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The Right To Access Information on Land Recovery, Compensation, Assistance, And Resettlement: Case Study, City of Can Tho, Vietnam

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**THE RIGHT TO ACCESS INFORMATION ON LAND RECOVERY,
COMPENSATION, ASSISTANCE, AND RESETTLEMENT:
CASE STUDY, CITY OF CAN THO, VIETNAM**

Hien Trung Phan & Hugh D. Spitzer*

Abstract

Land recovery in Vietnam is the process of compulsory transfer of land use rights from the hands of land users to the hands of the State by way of local government agencies. Land recovery frequently raises issues of compensation, assistance, and resettlement. It is vital for affected land users and the general public to have access to reports on land recovery, compensation, and resettlement. The article describes a limited survey of Vietnamese people whose land was subject to government recovery and evaluates their access to and understanding of information at each stage of the land recovery process. The study revealed a number of weaknesses in the communication process between land users and state entities when government agencies recover property for public purposes. The article makes specific recommendations meant to balance the interests of the state, investors, and people subject to land recovery, and to ensure democracy and implementation of the Vietnamese public’s right to oversight and accountability.

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I. INTRODUCTION

In Vietnam, where all land is deemed owned by the state in trust for the people, mandatory government appropriation of privately used land is labeled as “land recovery.”¹ Among land recovery cases in Vietnam, the most controversial are those that fall under land recovery for purposes of national defense/security, and socio-economic development for the benefit of national and public interest. These cases often cause disagreement, complaints, denunciations, and even coercive enforcement cases. This results from the fact that land recovery is accompanied by compensation, assistance, resettlement, and valuation of land and assets attached to land, all of which must be resolved based on legal characteristics of the land and land value. Consensus occurs only when land recovery is “public, transparent and compensations must be provided in accordance with the law.”² In order to fulfill these requirements, it is necessary to specifically stipulate the parameters on the right to access information on land recovery, compensation, assistance, and resettlement. However, as described in this article, a large number of Vietnamese people whose land is subject to government recovery are not fully aware of the process or their rights.

Statutes and regulations outline the land recovery process and provide land users with robust rights to information about the land recovery system. But there are marked differences between actual practice and the written law on public information and land recovery. The lead author conducted a case study, gathering and interpreting the results of interviews and an intensive survey of 300 households whose land was recovered in Can Tho city, Vietnam, from 2017 to 2019.³ This survey took place at the same time as various land acquisition projects in the Can Tho city area. The data was

¹ Land Law, No. 45/2013/QH13, art. 199, cl. 1 (Nov. 29, 2013) (Viet.) (stating that when the State needs land back for its public needs, the State, through those authorities, “recover[s]” the land. In this article, we use the term “land recovery” to describe this process.).

² HIẾN PHÁP NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [Constitution] Jan. 1, 2014, art. 54, cl. 3 [hereinafter Hian Phap].

³ Phan Trung Hien (Project Manager), *Training and Research to Improve Local Policies and Practices Towards Compulsory Land Acquisition Procedures in Can Tho City* (Oct. 2017).

derived from 300 survey samples that were randomly selected and then collected door-to-door from households whose land was acquired. To be accurate and avoid bias, the survey team tested ten sample questionnaires and went from door to door to ask questions, subsequently identifying questions that could be improved. To facilitate data collection, in addition to reporting the survey results to the local government, we cooperated with the Father Land Front⁴ to identify affected land users to interview. However, when answering the questionnaire, we assured the confidentiality of individual respondents and put all surveyed samples in a closed box. We selected ten final-year law students with excellent academic performance and trained them to participate in submitting the questionnaires and explaining each question to the land users as necessary. While the research was a modest sample in just one area of Vietnam, we believe the findings are representative of land users' experience in other parts of the country.

II. LAND OWNERSHIP AND LAND RECOVERY IN VIETNAM

A. *Overview of Land Ownership and Recovery in Vietnam*

Article 53 of the 2013 Constitution of Vietnam provides that land is a public property owned by the entire people and managed by the State as the peoples' representative.⁵ Because all land is owned by the people and managed by the State of Vietnam, individuals, families, and organizations in Vietnam only have limited rights to land as "land users." As noted above, when a government agency takes land from land users for public purposes, this is known as "land recovery." Indeed, Article 54 of the 2013 Constitution allows the State to recover land for the purposes of national defense and security, and for socio-economic development for the national and public interests.⁶ Instead of using phrases "compulsory purchase" (the UK) or "eminent domain" (the U.S.) or "land acquisition" (Australia), Vietnam law uses the term "land recovery."

The acquisition of land for public purposes, with compensation, derives from Vietnam's 1993 Land Law, on the basis of building a socialist-oriented

⁴ A key part of Vietnam's social-political system, the Viet Nam Fatherland Front is described as "the political base of people's power." It has a significant role in society, promoting "national solidarity" and "unity of mind in political and spiritual matters." Like other organizations in society, the Front is also considered a tool to work for common aims, namely, for the rights of people and for a peaceful, independent, unified, democratic, and prosperous country, having a worthy role on the international stage. See *Viet Nam Fatherland Front Committee*, Ha Noi Portal, Viet Nam Fatherland Front Committee - english.hanoi.gov.vn (last visited Sept. 17, 2023).

⁵ *Supra* note 2, at art. 53.

⁶ *Id.* at art. 54.

market economy and the 1992 Constitution. Clause 3, Article 54 of the 2013 Constitution states:

The State shall recover land used by organisations and individuals in imperative cases provided by the law for the purposes of national defence, national security and socio-economic development in the national and public interests. The recovery of land must be public, transparent and compensations must be provided in concordance to the law.⁷

This leads to four significant points. First, the State may recover the land currently being used by organizations and individuals only in cases of necessity as prescribed by law. This means that each land acquisition must have a legal basis consistent with the Land Law and sub-law documents (*i.e.*, regulations and decrees) that must not arbitrarily expand or narrow the constitutional and statutory framework.

Second, land acquisition is limited in scope for defense and security purposes, and socio-economic development for national and public interests. Government land reacquisition is meant to be for the common good, which includes national economic development.

Third, the land acquisition process must be public and transparent. Publicity and transparency are prerequisites for people to be able to monitor the management and use of land, including the stages of asset inventory, compensation calculations, and payment of compensation to affected households.

