

**LAND REFORM IN VIETNAM
WORKING PAPERS**

Volume I, Part 1

Legal Framework and Program Status

Prepared for:

**THE REPUBLIC OF VIETNAM AND THE
UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

**STANFORD RESEARCH INSTITUTE
MENLO PARK, CALIFORNIA, USA**



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LAND REFORM IN VIETNAM
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Legal Framework and Program Status

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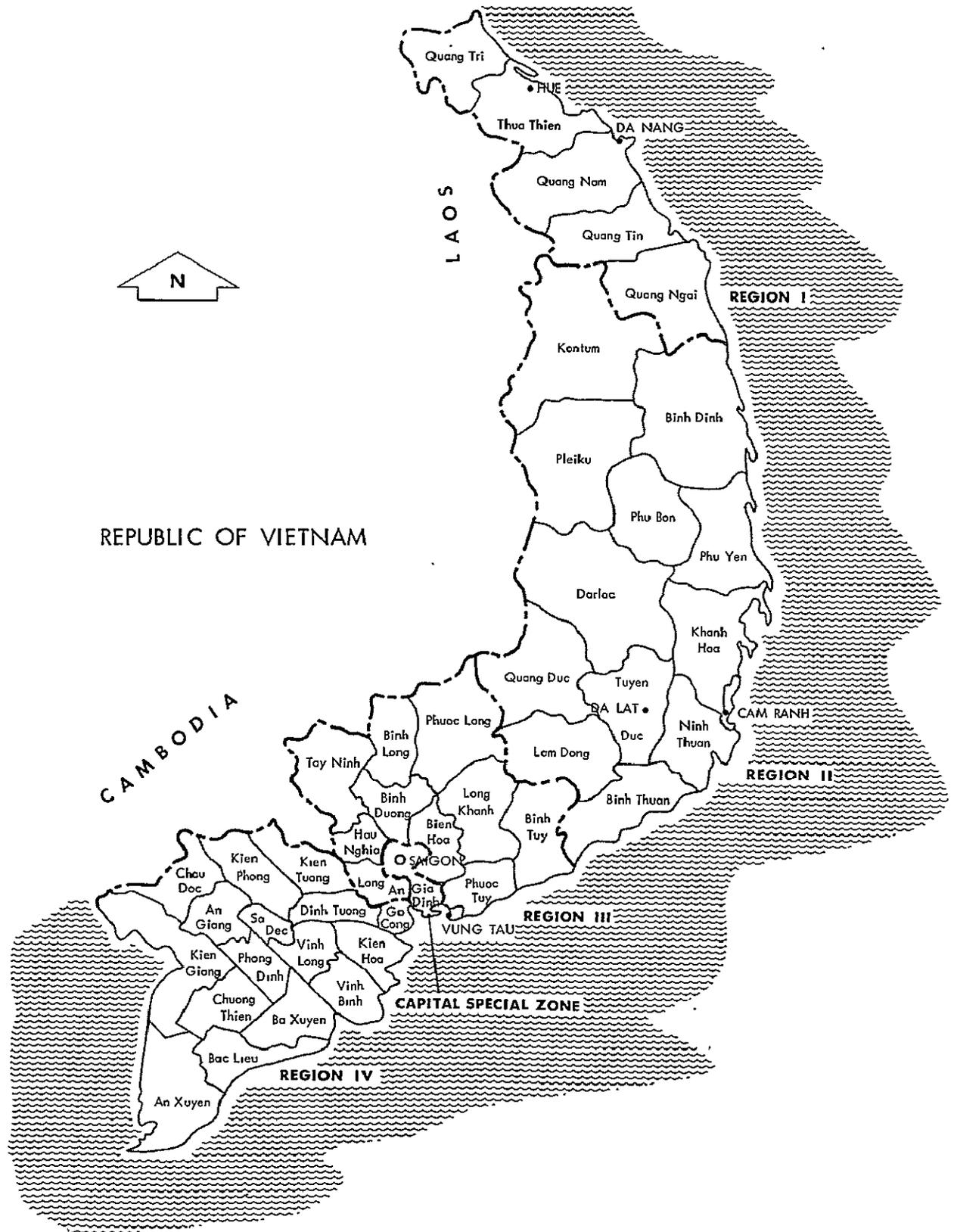


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USA

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Chapter 1

INTRODUCTION

Background

This volume--Volume I in a series of working papers on "Land Reform in Vietnam"--is designed to provide a factual basis for rational land reform policies in Vietnam. The work was conducted by Stanford Research Institute under contract AID/VN-8 for the U.S. Agency for International Development. It was carried out with the assistance of the resources and personnel of U.S. agencies in Vietnam and the agencies of the GVN (Government of Vietnam), particularly those agencies concerned with the Ministry of Land Reform and Agriculture.

Volume I is designed to bring together in one place the essential information for assessing the status of land tenure and of land reform in Vietnam. It is devoted to an exposition of the legal and administrative framework for land reform in Vietnam and with establishing the factual status of progress in implementing the basic legislation, decrees, ordinances, and administrative regulations pertaining to the various measures for land tenure improvement. The purpose of this volume is to present a comprehensive understanding of the essential facts of the land tenure and land reform situation as it applies to the Republic of Vietnam as a whole. In addition to its descriptive interpretation of the existing laws and programs and their genesis, this volume also has appended as Part 2 a comprehensive yet selective list of documents and statistical materials consisting of a "Data Book" of the best information available on the subject. This Data Book is intended to meet the requirements specified in contract AID/VN-8.

Land reform is not a modern innovation in Vietnam. As far back as the 13th century and in the intervening period, Vietnamese emperors resorted to land acquisition and redistribution as a means of curbing the political power of the feudal nobility and of reinforcing stability by giving land to the peasants. The kings realized that in a rural society extensive land ownership by large landlords was not only the source of eminent social status but also the basis of economic and political power that could threaten the imperial power and create political instability.

Like the expansion of the American nation to the West, the Vietnamese nation expanded southward conquering indigenous kingdoms along the way until the occupation of the Mekong River Delta about three centuries ago. The southward expansion of the Viet people began 20 centuries ago from the original South China homeland, ever in quest of new land to meet the needs of a dynamic and growing population.

Land development in the Mekong Delta occurred primarily through private endeavor of the Emperor Gia Long and his successors in the first half of the 19th century, and later under the French colonial administration. During the French colonial period, the availability of farmland in the Delta was greatly extended by land clearing, construction of a network of canals for draining and irrigation, and the development of riceland plantations.

Land redistribution policies were undertaken as the Viet Minh sought popular support in launching their attack on the French colonial power after the end of World War II in 1945. The landlords were induced to cooperate in these policies. Concern about the land tenure problem was expressed during the regime of Emperor Bao Dai, under French colonial tutelage, beginning in 1950 when official policies to improve land tenure relationships were initiated. Most of the germ ideas pertaining to land tenure improvement originated in this period and were built on later. Under Prime Minister Diem in 1955, the government first undertook measures to alleviate the hardships of the tenant farmer and to increase his well-being by improving the security of tenure and increasing his net share of production by reducing his rental payments. Increasingly, emphasis was shifted to extending land ownership by acquiring land from the large landlords and redistributing it to the landless and the small owner. The substantial political power of the landlord class was reflected in the establishment of a comparatively high land retention limit of 100 hectares, a limit higher than that established in any East Asian country that had carried out land reform programs after World War II.

The Republic of Vietnam was established to bring together dissenting anti-Communist groups and to unite them against the Communist faction of the Viet Minh. Since its inception following the Geneva Agreement of July 1954, the nation has been confronted with immense political, military, and social problems. The French had agreed to resolve the question of reuniting the country with North Vietnam by means of elections to be held two years later in 1956. However, this agreement was not legally binding on the newly formed Saigon Government, which had agreed to nothing. Rather, in 1956 the New Constitution of Ngo Dinh Diem was adopted by referendum, and further consideration of general elections embracing the two Vietnams appeared unlikely.

Within a few years after the Geneva Agreement, thousands of South Vietnamese cadre of the Viet Minh began returning after training from North Vietnam to extend subversion on a growing scale. At the same time (beginning in November 1955), Diem as the new President undertook a large scale land tenure reform effort. While the initial effort was substantial, progress after 1960 was on a very limited scale. This was the year in which the formation of the Viet Cong political arm--the National Liberation Front--was announced. Much of the energy in President Diem's land reform program tended to shift due to insufficient security in the rural countryside, lack of sufficient technically trained administrators, lack of sufficient funds to carry out the scheme, and growing political antagonism toward his government, which culminated eventually in his assassination in November 1963.

The newly elected Government of Vietnam has recognized by a number of significant steps the political and economic aspirations of the farmers and of the rural inhabitants in general. The new constitution, promulgated on April 1, 1967 clearly defined measures being taken to establish and strengthen democracy at the village level. Elections have been held, and representative village governments have been established designed to strengthen the development capability at the local level.

The new constitution states in the preamble:

Confident that the patriotism, indomitable will, and unyielding traditions of the people will assure a radiant future for our country: Conscious that after many years of foreign domination, followed by the division of our territory, dictatorship and war, the people of Vietnam must take responsibility before history, to perpetuate those hardy traditions and at the same time to welcome progressive ideas in order to establish a republican form of government of the people, by the people and for the people whose purpose is to unite the nation, unite the territory and assure independence, freedom, and democracy with justice and altruism for the present and future generations.

The Constitution does not stop with general concepts in its preamble. The objectives of the constitutional government are clearly oriented to action programs benefiting its rural people. Under Article 19, the Constitution states:

- "1. The state recognizes and guarantees the freedom of private property.
2. The state will advocate a policy of making the people property owners.
3. Expropriation or requisition by the State for the common good must be accompanied by speedy and just compensation at price levels existing at time of expropriation or requisition."

This policy is further augmented by Article 20, which specifies: "The State will give special support to those elements of society which have a low standard of living," and by Article 21: "The State advocates raising the standard of living of rural citizens, and especially helping farmers to have farmland."

Also the Constitution states (Article 2), "The State recognizes and guarantees the basic rights of all citizens," and further, "The State will protect freedom, the lives, property and honor of every citizen," (Article 6.)

In the Declaration of Honolulu, February 8, 1966, the Government of Vietnam states, "We are dedicated to the eradication of social injustice among our people. We must bring about a true social revolution and construct a modern society in which every man can know that he has a future; that he has respect and dignity; that he has the opportunity for himself and his children to live in an environment where all is not disappointment, despair, and dejection; that the opportunities exist for the full expression of his talents and his hopes." The government of the United States more specifically promised, "The United States will give its full support to measures of social revolution including land reform based upon the principle of building upward from the hopes and purposes of all the people of Vietnam." Also, a joint communique (issued after the Honolulu conference,) by U.S. President Lyndon B. Johnson and Lt. Gen. Nguyen Van Thieu, Chairman, National Leadership Committee, Republic of South Vietnam, stated, "Cabinet members of both Governments had thorough discussions of special needs of the people of South Vietnam in the fields of agriculture, health, and education. In agriculture it was agreed that special effort would be made to move agricultural techniques--particularly new species of highly productive rice and corn and vegetable seed--from the experimental station to the farmer in the fields. Steps for more rapid land reform were carefully reviewed. It was agreed that Secretary of Agriculture Freeman and a team of agricultural experts would proceed at once to Vietnam for the purpose of developing enlarged programs of agricultural cooperation."

Considerable criticism has been directed at alleged irregularities related to Vietnamese land administration; however, much of this criticism is based on theory and speculation rather than on evidence. Also, the criticism often made little or no allowance for the conditions of war. It is thus essential that the Government of Vietnam have meaningful and factual data to provide it with effective controls against abuses and to protect itself from unfair and unjustified criticism, as well as to serve as a basis for land reform programs.

Objectives of Volume I

The material contained in this volume was for the most part prepared for an interim report issued in November 1967. Two purposes of that report were to document the legal and administrative framework under which land reform policies were being implemented and to determine the progress in carrying out land reform policies. Another purpose of the original report was to assemble in one volume all of the relevant, available information on the land reform situation and to assess this information in terms of omissions, inconsistencies, and reliability. Finally, the research was aimed at generating new data essential to implementing existing programs and to progressing toward development of new land reform policies.

Much of the text in this volume has been rewritten, and the data have been updated, insofar as possible, to July 1968. Also, more selectivity has been exercised in the preparation of the statistical and documentary appendix material. This volume attempts to bring together the information necessary to understand the legal and administrative framework and the status of progress in land reform in the Republic of Vietnam.

Volume I is designed to provide a benchmark in the development of meaningful statistics that are a prerequisite to rational policy planning. Only from a basis of fact can appropriate assessment be made of the impact of proposed ordinances and directives.

Scope and Method of Approach

Information contained in this volume was taken primarily from statistics, surveys, maps, reports, and studies in the USAID Mission files, as well as documents in the Vietnamese, French, and English languages in the files of GVN ministries and other agencies. Field observations were made to assist in interpreting the data, and the volume includes both a compilation of data and some preliminary evaluation of those data.

Because tabulations of data seldom can stand alone, a narrative report has been written that not only points out important facts, numbers, and ratios, but also strives to interpret, provide background, and convey understanding.

Priority has been given in the volume to the Southern Region of Vietnam, including the Mekong Delta. Because of time limitations and the Viet Cong Tet offensive of January 30, 1968, most of the project team's field trips were limited to the Delta area.

Unfortunately, the war in Vietnam has precluded the possibility of obtaining certain information in the normal administrative fashion. Lack of data has been further aggravated by destruction of various records. The nonavailability of current information and the destruction of historical records have compounded the problem of developing accurate land reform intelligence.

Organization of Volume I

Volume I is in two parts. Part 1 contains narrative sections that include salient information and tabular summaries of statistical data. Basic statistics, maps, legal and administrative documents, and certain descriptive materials are included in Part 2. The narrative sections are keyed to the contents of Part 2 by appropriate footnotes and references.

Part 1 contains an Introduction followed by a resume and discussion of the major legislative and executive directives concerning land reform, and a review of land reform and tenure conditions, including data to indicate the status and progress of current programs.

The major portions of the material in Part 2 are (1) translations of the principal ordinances and regulations dealing with land reform and (2) the most pertinent statistical data relating to the status of land tenure and reform programs in Vietnam. The translations were by Vietnamese. Since this work was not performed under supervision of Stanford Research Institute, the Institute has not edited the original translations either for content or language structure.

Although the statistical material is considered to be the best available, there are inconsistencies in the data that cannot be reconciled. There is an urgent need for the re-establishment of sound record-keeping and data collection procedures throughout the land affairs and tax offices in the central administration in Saigon and other government levels. The

present condition of the basic land and tax records is such that it is difficult to have confidence in the accuracy of some of the data. However, many of the data are sufficiently accurate to provide a basis for land reform policy considerations.

Acknowledgments

The names of the many USAID and GVN staff members who made substantial contributions to the work of the project team in this study are too numerous to mention individually. However, special mention must be made of the contributions of Mr. John L. Cooper, Special Assistant to the Director for Land Reform (USAID), for his unfailing support of the project; Mr. Keith W. Sherper, Assistant Land Reform Adviser, for his patient and dedicated assistance; and Mr. Leland E. Fallon, for his effective administrative support. Mr. Nguyen Xuan Khuong and Mr. Cao Thanh Chuong, Specialists in the USAID Land Reform Advisor's office, have been invaluable sources of information.

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Volume I was prepared by Mr. William J. Tater, Task Leader, with the assistance of Dr. Robert M. Reeser of Ohio State University, Mr. Waldo M. Sands, private consultant, and Professor Roy L. Prosterman of University of Washington. Research assistance was provided by Miss Claudia Grill, Mr. Gary D. Fitzpatrick, and Miss Francesca Mayer, and secretarial support by Miss Claudia G. Stockman and Miss Darlene N. Wheeler.

The overall land reform project was under the technical leadership and administrative management of Dr. William Bredo, Project Director, and Mr. Robert O. Shreve, Project Field Director.

Chapter 2

MAJOR EVENTS AND LEGISLATION CONCERNING LAND TENURE AND REFORM IN SOUTH VIETNAM

1930

Civil Court of Annam
Articles 1199 to 1209 Metayage made legal.

1949

July 1, 1949 Bao Dai decrees to formally established the State of Vietnam and provide a basis for its organization within a constitutional framework.

1951

Feb. 2, 1951 first evidence (though a propaganda move) of interest in agrarian reform came in the Vietnamese New Year message of Emperor Bao Dai in which he promised regularized tenancy agreements and credit control, although quickly adding, "without, of course, impairing the interests of the established large land owners..." He also promised that peasants who had been given land by the Communists would be allowed to retain their holdings when the "troubles" were over. Nothing came of these promises.

1952

Mid-1952 National Committee for Agrarian Reform organized.

1953

Early 1953 President Nguyen Van Tam announced that henceforth rents were in no case to exceed 15 per cent of the crop, and this ruling was followed up in June 4, 1953 by a number of legal provisions.

Ord. 19	6/4/53	Established a committee to investigate abandoned concession lands & distribute them for cultivation.
Ord. 20	6/4/53	Set forth landlord - tenant relationships including maximum rental rate at 15% of total crop.

- Ord. 21 6/4/53 Fixed the retention-rate of ricelands. (No attempt to expropriate or transfer excess made at this time).
- Ord. 22 6/4/53 Established usufruct rights for farmers who squatted on land left uncultivated. (Later repealed.)

1954

- 5/8/54 French forces at Dien Bien Phu surrender to Vietminh armies under Vo Nguyen Giap.
- 7/7/54 Bao Dai appoints Ngo Dinh Diem as premier of State of Vietnam.

October 24, 1954 Pres. Eisenhower sends a letter to Premier Diem of South Vietnam stating that American assistance will be given directly to the government of South Vietnam. The letter also stated that the U.S. government "expects this aid will be met by...undertaking needed reforms."

Fall of 1954 American and French advisers agreed that the immediate goals of land reform could be realized by a rent reduction and tenure security program. Government not ready to embark upon such a reform.

1954 Ord. 2 promulgated.

Mr. W. Ladejinski was Special Advisor to President Ngo Dinh Diem for Land Reform.

1955

January 1, 1955 U.S. begins to render direct assistance to Vietnam.

- Ord 2 1/8/55 Modified Ord. 20 - increased rental rates to 25%; set a maximum interest rate of 12% for equipment & animals used; secured tenure for 3 years with right of renewal, etc.
- Cir. 5 1/18/55 Limited application of Ord. 2 to ricefields and annual cropland, other than plantation or industrial crops.
- Ord. 7 2/5/55 Provided for leasing and recultivation of abandoned privately - owned lands. (Expired 12/31/55.)
- Spring 1955 Diem defeated the Binh Xuyen armies and anti-government elements of the Cao Dai and Hoa Hao.

May 10, 1955 Premier Diem forms a new Cabinet composed largely of his own followers. Mr. Nguyeu Van Thoi, Inspector General for Cadastre (now Land Affairs) appointed Minister for Land Registration and Land Reform. He was responsible for reorganization of the Ministry by Decree 19 dated April 6, 1955.

Decree 145 5/10/55 Fixed the composition of the Government: A Directorate General of Land Reform (in Min. of Agric.) and an Inspectorate General of Cadastre (in Min. of Finances).

Note 372 5/23/55 Created the position of Minister of Land Registration and Land Reform with some agencies under his management such as Dir. Gen. of Land Reform and Insp. Gen. of Cadastre.

Decree 197 6/4/55 Fixed responsibilities of the Minister of Land Registration and Land Reform.

July 1955 The increasing stability achieved by the National Government had changed the environment and more orthodox positions were taken by tenants and landlords, with peasants in favor and landlords protesting that rent rates were too low.

October 1955 Bao Dai deposed by referendum in South Vietnam; Diem wins and proclaims Republic.

Arrête 24 11/16/55 (Modified by Arrête 11/25/55) Related to the organization of the Ministry of Land Registration and Land Reform.

1956

Ord. 28 4/30/56 Replaced Ord. 7 - recultivation of uncultivated private lands as well as abandoned lands leased by Government.

July 1956 Date for elections to unify Vietnam passes.

October 22, 1956 President Diem announced a land transfer program framed in cooperation with American officials and unofficial advisers.

Ord. 57 10/22/56 Established land transfer program aimed at a more equitable distribution of land ownership. Retention rate of 100 hectares set and excess to be expropriated.

October 26, 1956	South Vietnam's first constitutional is promulgated and the National Constituent Assembly is officially transferred into a National Assembly.
November 9, 1956	Mr. Nguyen Van Thoi resigned. Mr. Do Van Cong was appointed Minister for Land Registration and Land Reform in order to improve the Land Reform Program.
Cir. 56 11/21/56	Census to be made of farmers requesting lands under Ord. 57 provisions.
 <u>1957</u>	
Decree 2 1/4/57	Established Land Reform Funds.
Cir. 1 1/7/57	Landlords required to make written declaration of excess holdings over 100 hectares.
February 25, 1957	Nguyen Ngoc Tho, Vice President of the Republic became concurrently the Minister for Land Registration and Land Reform, replacing Mr. Do Van Cong who was wounded.
Arrêté 26, Feb. 28, 1957	Established the organization of the Ministry for Land Registration and Land Reform.
Cir. 5 3/21/57	Recalled for landlord's declarations.
Arrêté 74 4/4/57	Established the National Council for Land Reform
Decree 74 4/4/57	Decisions of Land Reform Court must have approval of the National Council for Land Reform.
Decree 75 4/4/57	Established Provincial Committee for determining current value of rice lands.
Decree 76 4/4/57	Established 3 National Committees for Land Reform: Regulation Census and Supervision Finances
Cir. 14 4/22/57	Implemented Decree 75 of April 4, 1959 and established subcommittee for carrying out land valuation.
Cir. 22 5/28/57	Implemented Ord. 57 fixing regulations governing expropriation and distribution of agricultural land.

Ci4. 1982 6/6/57 Area of land reserved for ancestor worship to be limited to 15 hectares in Southern Vietnam and 5 hectares in Central Vietnam. Fixed time - limit for landlords to produce papers properly dated.

September 1957 The Government announced a schedule of prices based on productivity at which landowners would be compensated for their holdings and indicated that tenants would be able to purchase the land at the same price.

Cir. 45 9/11/57 Price rate of expropriated land.

Cir. 49 9/24/57 Supplemented Cir. 22, concerning joint-ownership regulations and limiting worship land (riceland & garden area) to 15 hectares.

Arrêté 114 10/19/57 Established District Committee for yield valuation.

Cir. 58 11/11/57 Implemented Arrêté 114 of Oct. 19, 1957: fixing the composition of the District Committee in charge of yield evaluation.

Decree 498 11/27/57 Established the Land Reform Court. Tenant had recourse to use when conciliation failed.

Decree 500 11/29/57 Established regulations for compensation to landlords (checks & Land Reform Bond).

Cir. 63 12/4/57 Implemented Arrêté 114 of Oct. 19, 1957: designating landlord as member of District Committee.

Cir. 67 12/11/57 Supplemented Cir. 49 of Sept. 24, 1957: Maximum limit of worship land. Refusal of worship. Change in use of worship land.

Cir. 68 12/11/57 Immediate meeting of yield valuation committee.

Cir. 69 12/11/57 The case of heirs as joint-owners.

By end of 1957 Setting of land prices was virtually completed.

1958 Mr. Do Van Cong returned to the position of Minister for Land Registration and Land Reform.

January 4, 1958 Large Communist guerilla band attacks plantation north of Saigon, reflecting steady increase in Communist armed activity in South Vietnam since mid-1957.

Cir. 15	1/30/58	Implemented Arrêté 114 of Oct. 19, 1957: concerning yield valuation committee. (Signature of members.)
Cir. 14	1/30/58	Concerned amount of land rents to be paid according to number and type of crop. (31 & 32 completed rules set down in 14 and 18.)
	18 2/6/58	
	31 & 32 4/22/58	
Cir. 4054	3/14/58	Implemented Decree 498 of Nov. 27, 1957: First Instance Court acts as Agrarian Court.
May 9, 1958		President Diem marked the first fully completed transactions under Ordinance 57 when he handed the first title deed to a new owner and the first down-payment check and Land Bond to an expropriated landlord at a ceremony at Cai Lay, 60 miles south of Saigon.
Cir. 50	7/10/58	Implemented Ord. 57: authorization to landlords for sale of excess land over 100 hectares.
Sept. 10, 1958		France and South Vietnam sign agreement under which France provides aid for the Vietnam government's agrarian reform program--1,490 million francs.
October 3, 1958		Major changes in the staff of the Directorate General in order to improve land distribution.
October 9, 1958		Agreement concluded between the Government of France and the Government of Vietnam - the former allocated 1,490,000,000 francs (US \$ 2,900,000) for the purchase of all the French rice lands.
Cir. 67	10/25/58	Called for the District and Provincial Agricultural Committees to "temporarily cease their activities."
Decree 558	12/5/58	Modified Decree 498 establishing the Land Reform Court.
Cir. 3329	12/31/58	Communique: final term for presentation of papers with respect to ownership or others' rights.
End of 1958		Major changes in the senior staff in charge of Land Reform at the Ministry level in order to improve land reform.

1959

- Cir. 25 1/15/59 Concerned amount of land rents to be paid according to number and type of crop, (modified Cir. 31 & 32).
- Cir. 6 3/3/59 Maximum delay for reexamining a lawsuit by Agrarian Court.
- Decree 81 4/1/59 Modified Decree 500 concerning compensation to landlords (Land Reform Bonds).
- Cir. 19 6/1/59 Dealt with uncultivated lands with forest-type vegetation.
- Arrêté 335 8/11/59 Exchange of Land Reform Bonds.
- Cir. 38 9/3/59 Regularized worship land: Several holdings of worship land; donated land disguised as worship land; worship after 5 generations; landlords no heirs; rotative farming worship land; procedures for regularization; court's competency.
- September 9, 1959 Mr. Huynh Huu Nghia, Minister for Labor appointed to the position of Minister for Land Registration and Land Reform. Mr. Do Van Cong resigned.
- Cir. 3093 9/9/59 Communique to landlords owning more than 100 hectares for declaration.
- Cir. 3407 10/6/59 Communique to landlords who request authorization for sale of excess land over 100 hectares.

Late 1959 The French landowners accepted the terms of their government and the transfer of the land to the Government of Vietnam commenced in early 1960.

- Arrêté 211 12/1/59 Established the organization of the Directorate General for Land Administration and Topography (including the Directorate of Land Registration and the Directorate General of Cadastre).

1960

- Cir. 358 1/8/60 Note to Land Affairs Officer about time limit for final procedure in selling excess land.
- Cir. 3 1/9/60 Regularized worship land.

Decree 28 1/25/60 Modified Decree 500 concerning compensation to landlords (Land Reform Bonds).

Cir. 9 2/22/60 Management of lands purchased from French owners.

April 30, 1960 An opposition group of 18, calling themselves the Committee for Progress and Liberty, sends letter to President Diem demanding drastic economic, administrative, and military reforms.

November 11, 1960 Military coup attempt against President Diem's regime. Rebel Col. Thi declares that President Diem is guilty of autocratic rule and nepotism and has "shown himself incapable of saving the country from communism and protecting national unity."

November 12, 1960 Loyalist troops enter the capital and subdue the rebels.

November 13, 1960 U.S. State Dept. expresses satisfaction at the failure of the coup against President Diem and also hopes that "his powers will be established on a wider basis with rapid implementation of radical reforms and energetic action against corruption-suspected elements."

December 1960 National Liberation Front of South Vietnam is organized.

1961

Cir. 8 2/27/61 Landlord may rent his land (within retention limit) freely as he wishes; compensation to expropriated landlords and other matters relating to absentee landlords, abandoned lands, etc.

April 3, 1961 United States-Vietnamese Treaty of Amity and Economic Relations signed in Saigon. National Assembly ratifies treaty on June 14.

April 4, 1961 Pres. Diem appeals to the I.C.C. to make an "immediate and energetic investigation" of growing Communist terrorism and subversion throughout South Vietnam.

