saigon Marketing]* (15 September 2007) at 16.

19. *Ibid*.

In addition to ideological grounds, Le Duan justified the granting of exclusive power to the State to manage land on the grounds that land belonging to the people would be best protected by the State. He said “[t]he government of the Socialist Republic must exclusively plan and use land appropriately, and it must appropriately invest, protect, and nurture land across the territory.”²⁰

In 1986, state leaders decided to accept the market economy at the sixth National Party Congress. This led to the enactment of a new constitution in 1992.²¹ The *1992 Constitution of the Democratic Republic of Vietnam* (1992 Constitution) made substantial revisions to economic rights. In relation to land ownership, the 1992 Constitution stated that land was allocated by the State for use on a “long term basis” and that the people had the right to transfer land use rights “according to the law”.²² Although this was a remarkable breakthrough from the 1980 Constitution, the construction of the text indicates that there was a compromise struck between the conservative and the more liberal-minded lawmakers.

More importantly, the drafting process of the 1992 Constitution was more transparent than that of the 1980 constitution-making process. It began in June 1989 when the National Assembly set up a Constitutional Amending Committee (CAC) to oversee the work of drafting the law and to ensure public comments were solicited.²³ As a result, there were some genuinely heated debates among members in the National Assembly on the right to own land and the right to transfer and to inherit the land. At the same time, senior state leaders continued to intervene in the process of deliberation. A clear example of such intervention occurred during the debate on the right to inherit land. The right to inherit land was one of the rights that was debated in the National Assembly (NA) in 1992, but it was not included in the 1992 Constitution. According to a senior member of the constitutional drafting team, the right to inherit land was submitted for discussion by NA members in the morning session on 6 April 1992, with 318 out of 422 NA members approving its inclusion in the amended Constitution. Despite its successful passage through the NA, the right did not appear in the 1992 Constitution. The Chairman of the NA had reportedly asked the NA members to reconsider the importance of including such a right in the Constitution.²⁴ An account by journalist Huy Duc described the heated exchanges inside the NA and General Secretary Do Muoi’s improper influence on the debate proceedings in the NA. As he stated in his memoir:

The Chairman of the NA Le Quang Dao stated after the vote that this was an important matter and requested the NA delegates [to] reconsider the vote (chính lý). It is at this point that delegate Tran Thi Suu stood up and said “I have the impression that there is someone behind pulling the strings of the NA”. This prompted Le Quang Dao to slam his hand on

20. *Ibid.*

21. *1992 Constitution*, *supra* note 10.

22. *Ibid.*, art 18.

23. Russell Heng Hiang KHNG “The 1992 Revised Constitution of Vietnam: Background and Scope of Changes” (1992) 14(3) *Contemporary Southeast Asia* 221 at 222.

24. Huy DUC, *Ben Thang Cuoc – II Quyen Binh [The Winning Side – II Quyen Binh]* (OsinBook Smashwords, 2012).

the table, and he said: “who, who was pulling the string of the NA! This is a complex issue that required careful consideration, it is not the case of someone pulling the string”. In the evening session of 6 April 1992, 302/411 delegates voted not to include this right in the Constitution.²⁵

According to a senior legal drafter, General Secretary Do Muoi was a key opponent of the recognition of a right to inherit land. He said:

Mr. Do Muoi still thought it was opening too much. There were issues that the NA had voted on, he still stopped it (chặn lại). At every break in the NA session, he would run into the office of Chairman Le Quang Dao.²⁶

In addition to these observations, the senior drafter stated that the party leadership continued to object to recognizing the right to inherit land, as this would effectively result in the recognition of private ownership of land – an outcome which the party-state ideologically opposed.²⁷ At the same time, the senior leadership allowed land transfers to be recognized. Based on evidence from documentary research and fieldwork interviews, it appears that this recognition was made to allow the market economy to function and to control land transactions in the informal land market.²⁸ In 2001, the constitution was amended and constitutional dialogue continued, with the party members and party leadership giving conflicting signals by both redirecting and expanding the scope of debates at the same time.²⁹

The next constitutional debate occurred in 2010 and it eventually extended to the drafting of the 2013 Constitution and the land law. As the constitutional debates between 2010 and 2013 are the focus of this article, they will be considered in depth in a subsequent section.

In sum, state leaders in Vietnam have used the constitution to establish the State’s control over land and to legitimize the nationalization of land that had occurred in practice. For example, the 1959 *Constitution of the Democratic Republic of Vietnam* (1959 Constitution) legitimized the collectivization of land and the 1980 Constitution formally abolished private land ownership. At the same time, Vietnam’s first constitution after the sixth National Party Congress in 1992 provided a stronger guarantee of long-term usage of land for the people and allowed land transfers to occur. The increased protection offered by the Constitution to landholders coincided with the party leadership’s decision to allow greater space for constitutional dialogue and debate. The debates in 1992 and 2001 showed, however, that the party leadership limited the debates and usurped the viewpoints of the NA members on issues relating to

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

28. “Thế khó kiểm soát thị trường ngầm [Difficult To Control The Informal Market]” *VietNamEconomy* (17 September 2009), online: BatDongSan.Com.VN <<http://batdongsan.com.vn/phan-tich-nhan-dinh/the-kho-kiem-soat-thi-truong-ngam-ar11432>>; Le Nhung, “Quan Ly Dat Dai Long Leo Kho Kiem Soat Thi Truong Ngam [Lax Management of Land Makes it Difficult to Control Informal Market]” *VietNamNet.VN* (10 November 2011), online: VietnamNet.VN <<http://vietnamnet.vn/vn/thoi-su/47827/quan-dat-dai-long-leo-kho-kiem-soat-thi-truong-ngam.html>>.

29. Sidel, *supra* note 5.

land ownership and land rights. The party leadership was also vigorous in their opposition to the recognition of private land ownership.