Fourth, land users must be compensated according to the provisions of the Land Law. It should be observed that people using land without a legal basis cannot be compensated. However, this requirement of “legal use” can seriously impact people who are irregularly using land being acquired. Further, the law does not provide for all the types of damages that people suffer, and it is possible that compensation might be less than the land users’ view of a fair value. The types of damages incurred are very diverse, including direct damage, indirect damage, personal damage, community damage, economic damage, environmental damage, cultural-social damage, physical damage, mental damage, tangible damage, and invisible damage. Given this complexity, in practice the method of calculating damages before, during and after the State's land recovery process is outdated, and in many respects no longer suitable.

B. Details of the Land Recovery Process in Vietnam

⁷ *Id.*

According to Article 69 of the 2013 Land Law, the recovery of land for national defense and security purposes and for socio-economic development must go through the following steps:

(i) Formulate and implement a plan for land acquisition, investigation, survey, measurement, and tally. At this stage, the People's Committee of the level competent to recover the land must issue a notice of land recovery. That notice is to be sent to each person whose land is identified for recovery, disseminated to the people in the affected area, and announced on mass media and posted at the headquarters of the commune-level People's Committee for the residential area where the recovered land is located.

Within ten days of being mobilized and persuaded, if the land user still fails to cooperate with the organization in charge of compensation and ground clearance, the chairperson of the district-level People's Committee shall issue a decision on inspection and mandatory counting. The person whose land is recovered is responsible for implementing the decision on compulsory inventory. In the case that person whose land is recovered does not comply, the chairperson of the district-level People's Committee must issue a decision on enforcement of the decision on compulsory inventory and organize the enforcement according to the provisions of Article 70 of the Land Law, 2013.⁸

(ii) Prepare and carry out an appraisal for compensation, support, and resettlement plans. At this stage, organizations in charge of compensation and ground clearance are responsible for paying compensation and implementing support and resettlement plans. They must coordinate with commune-level People's Committees of localities where the recovered land is located in collecting opinions on compensation, support, and resettlement plans in the form of holding direct meetings with people in the area where the land is recovered. At the same time, the organizations must publicly post the compensation, support, and the particular resettlement plan at the head office.⁹

(iii) Issue the decision on land acquisition; approve and organize the implementation of the compensation, support, and resettlement plan. At this stage, competent People's Committees specified in Article 66 of the 2013 Land Law are charged with deciding to recover specific parcels of land and simultaneously approving compensation, support, and resettlement plans.¹⁰

⁸ *Supra* note 1, at art. 70.

⁹ *Id.* at art. 69.

¹⁰ *Id.* at art. 66.

If the person whose land is recovered does not hand over the land to the organization in charge of compensation and site clearance, the commune-level People's Committee, the Vietnam Fatherland Front Committee of the commune where the recovered land is located, together with organization in charge of compensation and ground clearance, proceeds with the land recovery and the task of persuading the affected land users to assist with that recovery.

If the person whose land is recovered has been persuaded but does not comply with the handover of land to the organization in charge of compensation and ground clearance, the chairperson of the district-level People's Committee must issue a decision on enforcement, recover the land, and proceed with the enforcement according to the provisions of Article 71 of the 2013 Land Law.¹¹ Organizations in charge of compensation and ground clearance are responsible for managing the cleared land.¹²

In short, the order and procedures for land recovery are not only steps taken to create favorable conditions for smooth and efficient land acquisition. They also provide the boundaries and scope of the subject's duties at each stage, with attention to ensuring the rights, obligations, and responsibilities between the parties. But, the right to access information is fundamental to the exercise of other rights. If the affected people do not have access to information or the relevant information is incorrect, that will likely affect their legal rights to comment on the proposal, challenge the land recovery, and to claim compensation.

C. Vietnam's Right to Access Information on Land Recovery, Compensation, Assistance, and Resettlement

1. Definition and Background on the right to access information about land recovery, compensation, assistance, and resettlement.

The right to access information regarding government action is widely recognized as a basic right of citizens. Information, as understood in the "Fundamentals of Freedom of Information Law" outlined by Article 19 of the Universal Declaration of Human Rights, includes all documents held by certain organizations and agencies, regardless of the distinction of form and manner in which it is stored, the origin of the information, and the date of

¹¹ *Id.* at art. 71.

¹² *Id.* at art. 69.

creation or collection.¹³ In the most basic sense, the right to access information is a legal right that includes the right to view government works, documents, and other records, and to quote and make copies of documents and records in progress.¹⁴

The right to access information was first recognized by Sweden in 1766,¹⁵ followed by the French Declaration of Human Rights and Civil Rights in 1789.¹⁶ The same principles were set forth in Colombia's 1985 access to information statute, enacted in 1985.¹⁷

According to one Vietnamese dictionary, "being public means not keeping secret, but rather letting everyone [sic] know."¹⁸ Article 2, Clause 1 of the 2016 Vietnamese Law on Access to Information states: "Information means news, data created by state agencies, contained in documents, dossiers, materials in forms of hand-writing copies, printed copies, electronic copies, paintings, pictures, drawings, tapes, disks, videos, recordings or other forms."¹⁹ Disclosing information is, in turn, not keeping information secret or hiding news and data. Rather, it means making such information public for all to know. Therefore, disclosing information in the field of land recovery, compensation, assistance, and resettlement means publicizing information through accessible records or through mass media. It is particularly important for this information to be made accessible and understandable to the specific individuals subject to land recovery activities.

Article 2, Clause 3, of Vietnam's 2016 Law on Access to Information provides that access to information means reading, watching, listening,

¹³ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 19 (Dec. 10, 1948).

¹⁴ *Id.*

¹⁵ 2 ch. 1 art. TRYCKFRIHETSFÖRORDNING (Svensk författningssamling [SFS] 1949:105) (Swed.) ("Every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.").

¹⁶ *Declaration of the Rights of Man – 1789* at art. 11, YALE LAW SCHOOL: LILLIAN GOLDMAN LAW LIBRARY, http://avalon.law.yale.edu/18th_century/rightsof.asp (last visited Mar. 22, 2022) ("The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.").

¹⁷ Bill Orme, *Access to Information: Lessons from Latin America*, UNESCO, 2017, at 8, <https://unesdoc.unesco.org/ark:/48223/pf0000249837>.

¹⁸ *Tu dien tieng Viet [Vietnamese Dictionary]* 208 (Vien Ngon Ngu Hoc [Institute of Linguistics], 2005).