Decree 120 5/18/61 Establishing the Ministry of Rural affairs including The Directorate General for Land Administration, The Directorate of Land Reform, and other agencies of the former Ministry of Agriculture and the NACO and the Commisariat General for Land Development. The Directorate General of Land Administration did not supervise the Directorate for Land Reform which was a separate agency.

May 18, 1961 Mr. Tran le Quang appointed Minister for Rural Affairs.

October 2, 1961 Pres. Diem declares at the opening of the National Assembly's budgetary session: "It is no longer a guerilla war...It is a war waged by an enemy who attacks us with regular units fully and heavily equipped and who seeks a strategic decision in Southeast Asia in conformity with the orders of the Communist International." The President also says that the U.S. committee headed by Dr. Eugene Staley recommended an increase in aid both for military measures and for economic and social development.

November 1961 Kennedy administration steps up its military aid to Diem regime.

Cir. 6 11/3/61 Management of undistributed Former French lands.

Cir. 79 11/22/61 Punishment to landlords who do not declare their lands.

1962

January 4, 1962 A joint United States-South Vietnamese communique announces "broad economic and social program (to raise living standards)..."

April 20, 1962 National Assembly pledges full support to Pres. Diem's plan to establish thousands of "strategic hamlets" in the Communist-infested Mekong Delta during the current year.

Arrêté 200 5/8/62 Organized the Directorate General for Land Affairs including the Directorate for Land Reform and the Directorate General for Land Administration. The government recognized the error in the organization of May 1961: Land Reform activities ceased during 1961-62.

Decree 124 5/31/62 Applied Torrens' type systems of title determination and administration.

Cir. 4983 7/24/62 Time-limit for payment by new owners of land is extended.

Cir. 6729 9/24/62 Compensation for expropriated land in Land Development and Resettlement Centers.

Cir. 7289 10/11/62 Aimed at implementing Decree 124 of 5/31/62 by setting priorities for conducting of cadastral surveys. .

October 26, 1962 National Assembly extends by one year Pres. Diem's emergency powers to rule by decree.

December 29, 1962 Government in Saigon announces that 4,077 strategic hamlets have been completed (of a total of 11,182 to be built) and that 39 percent of South Vietnam's population is now living in these communities.

1963

Cir. 2661 2/28/63 Formalities for transfer of Land Reform Bonds. Enforcement of Art. 13, Ord. 57.

Cir. 4461 4/11/63 Regulated illegal squatting on government lands by transforming the squatting into a tenancy.

June 1963 Buddhist militant elements erupt in South Vietnam.

October–November 1963 Diem overthrown and assassinated along with his brother, Ngo Dinh Nhu.

November 1963 Military regime under Duong Van Minh established. Not only Land Reform, but other programs were slow. (Destruction of strategic hamlet, rural agglomerations, land development centers, resettlement centers.

1964

January 1964 Coup d'état by General Nguyen Khanh.

January 17, 1964 The joint Vietnamese-American survey of the strategic hamlet program shows serious flaws and less than 20 per cent of the 8,000 villages as viable. Gen. Nguyen Khanh was to say in April, 1964, that Viet Cong controlled close to 7 million (about 57 per cent of South Vietnam's rural population).

March 7, 1964 General Khanh announces a one-year reform program to rebuild South Vietnam's political and administrative structure and raise standard of living.

Arrêté 192 3/19/64 Placed central organization of Land Reform Courts outside the Dir. Gen. for Land Affairs and under the Ministry of Agriculture.

Cir. 4095	3/25/64	Fixed maximum area which each farmer may rent for cultivation and granted provisional concessions of land to illegal squatters.
May 18,	1964	The White House requests an additional 125 million dollars for economic and military aid to Vietnam.
Decree 217	6/18/64	Modified composition of the National Council for Land Reform.
August	1964	Militant Buddhists demonstrate against Khan regime.
August	1964	General Khanh ousted; Dr. Nguyen Xuan Oanh becomes acting premier.
September	1964	General Khanh returns as premier.
September	1964	Coup d'état led by General Lam Van Phat fails.
Cir. 13.157	9/7/64	Reconsidered the period prohibiting rental, sale, mortgage or pledging of expropriated land.
October	1964	Saigon's Major, Tran Van Huong, replaces Khanh.
Decree 7	10/2/64	Set tenure security under rental contract at 5 years.
Decree 8	10/2/64	Modified Article 14, Ord. 57 - changing period of payment for expropriated land to 12 years instead of 6.
Arrêté 705	11/24/64	Gave province chiefs the right to approve decisions on granting of definite ownership rights without compensation to squatters on state-owned lands.
Cir. 16601b	11/24/64	Regulated the squatter situation on state-owned lands by granting ownership rights free of charge.
Decree 359	12/10/64	Landlords owning more than 100 hectares given 3 months to submit written declaration of excess over 100.
 <u>1965</u>		
January	1965	Premier Huong deposed, replaced by Dr. Oanh again.
February 16,	1965	Dr. Phan Huy Quat replaces Dr. Oanh as premier; but General Khanh retains actual power.

February 21, 1965	Military leaders backing Khanh force him to go abroad; power goes to civilian regime of Phan Huy Quat, and chief of state Phan Khac Suu.
Cir. 2236 3/10/65	Redistribution of expropriated land given back by farmers receiving Ord. 57 land; establishing new titles, replacing old ones which have been lost.
May 27, 1965	Political crisis in South Vietnam touched off by Roman Catholic resentment of Phan Huy Quat regime.
June 1965	The civilian government of Phan Huy Quat replaced by the military government of Generals Nguyen Van Thieu and Nguyen Cao Ky.
Arrêté 985 7/2/65	Organized the Ministry of Agriculture.
Arrêté 405 7/28/65	Modified Article 2, Arrêté 705 of 11/24/64, transferring approval power to Ministry of Agriculture.
Cir. 9275 8/23/65	Allocation of Communal Lands for cultivation bringing them under landlord-tenant controls of Ords. 20 and 2.
Cir. 9277 8/23/65	Distribution of lands purchased from French owners; transfer recording; delay for annual payment.
Decree 489 8/27/65	Outlined the responsibilities of the Directorate General for Land Affairs.
Cir. 13157 9/7/65	Any drains, paths, marshes or ponds considered as part of expropriated land under the principle "the accessory follows the principal" and the recipient must purchase these "accessories" to the land.
Decree 20/65 10/8/65	Modified Article 14, Ord. 57 - granting permanent (title) ownership rights to farmers purchasing expropriated land.
Decree 21/65 10/8/65	Granted permanent ownership rights without compensation to farmers at the Land Development Centers and Resettlement Centers.
Cir. 11.000 12/15/65	"Solution to confusion of farming and ownership rights; and collection of back rents during past insecure years."

1966

- Decree 2 2/15/66 Farmers purchasing expropriated land exempted from land tax and other fees during 12 years of payment for land.
- Cir. 5619 5/27/66 Allocation and renting of Communal Lands to follow rental regulations as set down in Cir. 9275 of 8/23/65 instead of bidding practices.
- Decree 217 6/18/66 Modified composition of National Council for Land Reform.

1967

- Decree 2/67 2/14/67 Procedure for the regularization of transfer of property which is occupied for the execution of public works, national defense or public interest projects.
- Decree 22/67 2/14/67 Further regulations concerning expropriation of private property, transfer of ownership and payment procedures.
- Arrêté 2/65 3/10/67 Granted ownership rights to Vietnamese citizens located at Land Development and Resettlement Center on state-owned lands which they are actually exploiting.
- Cir. 61 3/28/67 "Solution to confusion of farming and ownership rights; and collection of back rents during past insecure years."
- Cir. 8379 8/12/67 Simplified procedures for compensation to landlords for expropriated lands. Allocation of land in Land Development and Resettlement Centers.
- September 3, 1967 Election of Nguyen Van Thieu and Nguyen Cao Ky as President and Vice President of the Second Republic of Vietnam.
- Decree 41/67 10/18/67 Transfer of the land tax to local areas (including new rates).

January 18, 1968	National Land Reform Conference, Saigon.
January 31, 1968	Communist Tet offensive.
March 20, 1968	Circular 2295 issued, establishing the condition that rents paid by tenants on government lands subsequent to purchase application would apply to purchase price.
May, 1968	President Thieu installs new premier and cabinet.
June, 1968	Special Land Reform Fund Committee creates DGLA-AID fund and administrative organization for an accelerated land reform program.
September, 1968	Redistribution of former French lands in Choung Thien and Kien Tuong Provinces under accelerated land reform program.

Sources: USAID Office of the Special Assistant to the Director for Land Reform, Saigon, November 1967.
The Viet-Nam Reader, Articles and Documents on American Foreign Policy and the Viet-Nam Crisis, ed. by Marcus G. Raskin and Bernard B. Fall. Random House, N.Y., 1965.
Vietnam: History, Documents and Opinions on a Major World Crisis. Ed. by Marvin E. Gettleman, Fawcett Pub. Co., 1965.
 Gittinger, J. Price: "Rent Reduction and Tenure Security in Free Vietnam." Journal of Farm Economics, Vol. 39, No. 2, May 1957.

Chapter 3

LEGAL FRAMEWORK FOR LAND REFORM*

Overview of Early Land Reform Enactments

The Vietnamese struggle for independence stressed the need for a wider and more equitable distribution of land ownership as well as alleviation of injustices inherent in prevailing land tenure policies.

In the New Year's message of February 2, 1951, Emperor Bao Dai proclaimed the need for land tenure reform and followed this announcement with the establishment of a land reform committee in December 1952. In the following month (January 1953), Prime Minister Tam announced that a land reform scheme would be carried out, and subsequently, on June 4, 1953, promulgated four ordinances to establish such reform:

Ordinance 19 established a committee to investigate abandoned concession lands and to distribute them for cultivation. Concession lands are government-owned lands suitable for farm cultivation often in forested areas and given to private individuals for development subject to certain conditions in a program rather similar to "homesteading."

Ordinance 20 established regulations governing tenant farming. It established a maximum rental rate of 15 percent of the total annual crop on rice fields or other annually cropped agricultural land.

Ordinance 21 limited large scale ownership of land by restricting land retention to between 12 and 36 hectares in North Vietnam, 15 to 45 hectares in Central Vietnam,

* The reference materials of this chapter are for the most part legal enactments: ordinances, decrees, etc. An effort has been made to include in Part 2 translations into English of all of the relevant major enactments in their most recent and currently applicable form and also supplementary or modifying enactments when the precise wording or interpretation of these is vital.

and 30 to 100 hectares in South Vietnam. The actual area of land retained would vary with the family size of the owner. Although this ordinance was introduced as a measure to distribute land more equitably, no attempt was made to expropriate land or to transfer excess land above the retention limit.

Ordinance 22 established usufruct rights for farmers who squatted on private land that was left uncultivated. Usufruct is a high order of use rights for land that permits the occupancy and use of land and receipt of income therefrom for periods of time under various conditions. The bare legal title remains with the owner of the land, who gets his full rights back if and when the usufruct terminates. Usufruct is discussed in more detail later in this chapter.

Although these ordinances introduced important reforms, they were never enforced. Ordinance 22 was later repealed.* The land tenure and distribution problems remained until Ngo Dinh Diem attempted to resolve them.† Emperor Bao Dai in May 1954 asked Diem to become Prime Minister and form a government. Diem's popularity rested on his dual opposition to Communism and French rule. However, Vietnamese landlords feared Diem's call for a national "revolution," which implied radical projects or agrarian reform. Indeed, they sabotaged every effort made by Diem to gain control of the government apparatus. Although Diem had the mandate, he lacked the power to carry out his intended policies.‡

In the Mekong Delta, half of the cultivated land was owned by only 2.5 percent of the landlords, and 80 percent of the land was tilled by tenant farmers. By 1954, high land rents, irrigation fees, tenure insecurity and high interest loans had turned many poor peasants into

* Appendix D-13, Article 20 of Ordinance 7, dated February 5, 1955. All Appendixes referred to are those included in Part 2 of this volume.

† There was one notable exception. Colonel Jean Leroy, in charge of Ben Tre Province, introduced and enforced a regulation cutting tenants' rents in half. The one and only province in which Bao Dai succeeded in achieving popular support in the January 25, 1953, municipal elections was in Ben Tre, demonstrating that a policy of reforms did have a chance of creating popular determination to resist the Viet Minh. (Joseph Buttinger, Vietnam: A Dragon Embattled, Vol. II, Vietnam at War, Frederick A. Praeger, New York, p. 782, 1967.)

‡ Ibid., pp. 849-58.

Viet Minh supporters * Diem recognized agrarian reform as one of his most urgent tasks. He appeared to recognize this as a method of reducing the appeal of communism to the rural masses.†

Diem's administration attempted to alleviate four principal problems facing tenant farmers by:

1. Placing effective limits on rental charges.
2. Providing the tenant with a greater degree of security of tenure.
3. Placing limits on the obligation to pay rent in the event of substantial crop failure.
4. Placing the tenant in a legal position to have right of first refusal should the landlord attempt to sell the land.

On January 8, 1955, Prime Minister Diem introduced Ordinance 2,‡ which tackled the problem of land tenure by amending and implementing Ordinance 20. This ordinance modified the rental limit making legal a range from 15 to 25 percent of the value of the principal crop; placed restrictions on payment landlords could claim for implements, seed, and so forth provided to their tenants; and increased the tenants' security of tenure.

Ordinance 7§ was promulgated on February 5, 1955, to provide for leasing and recultivation of abandoned, privately owned lands. This ordinance was later amended by Ordinance 28** of April 30, 1956, which applied to uncultivated private lands as well as to abandoned lands of unknown ownership leased by government authorities.

In 1956, Diem in his new office of President decided to implement a policy of land distribution. He promulgated Ordinance 57†† which limited ownership of riceland to 100 hectares and provided for expropriation of excess land holdings. Where families already had provided for additional

* Ibid., p. 920

† Wesley R. Fishel, Foreign Policy Association Headline Series No. 163, "Vietnam, Is Victory Possible?", February 1964, p. 32.

‡ Appendix D-2, Ordinance 20, dated June 4, 1953, as amended by Ordinance 2, dated January 8, 1955, and further amended.

§ Appendix D-13, Ordinance 7 of February 5, 1955.

** Appendix D-14, Ordinance 28 of April 30, 1956.

†† Appendix E-3, Ordinance 57 of October 22, 1956.

farmland to be used to maintain ancestral worship areas, up to 15 hectares beyond the 100 hectare limit were to be permitted. However, no new worship lands were permitted beyond the 100 hectare limit. Provision was made for the government to pay landlords for this expropriated land with 10 percent cash and the balance of 90 percent by nontransferable bonds bearing 3 percent interest and amortized over a period of 12 years.

Ordinance 57 also set forth priorities for receipt of redistributed expropriated lands, with the first opportunity to purchase given to those tilling the land in question.

The French government cooperated with this distribution of ricelands and, under terms of the Vietnamese-French Convention* of September 10, 1958, undertook to finance the Vietnamese government purchase of French-owned ricelands.

Several aspects of the agrarian program introduced by the Vietnamese government in 1955 and 1956 were certain to antagonize those peasants who had benefited from the Viet Minh's land policies. For example, large numbers of peasant tenants suddenly had to pay rent to landlords who, during the nine years of colonial war, had been in Saigon under French protection. Since the peasants had come to regard the lands they had been tilling as their own, they were unhappy when Diem's officials not only collected taxes from them but also demanded rent in behalf of these landlords. The governments' decrees that rents be reduced to 25 percent of the crop value held little attraction for peasants who had not been paying rents for many years. Other aspects, such as redistribution policy, which looked moderately attractive on paper, were carried through in a way that alienated many of the peasants.†

In summary, the major items of Vietnamese legislation dealing with the reform of land tenure are at present Ordinances 20 and 2,‡ governing landlord-tenant relationships; Ordinances 7 and 28,§ dealing with

* Appendix F-1, Convention of the Operations of Purchasing French-owned Rice Fields.

† G. McT. Kahn and J. W. Lewis, The United States in Vietnam, C. V. Origins of the Civil War, Delta Book, 1967, p. 103. Also, U.S. Senate, "U.S. Policy with Respect to Mainland China," 89th Congress, 2nd Session (Washington: U.S. Government Printing Office, 1966) p. 349.

‡ Appendix D-2.

§ Appendixes D-13 and D-14, respectively.

cultivation of abandoned lands; and Ordinance 57,* governing acquisition and redistribution of the lands of large landowners. There are, in addition, special provisions governing certain categories of lands including former French lands, squatter occupied public lands, land development and resettlement center lands, communal lands, and "confused" lands.†

Additional materials included for more complete understanding of land tenure are the 1925 land code derived from the French; the French civil code of Cochín China; the Royal Central Vietnam Code; other elements of the general laws of real property, originally adopted under the French, all of which continue to regulate all areas not pre-empted by the tenure-reform laws; and a long series of administrative pronouncements by which the reform laws ultimately were intended to find their way into actual application in the field, ranging from formal decrees, to the contract forms supplied by the government and the instructions given the cadres of the Revolutionary Development program on how to handle landlord-tenant disputes.

Much earlier than most of the above-mentioned legislation, a decision of the French Governor-General of Indochina, in 1903, defined the basic categories of land holdings as follows:

1. Public domain: road rights-of-way, rivers, lands within 81 meters of the coastline, etc. These were open to use by all.
2. French government lands: military installations, lands on which French administrative buildings stood, etc.
3. Indochinese lands: lands on which government buildings, etc., relating to the whole of Indochina stood.
4. Local domain: lands belonging to the regions of Indochina, including the public lands of Annam, Cochín China, and Tonkin. This was a very substantial category and included extensive reaches of uncultivated land, as well as jungle and mountain lands.
5. Provincial domain: land on which provincial administrative buildings stood and also certain worship lands purchased with provincial funds.

* Appendix E-3.

† Relevant circulars are Circular 11000 of Dec. 15, 1965, and Circular 61XD of March 1967.

6. Communal lands:

- a. Land for which the legal title rested in the King, with the village having the right of usufruct. Unlike the ordinary usufruct, this was inalienable; the village could not sell its rights in the land. It appears that the bulk of communal land was of this category.
- b. Land privately owned by the village and fully subject to its powers of disposition with authorization from district or province chiefs who control administration of village operations.

7. Private landholdings.

The government of Vietnam succeeded to all ownership rights held by previous central governmental authorities with respect to lands in categories 2, 3, 4, and 6a. To these lands were added the lands acquired under Ordinance 57 and from French owners. The basic categories of ownership would thus appear to be reduced to five: public domain, government (national) land of several classes, provincial domain, village-owned land, and private landholdings.

Landlord-Tenant Relationships - Cultivated Lands

Starting in 1953, the GVN land reform program sought to improve landlord-tenant relationships by providing rent control and other protection for tenants.

General Provisions

The landlord-tenant regulations under Ordinance 20, dated June 4, 1953,* require a written lease according to a specimen "Type A" contract,† provide for security of tenure, set the rental limit at 15 percent of the total annual income, and include a rent escape clause in case of a short crop, and the right of first refusal to purchase.

* Appendix D-2

† Appendix D-3, Tenant Contract Type A.

The modifying 1955 ordinance* provided that a copy of the contract be kept in the files of the local Village Council, changed the rental limit to 15 to 25 percent of the value of the annual harvest of the principal crop, and set limits on the charges landlords could make for advances of seed or fertilizer (at actual cost plus annual interest not to exceed 12 percent) or for leased cattle or implements (at 12 percent of their value).

The 1955 ordinance appears to have marked the beginning of a serious program in the area of landlord-tenant relations, with, however, some modifications and adjustments as the program progressed. While the basic ordinance stated that it was applicable to "rice-field or agricultural land," a later circular† limited its application to rice field and annual crop land, other than plantation or industrial crops. The land reform portion of the current handbook issued to Revolutionary Development cadres‡ asks: "Does the tenancy statute stipulate the land for growing vegetables, sugar-cane, fruit, etc.?" And answers, "It does stipulate the land for rice cultivation only. As to the land for other crops, it is up to the arrangements between lessors and tenants." Although this is not an official interpretive regulation, it does point out a problem of defining ricelands. In practice, ricelands are assumed to include those lands on which agricultural crops are planted annually.§

Subjects of Contract Coverage

The legal regulations sought to control security of tenure, lease renewal, and levels of rent payment; to provide means of settling disputes; and to protect tenants in case of crop failure.

Security of Tenure. As to the legal control of tenure security under the contract, the contract period was five years, originally subject to three-year termination if the lessor wished to cultivate the land himself or through a lineal descendant, but this was changed to five years in 1964.** The other basis for cancellation of the

* Appendix D-2, Ordinance 2 of January 8, 1955, superimposed on Ordinance 20.

† Appendix D-4, Circular 5, January 18, 1955.

‡ Appendix D-19, Questions and Answers on Tenant Regulations.

§ Appendix D-4, Circular 5, paragraph 1, Purposes of Land Reform.

** Decree 007-CT/LDQGQL/SL, dated October 2, 1964.

contract or refusal to renew it is stated to be "any other serious and legitimate reasons such as non-payment of farm rent ... or action of the farmer which would be detrimental to proper cultivation of the leased land ..." (Ordinance 2, Article 9). It may well be that this does not depart substantially from the general property law provision Article 245 of the 1925 Code, which states: "The lessee is held: 1. To use the land according to the intention that has been expressed by the contract; and 2. To pay the rental for the leasehold upon the terms agreed."

The "Annual Report on Land Reform Activities During 1965" published by the Ministry of Agriculture indicates that, from the creation of the Land Reform Court in 1958 to hear disputes under the Ordinances through December 31, 1965, 2,007 lawsuits were received, of which the largest category by far, 1,060 concerned "disputes on reversion of land by landlords."*

In case of cancellation or nonrenewal, either landlord or tenant is supposed to give at least six months' notice to the other (Ordinance 20, Article 10).

Renewal of Lease. Taken in context, it appears to have been the intention of these ordinances to raise tenants to a new and permanent level of tenure security. Article 6 of Ordinance 20, which gives the term as not less than five years, states that the contract "will be renewable by tacit agreement," and the contract form states (Article 3, old form) it is "renewable by tacit agreement for the same length of time," or (Article 2, new form) "will be tacitly renewable." Unfortunately, this language does not make it clear whether the "tacit renewal" can take place more than once. The Type A contracts originally signed are already more than ten years old unless replaced by a newly signed contract (i.e., have passed through their original five-year period and through one full five-year tacit renewal period).

In addition to the ambiguity in the law concerning renewal for more than one period, there is a problem of possible narrow interpretation of the concept of tacit renewal following the apparent practice under the general property law. Article 230 of that law provides for tacit renewal ("tacit reconduction," in the French version) of a lease is, after expiration of the term, "the lessee does not abandon the land and is left in enjoyment by the lessor . . ." The tacit renewal is then for "a term fixed by the custom of the region" rather than for a fixed five years, as under

* Decree 498-DT/CCDD, dated November 27, 1957.

the tenure security law. However, the only annotated decision under this section, an opinion of a chamber of the French Cour de Cassation rendered in 1875, interprets the provision extremely narrowly, holding that (according to the annotation), "tacit agreement is based upon the two parties having the same will: a new contract with the same conditions as in the last contract . . . (if the lessee) does not move, but stays, in contradiction with the will of the lessor who would like the lessee to move, there is no 'tacit agreement.'" Hence, there is, as a matter of the applicable law, serious doubt whether the administrators or the parties to the original contracts would continue to regard them as binding in any instance where a new contract has not been signed at least within the past ten years. To the extent that this is true, even the theoretical applicability of the other provisions of Ordinances 20 and 2 would likewise appear in doubt.

Rent Limitation. The legal range of payment is 15 to 25 percent of the gross crop, without allowances or deductions from that crop for seed costs or harvesting expenses.

In addition to limiting the proportion of the crop that may be required as rent, the law states that the tenant is not liable for land taxes (Ordinance 20, Article 19).

The aforementioned legal provisions do not fully protect the tenant from exorbitant rents. The contract form does not merely state the rental percentage, but sets forth the parties' agreement as to how much the land will produce and what the actual amount paid in rent (usually paid in gias--40 liter units--of paddy rice) will be. The tenant might, for example, be asked to state a normal production figure greater than the amount actually expected to be produced, so that the apparently legal 25 percent is a somewhat larger fraction of the actually expected production of the land. Or, if the landlord fears to use an inflated production figure alone, he may use an inflated land-area figure as a basis for a fictional production figure, difficult to detect.

It has been reported that there have been cases where landlords extract rent above the 25 percent ceiling. In other instances, the landlord asks for rental payment in advance, for "key money" as a condition of signing a lease, or for out-and-out "under the table" payments each year as a condition of not exercising purported termination rights under Article 9.

Article 14 of Ordinance 20 states only that the rent "must be paid annually . . . at the latest within the month following the harvest in the province." In addition, both the ordinances and the contract forms have, from the first, remained silent on certain points that could become

additional means for reimposing a heavy overall economic burden on the tenant in favor of the landlord. The supplying of physical production inputs such as insecticides may or may not be interpreted as subject to the repayment limit of actual purchase price plus 12 percent interest. Money loaned by the landlord to the tenant for agricultural needs or for consumption items may or may not be subject to the 12 percent interest limit. There appears to be no provision limiting payment, or repayment, for the use of a dwelling not located on the farmland itself. Viewed as a device for extracting additional income from a fixed land resource, separation--for purposes of leasing--of the farmland from the fixed improvements such as dwellings, fruit trees, and fish ponds would appear to have some potential.

A major restriction of the rent limitation provisions arises out of administrative reinterpretation of the ordinance itself. While the ordinance provides for the rent to be paid on "the value of the annual harvest of the principal crop" (Ordinance 2, Article 13), a series of interpretive circulars* provides that: (1) the land rent is based on the total amount of the annual income from the principal type of cultivation; (2) for two-crop riceland the rent is based on the total production from the two harvests; (3) for land giving one rice crop and one crop other than rice, the rent is still based on the income from rice plus the income from the other crop; and (4) the rent does not apply where a second crop, rice or otherwise, is "secondary," i.e., "is to satisfy the (food) needs of the tenant family." Hence, the term "annual harvest" is interpreted to mean "total yearly harvest" rather than "main yearly harvest," and the meaning of "principal crop" includes two totally different kinds of crops.

Crop Failure. In another important area relating to rent collection, the tenant is to be "exempted from payment of the fixed land rent" in case natural disaster or unavoidable accident "destroys at least two-thirds of the harvest" (Ordinance 2, Article 15). The Type A contract expands this, stating that in case one-third of the crop is lost, due to unavoidable circumstances, the tenant need pay only two-thirds of the annual rent, while if two-thirds is lost the rent is entirely exempted.† The village agricultural committee is to appraise losses.‡

* Appendix D-2, Article 13, Circular 14, dated January 30, 1958, and Circular 18, dated February 6, 1958, are completed by Circulars 31 and 32, dated April 22, 1958, and modified by Circular 26, dated January 15, 1959.

† Appendix D-3.

‡ Appendix D-6.

Settlement of Disputes

The original legislation apparently contemplated nonbinding conciliation of disputes by a hierarchy of agricultural committees at the cantonal, district, and provincial levels. A 1958 circular* modified the makeup of the cantonal (village) committee while terminating the role of the district and provincial committees. The village (cantonal) agricultural committee is to be composed of the Chairman of the Village Administrative Committee (or Chief of Canton or his deputy), plus two landlords and two tenants. Such agricultural committees have been established in 1,472 of the 2,477 villages and in 37 of the 177 cantons in South Vietnam. Village and cantonal agricultural committees have, since 1962, handled 17,636 disputes. According to official statistics, satisfactory solutions were obtained on 15,704 cases; however, 1,932 cases were not resolved.† There is also some indication of the revival of a conciliation mechanism at the district level.

If conciliation fails, the parties in theory have access to the Special Land Reform Courts.‡ A tribunal was to have been established in each province but only four have actually been established; in Saigon, Long An, Dinh Tuong, and An Giang. These courts have heard 2,100 cases (including some before 1962). Of these, the disagreement concerned rent in 310 cases, period or time of contract in 251 cases, pre-emption (right to buy) in 151 cases, landlord repossession of land in 1,100 cases, regularization of tenure in 109 cases, and miscellaneous problems in 179 cases.§ Decisions of the court must have the approval of the National Council for Land Reform.** In an intermediate screening step, the Commissioner General of the Land Courts gives his conclusion as to the court's decision before the Council's determination.