B. *The Abolition of Private Ownership and the Pressure to Re-recognize it*

The preceding discussion shows that a core strain in the CPV's ideology was its opposition against private land ownership. In 1991, the party state leadership ensured that the status quo was protected when they amended the Party Political Manifesto to state that Vietnam "has a highly developed economy based on modern production forces and the public ownership of the means of production as the primary form of ownership".³⁰

Vietnam's rapid economic development, however, led senior leaders to recognize the transferability of land use rights under a "public" (i.e. state) ownership land system. The 1993 *Land Law* recognized that landholders have five land use rights that resemble fee simple tenure.³¹ However, the law provided that the State can compulsorily acquire land for "national and public interest" purposes.³² The retention of the public ownership regime has been unpopular and widely perceived to be responsible for public corruption and misappropriation of land by state officials. In 1997, perceptions of injustice and incidents of public corruption led to the lockdown of an entire town in Thai Binh by protesters.³³ Despite the public's concerns, the 2003 *Land Law* officially expanded the bases upon which the government could recover land to include purely economic development projects.³⁴ In 2010, agitations for constitutional reform rose significantly after the eruption of a land eviction case in Hai Phong known as the Doan Van Vuon (Vuong) land dispute.³⁵

The facts are as follows. Vuon leased nineteen hectares of coastal marshland owned by the district government to farm for fifteen years. The period of the lease was one of the points that made this case controversial. In Vietnam, the period for which land is allocated is based on the classification of the type of land. According to the 1993 *Land Law*, state officials may determine the lease period for coastal marshlands. In contrast, agriculture land leases were limited to a period of twenty years. In Vuon's case, he had turned the marshland into a fish farm, which would fall under the category of agricultural land. In 2009, when the business began to turn a profit, the authorities expropriated the land. The reason cited for expropriating the land was to establish an airport on the marshland. The construction of the airport never happened. Vuon's protest became popularized after domestic news media reported that he fended off more than 100 local government security men from his house with homemade

30. Communist Party of Vietnam, *The Collected Transcript of Proceedings from the National Party Congress Part I* (Hanoi: Political Publisher, 2010) at 407.

31. 1993 *Land Law* (adopted 14 June 1993), art 3.

32. *Ibid*, art 27.

33. Human Rights Watch, "Rural Unrest Since the Start of Doi Moi" (1997), online: Human Rights Watch <<https://www.hrw.org/reports/1997/vietnm/Vietn97d-02.htm>>.

34. For detailed analysis of the 2003 *Land Law*, see Le, "What Role for the Law", *supra* note 2.

35. BBC, "Pitched battle over Vietnam farmland" *BBC* (17 January 2012), online: BBC <<http://www.bbc.com/news/world-asia-16571102>>.

explosives as they attempted to evict his family from his land on that fateful day.³⁶ Vuon was sentenced to five years in jail after he injured six police officers, including the chief of police.³⁷

The perceived heavy-handed approach and injustice suffered by Vuon led to an outpouring of support from ordinary Vietnamese in North and South Vietnam. The outrage over the State's land ownership regime was expressed in Vietnamese newspapers and social media. The legitimacy relied upon by the State for its right to exclusively manage land was challenged, but it did not end there.³⁸ The Doan Van Vuon case was followed by the Van Giang land disputes and many other reported and unreported land disputes which attracted a large number of protesters.³⁹ These protesters opposed the government's overriding preoccupation with national economic development and industrialization, an objective that was facilitated by the 2003 *Land Law* granting to local and national governments the power to confiscate and allocate land to land developers purely for the purpose of economic development.

In the midst of the major land protests in 2010–2013, members of the NA called for the government to include amending the Constitution and the 2003 *Land Law* (which had already been delayed for several years) in its legislative programme. Meanwhile, reformist politicians used the Eleventh National Party Congress held in January 2011 to force a debate on the continuing relevance of the Party Manifesto that insists Vietnam's economy be constructed based on “public ownership of the means of production”.⁴⁰ The debate in relation to the Party Manifesto during the 2011 National Party Congress became a key battleground as it laid the foundation for the making of a new constitution in 2012–2013.

One of the senior leaders who appeared to have played an instrumental role in forcing a debate on the matter was the Minister of Planning and Investment, Vo Van Phuc. He argued that delegates should examine Vietnam's application of the market economy under twenty years of *Doi Moi*, as Marx and Lenin taught students to assess a theory based on practice and not on dogmatic adherence to theory. He said:

The statement of the Tenth National Party Congress was the result of consolidating the 20 years of *Doi Moi*. At the discussion session within the Thanh Hoa delegation yesterday, there were cadres who believed that the drafting of “public ownership of the means of production means” was based on the theories of Marxism-Leninism. But I would like to

-
36. Murray HIEBERT and Phuong NGUYEN, “Land Disputes Stir Political Debate in Vietnam” *Center for Strategic & International Studies* (11 April 2013), online: Center for Strategic & International Studies <<http://csis.org/publication/land-disputes-stir-political-debate-vietnam>>.
 37. Le HA, “Doan Van Vuon sentenced [to] 5 years in prison” *VietnamNet Bridge* (5 April 2013), online: Vietnamnet Bridge <<http://english.vietnamnet.vn/fms/society/70713/doan-van-vuon-sentenced-5-years-in-prison.html>>. However, Vuon was released early in 2015.
 38. See BBC, “Đoàn Văn Vươn ‘sẽ hành động như trước’ [Đoàn Văn Vươn will not change his action]” *BBC* (15 September 2015), online: BBC <http://www.bbc.com/vietnamese/vietnam/2015/09/150902_doan_van_vuon_se_hanh_dong_nhu_truoc>.
 39. Joshua LIPES, “New Clashes in Land Disputes” *Radio Free Asia* (15 June 2012), online: Radio Free Asia <<http://www.rfa.org/english/news/vietnam/clashes-06152012152150.html>>.
 40. Nghia NHAN, “Đại biểu Võ Hồng Phúc nói lời tâm huyết [Democratic discussion at the Eleventh National Party Congress: Delegate Vo Hong Phuc Said His Heartfelt Words]” *Phap Luat Thanh Pho Ho Chi Minh* [*Law Ho Chi Minh City*] (14 January 2011), online: Phap Luat Thanh Pho Ho Chi Minh <<http://phapluattp.vn/thoi-su/theo-dong/dai-bieu-vo-hong-phuc-noi-loi-tam-huyet-385498.html>>.

say that Marxist-Leninists taught us that theory must be proved by practice. So what did practice prove: The Soviet Union and Eastern European countries that applied that model and failed; Vietnam built on these lessons and we succeeded. So why now do we give it up?⁴¹