¹⁹ *Luật tiếp cận thông tin [Law on Access to Information]*, No. 104/2016/QH13, art. 2 (Apr. 6, 2016) (Viet.).

recording, copying, and taking photos of, information.²⁰ The right to access information is the ability of the individual citizen, within the scope of law, to receive, search, and disseminate information, including information held by state agencies.²¹ The right to access information on land recovery, compensation, assistance, and resettlement includes two main aspects: (i) state agencies are responsible for disclosing information including notification of land recovery, plans on compensation, assistance, and resettlement, to people living in the land recovery area; and (ii) when people request more details on such contents to better understand the scope of the land recovery and to determine the extent of damage to their land and assets attached to land, that information must be provided and shown in detail.

2. *The constitutional and legal bases of the right to access information on land recovery, compensation, assistance, and resettlement.*

The history and character of the right to access state information depends on the socio-economic conditions of each country and the political orientation of that country. Therefore, when viewing the topic comparatively, we see that different governments have different levels of tolerance for public access to information. However, at the core of determining the scope of the public's right to access information is still a multi-dimensional relationship between national security and freedom of information. Without national security, basic human rights are always at risk. However, if national security is overemphasized, the right to freedom of information can become severely limited. Striking an appropriate balance between state secrecy and freedom of information requires an alert press and an independent justice system. To understand the relationship between access to state information and the right to privacy and protection of state secrets in Vietnam, it is necessary to view the constitutional and legal bases of the right to access information in that country.

Vietnamese rights to access information on land recovery, compensation, assistance, and resettlement are protected by constitutional and statutory provisions as follows:

First, the right to access information is an inherent constitutional right. In Vietnam, information disclosure and access to information has been recognized since the 1992 Constitution: "The citizens shall enjoy the right to be informed."²² Inheriting this provision, Article 25 of the 2013 Constitution states: "The citizens shall enjoy the right to freedom of opinion and speech,

²⁰ *Id.* at cl. 3.

²¹ Dao Tri Uc & Vu Cong Giao (Co-Editors), *Things to Know About Law on Access to Information* at 17, HA NOI NAT'L U. PUBL'G HOUSE (2015).

²² Hien Phap, art. 69 (1992) (Viet.).

freedom of the press, of access to information, to assemble, form associations and hold demonstrations. The practice of these rights shall be provided by the law.”²³ Furthermore, clause 3 of Article 54 of this Constitution stipulates that land recovery “must be public, transparent and compensations must be provided in accordance with the law.”²⁴ It follows that the constitutional right to access information means a constitutional right to access information on land recovery, compensation, assistance, and resettlement. Publicity and transparency in land recovery are prerequisites for citizens to practice their right to access information in land recovery activities. Although there is no private land ownership in Vietnam, Vietnamese land law provides the principle of just and prior indemnity. “Just” should be understood as fairness in the amount of compensation and in the implementation of steps and procedures between parties. It is necessary to seriously recognize the responsibility to disclose information of the state agencies and to carefully stipulate the right of land users to access information.

Second, the right to access to information is affirmed in laws and by-law documents through regulations on accountability of competent agencies and officials. In addition to the Law on Access to Information, other legal documents also indirectly highlight the right to access information on land recovery, compensation, assistance, and resettlement. For instance, the 2005 Anti-Corruption Law as amended in 2007 and supplemented in 2012 stipulates the disclosure of information on land management and use.²⁵ Here, the following must be disclosed: “Plans regarding land use master plans, land recovery, ground clearance, compensation package levels, assistance and resettlement at the time of land recovery, only after being decided, approved, or adjusted by competent state agencies.”²⁶

Further, the 2007 Ordinance on the Exercise of Democracy in Communes, Wards and Townships states that “people know, people discuss, people implement, and public oversight and comment,” and also specifies material that should be disclosed, including: “Investment projects and buildings, priority levels, implementation progress, compensation methods, subsidies for resettlement and reallocation related to projects and buildings in the areas managed at the commune level, detailed planning and plans to use land and adjustment methods, and resident planning in areas managed at the commune level.”²⁷ This shows that, although using different terms, the

²³ Hien Phap, art. 25 (2013) (Viet.).

²⁴ *Id.* at art. 54.

²⁵ Anti-Corruption Law, No. 55/2005/QH11 (Nov. 29, 2005) (Viet.).

²⁶ *Id.* at art. 21.

²⁷ Ordinance on the Exercise of Democracy in Communes, Wards and Townships, No. 34/2007, art. 2 (Apr. 20, 2007) (Viet.).

disclosure of information related to land recovery, compensation, assistance, and resettlement is required to be practiced in adherence to the relevant regulations. This condition is a prerequisite for exercising the right to access information in this field.

In addition, the 2015 Law on Organization of Local Government²⁸ also clearly stipulates mechanisms for monitoring access to information at the local level:

The communal-level People's Committee shall be responsible for holding discussions or dialogues with the local people on the performance of the People's Committee and issues relating to rights and obligations of the local people at least once a year; in case the size of the administrative unit at the communal level is too large, such discussions or dialogues shall be held by each village group and residential quarter. The people's committee shall post a notice through means of mass media and notify the Head of the village and the Head of the residential quarter of time, venue and topics of discussion or dialogue with the people no less than 7 days before the opening date.²⁹

This provision provides a great opportunity for the right to access information, the right to public oversight, and the right to discuss on accessible information. In principle, all residents have the right to discuss and exchange with the local government to obtain information on the state of affairs of the People's Committee and issues related to rights and responsibilities of local citizens, including the right to access information.

Third, the Law on Access to Information expressly ensures the right to access information in the field of land recovery, compensation, assistance, and resettlement. One of the more progressive areas of Vietnamese law is the provision of separate law on access to information. The 2016 Law on Access to Information, which took effect on July 1, 2018, included as part of information to be widely publicized: "information on planning, land use planning, land price, land recovery, compensation, site clearance and resettlement related to projects, works in the locality."³⁰ This illustrates that the right to access information on land recovery, compensation, site clearance and resettlement is an important and essential component falling within the right to access information in Vietnam.

Fourth, the Land Law recognizes the responsibility of the State to provide information about land. The Article 28 of the 2013 Land Law affirms

²⁸ Law on Organization of Local Government, No. 77/2015/QH13, art. 125 (June 19, 2015) (Viet.).