In the four provinces in which a Special Land Reform Court sits, the court consists of one judge--who is the same official who at other times acts as judge of the regular civil court in the province--plus two assessors and a government commissioner who are supposed to supply special

* Appendix D-2 Part III (new); Circular 67-BDT/CCDD/TT, dated October 25, 1958, requested the District and Provincial Agricultural Committees to "temporarily cease their activities."

† Appendix B-10, Directorate of Land Reform, "Monthly Activities Report," dated September 13, 1968.

‡ Appendix E-4, Article 26, established by Decree 498-DT/CCDD, dated November 27, 1957, modified by Decree 558, dated December 5, 1958.

§ Directorate of Land Reform, op. cit.

** Appendix E-4, Article 24, established by Decree 74, dated April 4, 1957.

expertise on land reform problems. In other provinces, the judge of the regular civil court, sitting by himself, acts as a land court in hearing cases under the landlord-tenant laws. Access to the four special courts, or to the general court in its hearing of landlord-tenant problems, appears to require in all cases travel to the provincial capital.

Seventy-six cases decided by the provincial courts (both the four special courts and the general courts sitting on land reform matters) in the initial years of administration of the landlord-tenant laws, i.e., up to the end of 1959, were reversed by the National Land Reform Council on advice of the Commissioner General, republished by the Commissioner in booklet form and distributed to all judges. This booklet appears to be the only source of precedent for judges sitting on landlord-tenant matters, since other decisions have not normally been reproduced in multiple copies or sent to the judges.

Sixty-six of these cases were translated and the facts and results tabulated in various ways in an effort to make a judgment on the strength and weaknesses of the system. These cases represented about 3 percent of the total number of cases decided by the courts.

The size distribution of holdings involved in adjudication in the land courts was different from the average size distribution of holdings--the cases appear to have been related to tracts somewhat larger than the averages of the 66 cases translated. The tract size is available in 55 cases and the distribution is:

<u>Size of Holding</u>	<u>Actual Court Cases</u>	<u>Percent Court Cases</u>	<u>Percent of Land Holdings in Southern Region</u>
One hectare or less	10	18.2	22.1
Over 1 hectare, up to 2	10	18.2	28.5
Over 2 hectares, up to 3	8	14.5	17.6
Over 3 hectares, up to 5	9	16.4	17.6
Over 5 hectares, up to 10	13	23.6	8.3
Over 10 hectares	5	<u>9.1</u>	<u>5.9</u>
		100.0	100.0

In about one-third of the cases, more than one tenant was joined in the action, and in about one case in seven, more than one landlord was joined.

In 64 landlord-tenant disputes,* landlords were represented by a lawyer in 18 (including 15 out of 37 disputes before the special land reform courts), tenants in only 5 (including 4 out of the 37 before the special courts).

The average time lapse from the decision of the provincial court to that of the National Council was just under six months. There are clearly many months between the original assertion of the claim and the provincial courts' own final determination, although exact figures are not available.†

The decisions of the National Council reflected considerable formalism, but no detectable bias for or against the tenants in determining the law and few or no unreasonable departures from the interpretations that would be expected based on the written text of the ordinances and subsequent regulations.

Where the tenant was the plaintiff in the action, relief was obtained on only 10 out of 33 claims, with relief denied on a variety of grounds (ranging from inadequate documentation, to absence of a written contract, to lack of jurisdiction because it was not riceland) in 23 claims. Landlords fared no better as plaintiffs, with relief granted on only 24 out of 71 claims.

Where landlord-defendants raised counterclaims against the plaintiff tenant, they obtained relief on 4 out of the 21 claims. In the reverse case, tenant defendants counterclaiming against landlords obtained relief on 10 claims out of 61.

* The remaining two of the 66 disputes translated were tenant-subtenant disputes.

† In the one record examined completely, the initial time sequence was:

April-May 1965 - apparent beginning of dispute
March 1966 - failure of village level conciliation
May 1966 - failure of district level conciliation
December 1966 - beginning of court proceeding
September 1967 - decision of the special land court

When a decision is reversed, it is remanded for further proceedings, not to the original court, but to an adjoining provincial court. This is done in the belief that the reversed tribunal would simply persist in its error, ignoring the reversing judgment.

It is apparent that the slowness, geographical remoteness, and highly formalized procedures of the land courts represented a burden that helped deny effective access to all but the most persistent of the less affluent smaller tenants. But it also appears that the actual decisions rendered by the courts were on the whole, fair, reasonable, and unbiased. The sample of precedent-making decisions dates from pre-1960, and it is conceivable that this situation has changed, although this is unlikely as long as the Commissioner General continues to review all decisions.

The judicial consideration of disputes in landlord-tenant contract cases requires taking evidence and making a decision to accommodate a relatively complex, individual set of dealings between particular individuals. These dealings are supposed to take place inside a prescribed general legal framework, but with numerous important variations allowed, based on the activities or desires of the particular parties and on changes in external circumstances.

Since the law being administered is a fairly complex one, it is probably unreasonable to believe that adjudication can be inexpensive and rapid or that built-in safeguards such as extensive records and careful appellate review can be dispensed with.

Another important question is availability of the judicial mechanism to tenants, with substantial indication from field interviews that tenants fear loss of the land if they pursue a dispute with the landlord.

Metayage

The applicability of Ordinances 20 and 2 to the landlord-tenant relationship known as "metayage" or sharecropping is not clear from the ordinances themselves. The metayage arrangement, common in the Central Provinces of Vietnam, resembles the sharecropping system used in the southern United States; it differs from the South Vietnamese standard tenancy arrangement in that rent payments vary with production on a set ratio, rather than the setting in advance of a particular fixed quantity of crop as the payment to be made. Metayage was made legal by Ordinances under the Royal Civil Code of Annam (Articles 1199 to 1209) in 1930. Ordinance 20 (in Article 3) defines the term "sharecropper," distinguishing it from "tenant," but does not again refer to the sharecropper by that term. Ordinance 2

states (in Article 7): "No verbal lease is valid," and contracts under Metayage apparently are customarily informal (rather than written). The question of whether metayage arrangements were to be subjugated to the requirements of Ordinances 20 and 2 was resolved by excluding them. Circular No. 22 dated June 10, 1959, stated that "about metayage sharecropping we maintain the present structure."

What the "present structure" is can be seen from the 1925 decree which established--and continues to represent, except where specifically superseded by later ordinances or regulations--the property law for the region that was formerly Cochin China. Under this decree, the landlord and the sharecropper fix their shares by contract but in the absence of a contract stipulation, the crop is divided 50 percent to each (Article 257); an additional obligation to pay a fixed rent may also be agreed on (Article 256). The lessor has the right generally to supervise the cultivation of the land, although the exact meaning of this right is left to contractual stipulation and, in its absence, to "the usage of the community" (Article 258). In case of crop failure, the parties bear the loss in proportion to their share of the crop (Article 260). Apart from these specific provisions, the sharecropper is stated generally to fall within the same pattern of rights and obligations as the standard farm tenant under the 1925 law. Particular reference is made to several general articles as applying to the sharecropping arrangement (Article 262). These articles provide for nonindemnified termination of the tenancy on sale of the property by the landlord, unless, apparently, the tenancy contract was a written one with a set term. If the formalities were set, there could be no eviction by the new owner unless the lease reserved this right, and then there had to be indemnity equal to one-third of the rental for the time remaining on the lease (this would presumably be impossible to calculate in advance where it depended on the actual crop produced). It is not clear whether a further provision for a one-year eviction notice by the new owner applies only where there is a written contract (Articles 234-7). The other articles referred to, as applied to the sharecropper, require the lessee to use the property for the purpose stated in the contract (Article 245) and make him answerable for damage, loss, or fire affecting the property unless he can show it was not his fault (Articles 252-3).

Since Ordinances 20 and 2 were construed to exclude metayage and the old law remains fully in effect, the typical legal profile of the metayage sharecropper without a written contract would appear to be that of a tenant who pays 50 percent of his actual crop as rent, shares losses on crop failures, is supervised by his landlord to a degree that accords with local custom, and is subject to eviction (apart from other reasons such as failure to heed his landlord's legitimate directives) if his landlord sells out.

Usufruct

The French-derived Vietnamese property law makes provision for a flexible, high order property right called "usufruct." Usufruct is an established Vietnamese principle that underlies three of the key features of possible land reform action: (1) termination of rent or payment by the cultivator; (2) security of tenure for the cultivator; and (3) insulation of the cultivator from landlord harassment and demands.

Usufruct might be described as a passive trust of land in which the actual "enjoyment" is with the usufructuary who occupies and receives the profits from the land, while bare ownership resides in another person-- "le nu propriétaire"--whose rights are essentially limited to surveillance to ensure that the property is not despoiled. While the institution is similar to the "unexecuted use" of old English property law, the more modern functional equivalent is the division of ownership between the holder of a life estate in land--such as the dower-electing widow in states having dower rights--and the holder of the reversion or remainder interest.

The French-Vietnamese usufruct concept is more flexible than the life estate, however, for it may also be ended on stated conditions other than the death of the usufructuary, such as the passage of a designated period of time. While he holds the usufruct, the usufructuary has essentially the untrammled use of the property, including all easements, rights, and servitudes (rights of access, rights of subjacent, and lateral support for buildings or ditches, water rights, and so forth) held by the recorded owner. The usufructuary is only limited by the requirements that he make maintenance repairs and not commit depredations, which are substantially equivalent to the obligations of the holder of a life estate under Anglo-American law not to commit "waste." The bare owner cannot detract in any way from the usufructuary's rights. He may not, for example, affect those rights by selling the land to another. Neither does he have any reserved right to take back the land for his own cultivation nor to direct the way in which the usufructuary is to cultivate the land.

The usufruct institution appears to have had a wide variety of uses in South Vietnam, including the rights commonly acquired by a widow on the death of a husband owning real estate, the rights held by parents with respect to the property of minor children, the rights often granted with respect to land to be held for ancestor worship, and the rights held by villages with respect to a large portion of communal lands (here the GVN holds the bare ownership and the village, as usufructuary, frequently exercises the usufructuary's right to grant or rent a portion of his interest to another).

Landlord Tenant Relationships - Uncultivated Lands

The need to deal with landlord-tenant relationships concerning uncultivated lands was created by the serious drop in rice production during the time of trouble before 1955. Many farmers had abandoned riceland because of the conflict with the Viet Minh. To bring abandoned lands back into production and hence increase the national rice output, the government provided for recultivation of these lands in Ordinances 7 and 28.

Type B and Type C Contracts

Ordinances 7 and 28 are aimed at the recultivation of lands not cultivated during the previous cropping season; both ordinances state this as their purpose in their first articles. Their timing (February 5, 1955 and April 30, 1956) make it evident that their focus is land that was left idle as a consequence of the conflict with the Viet Minh. These ordinances provide a procedure for annual listing of such lands (Ordinance No. 28, Articles 3-6) and a framework for three-year rentals. A landlord listing his lands has the choice of cultivation himself or of entering into contract(s) of Type A (standard lease, already discussed) or Type B. The Type B contract resembles Type A in most particulars except that the tenant is exempted from paying rent the first year and will have to pay only one-half and three-fourths of the agreed annual rate in the second and third years, respectively. The Type B contract, which reduces the owner's income, also exempts him from land taxes (Ordinance 7, Article 4).

If the owner of uncultivated land either failed to list his land or failed to make satisfactory provision for its cultivation, he was "considered absentee" and the provincial census committee was to enter into lease contract on his behalf, using the Type C contract.* The Type C contract is quite similar to the Type B contract except that the public agency is named as lessor or as "acting on behalf of" the landowner. Under this contract, as under Type B, the owner is exempted from land taxes (Ordinance 7, Article 10).

In both the Type B and Type C contracts, the tenant's rent payment is reduced by 100, 50, and 25 percent, respectively (i.e., he pays nothing, one-half, and three-fourths of the usual rent) in the first, second, and third years of the contract. Presumably the reason for these lower rates is to recognize the higher costs of putting uncultivated land back into

* Appendix D-15, Tenant Contract Type B.

† Appendix D-16, Tenant Contract Type C.

production. The rentals for the absentee landlords (Type C contracts) are to be collected by the Chief of Province who, after deducting "all expenses and taxes" (nonproperty taxes, presumably), deposits them in a special account in the provincial treasury (Ordinance 28, Article 13).

Originally the power to lease was given to the Village Administrative Committee, Ordinance 7, Article 10. Thus, power here may have been transferred to a higher administrative level (although Circular 19 of June 1, 1959, dealing with uncultivated lands with forest-type vegetation seems to indicate that it was still "the Village Council" that was drawing up Type C contracts) whereas the dispute conciliation power under the landlord-tenant ordinances was apparently being transferred down to the village-canton level.

Contract Renewal and Transmutation

Article 12 of Ordinance No. 7 provided as to Type C contracts that, if the landowner were still absent "at the end of the first three-year period, the tenancy contract shall be renewed for another period of five years. The new tenancy contract shall be established in accordance with the provisions" of the basic landlord-tenant ordinances (i.e., shall be a Type A contract). While this language appeared to apply only to the Type C contracts, the forms extended but weakened the renewal provision, stating in both the Type B and Type C contracts that "at the expiration of this three-year period, the contract might be renewed" for five years. Both forms appear to incorporate the limitations on cancellation or non-renewal of the basic landlord-tenant ordinances. However, even the clearer language of the statute concerning renewal leaves open the question whether the "new tenancy contract" for five years can "be established" without the formal signing of a new Type A contract. To put it another way, even the ordinances make no express provision for the transmutation of a Type C tenancy contract into a Type A tenancy contract after three years simply by a process of tacit renewal.

Other Considerations

The Type B and Type C contract forms appended to Ordinance No. 7, and the forms actually in use, make provision, in the case of the B contract, for all of the ancillary facilities described in the full A contract; renting of agricultural implements and livestock; seed and fertilizer loans; and "grant" of dwellings, fruit trees, and fish ponds located on the leased land (as in the A form, there is no sign indicating a money entry is to be made under the latter category). Those things

that were missing from the A contract are likewise missing here. In the case of the C contract, presumably because there is no contact with the absent landlord to serve as a basis for his supplying the other items, only the section as to grant of dwellings, etc., is included.

Both forms contain a provision for reduction to two-thirds of the rent if one-third of the crop is lost due to unavoidable circumstances, and for exemption from rent in case two-thirds is lost. The Type B contract specifies "the lessee shall have to pay only two-thirds of the annual rent" in case one-third of the crop is lost, and is thus not explicit as to whether this sharing of loss applies to the fixed, basic rent or to the residual amount left after exemption in the early years of recultivation. Would a lessee who suffered destruction of half his crop in the third year of recultivation pay three-fourths of the fixed basic rent, or only two-thirds of the three-fourths, i.e., one-half? The Type C contract, however, ties loss sharing to "the land rent as provided for in Article 6 of this contract," making it clear that the rent as finally determined by the procedures of Article 6 would be reduced to two-thirds under the loss sharing clause.

Thus, the B and C type tenancies raise substantially all of the interpretative problems of the A tenancies, as well as raising certain additional interpretative problems of their own.

Lands Expropriation under Ordinance 57

Ordinance 57 is the basic law regarding achievement of land reform through the acquisition of large holdings in return for government compensation and their distribution to small farmers. It has been the subject of a substantial body of amendments and interpretations.

Lands Affected and Retention Limits

Ordinance 57 stated in Article 2 its application to "privately-owned abandoned land suitable for rice cultivation and land under cultivation in excess of the maximum area that landlords are legally allowed to retain."* By riceland was explicitly meant land annually cropped and otherwise suitable for riceland cultivation. In Article 4 of Ordinance 57 non-ricelands were defined to exclude industrial crops, which are nonannual

* Appendix E-2, Article 2.

crops, livestock farms, model farms, forests and concession lands. Circular 22* also defined riceland to include land suitable for rice production but excluding land used to produce industrial crops.

Each landlord was to submit a written declaration as to the ricelands if he had more than 100 hectares.† The deadline for filing this declaration without invoking the criminal penalties of the ordinance was ultimately extended into 1965.‡ These extensions of time apparently were designed to induce rather than compel landlords to declare their oversize holdings. Penalties and punishments are provided, but no evidence has been encountered of penalties levied for such failure to declare.

The landlord was allowed to select the 100 hectares he would retain, with no requirements of contiguity (Article 3). Of the amount retained, the landlord could himself exploit only 30 hectares--thus it was clear that the ordinance was not designed to eliminate the institution of landlordship, for an owner of 100 hectares must remain a landlord with respect to 70 hectares.§

Article 5 allowed an additional retention area not to exceed 15 hectares for certain special types of worship lands, details of which were to be fixed by a special committee. The special committee fixed the additional retention area as 15 hectares in southern Vietnam and 5 hectares in the central part of the country.** Since there were few estates of more than 100 hectares in Central Vietnam, the Ordinance 57 land reform had virtually no effect there. However, this device to permit retention of additional land was of some importance in the southern region.

* Appendix E-4, Articles 2 and 4 of Circular 22-DTCC/TT, dated May 28, 1957, Implementing Ordinance No. 57 dated October 22 1956.

† Appendix E-3, Part IV: Circular 1, dated January 7 1957; Circular 5, dated March 21, 1957; Communique 3093, dated September 9, 1959.

‡ Appendix E-4, Article 28, Decree 359, dated December 10, 1964.

§ Appendix E-5, Circular 8/BDT/CC/TT, dated February 27, 1961, stated the decision of the National Council for Land Reform as being that "the Council allows the landlord to rent freely his land (i.e., within the retention area) without limitation of area." Appendix F-8, Circular 4095-BCTNT/HC/TC3/TT, dated March 25, 1964, however, stated that "tenants should not be allowed to rent more than the self-farming area of a landlord which is 30 hectares."

** Appendix E-4, Circular 1982, dated June 6, 1957, supplementing Circular 22, dated May 28, 1957.

The 15-hectare maximum limit for worship land has been construed not to apply to "garden land;" thus, following the example given in Circular 49 of September 24, 1957, a landlord with 127 hectares of land--100 of riceland, 15 of worship riceland, and 12 of garden land *--could retain the whole.

The lands included were any of the following if handed down by the landlord's ancestors: Huong-Hoa Land (land left by parents to their descendants for the worship of ancestors); Hau-Dien (land given by an individual to the village/community on the condition that the village/community will worship him or his parents after his death); and Tu-Duong Land (land given by an individual to the community to be used for public worship). The worship land had to be established before the promulgation of Ordinance 57.

Church-owned lands were not specifically exempted from application of the ordinance (Article 6) but have been exempted in practice. With respect to Catholic lands in particular, every Vietnamese government has refrained from exercising its right to tax, apparently in consideration of the Church's political power. Records do not show church-owned lands to be great in quantity.

The ordinance provided that all lands recorded under a landlord's name were to be totaled in applying the retention limit (Article 7). The estate of a landlord dying after promulgation of the ordinance was to be considered as a single property (Article 10). All certificates of ownership rights, real estate securities, and mortgages not "properly dated" before the effective date of the ordinance were to be considered invalid. This was an attempt to prevent frustration of the law's purpose by nominal transfers of large estates into the hands of relatives or nominees. However, if there was a "properly dated will" before the date of the ordinance, it was apparently permissible to divide the property just as though there had been an actual sale at such earlier date. †

Later regulations appear to have made possible avoidance of the date-of-transfer provision by fictitious or nominal transfers. This may be due in some part to persons obtaining knowledge of the ordinance before its passage. In addition, later regulations made it difficult to control the predating of postordinance instruments. Comments concerning Articles 7 and 9 in Circular 22, dated May 28, 1957, indicate that: (1) the true

* Appendix E-4, Circular 22, dated May 28, 1957. Article 5.

† Appendix F-11, Circular 22, dated May 20, 1957. Comments following.

date of the document (transferring ownership, etc.) would be considered, even if it had not yet been placed on the land register; (2) such documents could be produced at the Provincial Land Affairs office up to 20 days after the date of the circular, which was itself issued seven months after Ordinance 57; (3) the document presented would be considered by the Province Chief, who would forward it with a recommendation to the Ministry of Land Affairs and Land Reform (in theory, the file containing all of these recommendations should be available for examination); and (4) the criteria for documents "having undoubted date" included documents showing that date signed by a notary, or referred to in a notarized document showing a preordinance date or certified (if, in the latter cases, the party could prove payment of the certification fee to the village budget). However, the time to produce such documents of "undoubted date" was ultimately extended to January 15, 1959* and to March 31, 1960.† Hence, it appears that the law was made dependent on the ability of the administrative system to screen documents presented up to 27 months after the ordinance was passed as being "properly dated" under the indicated criteria. "Declared land for expropriation" in the data supplied by the Directorate General for Land Affairs is for the year 1960, although many individual parcels were acquired before that time. An unknown amount of land held outside the 100 (or 115) hectare limit has escaped the acquisition procedure of Ordinance 57. For example, recorded information indicates land parcels registered in the names of deceased landlords and subject to distribution by inheritance created legal complications in terms of applications of statutory limitations on size of holdings.

Circular 6729, September 24, 1962, declares that drains, paths established by the landlord, and marshes and ponds were to be expropriated under the principle "the accessory follows the principal," and the recipient was to purchase these accessories. It noted that up until then no recipient had purchased these accessories and considered them as state-owned land after expropriation. At least in terms of American jurisprudence, this is an unusual concept. These things would ordinarily be considered part of the land purchase, and there would be no attempt to value them separately--a very difficult task. A dwelling would, of course, ordinarily pass with the land under American law, although an effort to value it separately would not be considered as unusual or too difficult a task.

* Communique 3329, dated December 31, 1958.

† Communique 6041, dated November 13, 1959.

Allotment of Land

The allotment of expropriated land was provided for in Ordinance 57, and successive regulations attempted to clarify problems and questions as they arose. The major topics of concern were: priorities of those who were to receive the land; conditions of ownership and land operation; and implementation of the laws.

Eligibility and Priorities. Ordinance 57 set priorities for allotment of land to the peasants, giving first priority to tenants (with or without a contract) or workers who had cultivated the land for more than two years. According to Article 12, next in order are war veterans, refugees, or people returning to a pacified village; unemployed, small landowners with more than five children and less than three hectares; and landless people generally. However, there is a complete exclusion from eligibility of "farmers who, profiting by recent events, have illegally occupied the land and who refused to sign lease contracts, or refused to pay land rents and taxes during the past years, and who refused to pay these back rents by March 31, 1957." Those who, while on the land, were not paying land rent, might be disqualified on a finding of "excessive obstinance" (comments following Articles 11 and 12, Circular 22, dated May 28, 1957). This was true in the period 1956 and 1957. However, it has not been true since about 1963. Circular 11000 BCN, dated December 15, 1965, confirmed by Circular 61 XD, March 28, 1967, provided a solution to this confusion of farming. If a farmer occupies a tenant's land while the area is under the control of the Viet Cong and later the land comes under government control, this occupant of the land is permitted to remain there and to hold between three and five hectares depending on the size of his family. However, should the landlord have no other farm land to farm himself, then he has a right to reoccupy three to five hectares of this land depending also on the size of his family. The former tenant is legally exempted for payments of back rents.

Refusals to sign lease contracts prior to 1963 were understandable. The following passages suggest the reasons:

1. From Wolf Ladejinsky, "Agrarian Reform in the Republic of Vietnam," in Problems of Freedom (Fishel, ed., 1961), p. 161: "Many a tenant had not paid rent in years, and thus even the admittedly low rent of 15 to 25 percent appeared to be an imposition. Others, whose occupation of land had been sanctioned by the communists, believed that their ownership had already been confirmed, and that signing a contract now would invalidate their claim to ownership."

2. From Kahn and Lewis, The United States in Vietnam (1967), p. 103: "Large numbers of peasant tenants were suddenly obliged to pay rent to landlords who, during the nine years of the colonial war, had sat safely in Saigon under French protection. Having come to regard the lands they were tilling as their own, these peasants were hardly overjoyed when Diem's officials not only collected taxes from them but also demanded rent in behalf of these landlords. Saigon's decree that rents be reduced to 25 percent of crop value held little attraction for peasants who had paid no rent at all under the Viet Minh."

3. From Wurfel, "Agrarian Reform in the Republic of Vietnam," Far Eastern Survey, Volume 26, No. 6 (June 1957), p. 85, referring to a statement in the New York Times, April 5, 1955, attributed to Mr. Ladejinsky, "that, in contrast to experience in other countries, tenants in South Vietnam were more hostile to the land reform than the landlords."

Under Circular 56 of November 21, 1956, there was to be a census of farmers requesting land under Ordinance 57. The recipients were, depending on interpretation of a later circular, to get an average of three hectares, or to get from three to five hectares.* Actual distribution has averaged a little less than 2.2 hectares per family.

Conditions. The new landowner was subject to certain restrictions incorporated in Ordinance 57. The land would be "provisionally registered" in the name of the recipient, who was to pay off in a maximum six-year period the same "condemnation price" the former owner was to receive from the government over a 12-year period. During these six years, title was to remain with the state (Article 14), even for four years beyond that time (a total of ten years), and the land could not be rented, mortgaged, resold, or seized to pay debts (Article 16). If the new owner did not put the whole area under cultivation within one year, did not participate in the program of agricultural development and similar activities in the common interest (Article 15), cultivated the land in a negligent manner, or became insolvent before paying for the land in full (Article 30), the government was to have the right to take back the lands without reimbursing him for the moneys already paid (Article 30). He could, besides, be imprisoned up to two years and fined up to 120,000 piasters (Article 27).

* Appendix E-4, comments following Article 12, Circular 22, dated May 28, 1967. This says both "Normally, the average area to be distributed as a unit is three hectares" (emphasis in original), and "Each family may receive from three to five hectares."

Despite these formal provisions, many land recipients have failed to maintain their schedule of payments. Only about one-third of the new owners (44,300 of 116,687) have made any payment, and overall only 22 percent of the payments due have been collected.* However, it seems doubtful that any of the penalties were applied. Inflation has now substantially affected the amounts remaining due for the land, since the bulk of recipient indebtedness was incurred in terms of pre-1962 prices. The net effect of inflation on the new owners has been to reduce the effective price of the land and to reward postponement of payment.

There have been a number of revisions to the original provisions. A 1964 decree† modified Article 14 to increase the payment period for recipients from six years to 12 years, and another change extended the no-rent, no-pledge, no-sale provision of Article 16 to a date six years after the farmer completed his payments: a normal total of 18 years.‡ In 1965, a circular provided that "permanent ownership titles" should be issued to recipients, and a decree provided that the land must be immediately recorded under the name of the recipient, not just "provisionally" so.§ While the provisions of this circular may have had psychological advantages, their legal effect would appear minimal, since the government was to retain a mortgage pending full payment, and Article 16 remained in force with its 18-year moratorium on sale, rental, or any use to secure debt. Indeed, essentially the only incidents of normal legal ownership that the recipient has had, and continues to have, are (1) freedom from claims for rent or eviction by private parties asserting superior title and (2) protection, by virtue of the recording (provisional or not), from superior claims by bona fide third parties due to fraudulent "second sales" by former owners.** Although these are important ownership rights, they did not add additional legal advantages to those already enjoyed by the land recipients.

Payments commence with the harvest the year following receipt of the land thus providing the new landowner with an opportunity to make payment from his crop earnings. A recent circular allocates up to three hectares

* Appendix B-10, Directorate of Land Reform, Monthly Activities Report, dated September 13, 1968.

† Appendix E-8 Decree 008-CT/LDQGQL/SL, dated October 2, 1964.

‡ Appendix E-7, Circular 13.157/BCTNT/HCTC-3, dated September 7, 1964.

§ Appendix E-4, Circular 9277, dated August 23, 1965, and Appendix E-9 Decree 020/65, dated October 8, 1965.