In the speech, Vo Van Phuc called for the reconsideration of the Marxist theory of socialism and he specifically questioned the view that “public ownership of the means of production” was an essential foundation of a socialist state. He said:

There is the viewpoint that the foundation of socialism is ownership. But I believe that the foundation of socialism must be social justice, income re-distribution. To view ownership as the foundation, we will make the past mistakes, following the same path which the Soviet Union and Eastern Europeans did.⁴²

This statement from Vo Van Phuc was a revelation, as he was challenging the long-accepted ideal that public land ownership was the only means to achieve social equality. In his address to all delegates, Vo Van Phuc referred to the success achieved after liberal economic reforms were implemented under *Doi Moi* and stated that it was time for the previously unchallenged Party Manifesto on public land ownership to be debated by all delegates at the Congress in order to reach “unity in the Party’s viewpoint”.⁴³ Vo Van Phuc created a showdown in the CPV as different members expressed contrasting viewpoints.⁴⁴

In response, there was strong opposition from the senior leadership. The most senior person who argued for the retention of the Marxist theory of public ownership was Nguyen Phu Trong, who was elected at this Congress as the new Party Secretary of the CPV. Trong, an elite leader, questioned the need to revise the 2001 Manifesto as “the matter has been debated several times already” and urged the delegates to vote for change only when there is absolute unanimity and where the conditions for change have ripened.⁴⁵ Other delegates argued that “public ownership of the means of production” was a definitive character of a socialist state and, from experience, Vietnam’s retention of the public ownership system had not deterred investors.⁴⁶

When the debate was voted on, the final voting count showed about sixty-five percent of delegates favoured the removal of the “public ownership of the means of production” from the Party Manifesto, while about thirty-four percent of delegates voted to retain it.

41. *Ibid.*

42. *Ibid.*

43. *Ibid.*

44. Nghia NHAN, “Tranh luận sôi nổi về ‘công hữu tư liệu sản xuất chủ yếu’ [Intense Debate on ‘Public Ownership of the Means of Production’]” *Phap Luat Thanh Pho Ho Chi Minh [Law Ho Chi Minh]* (15 January 2011), online: <http://phapluattp.vn/thoi-su/theo-dong/tranh-luan-soi-noi-ve-cong-huu-tu-lieu-san-xuat-chu-yeu-388450.html>.

45. Thu HANG, “Biểu quyết về ‘công hữu tư liệu sản xuất’ [Voting on the ‘Public Ownership of the Means of Production’]” *Phap Luat Thanh Pho Ho Chi Minh [Law Ho Chi Minh City]* (19 January 2011), online: <http://phapluattp.vn/thoi-su/theo-dong/bieu-quyet-ve-cong-huu-tu-lieu-san-xuat-385339.html>.

46. *Ibid.*

In the end, a new Manifesto was adopted and its language was similar to the one used in the Political Report of the Tenth National Congress in 2006. The latter stated that the socialist society in Vietnam was to consist of “a highly developed economy based on modern production forces and improved production relations that suit the development level of production forces”.⁴⁷ This outcome was considered a remarkable development, as the first draft of the Manifesto prepared for the Eleventh National Party Congress in 2011 had retained the “public ownership of the means of production”, and the elected General Party Secretary, Nguyen Phu Trong, had urged a vote for the status quo. At the same time, there was no indication that the government was prepared to accommodate the recognition of private land ownership as a consequence of adopting a new Political Manifesto.

In summary, the abolition of private land ownership formed a crucial element in the ideological and political legitimacy which the State relied on in governance. The economic reforms following the Sixth National Party Congress in 1986 and the large-scale land protests that followed have increased the pressure on the senior leadership to revisit its political ideology and reinvent its legitimacy. The developments at the Eleventh National Party Congress showed the existence of both internal struggles for change and resistance against that change.

The next Part will analyze the implications of these developments for the constitutional discussion of land ownership reforms in 2012–2013.

II. CONSTITUTIONAL DISCUSSION OF LAND OWNERSHIP IN 2012–2013

Constitutional discussion of land ownership in relation to the 2013 Constitution was initiated by the government on 19 October 2012,⁴⁸ six weeks after it initiated the process to amend the 2003 *Land Law*.⁴⁹ The government then directed an extensive public consultation process for both the constitution and the land law, with a three months consultation period for the new constitution and two months of consultation for the new land law.⁵⁰ The government’s announcement that both the Constitution and the 2003 *Land Law* were to be discussed, debated, and legislated during the same

47. *Ibid.*

48. Government of Vietnam, “To Trình Về Dự Thảo Sửa Đổi Hiến Pháp Năm 1992 [Outline of Draft Law to Reform the 1992 Constitution]”, Document no. 194/TTr-UBDTSDHP, online: Ministry of Justice <<http://moj.gov.vn/qt/cacchuyenmuc/ctv/news/Pages/to-trinh-du-thao-hien-phap.aspx?ItemID=4>>.

49. Government of Vietnam, “To Trình Về Dự Thảo Luật Đất Đai [Outline of Draft Law to Reform the Land Law]”, Document no. 222/TTr-CP, online: Duthaoonline <http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TailieuID=783>.

50. Government of Vietnam, “Nghị Quyết tổ chức lấy ý kiến nhân dân Dự thảo sửa đổi Hiến pháp 1992 [Resolution on Organizing to Gather Public Opinion in relation to the Draft Constitution Amending the 1992 Constitution]”, Resolution 38/2012/QH13, 28 November 2012; Government of Vietnam, “Nghị Quyết của Ủy ban thường vụ Quốc hội Về việc tổ chức lấy ý kiến nhân dân đối với Dự thảo Luật đất đai (sửa đổi) [Resolution on Organizing to Gather Public Opinion in relation to the Draft Land Law Amending the 2003 Land Law]”, Resolution 563/NQ-UBTVQH13, 21 January 2013.

session of the NA's sitting ensured that land ownership issues dominated the NA discussions.

The following discussion will analyze the key interest groups, their background, and their key arguments.