²⁹ *Id.*

³⁰ *Supra* note 19.

the responsibility of the State for formulating and providing information about land as follows:

1. To develop and manage the land information system and guarantee the right to access to the land information system for organizations and individuals. 2. To promptly publicize available information in the land information system for organizations and individuals, except confidential information as prescribed by law. 3. To notify administrative decisions and acts in the field of land administration to organizations and individuals whose lawful rights and interests are affected. 4. Competent state agencies and persons in land administration and use shall create conditions and provide land information for organizations and individuals in accordance with law.³¹

Thus, providing specified information includes announcing administrative decisions, and administrative acts in the field of land management, to affected organizations and individuals as defined by their rights and interests. This includes documents such as notice, decisions, and coercive enforcement of land recovery. Additionally, approval of compensation, plans, assistance, and resettlement must be announced. All of that information must be made available to law-abiding land users in areas where land recovery is being carried out. Moreover, these documents are to be made public through a mechanism that yields the highest level of accessibility.

On the other hand, to ensure the right to access information is implemented, the 2013 Land Law defines the right to public oversight and comment belonging to citizens as follows: “Citizens may themselves or via representative exercise the right to public oversight and comment the administration and use of land and report breaches.”³² One of the procedures under supervision in land management and use is “[l]and recovery, compensation, assistance and resettlement.”³³ Indeed, one of the principles set forth as an obligation placed upon the citizens is that “supervising and reporting must be implemented objectively, truthfully and legally.”³⁴

In summary, the right to access information about land recovery, compensation, assistance, and resettlement is indirectly affirmed in the Constitution, detailed in the statute on access to information, recognized in the Land Law, and backed by legal documents related to the right to access and publicize information. This is particularly important because cases

³¹ *Supra* note 1, at art. 28.

³² *Supra* note 1.

³³ *Id.* at cl. 3.

³⁴ *Id.* at cl. 2.

involving land consistently account for the highest proportion of complaints when compared to other fields of state management.

III. CASE STUDY FINDINGS ON ACCESS TO INFORMATION AT EACH STAGE OF LAND RECOVERY

Article 69 of the 2013 Land Law mandates the process associated with land recovery for national defense, security, and socio-economic development. Compared with previous regulations, the current sequence of procedures prescribed by the 2013 Land Law and the associated documents are more detailed than in earlier versions of that statute.³⁵ Nevertheless, there is still a need for more extensive disclosure of information relevant to land users and the public. The effective implementation of the right to access information on land recovery, compensation, assistance, and resettlement can be analyzed according to the levels and types of access to information. The focus here is on: (i) the government's responsibility to provide information; (ii) the level of practical access to information; and (iii) land users' understanding and using their legal rights based on that information. In order to study the actual access to this information in practice, the authors used results obtained by interviews of officials and a survey of 300 households whose land was recovered in Can Tho city from 2017 to 2019.

A. Implementation of Responsibilities for Providing Information

The notice of land recovery shall be sent to each person whose land is to be recovered, disseminated at meetings of citizens in the area where land is to be recovered, published on the mass media, and listed at the headquarters of the commune people's committee and/or at the communal areas of the residential zone where the land is to be recovered.³⁶

Thus, notice of an impending land recovery is a compulsory procedure and a prerequisite for implementation of the later stages such as formulation of a compensation plan, detailed decisions on the proposed land recovery, assistance, and resettlement. The state agency tasked to recover land is responsible for preparing notices of land recovery, publicly announcing it via the mass media, and sending notice to each household whose land is to be recovered.

The leading civil servant at the Land Fund Development Center at Can Tho told our interviewers that every household in residential zones where land is recovered is provided with a formal notice of land recovery. The

³⁵ *Id.* at art. 69.

³⁶ *Id.*

public is then informed about both the draft and later about the final decision approving plans for compensation. However, due to the inconsistencies in the statute, there appear to be certain limits on the information actually provided, including those discussed immediately below.

First, the Land Law provides: “The notice of land recovery shall be sent to each person whose land is to be recovered by way of distributed at meetings of citizens in the area where land is to be recovered.”³⁷ However, the legal documents we reviewed did not include an explanation detailing who exactly should have been included in the phrase “citizens in the area where land is to be recovered.” In some instances, officials doing site clearance understood these “citizens” to be the individuals whose land was to be recovered, but this may not be correct. In addition to the basic target group of people whose land is to be recovered, attention should be paid to those nearby property users potentially affected by the project. These might include: (i) those affected by installation and operation of related public works infrastructure such as common paths, water, sewer, and storm water utilities; (ii) those impacted by social services facilities such as schools, parks, fire suppression and medical stations; and (iii) those affected by possible environmental impacts such as wastewater, air pollution, and noise. All of those people need to be accounted for and provided notice when new projects or works are being proposed. The language of the Land Law on its face refers both to “each person whose land is to be recovered” as well as to “citizens in the area.” Therefore, the impacts of a proposed project that includes land recovery is broad, and notice should include both people whose land is to be recovered and the neighbors potentially affected by such activity.

Second, a government regulation governing applications for issuance of notices on land recovery stipulates something lacking clarity, like a requirement for an “extracted cadastral survey of pieces of land located in the boundary of the land area expropriated for project execution.”³⁸ As required by Article 69 of the 2013 Land Law, this measurement is only carried out after issuance of the notice of land recovery.³⁹ This causes difficulties because in some instances, it is hard to identify who in fact is using a specific land parcel. The main reason is that the actual land use status and the status portrayed in the survey maps often do not coincide. Therefore, when the local government goes to the field to identify the land and notify the land user, officials may notify the wrong person or persons, or altogether

³⁷ *Supra* note 1, at art. 69, para. 1.

³⁸ Circular on Applications for Land Allocation, Lease, Repurposing and Expropriation, art. 9, para. 3, No. 30/2014/TT-BTNMT (June. 2, 2014) (Viet.).

³⁹ *Supra* note 1, at art. 69.

miss notifying people directly interested in a given parcel. This obviously hinders people's access to information because: (i) there is no consensus between legal documents and their implementation by localities, rendering access to information inconsistent in these areas; and (ii) the information that people receive through the notice of land recovery, if only extracted from the survey map, is likely to be inaccurate information due to the lack of updates.