** Appendix E-10, Decree No. 002/66, dated February 15, 1966.

of Ordinance 57 land free to the cultivator when the land is located in land development and resettlement centers, and also delays by five years the 17-year payment period for war veterans, veterans' widows, and direct descendants of veterans.*

Implementation. The Ordinance 57 distribution program had two relatively good years, 1960 and 1961. About the middle of 1961, the distribution abruptly slowed, and an average of only about 1,000 hectares per year were distributed in the subsequent years. The reason for the slowdown is hard to pinpoint. In an interview with a highly knowledgeable official of the central land reform administrative organization of that time, it was suggested that a division of responsibility, which he recalls occurring in May 1961, and a decline in available administrative personnel were related to the decline in land distribution. It is also probable that the land distribution program took those lands which, for one reason or another, were most readily redistributed in its early years and that further progress could come only at a slower rate. It may be added that a November 1961 circular allowing provincial authorities to rent out undistributed lands and retain 40 percent of the rents collected may have helped "freeze" the situation.† Security was also a major factor in slowing distribution.‡

Compensation of Landlords

Landlords were to be compensated for the lands expropriated in accordance with the "current value of his land," to be established by a special committee (Article 20). Special Provincial Committees were set up to determine prices of crops, District Committees were to determine prices according to average yields and special district committees were to determine average yields. From these two values, the Land Affairs office computed the land value for homogeneous areas. This division of duties introduces some protection against biased or arbitrary figures. The Committees were guided by a directive that set forth valuation by province, according to the land quality and by one-crop, two-crop, and broadcast riceland. The highest value for single-crop Class A riceland was 12,000 piasters per hectare (in Long An). This compares for example, with a value of 4,000 piasters per hectares for Class C broadcast riceland

* Appendix E-4, Circular No. 8379, dated August 12, 1967.

† Appendix E-4, Circular No. 6-BDTNT/DT/CC/TT, dated November 3, 1961.

‡ For additional discussion, see Volumes II and III.

in Vinh Long. At this time, the official exchange rate was 35 piasters per U.S. dollar and the unofficial rate between 70 and 85 piasters.* Ten percent of the compensation to the landlords for expropriated land was to be paid in cash, the balance to be paid in nontransferable bonds to be amortized over 12 years and bearing 3 percent interest (Article 21). The bonds could be pledged as security with, and were legal tender for mortgage debts contracted with, the Agricultural Credit Fund. They could be used for paying land and inheritance taxes on the expropriated lands and to subscribe the securities of certain government-established industries.†

Although the ordinance did not seem to raise the question, there was apparently serious doubt at one point whether compensation would be paid for uncultivated lands. Circular 8 of February 27, 1961, decided that it would, but that owners of "abandoned uncultivated lands" would be last in line. Overall regulations as to payment were set in 1957.‡

Further provisions of the ordinance dealt with ancillary facilities of various kinds. There was supposed to be a separate expropriation of dwellings occupied by the recipients, which, if they were the property of the expropriated owners, would continue to belong to them until bought by the government at the current value and sold to the farmer for repayment over a 10-year period (Articles 17 and 18). There is no indication of acquisitions having been carried out under these articles of failure to carry them out having raised any significant problems for the land recipients.

The ordinance (in Articles 24 and 25) also contemplated a Land Reform Council and a series of committees (and local sub-committees, already discussed). The National Council for Land Reform was established in 1957,* and with three national committees, constitutes the centralized organs of land reform. The essential functions of these committees were: (1) regulation-making; (2) listing of land, administration, and title issuance; and (3) finances.

* Appendix E-4, the basic valuations are set forth in Circular 45-DTCC/TT, dated September 11, 1957.

† Appendix E-3, Article 22. The identity of these enterprises was fixed by Decision 335, dated August 11, 1959.

‡ Appendix E-3, Decree 500, dated November 29, 1957, modified by Decree 81, dated April 1, 1959, and Decree 28, dated January 25, 1960.

§ Established by Arrêté 74-DT/CCDD, dated April 4, 1957, with its composition subsequently altered by Decree No. 217, dated June 18, 1964.

Article 26 stated that Land Courts were established to examine violations and settle disputes, their powers and procedures to be fixed by decree. The Land Reform Court was established by a decree late in 1957* and given powers both in the landlord-tenant area and under Ordinance 57.

Article 27 allowed up to two years' imprisonment and 120,000 piasters' fine for any action "aimed at impeding or delaying the implementation of this Ordinance." However, it is believed that no criminal penalties have been imposed.

There appear to have been at least two major changes in organization affecting Ordinance 57 administration. A 1962 decree† organized a new central administrative structure, the Directorate General of Land Affairs, which was given broad functions in virtually every area of land regulation. The responsibilities of the Directorate General, as stipulated by another decree‡ include the following:

1. Surveying, aerial photography, mapping, and printing of maps.
2. Control of "the application of regulations and legal statutes of land registration and cadastral management."
3. Establishment, maintenance, and updating of land records.
4. Following up the enforcement of farm contracts stipulated between landlords and tenants.
5. Expropriation of big landholdings and redistribution of the land.
6. Solving of all affairs related to land concession.

Three technical agencies at the national level were established within the Directorate General: the Technical Directorate (also referred to as the Cadastral Directorate); the Legislation and Registration Directorate; and the Land Reform Directorate.

The Director General for Land Affairs is a member and executive secretary (spokesman) of the National Council for Land Reform.§ The Directorate General, in turn, is now under the Ministry of Land Reform and Agriculture.

* Decree 498-DT/CCDD, dated November 27, 1957, modified by Decree 558-DT/CCDD, dated December 5, 1958.

† Arrêté 200-BCTNT/ND, dated May 8, 1962.

‡ Arrêté 489-BCN/HCTC.3, dated August 27, 1963.

§ Decree 217, dated June 18, 1964.

In a second major change, a 1966 decree* reorganized village and hamlet administration. There is now to be a Commissioner for Agricultural Affairs on the Village Administrative Committee whose functions include carrying out of all matters dealing with agrarian reform and handling matters of land survey and registration, administration of village-owned lands, and establishment of land tax rolls.† Thus, this official's responsibilities tend to mirror rather closely, at the local level, those of the Directorate.

Voluntary Purchase Phase

In retrospect, the Ordinance 57 expropriation and redistribution program indicates that benefits might have been obtained by a voluntary purchase plan. Such a plan might still be useful in a project to forcibly lower further the landlords' retention limit of 100 hectares. A voluntary purchase program would have the objective of facilitating land transfers where such transfer would meet the needs and desires of both landlords and tenants. With a proper publicity campaign the program would stimulate voluntary land transfers because it would eliminate the land transfer tax and other legal restrictions which are now unattractive to prospective buyers and sellers of land. Also, the administrative costs to the government could well be less than has been the case with the Ordinance 57 program.

As currently conceived, the program would provide for title transfers at a purchase price not to exceed three times the average annual gross value of crops grown on the parcel in question. Financing would be arranged through a government agency, with repayment over 12 years and 6 percent interest on the unpaid balance. Landlord compensation would be in the form of cash and bonds based on paddy prices paid over a period of seven years with 5 percent interest. Initially, voluntary transfers would probably be arranged on a pilot basis pending expansion in the near future to include the entire country, subject to security conditions. Cost of the pilot program has been estimated at VN\$500 million.

* Decree 198-SL/DUHC, dated December 24, 1966.

† Instruction of Special Commissioner for Administration to Province Chiefs 96-DNC/NC/6, dated January 9, 1967, para. IV B a(6).

Lands Other Than Expropriated Lands

Additional important elements of the legal framework relevant to land reform relate to: former French land; concession land including squatter occupied land; communal lands; land development and resettlement center lands; Montagnard lands; religious land; and "confused" lands.

Former French Lands

The acquisition of the former French-owned lands took place because of and largely within the framework of Ordinance 57, but the administration and disposition of these lands has followed a somewhat distinct path under special administrative orders, and they are not customarily referred to as "Ordinance 57 lands" in statistics or reports.

The basic liability of French-owned lands to expropriation was fixed, as for all privately owned lands, under Ordinance 57. Hence the same limitations apply: ricelands only are affected; preordinance subdivision or sale is to be allowed and there is a 100 (or 115) hectare retention limit on ownership.

Special funds for the purchase of the bulk of ricelands owned by French nationals--1.49 billion old francs*--were granted by the French government under a Vietnamese-French Agreement of September 10, 1958.† Records dated September 13, 1968, show that total payments of 1.38 billion francs have been made to date.‡

Most of the French-owned lands have been large plantations, privately developed with mechanical and hydraulic systems, and thus were not well suited to immediate distribution in small parcels. In the interim, the plantations were "direct operated" as state farms, but this proved to be unprofitable. "Temporary management" was turned over to province chiefs

* Approximately \$3,000,000 using an exchange rate of 500 to 1.

† Most of the French owners chose to take payment out of the French franc fund, rather than to take payment on the same terms as Vietnamese landlords, even though the face value of the piasters-plus-bonds compensation was much greater. Also, it appears that most of the French owners elected to take francs for their full holding rather than invoking their right to retain 100 (or 115) hectares.

‡ Appendix B-10: Monthly Activities Report of Land Reform Directorate dated September 13, 1968.

who were "entrusted with the signing of contracts with tenants, supervising the cultivation and collecting the rents.* At the same time, the province officials were requested to study alternatives for ultimate use of the lands including establishment of agrovilles, allocation to soldiers' families, land development centers, state-managed plantations, Ordinance 57-type distribution, or leasing to farmers. A circular the next year† confirmed the continuation of "temporary management" by provincial authorities.

The temporary arrangement continued until 1965 when the decision was taken‡ that the former French lands were to be allocated for sale under procedures similar to those used under Ordinance 57. First preference went to present tenants, and subsequent preferences were to follow the pattern already established (Ordinance 57, Article 12). The maximum amount allocated would be three hectares of transplanted riceland or ten hectares of broadcast riceland. Price was to be paid in 12 installments, "based on the current yield and calculated in accordance with those prices" fixed for expropriated land. Apparently the price was therefore to be the same as for similarly productive land acquired with piasters and piaster-bonds, although the French government had supplied the funds for acquisition of the former French lands.

Allocation was in theory to be immediate for one category of lands, "scattered small rice plantations" (to be allocated according to the current situation of "squatting farmers"). However, "large rice plantations" were to be allocated according to a "plotting plan" that would adjust the boundaries and facilitate groupings for maintenance of irrigation systems where the holding had such systems (canals, dikes, dams) and that would be in accordance with a plan for improving irrigation systems where the land holding did not have such a system. Implementing committees were established at the national and provincial levels.

An April 1967 summary by the Directorate of Land Reform§ reaffirmed the policy of the 1965 Official Circular: "It was realized that renting the French lands was against the Government policy in implementing land reform. Land reform is limiting the size of private owned lands so as to have more land to distribute to the poor farmers; therefore, it is improper to take these French lands for Communal lands." It adds that the provisions of Ordinance 57 should be applied.

* Appendix F-5, Circular 009-BDT/HC/TT, dated February 22, 1960.

† Appendix F-7, Circular 6-BCTNT/DT/CC/TT, dated November 3, 1961.

‡ Appendix F-9, Circular 9277-BCN/HCTC.3, dated August 23, 1965.

§ Appendix F-15, French Land.

Concession Lands, Including Squatter Occupied Lands

These are lands belonging to the central government (other than Ordinance 57 or former French-owned lands, for which separate systems of regulations as described above apply) on which cultivators are present without a regularized leasing arrangement. Both the procedures for squatter claiming and the procedures for obtaining land in land development areas appear to be special, modernized versions of the procedures for granting land "concessions," and were developed under a French concession lands decree of 1928 and a host of subsequent administrative orders. Like the older concession procedures, these relate almost entirely to lands in the previous "local domain" of Annam and Cochin China, to the ownership of which the government of Vietnam has now succeeded. Concessions were obtainable with respect to land that was not cultivated but was suitable for cultivation.

A 1963 circular provided for regulating illegal squatting on government lands by transforming the squatting into a tenancy.* A 1964 circular† provided for granting of provisional concessions of the land to the illegal squatters.

Both circulars were superseded in late 1964 by an Official Circular‡ directed to all province chiefs that provided a procedure for local publicizing, squatter application, surveying, and final approval under which squatters actually occupying government lands up to 10 hectares would receive definitive ownership rights, free of charge. Squatters occupying over 10 hectares would, in some cases, also be allowed to purchase the excess. Administration was to be by a Survey Council (chief of survey team, member of Village Administrative Committee, representative of squatters, and, having no vote, a member of the survey team to serve as secretary), with subsequent approval by the Provincial Domain Concession Council, concurrence by the Ministry of Rural Affairs, and approval by the Province Chief. This Official Circular purported to freeze rights as of November 24, 1964, stating that existing holdings were not to be expanded and that no new squatters would be considered (Section 3, paragraph 3).

* Circular 4461/BCTNT/DD/CC/DN.1, dated April 11, 1963.

† Circular 4095 - BCTNT/HC/TC/3/TT, dated March 25, 1964.

‡ Appendix G-5, Official Circular 166016-/BCTNT/HCTC3, dated November 24, 1964.

A later modification* appeared to place more power in the hands of the Province Chief, but after the Ministry of Agriculture was organized in 1965 power of approval was transferred from the Province Chief to the Ministry of Agriculture.†

A further procedure for implementation exists through the Revolutionary Development teams, which as part of their activity in the land reform field are responsible for forwarding recommendations on confirmation of squatter titles to land up to 10 hectares.‡

Despite the legal machinery created, very little squatter held land appears to have been distributed.

Communal Lands

Communal lands have not been subject to any governmental policy of distribution of land to the tillers. However, by recent enactments in 1965§ and 1966** they have been brought substantially under the landlord-tenant controls of Ordinances 20 and 2 (described earlier in this chapter) with the village as the landlord. These policies appear intended to apply to lands held by the village in usufruct.†† The circulars exempt, however, what they estimate to be the 75 percent of the communal lands in the central lowland provinces, which by tradition are divided among all persons in the village over 18.‡‡

Rental Policy. The implementing circulars indicate that substantially all of the southern communal lands and the remaining 25 percent in the central lowlands had been subject to renting on a high-bid basis for periods of one to three years. The circulars state that as existing

* Appendix G-2, Arrêté 705-BCTNT/ND/HCTC.3, dated November 24, 1964.

† Appendix G-3, Arrêté 405-BCN/NC/HCTC.3, dated July 28, 1965.

‡ Handbook 1967, Criteria 8, Land Reform, pp. 13-4. This is to be done in coordination with the Farmers' Association Chapter and the Village Administrative Committee. It indicates a bidding procedure is to be applied to amounts in excess of 10 hectares.

** Appendix H-1, Official Circular 9275-BCN/HCTC.3, dated August 23, 1965.

†† Appendix H-2, Official Circular 5619-BCN/HCTC.3, dated May 27, 1966.

‡‡ See Circular 5, dated January 18, 1955, and other circulars regarding policies of land belongings to villages.

§§ Called quan cap. See Official Circular 5619, Sec. I and Note i.

bid leases expire, they are to be replaced by Type A contracts setting a rental of 15 to 25 percent of the estimated average yield of the land. The contract term is five years, but with local authority to revoke on six months' notice to recover the land for "common public use" at any time.

Maximum plot size is to be three hectares in the central region and five hectares in the southern region, with a caution against making the plots so small that productivity may be affected.

The circulars state that the lands are to be leased to an "inhabitant of the village living from his agricultural resources" who is, in a detailed statement of preference, a disabled or wounded soldier or of a dead soldier's family, family of a war victim, combat youth, veteran, tenant already holding the land under the old bidding procedure (directly or by lease from the winning bidder), and those having no land for farming.*

Hence, the new policy not only replaces bidding with Type A tenancy, but also makes communal lands available to persons in war-related activities in preference to any present pattern of use.

Administrative Procedures. The circulars also set up a detailed administrative procedure, with yet another local land reform body, a "Committee for Distribution of Communal Land" to be established in each village. The Village Administrative Council (later the Village Administrative Committee) was to propose the members for ratification at both the District Chief and Province Chief levels; the membership was to consist of Chairman of the Village People's-Council, or, if unavailable, the Chairman of the Village Administrative Council, the Hamlet Chief, a village dignitary, and two farmers' representatives, one of them being from the Farmer's Union or Farmer's Association.

The Village Administrative Committee was to collect the applications; ultimately establish the Type A contracts when the list of recipients was fixed by the Committee for Distribution in accordance with the expressed priorities and approved by the District Chief and the Province Chief; and "supervise the cultivation of the farmers, and collect rent."

* The 1965 circular gave as a prerequisite to any priority that the persons "be landless or own insufficient land for their cultivation." This qualification was not restated in the 1966 implementing circular, and its continuing effect would appear in doubt.

The Committee for Distribution, in addition to drafting the list of recipients, was to determine the per-family area to be rented* and "estimate the yield and rental rates for the land to be rented." A copy of this information was to be sent to the Village Administrative Committee. Publicity for the local administrative actions at each stage is also provided.

The 1966 decree and implementing circular that reorganized village and hamlet administration† apparently transferred the basic authority over village communal lands to two members of the Village Administrative Committee acting jointly: the Commissioner for Agricultural Affairs and the Deputy Chairman. How the new powers have been integrated with, or have supplanted, the functions described in the prior Official Circulars on communal lands is not currently known.

The guidelines provided for local administrative action in the Official Circulars are most detailed and comprehensive.

Land Development and Resettlement Centers

Land development centers and resettlement centers appear to have been formed principally out of state-owned land, with small amounts of private expropriated lands also included in some cases. The lands used were substantially all uncultivated lands, but considered suitable for cultivation.

A 1965 order states that all Vietnamese citizens located at these centers are to receive definitive ownership rights, free of charge, to the state-owned lands that they are actually exploiting.‡ The new owners are to be excused from land taxes for three years following the "distribution decree" if the land is devoted to secondary crops§ and until the year they collect their first income if the land is devoted to industrial crops.

* Appendix H-2, Circular 5619/BCN/HCTC.3.

† Decree 198-SL/DUHC, dated December 24, 1966.

‡ Appendix I-2, Arrêté 021/65, dated October 8, 1965.

§ Not defined, but apparently crops other than rice and industrial crops.

Montagnard Lands

The Montagnards, or mountain tribesmen of Vietnam, are the indigenous inhabitants of the Central Highlands. Because much of the highland area is less fertile than lowlands, the soil productivity diminishes rapidly over time with normal repetitive cropping practices. Apparently to overcome this problem of reduced fertility, the Montagnards rotate their farmland over 3 to 5 years.

A Montagnard village or buon has an elected chief and council and tribal laws. The political unit of the village may encompass several buons, the land of which may not be contiguous. The villagers rotate their farming operations from one to the next buon. The boundaries of the villages or buons are identifiable but are not surveyed or mapped.

During the late 1920s and early 1930s, plantation owners applied pressure on the Annam government to transfer Vietnamese people from the seacoast areas and settle them on plantations as laborers. However, the possible encroachment of outsiders on the land of Montagnards was apparently recognized. At least minimal laws were provided.* A 1923 arrêté modified in 1939 required written official approval to give effect to land contracts that were entered into among Montagnard villages, families or individuals of Annam, and non-Montagnards.* Such contracts were also to be recorded in a special provincial register. The purpose was stated to be "to protect the rights, the customs, and the interests of Moi people" (Article 4).

From the 1930s until 1954, any influx of Vietnamese was forbidden. However, subsequent to the GVN de facto independence, refugees from North Vietnam settled along roads in rural areas in 1954 and 1955. There were possibly 20,000 refugees settled in towns and villages of Darlac Province alone. These refugees had good leadership and adjusted well to the new environment.

During the 1956-57 period under the Land Development Program, landless peasants were encouraged to enter land development centers in the Central Highlands. Vietnamese attempted to seize Montagnard lands. In particular, unoccupied buons were easy to cultivate and consequently were taken over by Vietnamese. In this way, Montagnards were often dispossessed of their land. To alleviate serious conflict between the Montagnards and Vietnamese, steps were taken to improve the legal status of the Montagnards' rights to their communal land.

* Appendix J.

A 1958 arrêté* modified the earlier system by requiring "An authorization from the President of the Republic" for all land transfers or land exchanges between Montagnards and lowland people.

A major step, in principle, to solve the question of ownership was taken in an August 1967 decree law.† This was somewhat ambiguous in its immediate impact on ownership, speaking both in the present (Article 1: "Montagnards are hereby invested with ownership on land for farming"), and the future (Article 2: "Montagnards will receive permanent ownership rights on land they are rotatively farming.") But further provisions for administration make it appear that added steps are needed to confirm ownership. The maximum limit per family is to be set by decree (Article 2), and there is to be registration after land survey and titles granting ownership are to be distributed free of charge (Article 3).

Lands Returned to GVN Control (Confused Lands)

Two administrative orders and a training guide for Revolutionary Development cadres make special provisions for the problem of so-called confused lands: land on which the Viet Cong has settled persons other than those claiming to be the ones lawfully entitled to possession and that have been or may be returned to the control of the government.

A December 1965 official circular signed by the Minister of Agriculture‡ has been reiterated, and the policy strongly reaffirmed in an instruction directly from Prime Minister Ky to commanders, Province Chiefs, and District Chiefs.

Under this instruction,§ land registered in the name of a "small owner-operator" is to be (1) returned to him entirely, removing any persons placed there by the Viet Cong, if it does not exceed "3 or 5" hectares; (2) returned to him to an extent not exceeding two-thirds (but with a minimum return of "3 or 5" hectares) if the land exceeds "3 or 5" hectares, with the Viet Cong-appointed farmer permitted to remain on the rest "if he is landless and does not have any other land to cultivate" and provided further that he makes an official (Type A) contract with the landowner; and (3) if it exceeds "3 or 5" hectares and the Viet Cong

* Appendix J, Arrêté 513 a/DT/CCDD, dated December 12, 1958

† Appendix J, Decree Law 034-67, dated August 29, 1967.

‡ Appendix L, Official Circular 11.000-BC:KH/4G, dated December 15, 1965.

§ Appendix L, Circular 61-TT-XD, dated March 28, 1967.

has "confused" one-third or less, with the Viet Cong-appointed farmer permitted to continue farming provided that he makes a Type A contract with the landowner.

The foregoing provisions applying to registered small owner-operators also apply to recipients of Ordinance 57 lands.

If an original tenant reasserts his rights, whether he had a contract is a critical factor. If he had made an official contract with the landowner, he "has the legal right to farm the land confused by the Viet Cong," and the Viet Cong-appointed farmer is to be removed (and other land is to be sought for him), unless it is over "3 to 5" hectares, in which case the original tenant gets two-thirds and the rest is left to the present cultivator provided he signs a tenancy contract with the landowner. If he has not made a contract, he "had no legal right," but if the landowner declares he has collected rents from the "farmer"-- apparently the original tenant--and the "confused" area exceeds "3 or 5" hectares, one-half should be assigned to the original tenant and one-half to the present cultivator, provided each makes a tenancy contract with the landlord.

The Village Administrative Committee is made responsible for all enforcement. The period for settling disputes is stated to be three months (presumably after re-establishment of government control, this period to "be widely publicized and posted"), after which protests are no longer to be considered. When land is returned to the former farmer, a one-crop transferral period is given to the Viet Cong appointed farmer "to make preparations."

A second part of the instruction prohibits landlords "from collecting back rents accruing during the insecure period in those areas recognized by local authorities," and exempts them from land taxes for that period. All military and administrative personnel and Revolutionary Development cadres are strictly enjoined not to assist landlords to collect such back rents.

Despite strong expressions of purpose,* drafting mistakes may well mar the Prime Minister's instruction to a point that it is difficult to execute. It is, for one thing, a complex and involuted legal document

* "The Rural Construction work is aimed at eliminating the old miserable life in order to build up a happier life for the people in the rural areas The recovering of security is aimed at building a new life, and not for helping the landlords to collect back rents accruing during the insecure years created by the Viet Cong."

in its drafting, difficult to understand and interpret. This difficulty is heightened by a series of inconsistencies or omissions. The constant use of "3 or 5" makes it necessary for the precise cutoff points to be established at the local level, and even then application is apparently subject to unexplained inconsistencies in different situations ("not over 2/3" to the larger owner--cultivators, but "only 2/3" fixed as the amount to be returned to the original tenants of larger tracts). Also, the requirement that the Viet Cong-appointed tenant be landless or without other land to cultivate only appears in one case. The instruction may be difficult to enforce, especially in the absence of a definition of a "small" owner-cultivator.

There are in addition fundamental questions of policy. The small owner-cultivator is, at first view, the intended beneficiary. However, all landlords, with no apparent distinction between small and large, or absentee and cultivator, can insist on formal tenancy contracts (which implies the standard Type A contract and 15 to 25 percent rental limits) with all persons placed on the land by the Viet Cong, no matter for how many years they have tilled the soil or under what circumstances. A part of the instruction seems to enjoin government servants from dabbling in landlord-tenant relations but the prohibition on military and public officials helping to collect rents applies to "back" rents only.

Finally a clear legal route to reassertion of his rights is given to the large absentee landowner via his former tenants, who may move back onto the land carrying with them their obligation to him. Even a person who had no tenancy contract can be the owner's proxy for reassertion of rights on what would appear to be one-half of a tract of unlimited size (or at least up to the 100-hectare retention limit of Ordinance 57) if the landlord states that he has collected rents and the "tenant" does not demur.

As yet no data are available concerning the actual interpretation and the extent of application of the instruction in the field.

The 1967 handbook for Revolutionary Development cadres in the land reform area gives one possible source of information in this important area. The cadres, as part of their activity in the land reform field, are responsible for forwarding recommendations dealing with the disposition of all "confused" lands in their hamlet. However, no records of such recommendations have been found by SRI.

A consensus of Vietnamese opinion is that an equitable solution to the "confused lands" problem rates the highest priority among the objectives of land reform policy. At the same time, there is a lack of faith in the ability of written statutes, however closely and thoroughly they

may be worded, to encompass satisfactorily the great variety of individual situations.* In other words, popular opinion would support the view that village authorities be allowed considerable latitude and discretion in the final disposition of any given parcel of land in the confused category.

* Recorded comments by former Director General of Land Affairs, September 8, 1968.

Chapter 4

STATUS OF LAND REFORM

Land Reform Background

To appreciate the problems and actions relating to Vietnam's land reform it is important to recall the political and economic conditions that prevailed before and during this period.

Following the French capitulation at the Battle of Dien-Bien Phu and in preparation for the Geneva Conference, the French attempted to maintain a government of South Vietnam under Bao Dai. The French-supported regime of Bao Dai lacked popularity in the south. To stem the tide of opposition to this government, Ngo Dinh Diem was appointed Prime Minister under Bao Dai on July 7, 1954. Two weeks later on July 21, the Geneva Conference agreement on Indochina was signed by North Vietnam and France. Under its terms, South Vietnam was recognized as an autonomous state.

As later events proved, Diem was well aware of the dislike of Bao Dai by the populace. He was also aware of the wretched conditions under which many of the landless peasants were living. In 1956 he was able to displace Bao Dai. In the meantime as Prime Minister of Vietnam, he introduced a practical land reform program modifying Bao Dai's inactive Ordinance 20. Ordinance 2, the new scheme that amended Ordinance 20, was promulgated on January 8, 1955.* Without delay, Diem took steps to implement this legislation. Highlights of these ordinances with amendments are recapitulated below:

1. Tenure contracts were required in writing, with copies for the landlord, the tenant, and for the village records as a control document.
2. Rental rates were to be a minimum of 15 percent and a maximum of 25 percent of the estimated yield.
 - a. The yield was to be estimated by the Village Council.

* Appendix D-2.

- b. The tenant was required to pay only two-thirds of the rent if yields were less than two-thirds of the estimated yield, and pay nothing if the yields fell below one-third of the estimate. (It should be noted that the interpretation of this clause is much broader than the precise statement of Article 15 of Ordinance 20, which only refers to crop destroyed by an act of God.)
3. Rental of agricultural implements or animals and interest on loans for seed or fertilizer were limited to 12 percent and were to be included in the written contract.
4. Tenants were granted tenure security for three years, later amended to five years, with automatic renewal unless the landlord provided proof of need to repossess land for his own desire to farm or of failure of the tenant to carry out his terms of the contract.
5. Tenants were granted pre-emption rights, which gave them first right of purchase of lands should the landlord wish to sell the land.