A. *Intellectuals, Scholars, Retired State Officials and the Media*

In Vietnamese society, intellectuals and retired state officials have played an important role in civic discourse. The constitutional discussion in 2012 and 2013 showed that these individuals continued to have a strong influence in pushing for radical reforms of land ownership law. One group of such individuals was known as the "Group of 72". This group, as its name implies, consisted of seventy-two intellectuals and high ranking state officials, including the sociologist Tuong Lai, the former Minister of Justice, Nguyen Dinh Loc, the former vice Minister in the Ministry of Science, Chu Hao, and the economists, Pham Chi Lan and Le Dang Doanh.⁵¹ Their contribution to the constitutional debate came in the form of Petition 72.⁵² Petition 72 called for a complete re-writing of the 1992 Constitution to limit the rights of the State and state agencies. In relation to the constitutional arrangement on land ownership, the petitioners argued that the new constitution must provide for genuine protection of people's rights, including the right to determine access to land. Firstly, there was an immediate need to abolish the current Soviet-inspired state ownership regime as this system has never been successfully transplanted into Vietnam and was responsible for the increase in public land corruption. Petition 72 also proposed the recognition of private, collective, and community ownership:

If private ownership, collective and community are not recognized alongside the state ownership of land, this will rob the people of a fundamental right of the people to own property. To equate state ownership with people ownership of land is to create the conditions for public administrators at the various levels to engage in corruption, abuse of public powers, and enter into alliance with private developers to cause financial harm to the people, especially the farmers.⁵³

Secondly, the petitioners argued that the government should not be able to recover land for the purpose of economic development and that, should land recovery be necessary, the government must "acquire" and pay fair compensation for the land. It stated:

The draft law released has "legitimized" the recall of land and opened the scope to confiscate land for economic development. This is a backward step in comparison to the 1992 Constitution and has the potential to create deep disharmony in society.⁵⁴

51. For full list of the members of the group, see Kiến Nghị 72, "Kiến Nghị Sửa Đổi Hiến Pháp 1992" [Petition 72, "Proposal to Amend the Constitution"] *Boxitvn* (14 April 2013), online: Boxitvn <<http://boxitvn.blogspot.com/2013/01/kiem-nghi-ve-sua-oi-hien-phap-1992.html>>.

52. *Ibid*

53. *Ibid*.

54. *Ibid*.

The petitioners urged that the existing provisions in the Constitution and the 2003 *Land Law* that specify the right of the State to “confiscate” (*thu hoi*) land needs to be replaced with a provision that requires the government to “acquire” (*trung mua*) land with fair compensation to the landowner. In short, Petition 72 called for radical changes to the arrangement on land ownership in the Constitution and linked the issue of land ownership with broader reforms affecting the standing of the CPV in society. Petition 72 attracted more than 11 million signatories after it was made public, which indicated that the views of the seventy-two petitioners enjoyed broad public support.⁵⁵ This public support enabled the Group of 72 to attract the attention of the Vietnamese media, and it prompted the government to delegate a representative to meet with the Group of 72 to formally receive their submission.⁵⁶

In addition to the Group of 72, there were submissions by other intellectuals and retired officials who also called for radical reform. For example, one of the objections made to the state land ownership system was written by General Nguyen Trong Vinh.⁵⁷ In his letter to the Chairman and members of the NA, General Vinh recalled that one of the key purposes of the revolution in 1945 was to provide ownership of agricultural land to the people, and only in 1980 were the ownership rights to land taken from the people as the State followed Stalin’s model.⁵⁸ He then stated that, as Stalin’s political and economic model had proven unsuccessful, it was imperative that the State re-recognize private rights to land ownership.⁵⁹ In addition, land ownership across the generations had been recognized as a natural right by the Vietnamese people, given that more than eighty percent were peasants who relied on security of holdings in land.⁶⁰ Vinh concluded that governments at all levels who used the State’s powers to allocate and forcibly acquire land to profit from it were committing a crime against the people.⁶¹ General Nguyen Trong Vinh’s letter was important as he questioned the political legitimacy the senior leadership – from the former General Secretary Le Duan to the current General Secretary Nguyen Phu Trong – had relied on to impose an “entire people” land ownership regime that prohibited private land ownership.

At this point, it is important to note that not all intellectuals and retired officials called for the abolition of state land ownership. Other officials, who were mostly recently retired, adopted a more “friendly” strategy of persuasion. The most prominent figure espousing this view is Dang Hung Vo, the former Vice-Minister in the Ministry of Natural Resource and the Environment (MONRE). In his retirement, Vo has become a popular figure in Vietnam for his approachability and expertise in land matters.

55. *Ibid.*

56. “Nhân sỹ trí thức gửi bản kiến nghị sửa đổi Hiến pháp 1992 [Intellectuals hand over Petition 72]” *Bao Moi* [*New Newspaper*] (5 February 2013), online: Bao Moi <<http://www.baomoi.com/nhan-sy-tri-thuc-gui-ban-kien-nghi-sua-doi-hien-phap-1992/c/10343640.epi>> [“Intellectuals hand over Petition 72”].

57. Vinh Trong NGUYEN, “Thư của Tướng Nguyễn Trọng Vinh gửi Quốc hội [Letter to the National Assembly]” *Vutienson* (23 September 2013), online: Vutienson <<http://vutienson.blogspot.com/2013/10/thu-cua-tuong-nguyen-trong-vinh-gui.html>>.