B. Survey Findings Regarding Actual Access to Information

1. Methods of providing relevant information to affected land users

To determine the degree of access to information, we identified various means of access and then surveyed 300 households in the Can Tho City area whose land had been recovered. All of the households were located in Can Tho City, including Ninh Kieu district, the Cai Rang district and the Phong Dien rural district. Unsurprisingly, 90% of the time the officials notify people through meetings, and only 49% of the time are there written notices. This appears to be inconsistent with legal requirements that clearly call for written notice.⁴⁰

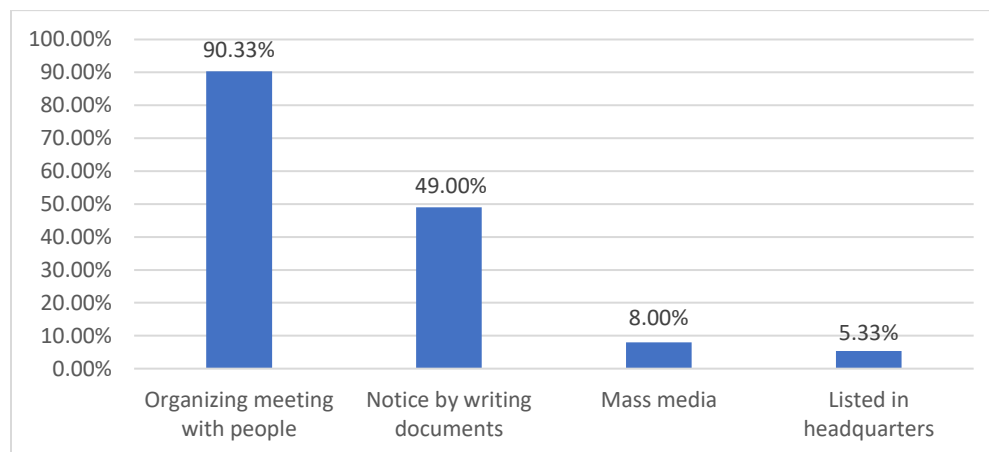


Figure 1. Methods of notice of land recovery

Therefore, among the methods of notifying people about land recovery, the most important is through organized meetings. This method ensures publicity and transparency. Furthermore, people can express their worries and ask questions as well as get answers from representatives in charge of compensation, assistance, and resettlement. The act of announcing the notice of land recovery through an organized meeting ensures that the people's right

⁴⁰ *Supra* note 1, art. 69, para. 1.

to access information is appropriately implemented.⁴¹ But *all* methods of notice of land recovery actions are legally necessary and should be used to ensure that information about land recovery is known by *all* affected people.

However, having access to information and fully understanding that information is not always the same. Surveys of people who were made aware of impending land recovery activity of their land by means of a meeting, found that the majority of respondents said they clearly understood the relayed information (65%). Unfortunately, 21 percent of respondents who participated in the meetings said that they did not grasp the information. At the same time, 2.33 percent responded that they received no invitation to the meetings, which means that they did not have access to the information at all.

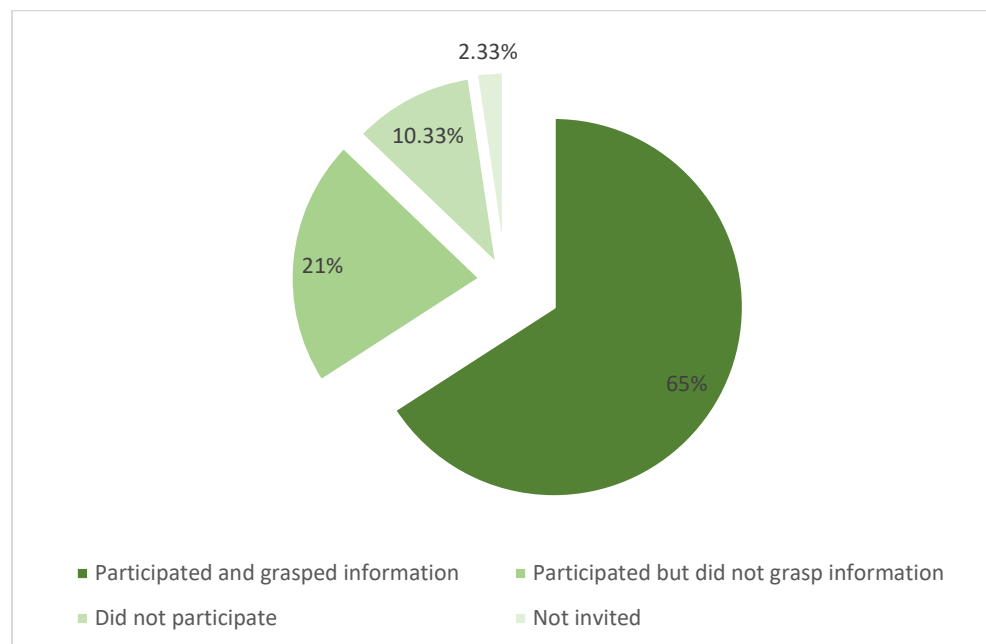


Figure 2. *Participation in meetings and understanding of information*

Interestingly, there is a significant disparity in the level of participation and comprehension between urban and rural area in meetings announced through notices of land recovery. For example, 80 percent of rural area respondents who participated in rural area meetings reported a good grasp of the land recovery information. But in urban areas, that percentage was just over 50 percent. Corroborating this, the proportion of participants who said

⁴¹ Phan Trung Hien & Chau Hoang Than, *Land Price Determination in Vietnam: The Situation and Recommendations*, 23 J. L. & SOC. DEVIANCE. 1, 30 (2022).

they did not fully understand the information about land recovery in urban areas (30%) is higher than in rural areas (nearly 20%).

One issue worth noting is that the percentage of male participants in meetings to provide land recovery information was 60 percent (in which the head of households directly attending the meetings represented 52.5 percent, and sons and sons-in-law were 7.5 percent). This compares with female attendees at just 40 percent (in which head of the households represented 32 percent, and daughters and daughters-in-law were 8 percent).