These early measures could not and were not meant to solve all problems but, as Ladejinsky points out,* they were intended simply to alleviate the worst anomalies of landlord-tenant relations in Vietnam. The government was fighting to survive, and administrative machinery was practically nonexistent at the outset. The land reform task was further complicated by lack of sympathy from some rural villages that had been indoctrinated by Communists. Real opposition to land reform came from Radio Hanoi and the Communist agencies in the rural areas. Many tenants had paid no rent to the landlords in years so that even the 15 to 25 percent rates appeared high. Although they paid a heavy tax to the Viet Cong, this tax was scarcely worse than rent, and postwar reduction could be hoped for. Others believed the Communists had confirmed their ownership so that they were not prepared to acknowledge the landlord by a contract. Still others believed a Communist victory would come so that they preferred to wait. On the other hand, landlords who had anticipated a return to the "good old days" were not prepared to accept this new program of profit restraints.

* Wolf Ladejinsky, "Agrarian Reform in Free Vietnam," in Vietnam in World Affairs, Special Issue, Studies on National and International Affairs: Vietnam, 1960, pp. 154-73.

Already the North Vietnamese were failing with their own land reform scheme, which ended in open rebellion in 1956.* However, neither the long range land tenure plans of the North Vietnamese nor their problems of implementation were publicized in the South. The Viet Cong were able through a propaganda and terrorist campaign to retain control in much of the sparsely populated countryside, but they failed to prevent the accomplishment of agrarian reform in areas nearer population centers with better roads and lines of communications.

Diem soon resolved differences with the Binh Xuyen† as well as the Cao Dai and Hoa Hao.‡ Internal conflicts were minimized, and areas occupied by these groups remained strongly anti-Communist with a united front against the Viet Cong.

Regulations to improve tenure conditions provided a means to pacify tenant farmers further. For many of them, the only hope for future family security was the assurance of their rights to occupy and cultivate property belonging to others or, alternatively, to cast their lots with the Viet Cong.

By 1955, South Vietnam had roughly a million tenants of whom 600,000 were in the Delta Provinces and 400,000 were in the Central Lowlands.§ There were slightly fewer landowners with 650,000 in the Central Lowlands** and only about 255,000 in the Delta Region.†† Some 183,000 of the Delta owners had less than five hectares.‡‡ About 6,000 landowners controlled half of the cultivated land in the Delta Provinces, or more than 1 million hectares.§§ Of this number approximately 2,400 have sold lands in excess of 100 hectares to the government under the land reform program of Diem.

Under terms of Ordinance 2, landlords and tenants were required to complete Type A written contracts, which remained in force for three years with automatic extension. Under Decree No. 007 dated October 2, 1964, the life of the contracts was extended from three to five years, with the requirement that contracts be reregistered.

* J. Buttinger, Vietnam: A Dragon Embattled, Vol. II, Vietnam at War, Frederick A. Praeger, 1967, p. 915.

† Ibid., pp. 865-8.

‡ Ibid., p. 881.

§ Wolf Ladejinsky, op. cit. p. 146.

** Ibid., p. 146.

†† Unpublished Data, Directorate of Land Reform (GVN).

‡‡ Ibid.

§§ Wolf Ladejinsky, op. cit. p. 146.

As discussed in Chapter 3, the Type A contract was limited to a fixed rent that, once established, became extremely difficult for landlord or tenant to change. However, a problem arose that could not be resolved with a Type A contract. Landlords often owned good land that had reverted to a wild state. Although tenants might wish to cultivate such land, they were not willing to pay 25 percent rent based on a target yield for well-cultivated land when in fact the land needed to be redeveloped for cultivation. At the same time, the landlords would not decrease their rents because they could not raise them in succeeding years.

This problem was resolved by Ordinance 28 dated February 5, 1955, which authorized use of a Type B contract. The Type B contract provided adjusted rental rates over the first three years, with no rent payment required for the first crop year, half of the normal rental rate for the second year, and three-quarters of the normal rent for the third year in accordance with Ordinance 7, Article 3.* At the end of three years the contract was to be changed into a normal Type A contract with full rental rate being applicable. In fact, however, many Type B contracts are being renewed as Type B rather than reverting to Type A, as provided in the ordinances. This provision, of course, gave the tenant an opportunity to bring the land into cultivation before paying rent. It also gave him a bonus in the form of reduced rent to offset his costs of redevelopment and to offset the possibly lower than normal yields at the outset. The total of 1-1/4 years' rent over a three-year period gave the tenant incentive to develop the land at the earliest possible date. At the same time, the Type B contract provided the landlord with a no-tax clause for three years, in recognition of his decreased revenue.

While the foregoing arrangements encouraged cultivation of idle land by voluntary means, they did not eliminate disuse of farmland. The government, interested in increasing production, brought pressure to bear on the owners of uncultivated lands. Under Article 3 or Ordinance 7, farmers were given 30 days to indicate their intention to have their land cultivated. Landlords who responded were given an opportunity to rent their lands under a Type A contract. If they were not successful, they were then offered a chance to negotiate with a tenant under contract Type B as prescribed by Articles 7 to 9 of Ordinance 28. However, if they did not wish to negotiate or were absent, the Village Committee undertook to negotiate a Type C lease, which is the same as Type B except that the Village Committee represents the landlord, and the Provincial Chief is responsible for rental collection on behalf of the landlord.

* Appendix D-15.

The progress of the Diem regime in implementing a land tenure control system can be measured by the fact that Ladejinsky estimated a total of 800,000 or 80 percent of the estimated million tenants had written contracts under Ordinances 2 and 7 that were in effect in June 1959.*

Later Gittinger listed the following numbers of accumulated Type A and Types B and C contracts in force from 1955 through 1959.†

<u>Year and Month</u>	<u>Accumulated Total</u>	<u>Type A (established tenants)</u>	<u>Types B and C (abandoned land tenants)</u>
1955 December	235,225	198,856	36,369
1956 December	537,030	441,910	95,120
1957 December	675,075	502,989	172,086
1958 December	752,088	552,683	199,405
1959 June	744,386	576,856	197,530

Gittinger states that up to 90 percent of the tenants in some southern provinces held contracts of all types, including Type A, in mid-1959.‡

To whatever extent Gittinger's data show contracts in effect, they must reflect contracts carried over plus new contracts less contracts expiring or canceled for various reasons. The annual increments in Type B and C contracts, adjusted for expiration of contracts after three years, indicates annual signups of 36,000, 59,000, 77,000, 64,000, and 57,000 for 1955 through 1959. Thus not only the total but the signup rate seems to have increased for three years.

Gittinger suggested there might be a total of 1 to 1.2 million tenants in Vietnam in 1959,§ in which case some 63 to 77 percent of all tenants employed contract forms as prescribed by law. He also estimated that 197,530 tenants had recultivated as much as 600,000 hectares of abandoned land.**

* Wolf Ladejinsky, op. cit., p. 156.
 † Gittinger, J. Price, Land Tenure in Vietnam, 1959, p. 3.
 ‡ Ibid.
 § Ibid.
 ** Ibid.

The accuracy of these and subsequent accumulative contract totals is not known. These summaries of contract numbers originate in each village where all contracts are recorded in a permanent register. This register contains the names of contracting parties, the relevant area, land location, rental rate, and contract date. The reporting procedure established was for monthly summaries to be sent from the villages to the Chief of the Provincial Land Affairs Service, who was to forward the information to the Directorate of Land Reform. The Directorate was to issue a Monthly Report and an Annual Summary.

To provide meaningful statistics, the village clerks are instructed to record contract cancellations when the tenant leaves or buys the land. Also, the clerk is expected to adjust entries to reflect switch of contracts from Types B and C to Type A where applicable or to remove the old contract record when a new contract is substituted. Because of lack of experience and training, clerical errors are likely to exist. The seriousness of such errors is not known.

Progress of Tenure Contracts

The following is a tabulation of all contracts in effect, including contract Types A, B, and C: *

<u>Year</u>	<u>Total Contracts</u>	<u>Hectares</u>
1959	781,899	1,365,423
1960	798,170	1,452,217
1961	790,499	1,438,157
1962	734,055	1,368,094
1963	698,326	1,348,962
1964	658,237	1,326,678
1965	658,148	1,329,884
1966	653,054	1,311,322
1967	657,042	1,322,696
1968†	660,663	1,329,869

* Appendixes D-21, D-22, and B-10.

† As of September 15, 1968.

Apparently the total number of contracts in effect actually decreased after 1960 and continued to decline until the end of 1966, when a slight upturn was recorded increasing from 653,054 in 1966 to 660,663 in 1968. The hectarage increased to the end of 1960 and then decreased up to the end of 1966.

To interpret these total transfers, one can observe the trends for each type of contract including Types A, B, and C as included in the appendixes.* There were on file in 1959 109,726 records of Type C contract covering 266,181 hectares. In the following year, the number of contracts was reduced by over 6,000 with an increase of 40,000 hectares. This may have been caused by larger farms being switched to Type A contracts while new contracts tended to cover smaller land areas. However, correction of clerical errors could also be the cause. In subsequent years, the number of Type C contracts was reduced as lands were identified by owners and switched to A contracts. In almost ten years, Type C contracts were reduced from 109,726 contracts to 90,497 contracts.

In general, Type B contracts also decreased slightly from a high of 86,803 contracts covering 226,206 hectares in 1959 to 77,593 contracts covering 219,578 hectares through September 15, 1968. Similarly, Type A contracts decreased from 588,370 contracts covering 873,036 hectares in 1959 to 492,573 contracts covering 869,747 hectares through September 15, 1968. However, Type A fluctuated increasing slightly from 486,956 in 1964 to 488,007 contracts in 1965. An upward trend was also observed from 485,072 in 1966 to 492,573 as of September 15, 1968. The hectarage tended to move in the same direction as the trend in numbers of contracts.

Current Status of Tenure Contracts

Contracts between landlords and tenants are automatically renewable unless they are replaced or terminated. Apparently the procedure employed in the first few years for contract renewal was for the landlord to report that the contract had not been terminated. This information was entered on the bottom of the contract form and signed by the landlord and tenant to indicate a five-year renewal. On the other hand, a contract might be terminated or replaced by a new contract to update changes in tenure terms. Also, in case of loss or disfigurement of the contract form, a new form could be issued. To ensure statistical accuracy, some system for reconciling actual contracts counts with recorded totals would be desirable.

* Appendix D-21, Land Rental Arrangements.

Information on numbers of contracts on record by type of contract (Type A, B, or C) and hectarage covered by these contracts has been compiled and tabulated by the Directorate of Land Reform.*

For Type C contracts where the landlord is absent and village representative rents uncultivated land on his behalf, the tabulation below gives the number of contracts as of September 15, 1968.

<u>Area</u>	<u>Contracts</u>		<u>Hectarage</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Southern Region	87,757	96.7%	237,453	99.5%
Central Lowlands	<u>2,740</u>	<u>3.3</u>	<u>1,091</u>	<u>0.5</u>
Total	90,497	100.0%	238,544	100.0%

The initial contracts are made for three years. As one might expect landlords apparently renewed their tenure contracts within the three-year period so that fewer renewals as Type C contracts are encountered, since renewals assume the Type A form.†

<u>Area</u>	<u>Number of Type C Contracts Renewed</u>		<u>Hectarage</u>
	Southern Region	3,695	8,983
Central Lowlands	<u>6</u>	<u>3</u>	
Total	3,701	8,987‡	

Type B contracts made by landlords with tenants to farm uncultivated lands are shown in the tabulation below as of September 15, 1968.

* Appendix B-10, Number of Registered Tenure Contracts between Landowners and Tenants as of September 15, 1968.

† Ibid.

‡ Rounded to nearest hectare.

<u>Area</u>	<u>Number of Type B Contracts in Effect*</u>	<u>Hectarage</u>
Southern Region	72,862	216,934
Central Lowlands	<u>4,731</u>	<u>2,644</u>
Total	77,593	219,578

In September 1968, the contracts in effect in the Southern Region covered an average of about three hectares per contract. In the Central Lowlands, the average was slightly less than 0.6 hectares per contract.

Apparently some B contracts are renewed as shown in the tabulation below.

<u>Area</u>	<u>Number of Type B Contracts Renewed</u>	<u>Hectarage</u>
Southern Region	1,570	4,279
Central Lowlands	<u>64</u>	<u>41</u>
Total	1,634	4,320

Type A contracts between landlord and tenant are legally required (with provision to use Type B for uncultivated land and Type C in the case of absentee landlords). However, this type of contract is primarily used in the Southern Region where 402,911 contracts are in effect covering 839,462 hectares of land as shown in the tabulation below.

<u>Area</u>	<u>Number of Type A Contracts in Effect*</u>	<u>Hectarage</u>
Southern Region	402,911	839,462
Central Lowlands	<u>89,662</u>	<u>30,285</u>
Total	492,573	869,747

* Appendix B-10.

The average area covered by a contract for the Central Lowlands is only about one-third of a hectare compared with slightly more than two hectares in the Southern Region.

The tabulation below shows the number of Type A contracts that were renewed and the hectarage. This is less than one-fifth of the total number of Type A contracts in effect, 492,573, which one would expect if contracts were automatically renewed. However, the explanation may be that new contracts are being submitted with changes in terms rather than simply a renewal of existing contracts. However, the facts are not known.

<u>Area</u>	<u>Number of Type A Contracts Renewed*</u>	<u>Hectarage</u>
Southern Region	32,445	83,439
Central Lowlands	<u>22,593</u>	<u>7,941</u>
Total	55,038	91,380

The number of renewals is almost as high in the Central Lowlands as in the Southern Region. Apparently there is more reluctance in the Southern Region to renew old terms of contracts than in the Central Lowlands.

All together, there are claimed to be 660,663 contracts in effect in South Vietnam covering 1,327,869 hectares. Of this number, 563,530 contracts are in the Southern Region covering 1,293,849 hectares. Since these contracts do not include rental of public lands, the number of tenants in the Southern Region should be much higher and cover a larger area. There are only 97,133 contracts on record for the Central Lowlands covering 34,020 hectares. Apparently only a small percent of tenants have written contracts. *

The recorded contracts have been questioned in particular because there is no known technique in force to eliminate contracts no longer in effect. Tabulations of total contracts, as recorded earlier in this section, indicate steps have been taken to reduce contract totals. This would indicate at least some contracts are being eliminated from the active lists.

* Appendix B-10.

An attempt was made to verify active contracts by questions asked in the Hamlet Resident Survey, the Absentee Landlord Survey,* and the Village Administrative Chief Survey.† Tabulations from the Hamlet Resident Survey indicate only 37 percent of all tenants had written contracts contrasted with 63 percent with verbal contracts only (balance of only 0.2 percent responded "don't know"). These results agreed closely with the response of landlords in the Landlord Survey who claimed 36 percent of their contracts were written as contrasted with 64 percent whose contracts were verbal. Since sizes of holdings associated with verbal and written contracts are not known, one may only speculate whether the high percentage of verbal contracts destroys the validity of the claimed contracts in effect or simply indicates many tenants on small holdings have no contracts. According to the Village Administrative Chief Survey, some two-thirds of all villages in the sample studied had either no lease contract register or had one that was virtually useless. The results of all these surveys leave doubt as to the accuracy of not only these statistics but also most other statistics prepared at the village level.

Security of Tenure

No procedure has apparently been developed to estimate illegal attempts by landlords to displace tenants. Discussions with Vietnamese Federation of Tenant Farmers officials leads one to believe this is not a major problem. However, there are disputes over attempted legal displacement of tenants. For example, 251 agrarian reform court cases were heard to settle disputes concerning the term of contract.† Since the courts were established, another 1,100 disputes resulted from attempts of the landlord to regain operation of his farm; that is 1,351 disputes out of a total of 2,100 were concerned with tenure terms. However, these statistics do not include settlements arranged by Village Agricultural Committees. Altogether 17,560 litigations were handled with 15,643 settled successfully.‡ Normally disputes were first discussed in the Village Agricultural Committee to give both parties a chance to resolve their differences before approaching the Land Court. However, the Agrarian Reform Court may be approached directly without first discussing the dispute in the Committee.

* Working Papers, Volume IV.

† Working Papers, Volume II.

‡ Appendix B-10; Agrarian Village Committee.

Rental Arrangements

All contracts whether Type A, B, or C are reviewed and legally must conform with rental limits of 15 to 25 percent. However, the possibility exists that actual rental payments may and do exceed 25 percent. This has been demonstrated by the SRI Hamlet Resident Survey in the Southern Region. The Secretary General of the Vietnamese Confederation of Labor (CVT), who is the official spokesman for the Vietnamese Federation of Tenant Farmers, stated that the Land Reform Program has definitely improved tenure conditions. The Secretary General felt that normally farm rents under usual conditions do not exceed 30 percent, but farms in exceptional locations may reach 50 percent. Rental rates in more secure areas where refugee farmers have concentrated tend to be greater. He expressed the opinion that key money, or advance cash payments, were demanded by the landlord to avoid disclosure of this rental infraction. His statements are supported by a regional inspection report of 1962.* A CORDS Land Reform and Land Affairs Field Survey recorded average rents from 10 to 40 percent.†

As an example of recorded rentals payable in September 1967, some 160 contracts out of 300 were reviewed in the Land Reform Office of the Village of Tanan in Vinh Long Province.‡ Out of this number, 40 percent averaged an 18 percent rental rate, 40 percent recorded a 20 percent rental rate, and 20 percent recorded a 23 percent rental rate. The rental rates in this area appear to increase with more productive land and greater security. These are recorded rates and do not necessarily reflect actual rents paid. However, indications are that some insecurity such as exists in this area improves the bargaining position of the tenant.

The rental arrangements under the standardized contracts and possible deviations from these contracts may be analyzed in terms of implications for risk, for efficiency in production, and for incentive to landlord and tenant. Information indicates that during the war years a labor shortage places the tenant in a better bargaining position. The Secretary General of the CVT indicated that tenant farmers were troubled

* Appendix D-20, Commissioner General for Land Reform, Regional Inspection Report, Dec. 10, 1962.

† Appendix H-7, Rental Contracts Issued for Communal Lands.

‡ Appendix D-24, Record of Rental Rate Information.

about a possible loss of bargaining position when peace is re-established and both servicemen and displaced persons will be competing for farms. Also, there is a fear that a fall in rice prices will further aggravate the profit picture, which is already none too favorable.

Notwithstanding formal rental limits established by decree, the forces of supply and demand tend to operate.* In areas where available tenant farmers exceed available farms for rent, actual rentals are likely to press against or exceed legal limits. Legal regulations undoubtedly tend to dampen excess rentals paid above legal limits; however, it appears that the regulations that hold tenant and landlord equally guilty if excessive rents are paid merely drive the bargaining process into hiding. If the tenant were free from fear of punishment for paying excessive rent, he would be more likely to cooperate in exposing the demanding landlord. The research team found no indication of legal steps taken to punish landlords (or tenants) for charging excess rents.

Since the tenant farmer appears to enjoy little protection against the landlord, the role of the Vietnamese Federation of Tenant Farmers is potentially quite important. The Federation has 125,370 members, which number appears to include about a quarter of all farmers who have recorded tenant contracts. Federation membership is largest in the Kien Giang Province in the South with 17,728 members, followed by Quang Tin Province in Central Vietnam with 11,863 members. Roughly a quarter of the members are north of the Binh Dinh Province with an additional 4,553 in Binh Dinh. The province of Phong Dinh in the Mekong Delta has 11,559 members, and Vinh Binh Province also in the Delta has 11,130 members. Most of the other members are scattered in the Mekong Delta. No records have so far been located to show the numbers of tenants who have exercised pre-emption rights† to purchase their farms from the landlord. However, a recorded 154 cases were heard in the Land Court for which the right to purchase farmland was the reason for court dispute.‡

Metayage

The typical legal profile of the metayage sharecropper without a written contract is that of a tenant who pays 50 percent of his actual crop as rent, shares losses on crop failures, is supervised by his landlord, and is subject to eviction. The metayage system of the Central

* Appendix D-20.

† Pre-emption rights refer to the first right to purchase, or refuse purchase of, farm lands.

‡ Appendix D-25.

Lowlands has not come under government control through Ordinances 2 or 20, or through other means. Too little is known or understood about these rental practices although they provide the tenure framework for nearly 20 percent of Central Lowland farmers and affect another 40 percent of farmers who rent land in addition to operating some that they own.

These crop-sharing farmers in the Central Lowlands appear to have few rights and lack legal support now given to tenant farmers in the Southern Region. Officials of the Vietnamese Federation of Tenant Farmers state that metayage cultivators have little if any protection against the bargaining power of the landowners.* Available data tend to support the thesis that farmers under tenure contracts in the Southern Region have had greater increases in production rates than farmers in the Central Lowlands, but there is no direct evidence that these differences are due to conditions of tenure. Indeed, a comparison of rice yields in cultivated areas in the Central Lowlands and Southern Region respectively, as published by the Agricultural Statistics Yearbook for 1965, shows that the Central Lowlands outyielded the Southern Region in 1954-55 by roughly 1.4 to 1.3 metric tons per hectare, whereas in 1965-66 the Southern Region recorded a yield of some 2.0 metric tons per hectare in contrast to 1.65 for the Central Lowlands.

It is clear that the metayage rental system violates the spirit and intent of Ordinances 2 and 20. Furthermore, its existence in only one region of the Republic of Vietnam constitutes an inequity, notwithstanding the fact that population pressure in the Central Lowlands might be expected to warrant somewhat higher rents than in the Delta. Finally, there remains the distinct possibility that improvement or change through government control of the system might create more productive agriculture in the Central Lowlands.

Land Expropriation Under Ordinance 57

The Viet Minh fought for many years to remove foreign domination. By 1954, the forerunners of the National Liberation Front had developed an infrastructure in the sparsely populated rural areas where ignorance and hardship prevailed. As part of their drive to power, the Viet Minh distributed the land of cooperating landlords and of those owners who were absent.

* Appendix D-20.

When President Diem assumed government leadership, he faced an appalling agrarian situation. Rents were as heavy as could be anywhere in Asia. The tenant was required to provide seed, tools, livestock, and hired labor for 50 percent of the crop.* When short of rice for seed or food, he was forced to pay double at harvest for short term loans. His net share of the crop was roughly one-third of the meager yield from a small area, and even that was subject to high risk. The tenant farmer on five hectares in the Mekong Delta suffered even worse conditions. He often received a net of only about 10 percent of the crop harvested, which was insufficient to support him for the year. With no more security than the most disadvantaged peasant, he was forced to look for another job.†

At the outset of World War II, two out of three families had no land at all in the Southern Region. By the end of the war with France, 4 million Vietnamese families were landless peasants while 2,500 families controlled 40 percent of the riceland of Vietnam, most of which was located in the Southern Region. This disparity in land ownership was not likely to remain acceptable to those who were disadvantaged, particularly at a time when the Viet Cong preached equity. The Viet Cong had not yet revealed its hand to the rural farmers in the Southern Region who believed they would become owners of the land they tilled. However, the signs then as now clearly pointed to collectivization of agriculture when convenient to the leaders. In spite of peasant revolt in North Vietnam, their lands were collectivized.

Diem introduced Ordinance 2 in 1955 to remedy some of the more flagrant landlord practices by control of rent, tenure conditions, and security of tenure, as described earlier.‡ He attempted to reach a maximum number of tenants at a cost that the government could pay. Fortunately the United States had given help§ and it was unofficially anticipated that the United States would carry part of the burden of land reform, as it later did.

The French government was later to assist Vietnam by financing the purchases of lands owned by French citizens, a program discussed in detail later in this chapter. Together with land acquired under the expropriation law, 680,000 hectares or nearly one-third of all riceland came under

* Appendix B-2, W. Ladejinsky, "Agrarian Reform in Free Vietnam," in Vietnam in World Affairs, p. 148.

† Ibid.; also Pierre Gouron, *L'Utilisation du Sol en Indochine Francaise*, p. 408.

‡ Appendix D-2.

§ See Volume II.

government control. Of this total, one-third or approximately 220,000 hectares was not cultivated at the time of transfer to government ownership, including 56,000 hectares that had never been under cultivation.* Many of the owners of these lands had not visited nor operated their holdings in a decade and were already discussing the possibility of sale.

In the planning phase, it was estimated that a limitation of ownership to 100 hectares would yield 425,000 hectares that, together with an estimated 245,000 hectares held by the French, would provide a total of 670,000 hectares, roughly a third of all tenanted land in the Republic of Vietnam.†

Ordinance 57 was introduced on October 22, 1956, and expressed its own purpose: "The Land Reform established by this ordinance aims at an equitable distribution of the land to help tenant farmers become small landowners for the development of agricultural production, and the orientation of large landlords toward industrial activities."‡ Ordinance 57 was aimed at providing an opportunity for some 200,000 tenants to become landlords. Also since many of these tenants would occupy expropriated uncultivated land, the law also would serve to increase rice production. With about 1 million people to be settled on this land, there was an excellent opportunity to improve the pacification program.§

Because landholdings in the Central Lowlands seldom exceeded 10 to 15 hectares, the reform program under Ordinance 57 with its 100-hectare retention limit obviously was designed to have its impact in the Southern Region of South Vietnam. This retention limit, rather than a lower level, was a political decision, used to avoid eliminating the rural middle class at one stroke.**

* Gittinger, J. P., Land Tenure in Vietnam, p. 5.

† Appendix B-2, W. Ladejinsky, p. 166 (with correction of total to read 670,000 and not 685,000 hectares).

‡ Appendix E-3.

§ J. P. Gittinger, "Land Tenure in Vietnam," December 1959, p. 7. According to Dr. Gittinger, 437,000 hectares to be expropriated from the Vietnamese plus 262,000 hectares to be purchased from French landlords would provide a total land area of 699,000 sufficient for 300,000 cultivators. On a prorata basis, this would permit roughly 200,000 cultivators to settle on the Ordinance 57 lands to be expropriated from the Vietnamese landlords.

** Appendix B-2, W. Ladejinsky.

A number of problems, some of them foreseeable, arose from the decree. Implementation of Ordinance 57 proved more difficult than anticipated. The program was far more complex than the land reform scheme in South Korea, where all cultivators became landowners of the land they cultivated. Unlike South Korea,† the land reform scheme of South Vietnam substantially retained the pattern of nonoperating ownership.

First, there was the problem of determining who owned individual parcels of land in Vietnam. Second, the size of land areas had to be established. Third, there was the problem of determining the legality of ownership by each individual. Fourth, standards of land classification were required for establishing land prices. Fifth, each parcel of expropriated land had to be priced using this standard. Sixth, land titles had to be reconciled with physical benchmarks and reference points. Seventh, the titles had to be searched to ensure that ownership had not been transferred. Eighth, taxes and mortgage status had to be determined to ensure that prior obligations were paid.

In addition, there were problems of developing an administrative and cadastral organization together with a necessary training program and appropriate systems and procedures.

After eight years of war, many of the land deeds had been lost in both the Central Lowlands and the Southern Region. Moreover, families that had owned and operated these lands were dependent on their rights to continue to operate them and were anxious to re-establish their ownership. To overcome these document losses, local villagers made independent attempts to establish temporary records and identify land ownership. However, these efforts lacked uniformity among villages and often excluded information necessary for satisfactory identification. For example, identification requires maps that were generally not available and when available were inaccurate. Land area measurements were often missing or not sufficiently accurate for tax purposes. Also, lack of knowledge of precise boundaries between parcels leads to ownership disputes about physical location of boundaries.†

* Korea Land Economics Research Center, Seoul, Korea, A Study of Land Tenure in Korea, 1966.

† Secretariat of State for Land Property and Agrarian Reform, Agrarian Reform Congress, Operation of Temporary Land Identification, Report No. 7, p. 1.