58. *Ibid.*

59. *Ibid.*

60. *Ibid.*

61. *Ibid.*

Vo's main argument was that the land ownership arrangement should reflect the economic stage of development, and he argued that as the senior leadership's objective is for Vietnam to become an industrialist economy by 2020, recognition of private ownership would give security to land users to invest on "their" land.⁶²

The ability of intellectuals and retired officials to represent the viewpoints of the people and influence public discourse could not have been achieved without the role of the Vietnamese state-owned media and non-state social networks. In relation to the state-owned media, domestic Vietnamese newspapers played a complex role. On the one hand, such newspapers are state-owned and are tasked to channel the communication between the State and the people. On the other hand, each Vietnamese newspaper has its own views on social justice issues and, in the absence of other effective organizations, the Vietnamese newspapers have taken on the role of advocating the cause of land ownership reform. For example, Vietnamese newspapers sent their journalists to camp in Hai Phong as the Doan Van Vuon dispute erupted. These journalists provided a forum for Vuon and his family to share their plight and brought their story to millions of ordinary Vietnamese. Similar to the state-owned (but not necessarily state-controlled) media, online social networks played crucial roles in disseminating information that was free from state censorship. Online bloggers were able to educate, connect, and mobilize ordinary Vietnamese into pressurizing the state leadership to change their mentality towards recognizing private ownership. For example, when Petition 72 was first drafted, it was hosted on the independent and popular "Bauxite Vietnam" and "Anh Ba Sam" blogs, which allowed the petitioners to receive more than 11 thousand additional signatures in support of the Petition. In addition to the roles above, it is likely that the presence of strong online social networks has enabled state-owned newspapers to report more sensitive news. For example, when Petition 72 was presented by former Minister of Justice Nguyen Dinh Loc to Le Minh Thong (the current Deputy Chair of the Legal Committee of the NA and the Deputy Head of the Editorial Board of the Constitutional Amendment Draft) on 4 February 2012, it was widely reported by state media agencies.⁶³

In summary, intellectuals, retired officials, and the media all played key roles in undermining the legitimacy of the government's insistence that land was held by the "entire people" in Vietnam. The positions adopted by the different discourse groups depended on their retirement age and their distance from the centre of power. At the same time, all of the key actors argued that the present system of land ownership has failed the people and called for greater constitutional protection of the peasants when their land is expropriated by the State, purportedly for economic development.

The next section analyzes the role of State agencies and institutions in order to assess the extent to which the State has responded to the call for land ownership reform from society.

62. Phuong Thuy, "GS Đặng Hùng Võ: Tôi thấy gai gai khi đọc quy định cưỡng chế thu hồi đất [Dang Hung Vo: I Feel Uncomfortable when Reading the State's Land Eviction Power]" *Lao Dong [Labour]* (3 January 2014), online: Lao Dong <<http://laodong.com.vn/bat-dong-san/gs-dang-hung-vo-toi-thay-gai-gai-khi-doc-quy-dinh-cuong-che-thu-hoi-dat-171394.bld>>.

63. "Intellectuals hand over Petition 72", *supra* note 56.

B. State Agencies and Institutions

The preceding section illustrates that there were societal pressures for change in Vietnam. The literature demonstrates that societal pressures can influence the change in State policy, provided that a sufficient number of state actors are also internally involved in the push for change.⁶⁴ In subsequent developments which were very much welcomed by the people, many state agencies and institutions appeared to support the people in their struggle to change the land ownership regime. This section explores the key roles of the Ministry of Justice (MOJ), MONRE, and the NA.

1. The role of the MOJ

The MOJ did not have a direct role in drafting the law. Under Vietnam's political-legal system, the MOJ's role is to provide expert legal advice to the government, the NA, and the different ministries responsible for drafting laws. In relation to the 2013 *Land Law*, the inter-ministry exchanges between the MOJ and MONRE available in the public domain showed that not only did the MOJ provide expert opinions on the legality of the draft law; it also pushed for the 2013 *Land Law* to clearly define the limits of the government's powers in relation to land. For instance, with regard to acquisition powers, the MOJ outlined that there were two streams of thoughts inside and outside of the government on this matter.⁶⁵ The first was that the new law needed to specify the circumstances in which the government should intervene to compulsorily acquire land and to specify the situations in which investors were required to negotiate the terms of compensation. The second was that the government should be involved in all cases of land acquisition and abolish the need for investors to negotiate with land users. The MOJ then stated in a letter sent to the Office of Government and MONRE that it was united in supporting the first option.⁶⁶ Similarly, the MOJ recommended that the amended law clearly define the circumstances in which the government could exercise its power to compulsorily acquire land for economic and social purposes.⁶⁷ In respect of determining land prices, the MOJ criticized the current approach that land should be valued at "close to normal market prices" as unachievable, and it also disapproved the current formula used to calculate land compensation. It advocated a more responsive People's Committee at the provincial (*tin*h) levels, which was needed to make timely adjustments to market and local conditions.⁶⁸

In addition to advocating land reform through internal channels, the MOJ has used its daily newspaper, *Pháp Luật* (Law) to inform and educate its readers about the current problems experienced under the current land regime, including corruption facilitated by the current laws. In this process, it has informed public knowledge and provided a forum for reform advocates to ruminate on land tenure reform.

64. Benedict J Tria KERKVLIT, "Governance, Development, and the Responsive-Repressive State in Vietnam" (2010) 37 (1) *Forum for Development Studies* 33 at 46.

65. Ministry of Justice, "Report, Explanation, Collection of Opinion by the MOJ in Relation to the Draft Land Law (amended), Public Document no. 7057/BTP-PLDSKT (30 August 2012).

66. *Ibid* at 3, 10.

67. *Ibid* at 10.

68. *Ibid* at 4.

In summary, the MOJ was working to address the concerns of the people in relation to land acquisition by the State. They called for greater accountability by the State in relation to its powers over land already allocated to the people. The reformist approach of the MOJ was most evident in the use of its flagship newspaper, *Pháp Luật* (Law), to advocate for land tenure reform to curb rising public corruption.

2. *The role of MONRE*

The position of MONRE on land reform is more difficult to ascertain. As the Ministry delegated the responsibility to draft the land law to MONRE, it acted according to the government's instructions. The public statements made by MONRE officials and the inter-ministerial exchange of letters generally indicated that MONRE's views reflected the government's position. For instance, a Vice-Minister of MONRE told journalists that "the people are not concerned with who has ownership of the land".⁶⁹ He upheld the government's narrative that recent reforms have provided peasants with rights that are comparable to private land ownership.