2. *Understanding accessed information and lawfully exercising rights*

In the case where annual land use planning at the district level has been formulated, land users in an area where conversion of land use purpose and/or land recovery is being carried are permitted to continue to exercise their rights in accordance with the planning. However, they are not permitted to implement new construction of residential houses, works or plant perennial crops. Moreover, permission from a competent State agency is required if a land user needs to improve or repair his or her existing residential house or works.⁴²

Therefore, when land use planning commences and after the issuance of notice of land recovery, land users are restricted from exercising rights to build or to renovate housing and to engage in other construction projects. Agricultural production is also restricted, such as growing perennial crops.⁴³ Article 49, Clause 2 of the 2013 Land Law does not mention restrictions on the ability of land users to engage in civil land transactions such as exchanging, assigning, leasing, bequeathing, donating, mortgaging, or investing capital based on those land use rights.⁴⁴

Curiously, the results obtained from the 300-household survey reflected completely different practices from those prescribed by the Land Law, because many affected land users were unaware of their rights. 83.5 percent of respondents stated that, after the notice of land recovery was issued, they were not permitted to conduct transactions related to land, even though they were permitted by Article 167 of the Land Law to do so (right to exchange, assign, lease, sub-lease, bequeath, donate, mortgage, or contribute capital using land use rights⁴⁵):

⁴² *Supra* note 1, art. 49.

⁴³ *Id.* at cl. 2.

⁴⁴ *Id.* at art. 167, para. 2.

⁴⁵ *Id.* at art. 49.

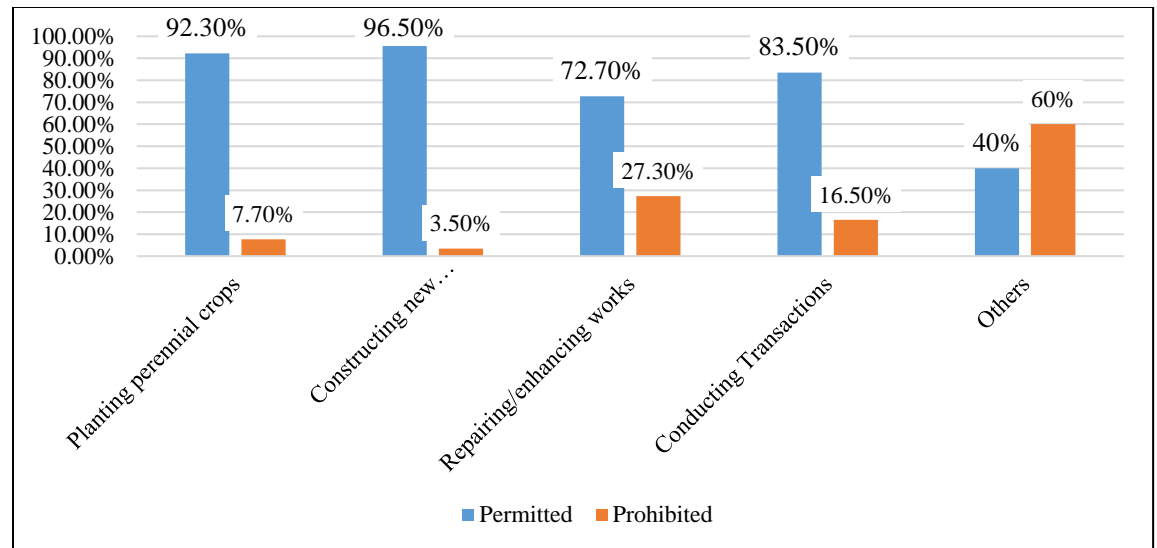


Figure 3. Permitted/Prohibited activities as experienced by people whose land was recovered

According to local government officials in Can Tho who were interviewed, the basis for this rights restriction experienced by surveyed households is that if people were enabled to perform real estate and financial transactions based on the affected land, many people might sub-divide land plots. This could lead to an increase of the number households eligible for assistance and resettlement, which would directly cause difficulties for the organization in charge of compensation and site clearance because the cost would be greater than originally planned.

Because of this disparity between statutory rights and practice on the ground, there needs to be an adjustment in required practices that is aimed at two main goals: first, government agencies should delineate in more detail the rights and obligations of people from the time of the formulation of annual land use planning at the district level. Second, information should clearly specify which activities are allowed and which are prohibited after the time of the issuance of a notice of land recovery. This information distribution should be mandatory and recorded in the notice on land recovery. Further, unless the statute is amended, land users should have the right to perform transactions stipulated by Article 167 of the Land Law. However, land users should not be permitted to benefit from any resulting increase in property value or to increase the number of households receiving assistance. In other words, the households in the area where land is to be recovered would still be permitted to exchange or donate their land use interests but would not be permitted to sub-divide land plots, except in urgent cases with legitimate reasons, such as bequeathing property interests upon death or pursuant to mortgage requirements.

Next, there should be increased training to help civil servants and public employees to understand the content, requirements, and meaning of the applicable regulations when acting with affected land holders. Additionally, it is necessary to propagate effectively, and in detail, information on the rights and obligations of people whose land is to be recovered to help them fully grasp the implications of the proceedings.

More detailed guidelines would also be helpful in reducing the number of situations where people engage in illegal construction, repairs, renovations, or crop-planting during the interim period before compensation packages are released and the new land use objectives are enacted. At the same time, improved information and processes would be favorable for state agencies and other units responsible for compensation and site clearance and helpful to local authorities when considering the legality of land and assets attached to it. Another important point of these guidelines would be to both formalize and legitimize information on rights and obligations of land users during the notice on land recovery stage. This would provide the right to access to information more effectively.

Under Article 68 of the Land Law, the Council for Compensation, Assistance and Resettlement and the Land Fund Development Organizations are charged with the implementation of compensation and site clearance.⁴⁶ The Land Fund Development Organization is a public land organization that performs two basic functions: paying compensation, support, and resettlement when the State recovers land and creating a clean land fund (i.e., cleared land ready for development). According to Decree No. 43/2014/ND-CP, land fund development organizations were established in each of Vietnam's sixty-three provinces.⁴⁷ Currently, there is no detailed guidance regarding formation of the Councils in the Land Law. According to Decree No. 69/2009/ND-CP (which has expired), and based on practical procedures in localities, one or two affected land users are supposed to participate in the Councils.⁴⁸ Those persons are tasked with voicing the concerns of all those whose land is also affected by recovery efforts and to protect their rights and personal interests. However, when affected people in Can Tho City were asked about their knowledge about the Councils, the results were as follows:

⁴⁶ *Supra* note 1, at art. 68.

⁴⁷ Decree Detailing a Number of Articles of the Land Law, art. 5, para. 2, No. 43/2014/ND-CP (May 15, 2014) (Viet.) (detailing the implementation of the 2013 Land Law).