Village officials requested technical assistance and, in response to their requests, the Vietnamese government in 1956 authorized a temporary land identification known to be carried out by a committee with representatives from each province to standardize procedures in the Central Lowlands. The Directorate General for Land Surveying assumed the responsibility for perfecting documents for land reform.* To achieve accuracy and uniformity of temporary land identification, experimental centers were chosen in parts of six provinces of the Central Lowlands of Vietnam, and the procedures were tested on roughly 10,000 parcels covering just over 2,100 hectares.† Shortcomings were observed and changes incorporated into a more general scheme of temporary land identification, which was introduced on a broader scale.

Although the appeal for help and the establishment of the temporary land identification scheme‡ preceded the announcement of Ordinance 57 in 1956, approximately a year was required to develop an effective land reform organization, train staff members to perform their various duties, and process the first of the titles of lands to be expropriated. However, mistakes were made that resulted in confusion and annoyance. As a result of both errors and data omissions, there were delays and complications concerning land expropriation; a former official recalls that even communal lands were inadvertently expropriated. Properties were checked for mortgages and unpaid taxes. Also there was a need for accurate survey results in order to determine acreage for payment. Since land prices were also dependent on productivity, it was necessary to examine the condition of the soil and obtain information about its crop growing capability. To avoid arbitrary pricing of land, formal steps were taken to classify the lands in terms of productivity.

Other complications led to delays in expropriating land. For example, under terms of expropriation if a husband and wife each had land in his or her own name before marriage and before proclamation of Ordinance 57, each was recognized as an individual under the law.§ This meant

* Ibid., p. 1.

† Ibid., pp. 2 and 3.

‡ Apparently land identification records were again destroyed after the 1963 coup d'etat and during the period of increased Viet Cong activity.

§ This situation was changed by Circular 5369 BCCDPCN of 19 June 1968, limiting a married couple to a total of 100 hectares.

that proof of the date of land ownership was necessary as well as documentation of the marriage date before final land disposition could be made. In this time of conflict with destruction of many records, the establishment of proof was extremely difficult and time consuming.

Land prices were based on productivity but were established low enough to ensure the ability of new owners to pay for their land. Provincial average prices ranged from 12,000 piasters per hectare in the Province of Bing-Duong (or US\$139 per acre at the former rate of exchange) down to 4,000 piasters (or US\$46 per acre) in the broadcast rice area of An-Xuyen.* These figures in U.S. dollars may overstate the value of compensation to landlords as the free market value of the piaster (VN\$72.22 = US\$1.00) was less than the official rate of VN\$35 = US\$1.00. Also, the value of the Vietnamese piaster at the time of land transfer was considerably higher than in 1968. The landlords affected received only 10 percent cash and the balance amortized over 12 years, during which time the value of the piaster declined.

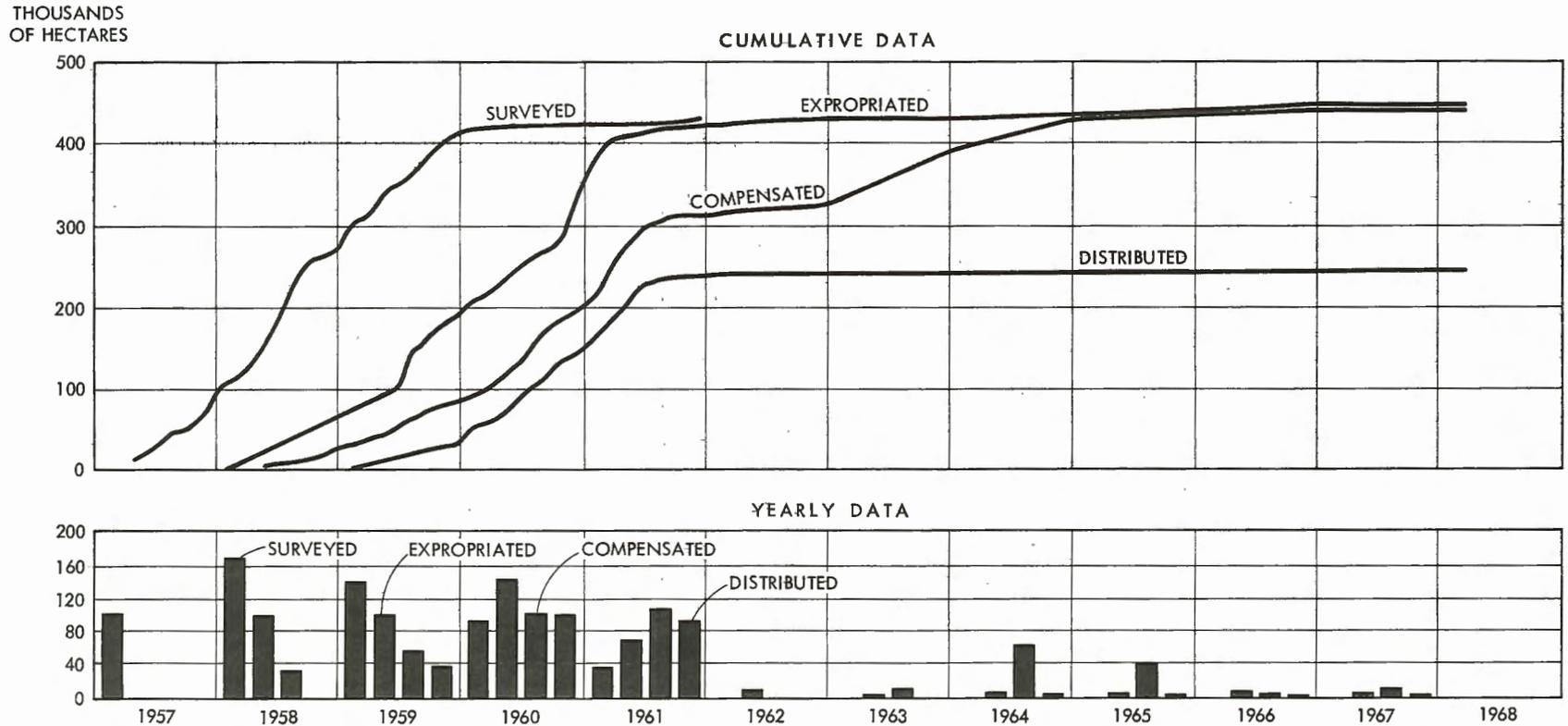
Due to positive government action in supporting land reform, most of the land subject to expropriation under Ordinance 57 was transferred to the government by 1960--411,632 hectares out of a current total of 450,848 hectares. After 1960, somewhat less than 6,000 hectares per year were legally expropriated as shown in Figure 1.†

Some landlords did not declare their lands in excess of 100 hectares for expropriation within the legal time limit, but it appears that time extensions were granted to avoid punishing them. In spite of such delays,

* Appendix B-2.

† Appendix E-14, Land Expropriated Under Ordinance 57.

Figure 1
 HISTORICAL DATA RELATING TO EXPROPRIATION
 AND DISTRIBUTION OF LAND UNDER ORDINANCE 57, 1956-68



SOURCE: Directorate General of Land Reform, Ministry of Land Reform and Agriculture.

land expropriation was accomplished with sufficient speed to ensure that there was riceland available at all times for distribution.* One of the major stumbling blocks in expropriating land was the question of compensation. Because of the arbitrary nature of many pricing decisions, one may well imagine the reluctance of government administrators to expedite unfavorable government decisions that were designed to help the new landlord at the expense of the old one. Notwithstanding these delays, the land expropriation program must be judged successful in its objective of acquiring all estates of over 100 hectares (see Figure 2).

The compensation paid to landowners for 447,604 hectares of land amounted to more than 1,540 million piasters including 194 million piasters in cash and 1,349 million piasters in bonds. This amount was paid to 1,972 landlords for 6,253 parcels of land.† Thus, the average landlord was paid about US\$22,220 at the official rate of exchange‡ for 226 hectares (i.e., over 550 acres). These landlords were understandably unhappy. It should be remembered that a reasonable price was intended but that it was eliminated by inflation.

Landlords were offered the option of exchanging their bonds for stocks in four companies in August 1959 in a decree authorizing sale of government-owned equity interest in the Paper Company of Vietnam, the Glass Company of Vietnam, the Vinh Hao Company (mineral water), and the Cotton Company of Vietnam.§ In actual fact, it appears that this investment opportunity was finally available only in two industrial enterprises, and these investments have not proved successful. In Taiwan where industry was growing rapidly, this kind of transfer of capital from agriculture to industry was very successful.

Distribution of Riceland Under Ordinance 57

Expropriation of riceland (Figure 3) under Ordinance 57 was successful, although slow in completion. However, distribution of land has lagged

* Appendix E-15, Accumulated, Expropriated, Distributed and Undistributed Land Areas in Vietnam under Ordinance 57.

† Appendix B-10: Monthly Activities Report. Land Reform Directorate, dated Sept. 13, 1968. Also Appendix E-16: Tabulation of Expropriated Land by Ordinance 57.

‡ VN\$35 = US\$1.00.

§ J. P. Gittinger, "Land Tenure in Vietnam," December 1959, p. 7.

Figure 2
 LAND IN REGIONS III AND IV EXPROPRIATED UNDER ORDINANCE 57

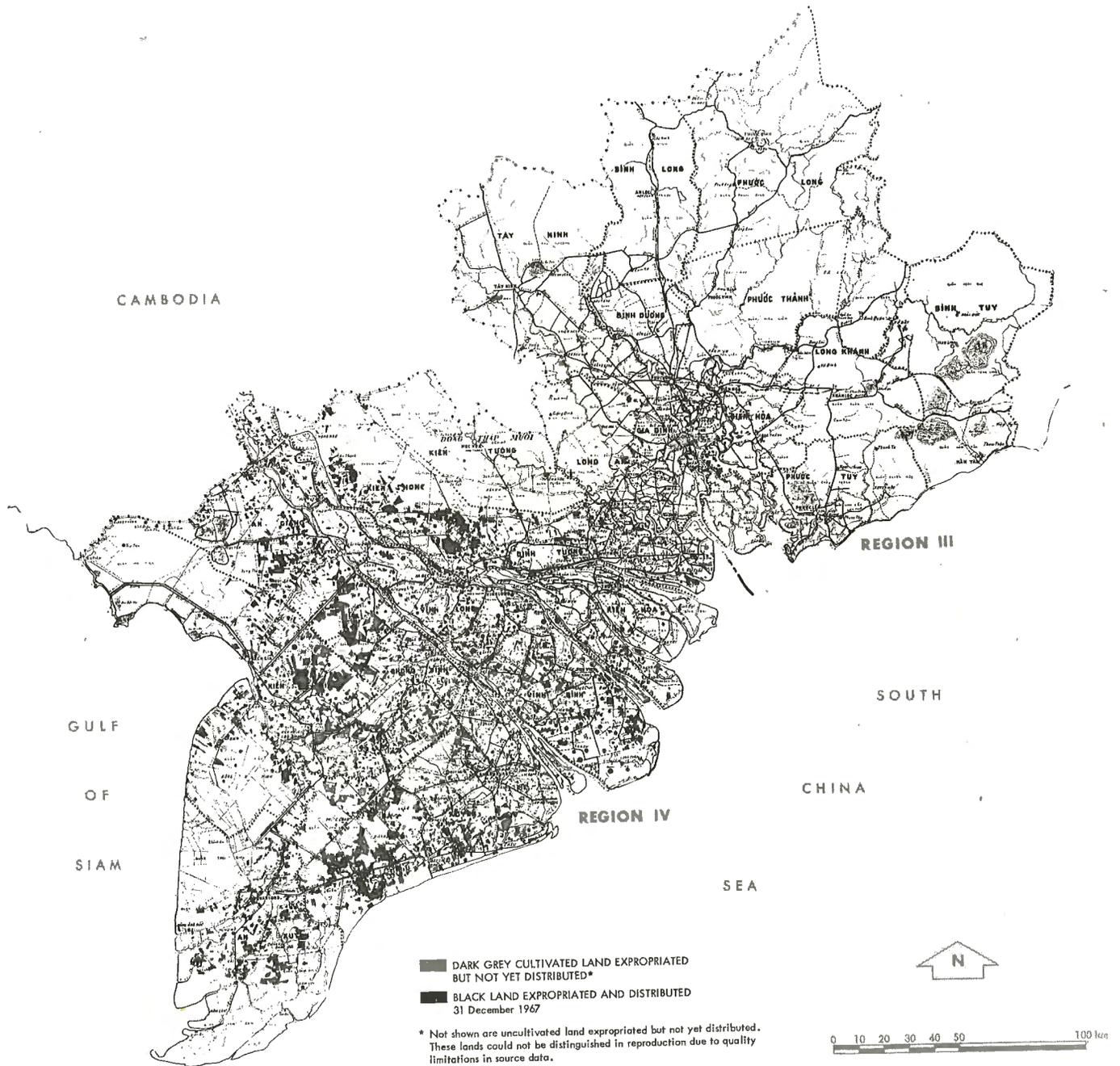
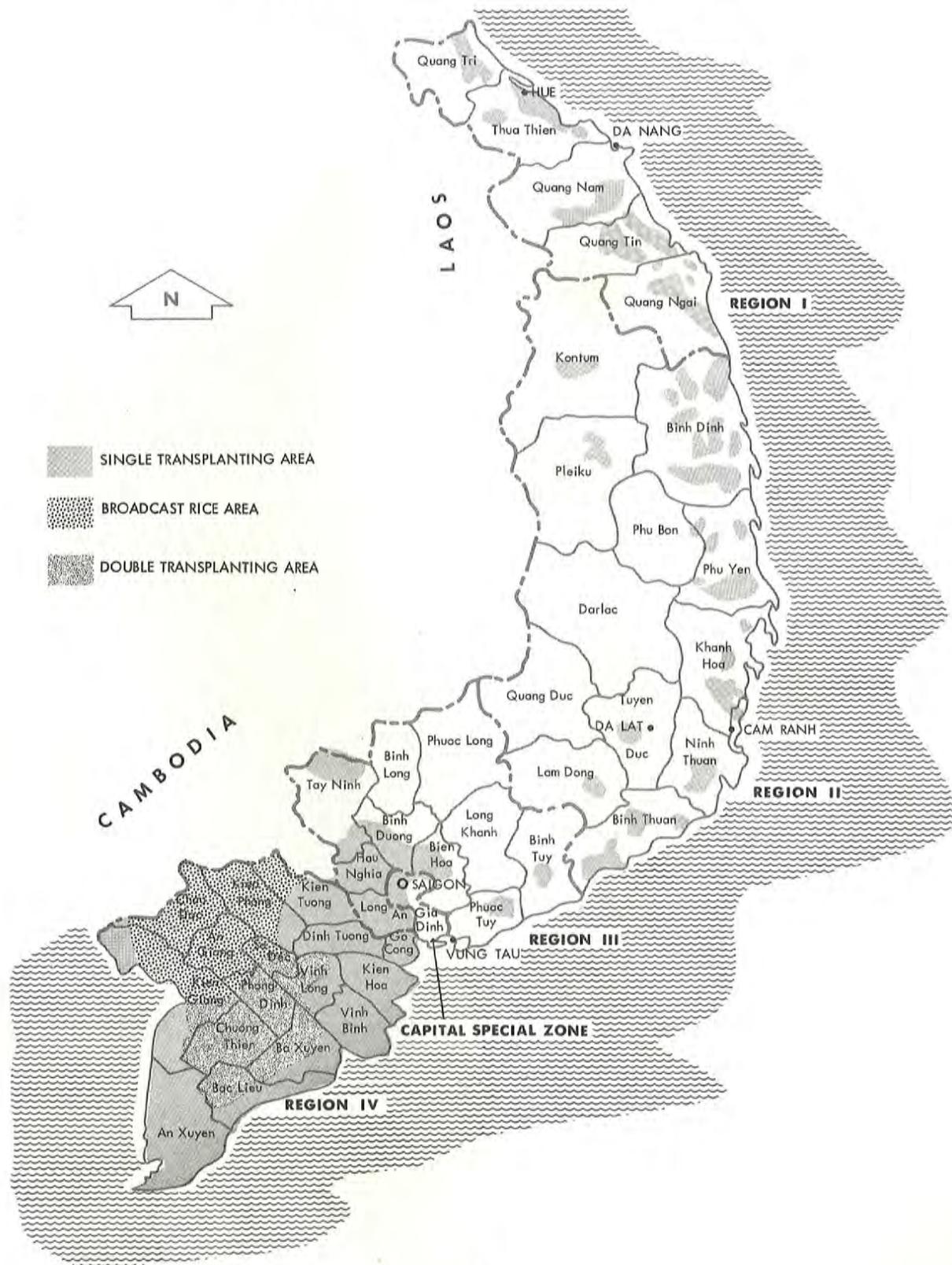


Figure 3
RICELAND AREAS IN REPUBLIC OF VIETNAM



far behind. Distribution of land is far more complicated than its acquisition. The land expropriated was selected on only one criterion, i.e., the transfer of all riceland held in excess of the 100 hectare limit with a 15 hectare legal allowance for ancestor worship. However, a real problem exists in interpreting the legality of recorded holdings in excess of 100 hectares (or 115 hectares with worship land). Under Article 4 of Ordinance 57, for example, an individual owner may exceed the retention limit if the excess hectareage represents land used for industrial crops or livestock production. If the recorded owner died before October 22, 1956, one might still be trying to untangle the legality of owners who succeeded him and their retention rights.

In some instances, wives had land rights as individuals, that is, if they owned land before the marriage. Otherwise, the wives have no individual rights to own riceland under Ordinance 57. Additional complications apparently arose with cases of multiple wives and divorced women. Ownership of land by children was legalized only if a child was 21 years of age at the time of the land reform promulgation, or 18 years if married. Joint ownership was accepted with each legally recognized person permitted to hold the retention limit. Some individuals claimed to "own" several hundreds of hectares that in fact belonged in part to members of their families. Although a parent often exerts parental control, even this indirect control is eventually wiped out by death.

Problems arising from these complex ownership patterns are compounded further by inadequate administrative records. The old Dia Bo land ownership records did not purport to be accurate. A common practice was to leave land in the name of an ancestor long since deceased. Even the Torrens-type records were in fact not kept up to date in many areas. Also, destruction or partial destruction of records at the Village and Provincial levels increased the problem of administering land redistribution. In some cases, owners were at a loss to prove they even owned certain land.

There were at best incomplete lists of land ownership records at the provincial levels with no master records at the national level. Indeed, in most countries such records are not available at the national level. This meant the Vietnamese had no control list to identify owners of excess lands. An attempt was made to establish lists by instructing landlords to declare their holdings. However, some of the landlords were out of the country for long periods of time. For a variety of reasons, other landlords were not aware of the regulations and did not know what reporting procedures were required. Less scrupulous individuals had opportunities to conceal their knowledge of the regulations. Existing conditions created a situation that made detection of illegal holdings quite difficult.

The complex legal procedures followed frequently took many years to expropriate the land in the most difficult cases. The SRI team found several cases of excess over 115 hectares in a spot check of Bac Lieu and An Giang Provinces. But because of slow administration resulting from the variety of permissible situations and complex procedures authorized--many cases were unsettled after ten years--it was never demonstrated that there was wilful maladministration.

Availability of expropriated land was not a sufficient condition to ensure its legal distribution. Other necessary conditions included:

1. Cultivability of land
2. Ground subdivision and borders clearly identified
3. Areas known
4. Prices determined
5. Protection of new owner against Viet Cong harassment
6. Willingness of tenant to buy land
7. Willingness of Provincial Administrators to distribute land
8. Finances available to conduct distribution.

These conditions provided difficulties that were not appreciated when the land was first expropriated for redistribution. Indeed, land expropriation was essentially not started until 1958, two years after Ordinance 57 for land distribution was promulgated. Although the major expropriation took place from 1958 to 1961, small areas are still being expropriated to date.

Quite obviously the landowners who gave up an average of more than 500 hectares each would wish to retain their most valuable land as was permitted by the law. Much of the remaining land was also good. However, one would normally expect to find substantial areas of marginal and nonarable lands that had been retained simply to ensure that the good parcels were retained by the owner in a single block of land. The magnitude and specific impact of quality differentiation in the expropriation probably can never be determined, but it exists.

Cadastral Problems

Benchmarks and reference points for parcels of land for distribution were often lacking. For example, existing survey information was often limited to identification of corner posts that defined the expropriated

property lines. Since the purpose of land reform was to break up these large holdings, additional cadastral survey information was a vital prerequisite to subdivision. Also the information was required for tax purposes and, more important at this time, to determine the area as a factor in establishing the value of the land.

The survey problems were further aggravated by Viet Minh and later Viet Cong sabotage efforts to remove cadastral benchmarks. Although the expropriated landlord's properties might be well-defined on paper and roughly identified on the ground, it was necessary to survey the land to ensure that the new landowners were legally acquiring the lands that they had occupied or that they were to assume. This emphasis on precise identification was made to avoid the disputes that had confronted the village leaders following destruction of farm ownership records.* The question of accurate boundaries was acutely felt by landowners who might own only a hectare of land. In areas with the French pattern of long and narrow fields, a difference of one meter in width on a 1-hectare field could represent 2 percent or more of the total land area. A more serious question, of course, was the compounding of inaccuracies both in distance and bearing from field to field resulting from crude surveys to measure from a point of origin, so that a new owner might find himself farming someone else's land. This type of problem becomes particularly serious where, as in the Mekong Delta, land is subject to flooding and field landmarks become lost.

To resolve these problems and to expedite the land reform program, the Secretariat of State for Land Property and Agrarian Reform was established, which is an office equivalent to a ministry.

Functions of the Secretariat include implementation of the Agrarian Reform Program to prepare and install land statutes, implement necessary survey methods, prepare maps, provide new cadastral and land documents, and rectify and conserve existing land documents.† The importance of cadastral problems is indicated by the seeming disproportion of emphasis and detail concerning surveying, maps, records, etc., in the Decree 211/BDT/ND of December 1, 1959, which authorized the Directorate General for Land Affairs and Topography.

To implement the survey operations, a hierarchy of surveyor positions was inaugurated setting forth standards of technical competence,‡ and

* Secretariat of State for Land Property and Agrarian Reform Congress, "Operation of Temporary Land Identification," Report No. 7, p. 1.

† Ibid., pp. 3-4.

‡ Ibid., pp. 2-3.

steps were taken to provide personnel to fill these positions. Apart from a small number of engineers and land technicians who studied abroad, most of the personnel were trained by the Public Works College. From 1955 until the end of 1960, 13 cadastral engineers and 43 cadastral technicians were supplied to the Directorate General for Land Reform. In addition, five students for the higher degree (engineer) and 10 students for the intermediate degree (technician) were admitted to the cadastral section each year, and courses were selected to train them for land reform duties. The program was geared to increase sharply survey personnel up to 1960.* Survey equipment, furnished by American aid, was provided, and by June 1959, there were 114 survey teams in the field. The time required to take these organizational and technical steps delayed achievement of land distribution.

Although Ordinance 57 had been promulgated in October 1956 to transfer land to tenants three years later, by the end of 1959, only 37,310 hectares had been transferred with proper titles to a total of 28,464 new owners.† To hasten the process of checking titles, President Diem had transferred to the Ministry of Land Registration and Land Reform experienced personnel who had formerly worked in the Directorate of Land Registration. In this way, experienced people were made available.

Prior to January 1967, no "permanent" titles, but only "provisional" titles were issued to recipients on the grounds that the lands had not been paid for. This practice of giving only provisional titles led to accusations by the Viet Cong that in effect no title whatever had been issued. In January 1967, President Ky undertook to change this situation by ordering the printing and distribution of over 100,000 "permanent" titles.

Land Values

Given accurate ground survey information and knowledge of the areas of the land parcel, soil types, and topography together with local conditions and production results, it was possible to arrive at objective land prices. It should be mentioned that a divided parcel of land is often worth less than its proportionate area because of nonavailability of land features such as drainage and rights-of-way to service each specific area. Production on each segment of land has to be maximized whereas the former owner enjoyed economies of scale and could optimize

* Gittingen, op. cit., p. 12.

† Appendix E-17, Status of Land Expropriated, Redistributed and Compensated.

production on the total land plot when all of the segments belonged to him. However, it appears that the landlord was forced to underwrite this loss of value. Payment for the land seems to have been much more closely related to what the new owner could pay than to the value of the parcel as an investment for the expropriated landlord.

Security

In reviewing the post-1962 situation, it might be concluded that the deemphasis of land reform delayed distribution and probably caused some farmers not to resist the Viet Cong, which in turn aggravated the security situation in these areas. However, the reverse relation appears more likely, that is, that lack of security limited the ability of the Vietnamese government to distribute these lands in Viet Cong areas. The Communists were violently opposed to the government land reform program. Viet Cong agents exerted continual pressure on the farmers in the form of propaganda, physical threats, and violence to dissuade them from buying lands. Where Viet Cong activity was under reasonable control, the tenants wished to purchase land. However, in Viet Cong-dominated territory, there was little incentive for a farmer to pay the Vietnamese government for land that could be neither serviced nor protected against Viet Cong taxation and control. Also much of the land had never been cultivated, or had gone untilled long enough to have reverted to wild land overgrown with brush, often with irrigation facilities in disrepair and with productivity generally at low level because of disuse.

While the problems of recultivation are considerable, they have been more or less taken in stride in some areas. However, tenants are unwilling to risk their lives to develop land in Viet Cong-controlled or confused areas. Indeed, the attitude of the peasant farmer toward the government compared with the Viet Cong is that farmers will not voluntarily clear land in Viet Cong-dominated or confused areas, but require secure areas in government-controlled territory.

As a result of variations in land suitability for farming, land identification, and security, it was natural that land distribution could be expedited by concentrating on the more readily available lands and delaying the more difficult transfers until after the peak period of land transfers had passed.

As one would expect, some land transfers were easy to complete with both landlords and tenants satisfied with terms offered by the land reform officials. However, a lag time of 18 months was still necessary to provide the organization, staff, and procedures for processing transfers

of land. President Diem presented the first fully completed transfer when he handed the first title deed to the new owner and the first cash payment and land bond to the expropriated landlord on May 9, 1958, at Cai Lay.* However, this ceremony hardly represented the beginning of a constant flow of transfers. As already mentioned, the processing of land distribution was an uphill task that tended to become more difficult as the easier transfers were completed and more difficult ones were left to be resolved.

In retrospect, the combined efforts of the various government agencies and individuals met with considerable success in implementing the reform program. However, by mid-1961, the rate of success as measured by the distribution of titles had started to diminish. U.S. financial and technical support was terminated in 1960. During the same period, U.S. economic assistance was being curtailed and administrative problems became progressively more difficult due to growing insecurity. These conditions thus tended to force President Diem into a shift of emphasis away from land reform.

Emphasis on this phase of land reform was lessened relative to other wartime activities--prematurely, as it now appears--with the downgrading of land reform from a Ministry of Rural Property and Land Reform to a Directorate General of Land Affairs and a separate Directorate of Land Reform not controlled either by the Minister or by the Director General, in the Ministry of Agriculture and Rural Affairs. At this time, Viet Cong activity was increasing with added emphasis on physical violence and subjection of people in isolated areas, so that the government was more concerned with the direct impact of the conflict.