At the same time, MONRE has worked in conjunction with international aid agencies such as United Nations Development Program (UNDP) over a number of years to review the implementation of the 2003 *Land Law*. Those reports consistently highlighted the conflict between the people's ownership of land use rights and the government's powers as the exclusive representative of landowners.⁷⁰ Moreover, Dang Hung Vo, the former Vice Minister of MONRE, appeared regularly in the press to call for reform of the law. Intra-ministerial exchanges also indicated that MONRE was not opposed to changes. For instance, MONRE accepted the MOJ's recommendation to amend the draft land law and promised to incorporate the MOJ's position in the redraft of the law.⁷¹ Finally, the current Minister of MONRE, Pham Khoi Nguyen, has expressed his views at a conference reviewing the implementation of the 2003 *Land Law*. He said: "It is best to recognize private ownership, as the reality is that the current regime has already recognized private ownership in all but name only".⁷²

In summary, the role played by MONRE on land reform is difficult to judge. Nonetheless, the work undertaken by MONRE and its former officials shows it has been critical of past land laws and has recommended measures to address the concerns of land users. In contrast to the group that advocated the abandonment of state land ownership, the MOJ and MONRE have called for laws that prevent misappropriation of land, rather than abandoning the current system of land ownership altogether.

69. Tu NGUYEN, "Sở hữu đất đai: 'Dân không quan tâm!' [People are not concerned about private land ownership]" *VnEconomy* (3 February 2012), online: <http://vneconomy.vn/20120308073322330PoC17/so-huu-dat-dai-dan-khong-quan-tam.htm>.

70. Dang Hoa HO and Malcolm MCPHERSON, "Land Policies for Social Development in Vietnam" (27 May 2010) 50–51, online: [Harvard Kennedy School, Ash Center for Democratic Governance and Innovation <http://ash.harvard.edu/files/vnm_landpolicyaper.pdf>](http://ash.harvard.edu/files/vnm_landpolicyaper.pdf).

71. Ministry of National Resource and Development, "Report to Explain, Accept the Opinions of the Ministry of Justice in Relation to the Project to Amend the Land Law", Document no. 189/BC-BTNMT (4 September 2012).

72. Tu NGUYEN, "Có Nên Cho Sở Hữu Tư Nhân về Đất Đai Bài 3 [Should Private Ownership of Land Be Recognized]", *Pháp Luật HCMC [Law HCMC]* (2 March 2011).

3. *The role of the NA representatives*

The contribution of the Vietnam's NA representatives to the 2013 constitutional debate on land ownership is arguably the most important phenomenon in recent times. Unlike parliamentary representatives in western democracies who are full-time representatives and are directly elected by the people, the representatives in Vietnam's NA do so on a part-time basis, and they are chosen to represent the CPV in an election ballot that has been largely predetermined. The traditional impression formed by many observers is that Vietnam's NA is a "rubber-stamp" institution of the CPV. However, the discourse of the most recent land debate shows that the NA is performing its role in questioning the government on key constitutional and land law issues. With respect to land tenure reform, the NA members have played an active role in bringing the issues of land tenure into the NA's agenda and in modifying the government's draft land laws to make them fairer for current land users.

The first attempt to put the new land law draft onto the legislative agenda can be traced back to 2009, when many NA members urged the government to amend the 2003 *Land Law* in 2010. The specific reason was that the people's anger towards the 2003 *Land Law* necessitated reforms. This request was resisted by Uong Chu Luu, the Vice-President of the NA, who stated that reforming the 2003 *Land Law* would have major political, social, and economic ramifications and, as such, it could not be placed on the legislative agenda during the 2010 sessions.⁷³ In 2011, the Land Law Bill was put on the NA's discussion agenda, but a request from MONRE for more drafting time delayed its consideration. On the 6th of September 2012, the government finally presented the Outline to amend the 2003 *Land Law*.⁷⁴ The Outline made it clear that land continues to be under the people's ownership, and the government's powers to acquire land for pure economic development purposes remained unchecked. This Outline appeared to set in motion an intense struggle in the halls of Vietnam's NA, as many members registered to comment on the appropriateness of maintaining the people's ownership as the sole form of ownership of land. The NA member for Quang Tri in North Vietnam, Ha Sy Dong, commented on Provision 14 of the draft law, which confirms that land remains under the people's ownership, with the qualification that the government is the exclusive representative of the landowner.⁷⁵ Articulating similar views as historian Duong Trung Quoc, who argued that the land rights under the "people ownership" regime are fictional rights, Dong argued that "people ownership" is a mere "play on words" as there cannot be "two owners" who can claim to exercise the right to determine access to land.⁷⁶ Similarly, NA member Vu Tien Loc warned that

73. "Năm 2010 cũng chưa sửa Luật Đất đai" [Amending the Land Law will still not occur in 2010] *Thanh Niên News* (5 June 2009), online: Thanh Nien <<http://www.thanhnien.com.vn/news1/pages/200923/20090605003821.aspx>>.

74. Government of Vietnam, "To Trình Về Dự Thảo Sửa Đổi Luật Đất Đai 2003 [Outline relating to the Draft Land Law to amend the 1992 Land Law]" Document no. 222/TT-CP, online: Duthaoonline <http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=528&TabIndex=2&TaiLieuID=774>.

75. Nguyen VU, "Sửa Luật Đất đai: Đại biểu - doanh nhân nghĩ gì? [Amending the Land Law: What the NA members are thinking?]" *VnEconomy* (20 November 2011), online: VnEconomy <<http://vneconomy.vn/20121120031321328PoC17/sua-luat-dat-dai-dai-bieu-doanh-nhan-nghi-gi.htm>>.

76. *Ibid.*

the “ask-give” practice in land administration will continue “so long as land or the rights to land is a special commodity”.⁷⁷

In June 2013, NA members decided to delay voting on the Land Law Bill to allow more time to consider the Bill. The struggle to form a consensus culminated in an extraordinary five weeks of deliberations in the NA from late October to 29 November, in which extra sessions held over five weeks were made to accommodate the NA members’ requests to debate the government’s draft laws on the constitution and the land law. In this five-week period, NA assembly members rose to make clear their discontent with the government’s retention of the state ownership regime. For example, the member for Vinh Phuc, Lê Thị Nguyệt, commented:

The law stated that land is owned by the people, which implied that the people should be able to exercise their ownership (*quyen lam chu*), however, in reality this has not occurred as legislated.⁷⁸

In sum, the preceding discussion shows that the NA members made two important contributions. Firstly, the members performed their role in scrutinizing the draft and ensuring it underwent revisions to meet the expectations of civil society. Secondly, NA members confronted the government on the key issue of land ownership, forcing the top leaders to address their concerns. In short, Vietnam’s National Assembly seemed to have lived up to its duty to reflect the viewpoints of its constituents on matters of concern relating to land takings and compensation.