⁴⁸ *Quy định bổ sung về quy hoạch sử dụng đất, giá đất, thu hồi đất, bồi thường, hỗ trợ và tái định cư* [Additionally Providing for Land Use Planning, Land Prices, Land Recovery, Compensation, Support, and Resettlement], art. 25, No. 69/2009/ND-CP (Aug. 13, 2009) (Viet.).

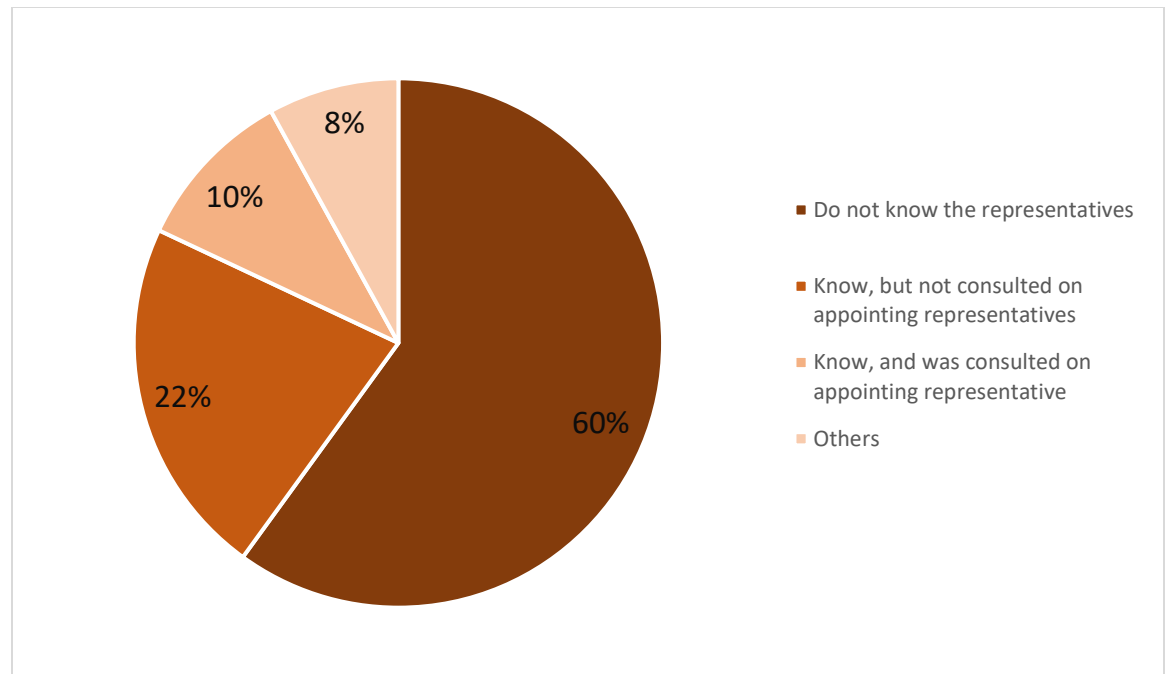


Figure 4. *Proportion of respondents who know information about representatives in the Council of Compensation, Assistance and Resettlement*

The study found that sixty percent of respondents did not personally know their representatives who had participated in the Council on Compensation, Assistance and Resettlement. Therefore, there should be detailed guidance on the formation of this council to ensure uniform and consistent application of laws in localities and representation and supervision of the exercise of people's right to access to information.

3. Making and settling complaints about process problems after access to information

Vietnam's right to access information has been implemented with the aim of resolving issues in a manner required by law. But, in fact, current Vietnamese laws do not adequately detail the government personnel responsible for receiving and settling complaints and addressing questions from people during the land recovery process. There is a lack of clarity about processes that should occur prior to a final determination to recover land from current users and the approval of plans on compensation, assistance, and resettlement.⁴⁹

⁴⁹ Additionally, after the issuance of a decision on land recovery, people have the right to make complaints and conduct denunciations. *Supra* note 1, at art. 204.

The survey shows that commune-level People’s Committees⁵⁰ and land fund development organizations are the two mechanisms most used by people to submit comments, feedback, and complaints during the land recovery process (both more than 32% of respondents). While land fund development organizations are directly responsible for compensation and site clearance, commune-level People’s Committees play an important, and even essential, role in addressing public inquiries. Ultimately, commune-level People’s Committees can be characterized as administrative agencies at the grassroots level and, as a result, are the closest and most accessible agencies to the people. The survey results also demonstrate that commune-level People’s Committees have been repurposed as a tool within reach of the local people, ensuring their right to information.

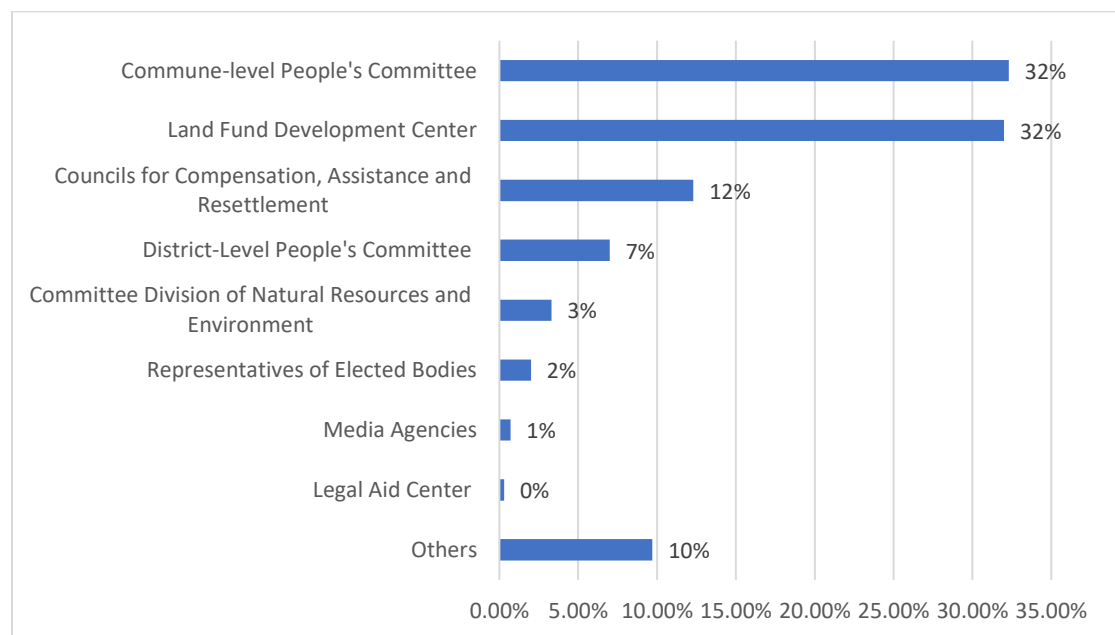


Figure 5. *Entities Receiving and Responding to Land Recovery Comments, Feedback, and Complaints*