Quantitative Measures of Progress

To appreciate the status and tempo of land reform at this time, it is informative to review a report of October 22, 1962, "Conference on Land Administration," prepared by the Directorate General of Land Affairs. According to this report, there were 2,035 landowners who had more than 100 hectares of land that were subject to expropriation. These land parcels were estimated to provide an area of 454,504 hectares for new landlords. Out of this area, some 22,266 hectares were reserved for special government use including agrovillage centers, land development

* J. P. Gittinger, "Studies on Land Tenure in Vietnam," Division of Agriculture and Natural Resources, United States Operations Mission to Vietnam, 1959, p. 7.

centers and irrigation pilot study areas. This left a total of 432,238 hectares theoretically available for distribution to tenants in 1962.*

Because of the apparently successful survey program only 13,539 hectares remained unsurveyed, which amounted to only 3 percent of the area to be distributed. However, it has subsequently been shown that due to great inaccuracies, a large portion of the lands must be resurveyed. Unsurveyed land in 1962 included 10,788 hectares in insecure areas, 2,680 hectares of scattered land in small parcels that had been omitted, and 71 hectares awaiting court decision.†

As a result of land offers under this scheme, 123,193 farmers have submitted applications to purchase 297,018 hectares out of this total of 418,699 hectares. Another 37,310 hectares of cultivated lands were offered for distribution but no applications to purchase had been received, presumably because of Viet Cong opposition. The balance of 86,301 hectares consisted of idle land for which no purchase requests had been received.‡

By the end of 1962, a total of 428,445 hectares had been expropriated. However, only 245,877 hectares had been distributed leaving 182,568 undistributed.§ After 1962, as shown in the appendixes, very little land remained to be expropriated, but little was distributed.

The Current Situation

The statistics here** are believed to reflect accurately the current distribution of land and titles as transferred from Provincial and Village records. Altogether some 452,276 hectares of land were expropriated by September 15, 1968. This area included 1,854 hectares reserved for roads and another 2,818 hectares still to be prepared for distribution, leaving a total of 447,604 on record for distribution.

To date, some 261,067 hectares have been distributed or allocated to 119,797 tenants including those in Land Development Centers. For this

* Directorate General of Land Affairs, "Conference on Land Administration," October 22, 1962.

† Ibid.

‡ Ibid.

§ Appendix E-15: Accumulated Expropriated, Distributed and Undistributed Land Areas in Vietnam Under Ordinance 57.

** Appendix B-10: Monthly Activities Report of Land Reform, dated September 13, 1968.

land, 116,167 permanent titles have been prepared and distributed to Provincial offices. Provincial statistics are also recorded but details and validity have not yet been defined. This high rate of distribution reflects 103,699 titles distributed to the Provincial Offices in 1967. However, the bulk of these titles remain undistributed in provincial offices.

The redistribution total included 7,360 hectares distributed free of charge to farmers in Cai San I Land Development Center and 2,823 to farmers in Cai San II. Thus, 191,210 hectares remain undistributed out of 452,276 hectares expropriated. However, there are 70,847 hectares of cultivated lands including rented land that farmers cultivate but for which they do not officially pay rent. The lands are primarily located in Viet Cong-dominated areas. The farmers are either opposed to purchasing lands they have occupied for many years, or they fear threats from the Viet Cong should they decide to buy the land. In either case, they still have to pay Viet Cong taxes amounting to about half or more of their crop so that any additional cost burden would further strain their ability to pay. Further information about this 70,847 hectares needs to be obtained.

Misuse of cultivable lands for unreported rental purposes by Provincial or Village officials has been suspected but not proven; verified irregularities have not been established. The reasons for believing that some irregularities may exist is because only 4 million piasters have been collected in rents over the seven-year period from 1960 to December 15, 1967, although there were 70,847 hectares of undistributed cultivated land on September 15, 1968.* There are several alternative explanations. First, farmers in Viet Cong-dominated areas will not pay rent; this is known to be true. Second, the provinces are using some of the rental funds for local expenditures. Third, officials in some instances could misuse funds with limited fear of detection, especially if obtained from Viet Cong-held areas. Although punishment is severe and there could be a death sentence, it is possible that there are individuals who will take a calculated risk. In fairness, however, to the Vietnamese government, one must state that verified irregularities have not been established. Without physical inventory control of land and adequate government audit procedures, misuse of land cannot be effectively controlled. A 22-Point Program was outlined by the former Prime Minister Nguyen Van Loc to improve the civil administration and eradicate bad practices.†

* Appendix B-10, Monthly Activities Report of Land Reform dated September 15, 1968.

† The Saigon Post, Nov. 16, 1967, "Loc Vows Fight Against Graft," p. 1.

The An Giang Land Reform Project, conducted by EARI (Engineer Agency for Resources Inventory) with government assistance, is currently under way. This project is designed to pinpoint problems and solutions for land identification. One important aspect is the development of modern photogrammetric processes for accurate delineation of property boundaries.*

Figure 4 summarizes the current status of lands expropriated under Ordinance 57 as well as former French lands which are discussed in the following sections.

Purchase of French Lands

French rule was directly imposed in 1884 on the southern provinces (Cochin China) of Vietnam, which are located on the lowland delta of the Mekong River, and cover an area of some 6 million hectares. At that time, the area was still sparsely populated and mostly undeveloped; a total of only 400,000 hectares was under cultivation by the inhabitants of this area. The French colonial administration endeavored to develop this virgin land area by offering to sell huge tracts of land at nominal prices. Indeed, much of this land was given to French citizens as well as to favored Vietnamese on condition that it be developed.†

Characteristics of French Lands

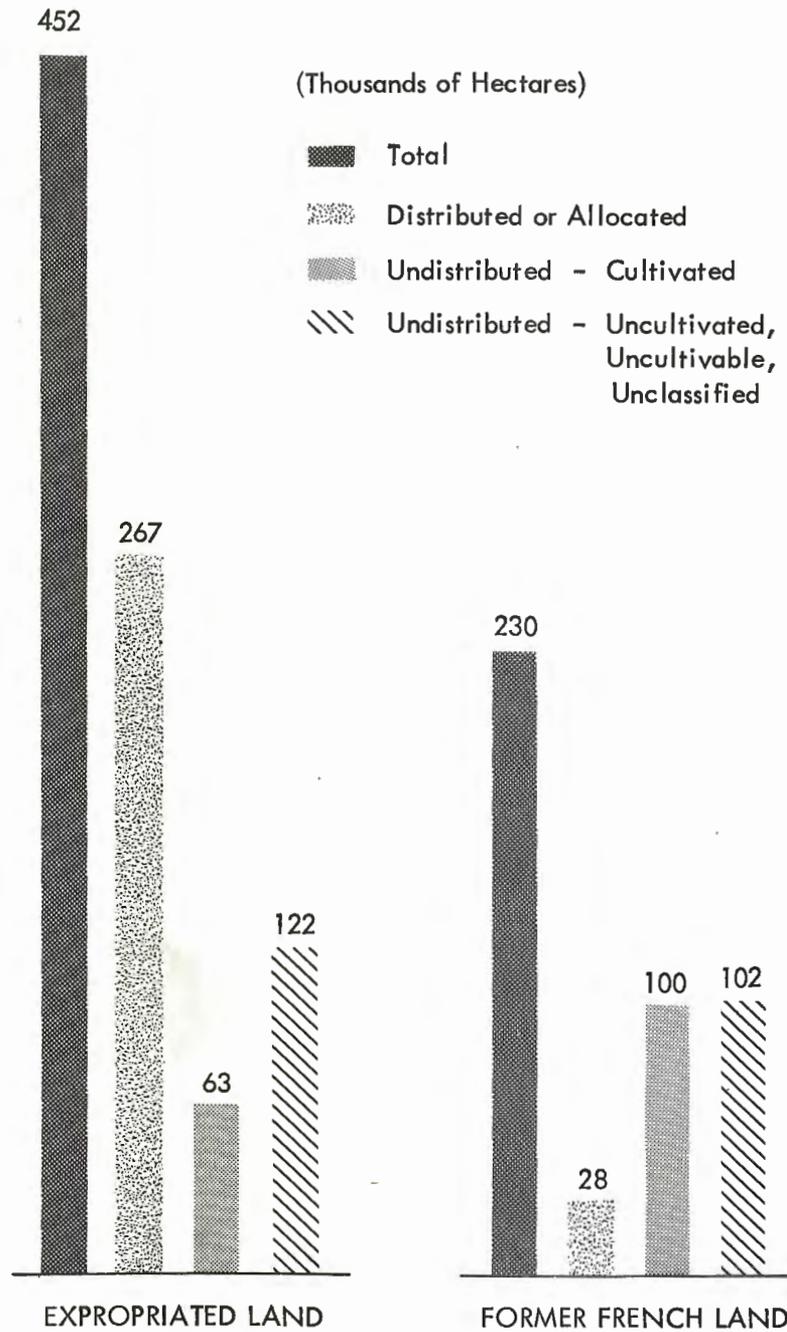
Unlike Annam, which was a Protectorate under the Emperor, the southern area was administered directly by the French government, and much of the land was developed by French citizens. Population shifts of Vietnamese tended to follow these land development schemes. Consequently, a farm ownership pattern developed with a few French citizens and companies controlling about one-ninth of the cultivated riceland in Southern Vietnam. More precisely, 430 landlords of French citizenship, of whom 280 were ethnically French, owned approximately 245,000 hectares out of an estimated 2.3 million hectares of riceland in the Mekong Delta. Some of the French ownership was recorded in the names of French companies, the largest being the "Domaine Agricole de L'Ouest" with more than 20,000 hectares.‡ It is important to observe that this company operated as a landlord with tenant farmers cultivating their lands.

* John O. Griesbach, EARI Project Manager, The An Giang Land Reform Project, November 1967. Also Agency for International Development by Department of the Army, Engineer Agency for Resources Inventory, Washington, D.C., "Land Reform Vietnam, Proposal: Land Identification and Classification Project," July 1966.

† Appendix B-2.

‡ Ibid.

Figure 4
 STATUS OF DISTRIBUTION
 OF
 GOVERNMENT OWNED LAND
 July 15, 1968



SOURCE: Office of Land Reform Advisor,
 USAID, Republic of Vietnam.

French ownership of land in Vietnam was a source of aggravation for the landless Vietnamese farmers, some of whom had been forced to sell their farms to the French landlords while under financial duress, or be evicted.* Much of the French land had reverted to wild land during the Vietnamese War for Independence. About half of the land was still being cultivated, most of which (97,000 hectares) was cultivated by tenant farmers.† Many of these French land holdings were located in remote areas where the Viet Minh prevented the French or Vietnamese government collaborators from developing and cultivating such lands. Some of the cultivated areas had been distributed to Viet Minh-selected farmers so that these Vietnamese farmers would resist any attempt of the French landlords to return. Indeed, landless farmers in general, regardless of their political affiliations, would not have passively accepted the return of the French landlords.

On the other hand, the French landlords were well aware of their predicament and were prepared to sell their lands. Landlords had discussed terms of sale and possible terms that would be acceptable to them.‡

The French-Vietnamese Convention

Fortunately, the French government in an agreement signed on September 10, 1958, assisted both the French landlords and the government of Vietnam by underwriting the financing of purchase of French ricelands.§ Terms officially offered by France were "an average price of 8,000 francs a hectare and within a total price limit of 1.49 billion francs." ** However, actual payments averaged only about 6,000 francs per hectare.

As a result of the French government support, the Vietnamese government was able to offer two alternatives to the French landlord. He could sell his land for cash with the compensation paid in francs in a French bank. However, the average cash price offered was only \$12 per hectare or about \$5 per acre.†† Alternatively, he could sell his land under the standard Ordinance 57 terms; the price was higher averaging \$98 per hectare (VN\$35 = US\$1), but with remuneration in piasters payable in Vietnam. He would receive 10 percent in cash and the balance payable over 12 years and bearing 3 percent interest. As discussed in a previous

* Ibid.

† USAID/Land Branch, "Land Reform in South Vietnam, 1951-1967," June 15.

‡ Appendix B-2.

§ Appendix F-1, Convention on the Operations of Purchasing French-Owned Ricelands.

** Ibid, Article I.

†† Based on 500 francs per dollar. See also Appendix B-2, W. Ladejinsky.

section of this report, inflation has cut this price to about half of the intended price. Under the French terms, the landlord was obliged to sell all of his land, whereas under Ordinance 57 the landlord could retain 100 hectares.

Although the French-financed alternative offered lower prices, the other provisions apparently made it competitive to landowners. Both those who chose to return to France and those who chose to remain in Vietnam could sell their land under provisions of Ordinance 57. Some 344 French owners with 381 parcels of land accepted the French land purchase terms and sold a total of 229,540 hectares for a total price of 1,378 million francs.* Thus, the average French landlord sold 667 hectares, or over 1,600 acres, for about US\$8,000 contrasted with about US\$65,000 equivalent that would have been paid under Ordinance 57. An unknown number of French citizens did not accept the terms offered under the French compensation plan so that their holdings were reduced under Ordinance 57 with 10,648 hectares expropriated under Ordinance 5.†

The most recent statistics on French lands purchased in each province are recorded in Appendix F-19.‡

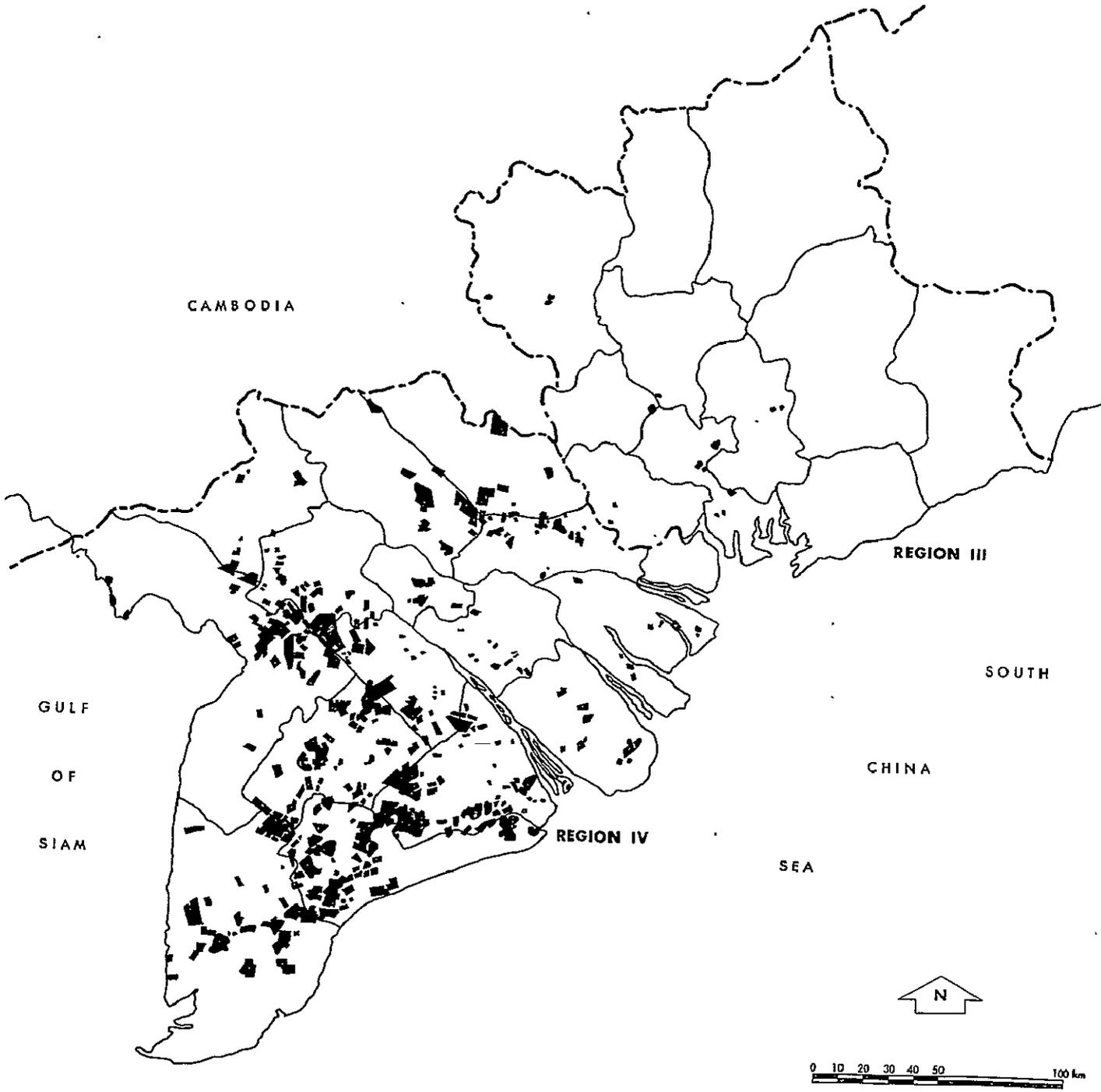
As already mentioned, nearly all former French land is located in the southern region; over half of it is located in five provinces (see Figure 5). The largest amount is 36,427 hectares located in Ba-Xuyen Province. Another 31,748 hectares are in Phong-Dinh Province. The Province of Chuong-Thien has the third largest amount with 30,399 hectares. The province of Bac-Lieu is fourth with 29,984 hectares, and An-Xuyen is fifth with 23,444 hectares. These provinces are contiguous and together constitute most of the southern tip of the Delta. This area is considered to be relatively insecure, apparently because of its remoteness and the overgrown nature of much of the land, which provides excellent cover for Viet Cong infiltration. However, Kien-Giang with 15,900 hectares and An-Giang with 7,708 hectares are more secure because they are located in areas occupied by the Hoa Hao. Another province, Kien-Phong, has 12,029 hectares but is apparently insecure. The statistics on provincial areas of French lands are taken from Directorate of Land Reform

* Appendix B-10, Directorate of Land Reform, Bureau of Land Reform, "Monthly Activities Report," dated September 13, 1968. Also F-16: Prices of Different Grades of Former French Lands.

† Appendix F-17, Directorate of Land Reform, "French Lands Purchased and Expropriated under Ordinance 57."

‡ Appendix F-19, Distribution of French Lands by Selected Provinces.

Figure 5
FORMER FRENCH LANDS IN REGIONS III AND IV



records and should be accurate.* However, security information is qualitative and subject to changing conditions of war. Nevertheless, it would appear that more than half of all of the French lands are located in areas believed to be insecure at the time of writing of this report. Two years ago, only 13 percent† of the French lands were considered secure with the additional uncertainty of Viet Cong infiltration‡. The military activity has increased since February 1968, and the security situation has deteriorated.

Distribution of French Lands

Under terms of the "Convention on the Operations of Purchasing French-owned Ricefields" signed by Vietnam and France, as of September 15, 1968, some 229,540 hectares of land were acquired by the Vietnamese government.§

Condition of Purchased French Land

For this land, the operating pattern was 97,000 hectares cultivated by management and then seeded and harvested by tenants under metayage agreement, while 56,000 hectares were never cultivated.** The balance was apparently farmed on a large scale presumably by broadcasting seed and utilizing farm machinery.

For example, the Domain Agricole de l'Ouest with 20,000 hectares in Phong Dinh Province employed tractors and other agricultural equipment to prepare the land by plowing, disking, and harrowing. Apparently, the planting and harvesting was performed by transient laborers who received about 20 to 30 percent of the crop. When the French owners stopped farming during the war, this action included stopping plowing. In some areas no one assumed this task so that the land reverted to a wild condition. Actually, some 34,821 hectares appear to have reverted to a wild state.††

* Appendix F-19.

† Office of Agriculture, USAID, January 1965 estimate.

‡ Appendix B-10.

§ Appendix B-10.

** United States Mission to Vietnam, Division of Agriculture and National Resources, J. P. Gittinger, "Studies on Land Tenure in Vietnam," Dec. 1959, p. 5.

†† The Purchase of French-Owned Ricefields, Secretariat of State for Land Property and Agrarian Reform, Republic of Vietnam, 1960.

Land Purchase Problems

Although the French government had made funds available for the Vietnamese government to purchase ricelands from French citizens in September 1958, and the Vietnamese government responded quickly to take advantage of this offer, more than two years were required to purchase most of this land.* By December 1960, a total of 211,410 hectares was purchased, which represents over 92 percent of the current figure of 229,540 hectares of purchased French land.† However, the delays were created by various administrative problems similar to those confronting expropriation of Ordinance 57 lands. Since some of the problems are unique, a brief discussion is included to provide some understanding of the problems which created the delays in land purchase and expropriation. These problems are listed below.

Establishing Land Ownership. To buy French lands, the owner had to be known and negotiations had to transpire; however, several obstacles were confronted. For example, 80 landlords were dead.* Some of the heirs were French, and they could qualify for land sale under this provision. However, others were Vietnamese or had resumed Vietnamese nationality so that they no longer qualified. Where joint ownership of French and Vietnamese existed, the non-French part owners were required to relinquish their claim so that a sale could be made under the terms of the purchase operations of the French-owned riceland agreement. Where more than one heir existed, it was necessary to list and classify the heirs to determine their interest.* Disagreements between owners further prolonged delays. Absentee landlords had to be contacted and instructed in the correct manner to arrange for official representation by proxy. There was always the problem of establishing whether he was alive, his residence, and, if necessary, the names and addresses of his heirs.

Legal Entity. To sell his land, the seller was required to establish his legal status. Guardians were required for minors, and even the question of sanity posed problems.

Land Identification. To sell land, it was first necessary to identify it. This was complicated where Dia bo records no longer accurately identified or measured land areas.‡ Often times land sale documents were produced that had not been recorded in the land registry, and documents had often been lost and owners did not know the precise location of their

* Ibid.

† Appendix B-10

‡ Dia bo refers to land registers under the system established by the French before the turn of the century. See Volume II for additional discussion of records.

lands. Even where records were complete, "permanent" titles were not issued to new owners. President Ky undertook to correct this situation in January 1967, as mentioned previously.

Property Liens and Taxes. To protect lenders who had liens on land, it was necessary to ascertain whether land under transfer was clear of encumbrance similarly as it was necessary to ensure that taxes had been paid. If not, provision was made to permit payment of their claims from proceeds of the sale.

Cadastral Surveys

It was necessary to survey most of the French lands to establish areas as well as to determine extent of cultivated areas. Where war damages existed, it was necessary to determine the amount of damage that had occurred.

Nonresponse of Owners

Initially many owners chose to ignore correspondence from the Vietnamese government inquiring about their lands; apparently there was a problem of motivating the landowners to respond. Later when prices were discussed and were felt to be unreasonable by landlords, they chose to argue, which delayed signing agreements.

Security

Some of the land was located in insecure areas. It should be remembered that by 1960 the North Vietnamese had violated provisions of the Geneva Ceasefire Convention. Already Viet Cong terror raids were underway, and government officials and workers were targets for killing and abduction.

Administrative Problems

Initially the purchased French lands were intended for distribution to villages as communal lands and for agrovilles.* Interim operation of

* Secretariat of State for Land Property and Agrarian Reform, Republic of Vietnam, 1960.

these lands on a large scale basis as operated by some of the French was attempted but without success. Meanwhile, the policy for handling these lands was re-examined. Under consideration were possible uses as agrovilles, land development centers, allocation for soldiers' families, state-managed plantations, continuance as leased lands, or for distribution under Ordinance 57.* The original intention of distribution for use as communal land was found to be inconsistent with the land reform movement's basic philosophy of distributing land to tenants.

Rental of French Lands

Although the concept of transferring land to tenants was desirable, the administrators of land reform were deeply involved in the problem of transferring Ordinance 57 lands, which alone exhausted their organizational and administrative capability.† To gain time and to avoid further overworking the administrative staff, the French lands were temporarily made the responsibility of provincial chiefs. Under terms of a 1960 circular‡ the provincial chiefs were instructed to manage the French lands, given authority and responsibility for renting these lands, and, apparently as an incentive, were granted 40 percent of the rents to be used for provincial and village expenditures. The present Minister of Land Reform and Agriculture characterized this move as a serious mistake that led to possible corruption.

Because of budget problems and de-emphasis of land reform, the administrative problems in land reform had not yet been overcome in 1961 so that the National Council for Land Reform in August 1961 decided to continue the program of renting French lands under provincial direction.§ However, the transfer of French lands to provincial responsibility was still a matter of expediency because only a fraction of the cultivated lands were rented, and additional steps were necessary to bring this idle land into cultivation. Indeed, much of the land was located in Viet Cong-controlled areas or in "confused areas" that are "no-man's" land.

Following President Diem's assassination in 1963, a series of coups d'etat destroyed any possible continuity of land reform policy. At best, the administrators could only hope to maintain the status quo in land

* Appendix E-3.

† Appendix B-2: W. Ladejinsky, "Vietnam, 1960."

‡ Appendix F-5: Circular No. 009/BDT/TT, dated February 22, 1960.

§ Appendix E-4, Article 26.

reform and, indeed, there is some indication of a regression, particularly in land tenure conditions.

Sale of French Lands

On August 23, 1965, the Minister of Agriculture offered to sell French lands to tenants who were farming them.* A maximum of three hectares of transplanted riceland or 10 hectares of broadcast riceland could be sold to one tenant with payments to be spread over 12 years. Provision was also made for land allocation to squatters. Also, tenants on large integrated holdings were expected to maintain canals, dams, and dikes jointly. Furthermore, to carry out this plan of sale, a "National Committee for Rehabilitation and Distribution of Former French Rice Plantations" was established. However, this committee apparently met only once and has not been effective. Moreover, in 1965 only about 6 percent of this land was secure so that land distribution could not be implemented.

Present Situation

At the present time, it appears that only about 13,728 hectares of French lands have been sold to 5,573 farmers. In addition, there are 10,781 hectares of land that are in the process of being transferred.† Another 5,715 hectares have been distributed free to farmers under resettlement schemes. Thus, 19,443 hectares have been transferred since 1965; this area plus the 10,781 hectares currently in process of transfer to tenants make a total of 30,224 hectares‡ out of 229,540 hectares in the three years since the decision was announced.

There is an estimated total of 4,000 hectares under rental control by the provinces.§ However, the actual area is not known because the Vietnamese government maintains control of rental money only and does not attempt to audit the inventory of French land. The present objective of the government is to transfer these French lands to the tenants. Apparently, there are about 103,500 hectares of uncultivated French land that

* Appendix F-9, Circular No. 9277.

† Appendix B-10, Monthly Activities Report of Directorate of Land Reform, dated September 13, 1968.

‡ Information contained in the Monthly Activities Report, Directorate for Land Reform, September 15, 1968, records a total of 24,509 hectares distributed to 8,665 applicants.

§ Directorate of Land Reform, unpublished statistics, Sept. 1967. Also see Appendix F-18, Rent from Land Formerly Owned by the French.

could be brought into production given sufficient security to attract pioneer farmers. However, it is important to record the fact that farmers will only occupy new land and suffer the problems and risks of breaking virgin land if the Vietnamese government can and will provide security against the Viet Cong. Farmers will not clear land in either Viet Cong-dominated areas or in contested areas. It appears that they are willing to remain in Viet Cong areas only to maintain and protect land that they already have under cultivation. Insecurity in Viet Cong-held areas and greater prosperity in government territory has induced many farmers to move to government-held areas.

Although statistics on the status of French lands are not complete, estimates are included here. These estimates are subject to considerable error although the statistics for cultivated areas are believed to be reasonably accurate. Out of roughly 230,000 hectares of former French land some 126,000 hectares are estimated to be cultivated, of which possibly 49,000 hectares are either secure or contested while the balance of 77,000 varies from contested to Viet Cong-dominated territory. The balance of 103,500 hectares is uncultivated with much or most of it in insecure areas.*

The term "insecure" may mean anything from occasional danger to almost certain conflict if one visits the area. Security may be good in the daytime but nonexistent at night. Insecurity often means visits from a Viet Cong tax collector, or it could mean a visit from a press gang to recruit a son for the Viet Cong army. The farmer requires sufficient security to cultivate his land without interference and without imposition of Viet Cong taxation, which means 24-hour protection.

Half of the 103,500 hectares of uncultivated land is believed to be arable while the balance requires improvements, such as major irrigation and drainage projects.

Attention should be directed to the division of management of these lands with the provincial chiefs collecting rents and the Directorate of Land Affairs in Saigon responsible for administration. On one hand the senior official in the province, the provincial chief, is given a great deal of incentive to retain the French lands to earn rental income for the province. On the other hand, the Land Affairs Chief, who is a subordinate, is expected to arrange to distribute these cultivated lands. It is difficult to expect that these lands will be distributed in the provinces, except with a change in policy.

* 1967 Annual Report, Directorate General of Land Affairs, Government of Vietnam.