C. Senior Party Leadership and Their Response

This section will analyze, in greater detail, how the actual constitutional debates played out. In particular, it will examine how the senior party leadership controlled the terms of reform to land ownership and their responses to the constitutional debates in relation to land ownership.

1. *The Outline to amend the 1992 Constitution and 2003 Land Law*

The Outline (*to trinh*) to amend the 1992 Constitution was presented to the NA on 19 October 2012, together with the government’s first draft of the new constitution. This document set out the reasons for amending the constitution and specified the scope and parameters of the amendment process. Finally, the document outlined some different viewpoints discussed during the preparation of the first draft of the constitution on specific issues. In relation to land ownership, the senior leadership called for clearer laws that specified the “assets belonging to the people” and the “management of land use”.⁷⁹

77. *Ibid.* The practice of “ask-give” refers to the expectation by state officials to receive informal payment or gift to carry out normal administrative functions, such as, for the leasing or allocation of land.

78. Nguyen LE, “Thêm một buổi thảo luận Luật Đất đai trước ‘giờ G’ [Another debate session on the Land Law which went to the ‘G’ Hour]” *VnEconomy* (14 November 2013), online: <http://vneconomy.vn/bat-dong-san/them-mot-buoi-thao-luan-luat-dat-dai-truoc-gio-g-20131113102751302.htm>.

79. Government of Vietnam, “To Trình Về Dự Thảo sửa đổi Hiến Pháp 1992 [Outline relating to the Draft Constitution to amend the 1992 Constitution]”, Document no. 194/TTr-UBDTSĐHP Section II, point 4.

The Outline to amend the 2003 *Land Law* was presented to the NA on 24 October 2012.⁸⁰ In this document, the senior leadership recognized that land issues “are important, complex, and sensitive issues that impact directly on stability and development of the economy, politics, and society”.⁸¹ The senior leadership also referred to the Directives handed down by the Central Committee of the CPV at the Eleventh National Party Congress that instructed state officials to stem corruption in land administration.⁸² This led to a strongly worded directive issued on 25 May 2012 instructing that the 2003 *Land Law* and related legal instruments be amended to “clearly specify the rights of each level of government in acting as the representative of the people as the owner of land and in managing land”.⁸³

Concurrently, the first drafts of the constitution and the land law provided that land belonged to the “entire people”. The senior leadership expressly limited the scope of reform in relation to land ownership, reinforcing that the State will continue to provide that land belongs to the entire people, and the State was the sole representative of the owner with exclusive management powers to land. Further to this, CPV’s senior leadership stated “the State will not return land that has been redistributed to organizations, households and individuals in the process of carrying out land policies.”⁸⁴

In summary, the government’s Outlines did not allow unfettered discussion on land ownership. The ground rules that were established expressly limited the changes that could be made to the arrangement of land ownership and imposed controls on the permitted discourse in relation to land. In both documents, the senior leadership emphasized the need to reform the law in accordance with the Party Manifesto. Further to this, the senior leadership specifically rejected any call to recognize private land ownership.

2. *Senior leadership and the lack of genuine commitment for radical changes to land ownership*

Actual development in the constitutional debates indicated that, despite the unprecedented public discussion, the senior leadership never had any genuine intention to change land ownership policies. The ground rules established for the amendment of the constitution and the land law provides some indication of the lack of strategic commitment to change the arrangement on land ownership. As the actual constitutional debates played out, more evidence emerged that the senior leadership was not prepared to abandon its opposition to private land ownership, as this

80. Government of Vietnam, “To Trinh Ve Du Thao Sua Doi Luat Dat Dai 2003 [Outline relating to the Draft Constitution to amend the 2003 Land Law]”, Document no. so 302/TT-CP.

81. *Ibid*, paragraph 1, page 3.

82. Government of Vietnam, “Instructions No 21-KL/TW Ket Luan Ban Chap Hanh Trung Uong Dang Khoa XI [Concluding Remarks of the Central Committee Session XI]”, *Government of Vietnam* (25 May 2012), online: Government of Vietnam <http://www.vinhphuc.gov.vn/ct/cms/Convert/phongchongtn/Lists/trunguon/View_Detail.aspx?ItemID=2>

83. *Ibid*, s 2, para 2.

84. Government of Vietnam, “Outline relating to the Draft Constitution to amend the 2003 Land Law”, *supra* note 80.

recognition could force the CPV to revisit a crucial element of the legitimacy base that it has relied on to rule the nation.

The lack of genuine commitment from the senior leadership to reform the 2003 *Land Law* was also demonstrated by the manner in which the party-state treated the group of intellectuals who drafted Petition 72 and the actors who proposed more moderate reform. The government was initially supportive of contributions from intellectuals, and it subsequently sent a delegate to receive the report from the eminent scholars and retired officials. At this meeting, the sociologist Tuong Lai called for the CPV to abandon Stalinist ideologies and establish a new constitution that genuinely provided for an accountable government. The response from the senior leadership was strong and swift. The General Secretary of the CPV, Nguyen Phu Trong stated at a meeting in Phuc Vinh that those who were proposing ideas that undermine the stability of the State were engaging in “acts of political, ideological and moral deterioration”.⁸⁵

This statement was followed by a series of actions that appeared to be aimed at undermining and harassing the creators of Petition 72. For example, on 8 March 2012, the Vietnam Television (VTV) network used its daily 7 pm Evening News bulletin to condemn those who had signed Petition 72. On 13 March 2012, hackers attacked the “Anh Ba Sam” blog which hosted the Petition. Those “undermining campaigns” appear to have worked. On 22 March 2012, the spokesperson for Petition 72, Nguyen Dinh Loc, appeared on VTV and in an uncharacteristic manner, distanced himself from the Group of 72.⁸⁶