From these results, it appears there are numerous points of contact for handling land user complaints about the land recovery process. But that diffusion can result in confusion, and there should be clearer regulations on which specific agencies and units are responsible for receiving and

⁵⁰ Commune-level People’s Committees are the lowest state administrative bodies in Vietnam (below district, provincial, and central levels). Commune-level People’s Committees perform state management tasks in most fields in the commune-level area in Vietnam. As of April 12, 2018, Vietnam has 11,162 commune-level administrative units, including 1,594 wards, 606 townships, and 8962 communes. *Việt Nam có bao nhiêu xã* [How many communes does Vietnam have?], BẠN NÊN BIẾT, <https://bannenbiet.com/viet-nam-co-bao-nhieu-xa/?msclkid=f9c3949ec85711ecb974afeedef77074> (last visited Sept. 8, 2023).

answering peoples' inquiries during state land recovery. Furthermore, information on the land recovery process, on who must receive information, and on when and what agencies land users should contact all must be made clearer to the public. In addition, there is a need to develop a consistent method of handling such inquiries around land recovery procedures. These adjustments would make the process more convenient for all parties involved, including both the existing land users and the staff of state agencies. Improved processes and transparency would reduce the number of situations where people aimlessly send complaint letters to the wrong agencies and departments. In addition, to engender government objectivity and transparency, it would be helpful to install a specific monitoring mechanism over procedures of receiving, processing, and responding to petitions during state land recovery. This would also encourage people to exercise their right of participating in state and social management.

Article 28 of Vietnam's Constitution provides:

Citizens have the right to participate in the management of the State and management of society, and to discuss and propose to state agencies issues about their base units, localities and the whole country. The State shall create the conditions for citizens to participate in the management of the State and society; and shall publicly and transparently receive and respond to the opinions and petitions of citizens.⁵¹

With this approach, it is possible to avoid creating gray areas in land recovery because requests and questions coming from the people have been promptly reviewed and handled.⁵²

IV. CONCLUSIONS AND RECOMMENDATIONS

With the help of one focused survey in Can Tho City, we have identified a number of weaknesses in the communication process between land users and state entities when the government commences the process of seizing ("recovering") land for public purposes. The process is unclear to the affected public, and there is a lack of transparency about both the process and the mechanisms for public input. Responsibility for providing information seems divided among multiple agencies, and a large number of residents do not adequately understand how their questions and complaints can be most

⁵¹ *Supra* note 2, at art. 28.

⁵² Phan Trung Hien & Tran Vang Phu, Discourse: *Sequence and Procedures of Land Recovery – From the Perspective of People Whose Land is Recovered*, Manifest of Experts Consulting Seminar of Project, *Capacity Improving Training and Research on Complementing Process of Land Recovery, Compensation, Assistance, and Resettlement*, (2019).

effectively addressed. Accordingly, the authors make the following recommendations:

First, it is necessary to have guidelines explaining the land recovery process in detail and outlining the right to access information. These guidelines need to promote public understanding of what information is accessible, such as “information on land use master plans and plans; land prices; land recovery; plans on compensation, ground clearance and resettlement related to projects and works in localities.”⁵³

Second, it is essential to continue the use of organized public meetings as outlined in legal provisions, which call for notices on land recovery and the publicizing of plans on compensation, assistance, and resettlement.⁵⁴ This should occur at the same time as mass media announcements and postings at the headquarters of the Communal People's Committee, the common living place of the residential area where the recovered land is located for public participation. Moreover, the rights and obligations of the people must be clearly defined and made public when the notice of land recovery is issued, especially land users' rights to continue carrying out transactions allowed by Article 167 of the Land Law, including the right to exchange, assign, lease, sub-lease, bequeath, donate, mortgage, and contribute capital using land use rights.⁵⁵

Third, it is necessary to issue detailed regulations guiding citizens in the exercise of their rights of public oversight and comment in the field of land in order to uphold Article 199 of the Land Law. This would reinforce the people's rights of public oversight and comment on land recovery, compensation, assistance, and resettlement. This is an important tool for people to exercise the right to access project information and for establishing an environment receptive to public feedback. Further, where more than half of people living on land soon to be recovered disagree with the plans on compensation, assistance, and resettlement, those plans should be subject to reconsideration by the relevant state entities. This is to be overseen by the people and subject to review by the Vietnamese Fatherland Front and its member organizations.

Fourth, it is necessary to clarify the components of the Council of Compensation, Assistance and Resettlement in charge of compensation, assistance, and resettlement. The Council's tasks should be more fully defined, including the powers of the individual members of the Council. It is especially vital to select representatives whose land was recovered in order

⁵³ *Supra* note 19, art. 17, cl. 1(g).

⁵⁴ *Supra* note 37, at art. 69, cl. 1(a).

⁵⁵ *Supra* note 1, at art. 167.

to give the residents a voice and protect their rights to access information. In addition, there should be a requirement of publicly announcing the criteria for the residents to select the representatives who will serve as council members. At the same time, commune-level People's Committees and land fund development organizations should be encouraged to serve as channels for receiving and responding to opinions, feedback, complaints, and for making it possible to provide information and resolve problems as early as possible.

Fifth, to promote the effective roles and responsibilities of officials in charge for site clearance, continued publicity about the steps and procedures of land recovery should be compulsory. There should also be organized training courses for all officials involved in the land recovery process, including commune-level People's Committee members and all-levels of the Vietnamese Fatherland Front. The courses should include briefings on land users' rights to access information on land recovery, compensation, assistance, and resettlement. Officials should also be better trained on how to organize discussions with people on the right to access information, steps for accessing information, and procedures for land recovery, compensation, assistance, and resettlement. These changes are all aimed at increasing the public's understanding of land recovery processes that impact them and to increase their ability to access their rights in situations that will substantially affect their futures.