In relation to the broader public consultation process, one prominent participant who attended the public consultation meetings organized by MONRE on behalf of the government told the author that although the consultation was open, the reception of public opinions was filtered by politics. He further stated that “although the public position was that there was no restriction on the terms of consultation on land ownership reforms, there were, in fact, restrictions imposed”.⁸⁷ He then referred to the statement made by the General Secretary Nguyen Phu Trong in Phuc Vinh and stated that “the land ownership issue was closed off for public discussions in public hearings that were conducted after the General Secretary’s statement”.⁸⁸

Another development that showed that the top leaders’ thinking on land ownership has not changed substantially was the government’s handling of debates in the National Assembly. One of the significant developments during the 2013 constitutional law reforms was the struggle between delegates of the NA and senior leaders of government in the debate on the Land Law Drafts. As many delegates rose to urge for changes to the current drafts, including changes that would have the effect of preventing government officials from expropriating land under the guise of economic

85. BBC, “TBT Trọng nói về sửa đổi Hiến pháp [General Secretary Trong talks about amending the Constitution]” *BBC* (26 February 2013), online: BBC <http://www.bbc.com/vietnamese/vietnam/2013/02/130226_nguyenphutrong_constitution.shtml>.

86. BBC, “Ông Nguyễn Đình Lộc nói về Kiến nghị 72 [Nguyen Dinh Loc speaks on Proposal 72]” *BBC* (27 March 2013), online: BBC <http://www.bbc.com/vietnamese/vietnam/2013/03/130323_nguyendinhloc_kiennghi72>. There are anecdotal suggestions that Nguyen Dinh Loc’s family members were harassed.

87. Personal interview with A, (10 February 2016).

88. *Ibid.*

development,⁸⁹ the leader of the constitutional drafting committee and the Chair of the Legal Committee of the NA, Phan Trung Ly, reiterated the government's call that no amendments would be made to the Draft Constitution on land ownership.⁹⁰ Then on 16 November, a final session to debate the constitution was abruptly cancelled. On 28 November 2013, when the delegates voted by pushing a button on their computer screen, ninety-seven percent of over 400 delegates voted in favour of the new constitution which preserved both "people (state) land" ownership and one party rule, with only two delegates abstaining from the vote.⁹¹ The 2013 *Land Law* was passed on 29 November 2013 with almost a ninety percent vote.⁹² It retains the key elements of "people (state) land" ownership, limited tenure rights, and the State's power to requisition land for the purpose of economic development. The new land law, however, has extended the duration of land use rights for agriculture granted to individuals and households to fifty years. Further, there are new statements in the 2013 Constitution that are directed towards protecting the interests of those who hold land rights. For example, Article 54(2) imposes a duty on the State to protect the right of land rights holders and Article 54(3) stipulates that while the State may requisition land for economic development in *particularly necessary* circumstances, the process to confiscate land must be transparent and people must be compensated in accordance with the law. Subsequent events demonstrate that the 2013 *Land Law* has not reduced State-society tensions over land ownership. For example, in March 2016, people in the North Vietnamese province of Thanh Hoa protested to prevent the local government from allowing a Hanoi based property developer the right to develop a sea service area that would block public entry into the Sam Son sea.⁹³

In summary, the discussion has illustrated that the unprecedented consultation process was more likely a tactical response adopted by the CPV's senior leadership. The senior leadership made some compromises and the new law reflects some impact of the mobilization from wider civil society. However, the attitudes of the senior leadership to the Group of 72, the censorship of public submissions, the government's handling of debates in the NA, and the absence of changes in relation to the arrangements made on land ownership in the constitution and the land law shows an absence of genuine commitment to reform the land ownership regime.

89. Nguyen LE, "Đề xuất bỏ phiếu kín vẫn đề còn khác nhau về Hiến pháp [Proposed secret ballot on various issues still in debate about the Constitution]" *VnEconomy* (4 November 2013), online: VnEconomy <<http://vneconomy.vn/thoi-su/de-xuat-bo-phieu-kin-van-de-con-khac-nhau-ve-hien-phap-20131103100819208.htm>>.

90. Nguyen LE, "Đề nghị giữ một loạt nội dung quan trọng như dự thảo Hiến pháp [Suggest to maintain the wording of a series of important issues related to the draft Constitution]" *VnEconomy* (5 November 2013), online: VnEconomy <<http://vneconomy.vn/thoi-su/de-nghi-giu-mot-loat-noi-dung-quan-trong-nhu-du-thao-hien-phap-2013110511192132.htm>>.

91. Tien DUNG & Nam PHUONG, "Quốc hội thông qua Hiến pháp sửa đổi [National Assembly passed Amended Constitution]" *VN Express* (28 November 2013), online: VN Express <<http://vnexpress.net/tin-tuc/thoi-su/quoc-hoi-thong-qua-hien-phap-sua-doi-2916328.html>>.

92. *Ibid.*

93. Anonymous, "Vietnamese face charges for protesting beach-blocking tourist project" *Thanh Niên News* (6 March 2016), online: Thanhnien News <<http://www.thanhniennews.com/society/vietnamese-face-charges-for-protesting-beachblocking-tourist-project-59937.html>>.

III. CONCLUSION

This article draws two main conclusions. First, the discussion has demonstrated that the senior leadership have, in practice, not allowed unfettered discussions in relation to the issue of land ownership. The State continues to control the discussion by rejecting the recognition of private land ownership as one of the ground rules for the amendment of the Constitution and the 2003 *Land Law*. Further to this, the harassment of participants, the filtering of public participation, and the heavy-handed management of debates in the NA show that the senior leadership have not changed their entrenched opposition towards private land ownership. The analysis in this article has illustrated, however, that powerful mobilization from the wider civil society organizations and individuals has triggered ideological divisions within the CPV on the question of private land ownership. This is evident from the struggles that occurred in the NA during the final days of debate as the government cancelled debates, pleaded, cajoled, and, finally, imposed its will on the NA members to vote for the draft Land Law as it was presented by the government. The 2013 *Land Law* has retained state ownership of land and the power to compel land acquisition purely for economic development purposes. However, some compromises are also evident, such as the inclusion of new statements in the 2013 *Land Law* to prevent administrative abuse of state land powers. Second, the discussion has demonstrated that the efforts of the government have not improved the legitimacy of the land system. The large-scale land protests events in Thanh Hoa province showed that State-society tensions over land access remain strong.⁹⁴

94. *Ibid.*