A significant problem is the failure to account for a large amount of cultivated land which is labeled as insecure but which is believed to be sufficiently secure for distribution. In one district, the Directorate of Land Reform is reported to have personally advised tenants how and where to submit their requests for purchase of lands because the provincial chief had failed to assist them to obtain titles to French lands under the pretext of insecurity. Assuming that the provincial chief in all sincerity felt distribution of this land should be delayed until the province could protect the farmers with military forces and provide security against terrorism, there is some question that his independent judgment should guide the distribution of land. If any single criticism seems valid, it concerns the failure of the government to maintain a consistent policy of land reform.

Concession Lands, Including Squatter Occupied Lands

Approximately 180,000 refugees have apparently occupied public and private lands for purposes of dwelling as well as raising crops. Out of this total number of squatters, a total of 33,852 have been identified as occupying 274,945 hectares of lands including about 119,000 hectares of cultivated lands.* Apparently much of this reported land is located in An Xuyen and Klien Giang provinces. According to unpublished statistics compiled by the Directorate General of Land Affairs, the squatters are actually farming an average of about 3.5 hectares per family. These farmers have apparently declared intentions to purchase land, with each applicant desiring to obtain slightly in excess of 10 hectares. However, these lands have not yet been surveyed so that no commitment has yet been made by these farmers or by the government.

To assist in rehabilitation of these refugees, Circular 166017 dated November 24, 1964, "Regulating the Squatter Situation on National Domain,"† established procedures for squatters to obtain titles to these properties. Up to 10 hectares were allowed with no compensation to be paid for the land. Arrêté 705, dated November 24, 1964, authorized provincial chiefs to approve decisions of definitive ownership rights without compensation to squatters on state-owned lands. Finally Arrêté 405 of July 28 modified Arrêté 705 requiring the concurrence of the Ministry of Agriculture before the provincial chief's approval. Under Arrêté 405, 2,037 hectares have been distributed to 2,878 persons. However, many squatters occupy and use lands under circumstances where making them owners does not appear to be possible; eviction is politically unthinkable, and yet the status quo is intolerable and getting worse.

* Appendix G-6.

† Appendix G-5.

Communal Lands

Communal lands are public lands controlled by the Villages and used for public and welfare purposes. They are of two types:

1. Cong Dan Dien Tho or nationally owned land on which the village enjoys usufruct rights. In case of expropriation, the government pays indemnities only.
2. Tu Dan Dien Tho or village-owned land.

The Cong Dan Dien Tho lands were created (1) by mandarins and other senior officials; (2) by expropriation from rebels, big landowners, and properties left intestate; (3) by royal gifts; and (4) by villages that cleared forests and drained swamps. The Tu Dan Dien Tho lands were acquired as gifts from wealthy men or were purchased by villages using village resources. For this report, both Cong Dan Dien Tho and Tu Dan Dien Tho lands will be considered together as communal lands.

Most of the communal lands are located in Central Vietnam, which was part of Annam. About 26 percent of the cultivated area of Annam consisted of communal lands.* At that time, the amount of communal lands varied significantly with some villages having most of their land in communal lands while others had none. In the Mekong Delta, the amount of communal land was less than 2.5 percent of the total area.†

President Diem was concerned with the need to assist the village organization and viewed the communal lands as a source of income that would provide a communal budget to finance village activities. The President wished to allocate at least 200 hectares of land to each village in Vietnam; rental of these lands would earn sufficient revenue to pay salaries of the communal body and expenses incurred in community development.‡ The Secretariat of State of Land Property and Agrarian Reform was charged with responsibility for coordinating and directing an investigation of the current status of these lands;§ however, this was complicated

* Appendix H-3, Cong Dien Communal Land. Also Pierre Gouron, *L'Utilisation du Sol en Indochine Francaise*, Paris: Center des Etudes de Politique Etrangere, 1940 p. 226.

† Ibid., p. 226.

‡ Secretariat of State for Land Property and Agrarian Reform, Report No. 5.

§ Ibid.

by the loss and destruction of village records. Control of communal land was lost, and in certain cases farmers were suspected of taking communal lands for their own. However, the villages could not repossess the land without proof so that a thorough investigation was needed to facilitate reconstruction of ownership patterns.

The investigation by the Secretariat of State covered not only titles to land but also qualitative considerations; abandoned lands were to be studied in an effort to cultivate them or reject them as nonarable. To assist in carrying out the study of communal lands and rice fields, local authorities were reinforced by five civil servants per village. This survey was a sophisticated technical project including preparation of maps of scale of 1:25,000 showing communal lands and rice fields.*

The 1960 survey revealed the following areas of communal lands in Vietnam (in hectares):

Communal rice fields	185,576
Other communal lands	<u>98,764</u>
Total	284,340

These communal lands represented 8 percent of the cultivated area of the country.† However, many provinces in the Highlands of Central Vietnam and a few new provinces in the eastern part of the Southern Region had no communal lands.‡ Altogether seven of the 37 provinces that made up the Republic of Vietnam at the time had no communal lands, 20 had from 1,000 to 6,000 hectares, and 10 had more than 10,000 hectares. Provinces with most communal lands were Thua Thien with 56,207 hectares, Binh Dinh with 32,380 hectares, Ba Xuyen with 25,175, and Quan Nam with 21,457 hectares. Those with none included Darlac, Kontum, Quan Duc, and Tuyen Duc. Communal lands held by these and other provinces are listed in detail in the appendixes.§

* Ibid., p. 1.

† Appendix H-5.

‡ Secretariat of State for Land Property and Agrarian Reform, Report No. 5.

§ Ibid.

The variation in amounts of land held by individual villages is indicated by the extremes: 180 villages had 1,100 hectares or more, while 1,361 villages had no communal land whatsoever.

Communal lands were historically employed to provide:

1. Each family and each 18-year-old male with land for housing.
2. Penland, which is to furnish office supplies for village administrative officials.
3. Foodland for officials as honorarium payments.
4. Instruction land to pay for schools and assistance for teachers' maintenance as well as to provide scholarships.
5. Orphan-widow land for orphans and widows and for charitable services.
6. Salary land for families with children whose husbands are serving in the military.
7. Worship land for spiritual requirements.
8. Public use for the communal budget.
9. Distribution to villagers by equal portions; originally for males only aged 18 and over but later for both males and females.

The established pattern of use of communal lands was the product of both local developments and intercession by higher levels of government. An early example of the latter is Circular No. 2993 SB/CCDD of April 9, 1936, by which villages of the Delta and in Central Vietnam were instructed to lease communal lands to landless peasants for one year with a maximum rent of 25 percent. The remaining communal land was shared equitably in obtaining leases for three years of cultivation.

On April 7, 1958, Circular Number 29 was issued to provincial chiefs instructing them to enforce rental payment after expiration of three years, by which time all existing leases would lapse. However, since 1955 in South Vietnam, the practice had been to divide up the communal land into small lots for use of poor peasants in return for 15 to 25 percent farm rent; thus, this provision of Circular Number 29 provided no hardship to the communities in these areas.

On September 23, 1956, the provincial chiefs were instructed to issue communal land to civil guards, with 1.5 hectares for a married civil guard and 1.0 hectares for a single man. However, this land could not be leased, resold, or pledged to anybody for ten years but must be tilled by the recipients.* Apparently becoming a landholder was either better than or conflicted with civil guard duty, for the recipients often resigned within two or three months after receiving the land. The provincial chiefs disliked this apparently inequitable practice and consequently attempted to resist distributing land to the civil guards. Subsequently another attempt was made by the government to overcome this resistance by promulgating Circular No. 167 of May 5, 1960, asking the provincial chiefs to implement the previous circulars.

To fulfill the prescribed 200-hectare area for communal land, the following types of land were made available for communal use:

1. Abandoned lands
2. National forest lands
3. Lands expropriated under Ordinance 57
4. French lands
5. Farmer-owned land available for purchase

Provisions for the first four categories were already available. To provide the fifth, Circular Number 48 of June 13, 1958, was issued specifying proceedings for purchase of expropriated lands to be used for communal lands. However, many provinces were financially unable to purchase such lands. In answer, Circular Number 211 of July 6, 1959, permitted villages to extend payments beyond six installments. Villages were also advised to clear abandoned lands and convert them into communal lands. However, additional information on the results of this project is not known.

According to 1967 land register records, some 305,340 hectares were allocated to villages as communal lands. However, because of loss of land

* Circular No. 334, dated September 30, 1958; No. 405, dated November 15, 1958; and No. 28, dated July 11, 1959.

register records, only 220,929 hectares could be identified. The identified area included 71,279 hectares as Quan Cap (or distribution lands), 43,494 hectares were leased, 50,523 were contracted to highest bidder, and 55,632 hectares were uncultivated.* Subsequently on May 27, 1966, under Circular No. 5619-BCN/HCTC.3, villages were forbidden to allocate land by bidding practice but must adhere to Ordinance 2 tenure conditions. Since this ruling has gone into effect, 19,675 hectares involving 10,046 cultivators in 251 villages now conform to Ordinance 2 rental arrangements.

A detailed report on the status of cultivated and uncultivated communal lands by province and district up to November 5, 1960, is contained in Appendix E-6. It will be observed that the provinces of Darlac, Kontum, Phu Bon, Quang Duc, Tuyen Duc, Long Khanh, and Binh Long have no communal lands. Province areas appear to have less communal land at present than before. For example, Thua Thien now has 46,548 hectares, Binh Dinh has 27,564 hectares, Ba Xuyen has 21,634 hectares, and Quang Nam 24,722 hectares.† Only Quang Nam records an increase over recorded communal lands for 1960.‡

An attempt has been made to account for areas of communal land as registered at the end of 1966. A copy of this tabulated information is included in the appendix.§ For example, the Province of An Giang had 13,961 hectares of recorded communal land. All of this land was under provincial control, with 5,097 hectares still leased under contracts obtained by bidding, another 5,097 hectares leased, and 3,766 hectares uncultivated. The Province of An Xuyen had 10,334 hectares on record of which only 3,271 hectares were leased and 7,061 hectares were uncultivated. Ba Xuyen with 21,634 hectares had 11,213 hectares control with 5,964 hectares leased and 5,519 uncultivated. Apparently lack of security discourages communities from breaking and cultivating reverted or wild lands.

* Appendix H-8, K. W. Sherper, Assistant Land Reform Advisor, Quan Tu Chau, Administrative Assistant, ADAG Planning Branch and Vo Van Qui, Deputy Director of Land Reform, Ministry of Agriculture, Communal Land Letter, dated April 13, 1967.

† Appendix H-5, Communal (Village) Lands.

‡ Appendix H-6, Communal Lands and Ricefields.

§ Appendix H-4, Directorate of Land Reform, Status and Distribution of Communal Land in Selected Provinces, 1966. Also Appendix Tabulation of Cultivated and Uncultivated Lands by Province and District.

The province of Quang Nam had 24,722 hectares on record, all of which are under the use and control of the Province. Of this land, 12,120 hectares are allocated to all villagers over 18 years of age, 4,051 hectares are leased by contracts obtained under bidding, and 8,550 hectares are uncultivated.

The early recognition of need for communal lands has not been followed by a continuing policy oriented to stable objectives. Changes in policy seem to have been due to uncertainty and changing leadership, whereas stability of government at the top level would appear to be a necessary adjunct of successful land reform.

Land Development and Resettlement Centers

The Land Development Program started by President Diem in 1957 had four goals:*

1. An economic goal to expand agricultural production and, in particular, export products
2. A strategic goal to develop population centers in remote areas that could provide both personnel and food supplies to support military outposts
3. A security goal to provide warning posts for Viet Cong insurrection
4. A social goal to raise living standards by shifting landless families from overpopulated centers and giving them an opportunity to become landowners.

Initially, 220 land development centers were established, covering 148,995 hectares to include 250,000 people. The United States assisted with heavy land clearing equipment. The initial scope of the program is indicated in Table 1.

The project to establish land development centers was extended beyond the capacity to manage it. Security deteriorated almost from the outset, and inhabitants were unable to withstand the Viet Cong's overt and covert operations. To aggravate the situation further, many families were not experienced with highland farming including upland rice farming.

* Appendix I-3. The Directorate of Land Development, "The Current Situation of the Land Development Program in Vietnam," 1964.

Table 1
 SUMMARY OF LAND DEVELOPMENT
 AND REFUGEE RESETTLEMENT CENTERS

	<u>Highlands</u>	<u>Central Lowlands</u>	<u>Southern Region</u>	<u>Total</u>
Number of Centers (original)				
Land Development				154
Resettlement (Refugee)				66
Total Centers*	104	15	101	220
Area of Centers (hectares)				
Land Development				121,761
Resettlement (Refugee)				27,234
Total Area*	55,375	3,617	90,003	148,995
Population of Centers (original)	93,593	11,118	143,265	247,976

Note: Of the 220 original centers it appears that 31 can be considered active and mostly secure.

* Number of centers as reported in 'The Current Situation of the Land Development Program in Vietnam' is 225. See Appendix I-3.

Source: Appendix B-10, Activities of Land Reform Directorate, dated September 13, 1968.

After the Revolutionary Day, November 1, 1963, the General Commissariat for land development centers was dissolved and the existing program was frozen.*

Under orders from the Prime Minister's Cabinet, work relating to administration, population, and security was placed under the direction of provincial authorities. However, the provinces often could not maintain security because of insufficient forces so that farmers were relocated and centers permitted to deteriorate.† Also, funds were insufficient to assist new farm settlers.

* Appendix I-3, The Current Situation of the Land Development Program in Vietnam, 1964, p. 2.

† Ibid., p. 3.

More important, the Viet Cong was cognizant of the strategic nature of these land development centers so that it undertook to harass the inhabitants and occupy the centers. When the National Security Forces withdrew, many centers were completely controlled by the Viet Cong. At the time of the preparation of the Report, "Current Situation of the Land Development Program" at the end of 1964, the following situation existed.*

In Pleiku province only five out of 23 Centers were relatively secure while 18 were lost completely. In Dar Lac province only seven out of 30 Centers were secure with 18 lost. In Binh Tuy province only two out of 20 Centers were secure with 18 lost. Although other provinces were slightly more secure, only 20 to 30 percent of the Centers in the Highlands and South Vietnam East Zone remained secure.

From an initial program of 210 centers with 247,976 people, the population increased to 274,945 persons in 1963 but many subsequently left and the population decreased to 242,755 in 1964. At the same time, the cultivated area decreased from 149,535 hectares of land to 103,249 hectares in 1963 (including 54,510 hectares of paddy, 22,000 hectares of field crop, and 26,749 hectares of industrial plants including rubber). The total area under cultivation may be even lower in hectarage because of double or even triple counting where multiple cropping is practiced. This area decreased even further down to 81,296 hectares (including 43,000 hectares of paddy, 20,000 of vegetables, and 18,296 hectares of rubber and other industrial crops). In 1965, the population decreased even further down to 215,098 persons. Currently there are 171 centers with 135,000 hectares of land but now including a large proportion of uncultivated land.

The reasons for decrease of settlers and land area include:

1. Conscription of youths; up to 80 percent of the youths in Pleiku were conscripted, for example.
2. Farmers were restricted to lands close to protected centers and had to abandon remote lands.
3. The Viet Cong forced farmers to displace industrial crops with rice since food was needed by the Viet Cong.
4. The farmers themselves worried about security and therefore attempted to maximize short run profits with annual crops.

* Ibid., pp. 4-5.

5. The rubber trees were unattended and the areas were counted as uncultivated.

It should be observed that the local authorities and inhabitants defended their centers steadfastly. However, the overwhelming force of the Viet Cong who, encountered no military personnel in the areas, subdued the residents and forced them to comply.

While the Vietnamese government carries these centers on its records, in reality, it is actively supporting only one center, namely, the Cai San center located in An Giang and Kien Giang provinces.* It includes 27,000 hectares.† Permanent titles have been issued to 7,385 farmers located on about 17,877 hectares of this land.‡

Apparently the land development center concept received U.S. support in terms of land-clearing equipment and the project was successfully introduced. However, the war situation prevented any continuing success because of the remote location. The land development center idea appears to have real potential for development of land. However, success seems to be dependent on security, and the program itself cannot be expected to have more than nominal impact on the security needs for its own success.

Refugees and Refugee Lands

The large number of refugees in the Republic of Vietnam is important to the land reform problem because a substantial portion of these refugees may be expected eventually to resume life in agricultural occupations and desire to become landowners. Thus, any estimate of the number of persons wishing to become landowners must include not only farmers who are currently landless but also many of the refugees, and these numbers will certainly add to the estimated demand for land in the future.

Under terms of the Geneva Agreement, residents of Vietnam were given 300 days to resettle in either North or South Vietnam.§ The representation of the refugees by vocation included the following:

* Ibid., p. 6.

† Land Branch, Office of Agriculture, USAID, Land Reform in South Vietnam, 1951-67, published June 15, 1967, p. 7. (Developed land only.)

‡ Unpublished information from Mr. K. Sherper, as received from Directorate of Land Reform, dated November 6, 1967.

§ Appendix A-1, Geneva Conference, Indo-China; Agreement on Cessation of Hostilities in Vietnam, Article 15.

Agricultural workers	666,377
Fishermen	88,850
Craftsmen, merchants, and students	<u>133,276</u>
Total	888,503

Many who came by boat were settled in the coastal provinces: Thua Thien, Quang Nam, Khanh Hoa, Binh Thuan, and Phuc Tuy. Of those refugees who arrived by plane or boat in Saigon, some settled in the suburbs of Saigon and Bien Hoa and engaged in handicraft and business. Others settled in the ricelands west and south of Saigon. Others went to the hills east of Saigon, and still others went to the highlands of Central Vietnam to work in agriculture. All together, 319 refugee centers were established. By July 1957 some 38,192 hectares of land were cleared. With time, the refugee centers became integrated into nearby villages.

The refugee problem was aggravated in 1965 when Viet Cong activity had reached its peak and military warfare had started in full swing. Villagers left their homes in fear for their lives. Refugees may be conveniently grouped into three classes; those who are resettled permanently, those who return to their villages, and those who are in temporary homes awaiting resettlement. In May 1965, a total of 362,682 refugees were on record, including 234,098 who were in temporary quarters and 128,584 who were permanently resettled.* This number increased steadily to August 1967 when there were 627,870 refugees who had been resettled, 767,459 refugees who were still in temporary homes awaiting final disposition, and 612,769 who had returned to their own villages,† a total of 2,008,098 "official" refugees. A slightly higher figure for a later date is included on "The Refugee Problem Map" in Appendix F-3, dated September 30, 1967.‡

* Appendix I-5, Refugee Situation in Vietnam.

† Ibid.

‡ See also Appendix I-10, Special Commission for Refugees, Directorate of Planning, Construction Office, Statistical Service, "Situation of Refugees from Non-Secure Areas," and Appendix I-11, Situation of Refugees from Viet Cong Contested Areas, by Region and Province. Additional information can be found in Appendixes I-4 through I-6 on Age, Sex, Structure, and Education of Refugees in Vietnam.

Human Sciences Research conducted a study* in 1966 in Phu Yen indicating that most refugees left their farms for multiple reasons; 86 percent of refugees stated they left because of military action. This military action includes Viet Cong military action against both civilian and military organizations. Altogether 68 percent were influenced to flee by Viet Cong coercion and terrorist tactics. A total of 32 percent evacuated their homes to avoid bombing and artillery, which presumably is primarily from the government-Allied side. Only 6 percent were forced to move by the military, who removed persons for their own safety before making the area a fire zone. The results are interpreted to indicate the most frequent cause of population shift was Viet Cong activity.

A total of 62,030 hectares of land have been cleared for agricultural use by refugees. This includes 34,246 hectares in the Southern Provinces, 26,630 hectares in the Central Highlands, and 974 hectares in the Central Lowlands.† The accuracy of these figures is not known. Most of the lands used for refugee centers are public lands. Private abandoned lands, where desired, are rented on a one-year contract. The rental rate is fixed by the Provisional Committee for Fixing Rental Rate.

Where land is subdivided for refugees, the Provincial Land Office surveys the land with payment from the budget of the SCP (Special Commissariat for Refugees). At present, SCR is studying the possibility of expropriating these lands and giving titles to the refugees so that the Ministry of Agriculture could handle them like any other new landowners.

Many farmers fled from both Viet Cong-dominated and harassed farm areas and migrated into more secure areas, including the major provincial cities and Saigon. Today, Saigon alone has approximately 2.2 million residents or an increase of over 60 percent since 1964.‡ Even higher rates of expansion have been recorded in Hue, Danang, Dalat, Cam Ranh, and Vung Tau. These major cities were already overcrowded with expanded

* Human Sciences Research Inc., A. T. Rambo, J. M. Tinker, J. K. Lenoir, "The Refugee Situation in Phu-Yen Province, Vietnam."

† Appendix I-12, Amount of Land Cleared for Agricultural Purposes and Refugees, Oct. 25, 1967. Appendix I-13 shows Resettlement Centers by Number and Area, including a graph of "Sample Registration in Temporary Refugee Centers."

‡ John D. Montgomery, United States Agency for International Development, Office of Agriculture, Aug. 1967, "Land Reform and Political Development: Prospects in Vietnam."

numbers of military and civilian personnel so that refugees were discouraged from locating in these cities. Indeed, they are not recognized as refugees and do not qualify for refugee assistance in these major centers. However, these displaced persons apparently favor these centers because of job opportunities and better military security.

Religious Lands

Appreciation of the role of the religious groups in land policy in Vietnam necessitates an understanding of the role of land in the religions of the people. For that reason, a brief résumé of each of the leading religions is presented, along with such data as are available on their land holdings.

Buddhism and Confucianism

Buddhism was introduced to Vietnam as early as A.D. 189. Following the end of the Hong Bang Dynasty, under the Chinese Emperor Han Ninh De, there was dissension in China while the province Giao Chi of China (now Vietnam) enjoyed tranquility under the leadership of Si-Nhiep. Chinese bonzes (Buddhist monks) fled from China into Vietnam where they could follow their religious practices in peace. Later, during the Tan Dynasty more bonzes came to Vietnam, this time from India.

Buddhism spread amongst the Vietnamese during the 2nd to 6th centuries, A.D., and flourished in the 7th to 14th centuries.

From the 15th century onward, Confucianism became the official doctrine so that Buddhist monks tended to withdraw from public life. This inhibited the institutional development of Buddhism.*

Confucianism, unlike Buddhism, had a political philosophy and lasted until the 19th century when intellectuals turned to western education. Soon Confucianism withdrew into obscurity.† Only a few institutions remain.

The Buddhists of Vietnam have a loosely knit organization, established in 1963, that is nominally led by Thich Tinh Khiet. However, the active leaders are Thich Tam Chau at Vietnam Quoc Tu of the National Pagoda, Thich Tri Quang of An Quang Pagoda, and Mai Tho Truyen of Xa Loi Pagoda.

* G. Carver, Jr., Foreign Affairs, "The Real Revolution in South Vietnam," p. 395.

† Ibid., p. 13.

Theoretically, the Buddhists respect Nirvana so that the bonzes do not believe they should be landowners. Some pagodas in Thua Thien (Hue) are state-owned, such as Linh Mu and Dieu De; other pagodas were built by the villages on communal land. In some areas, each village has its own pagoda, and still other pagodas have been built by wealthy people. The bonzes have been selected by the village or the community, or the donor.

The Co Son Mon branch is composed of Buddhists who hold religious services in their homes and not at a pagoda. In 1930-31, they organized the Association of Buddhists in Central Vietnam and later in Southern Vietnam. The two associations were united in 1963 to form the National Buddhist Association, which received a concession of 100 hectares located at Phuoc Tuy Province from Ngo Dinh Diem.

A pagoda may be located on communal land held under usufruct rights in which case the land will not be recorded in the name of the Buddhist religious community. Some pagodas may acquire wealth through gifts, in which case they may acquire land and buildings. However, Buddhists' ownership of property is recorded as only 507 hectares.* The Buddhists are apparently re-examining the question of land ownership, a practice that has been discouraged in the past.

Hoa Hao Buddhism

Hoa Hao Buddhism was founded by Prophet Huynh-Phu-So, a native of Hoa Hao village in Tan Chau district, Chau Doc province, in 1939. This religious movement is widespread in South Vietnam and has an estimated membership of 2 million.† This religious movement claims as members about 90 percent of the population of Chau Doc, An Giang, Kien Phong, and Sadec provinces.

Hoa Hao is Buddhism for the peasants and the practice of Buddhism at home.‡ Consequently Hoa Hao Buddhist preaching halls are constructed as establishments for teaching and not as residences. Since they are not residential places, they are smaller than pagodas.§ No records on size of landholdings for these buildings are known. However, the landholdings

* Appendix B-4: Riceland Area by Class of Ownership - Land Owned by Religious Groups.

† "A General Survey of Hoa Hao Buddhism," published by Hoa Hao Buddhist Headquarters, p. 26.

‡ Ibid., p. 12.

§ Ibid., p. 18.

are believed to be small. Hoa Hao Buddhists have consistently opposed Communism as well as colonialism. With the Cao Dai and other groups, they formed the United National Front in 1945 to further their national goals of independence.

Cao Dai

The Cao Dai religion was founded in 1926 by Ngo-Van-Chieu, a Vietnamese official in the French Colonial administration. He established a religion based on spiritualism. The religion was readily accepted because it overcame the psychological problems and tensions that divided other religions, particularly western Christianity and Hinayana Buddhism. In fact the basic doctrine of this religion is that the Supreme Being has revealed to them that five of the main branches of one great religion are Confucianism, Taoism, Buddhism, Cao Daism, and Christianity. The religion has provided solace to the spiritually uprooted but deeply religious people of Vietnam. The practice of spiritualism is limited to specific rituals with accredited mediums only.*

Cao Daism has its headquarters at Tay-Ninh by the Village of Long Tranh where the Holy See is located. The religion was strongly nationalistic and anticolonial. Its members have been in the forefront in opposition first against the French and later against the Viet Cong. With a membership of between one and two million they have provided a strong element of the united front against Communism.

The present Vice-President when he was Prime Minister of Vietnam turned over to the Cao Dai 2,000 hectares of cultivated land to be used for settling members of their religious community. Apart from this grant, the Cao Dai were recorded as having only 30 hectares of land. Apparently the government makes little or no effort to collect taxes on this land.†

Catholicism

Catholicism is also an integral part of the Vietnamese religious and social community. For example, the use of the Roman alphabet by the

* H.H.E. Loofs, "Religious Sects in South Vietnam," Hemisphere, Sidney, Australia, Volume 11, No. 2, February 1967, pp. 11-15.

† Recorded Statement by the former Director General of Land Affairs, September 8, 1968.

Vietnamese was introduced by Catholic missionaries. The Catholics had large missions and developed much land during the 17th century. These lands were largely acquired as virgin land and developed to maintain the missions.

The Catholic Church now has recorded a total of 33,726 hectares of land of all types.* Out of the total of some 33,726 hectares, some 28,147 hectares are plantation land, mostly in the Highlands where rubber, tea, coffee, and tobacco are grown. Many of these holdings are earmarked to provide revenue or subsistence for specific projects. For example, some 3,583 persons are settled on a tobacco plantation. A rubber plantation at Phu-Tho has been established to provide a home for old priests. Funds from revenue, when available, are used to assist in funding Catholic institutions which include three hospitals, five leper homes, 55 orphanages, 19 old people's homes, 1,158 primary schools, and 178 secondary schools. The manifold work of the Catholic Church in Vietnam is not self-supporting.†

The balance of 5,579 hectares is riceland. In addition there is believed to be another 10 percent or over 500 hectares of riceland that is recorded in private names. These large rice holdings in the Delta are the result of early missionary effort to desalt and drain certain saline soils.‡ Land holdings predated the Diem regime and supposedly were subject to the 100-hectare limit; however, expropriation of this land was deferred. For political reasons, no Vietnamese Government has taxed lands of the Catholic Church.§

An ecclesiastical official in Saigon stated that these ricelands are subject to tax. Indeed, he believes revenues received may not cover taxes paid because of the failure to receive rents from lands in contested areas. In the Saigon area, only three parcels of land out of 14 yield any revenue with the remainder covering taxes at best. There is some indication that officials of the Catholic Church would be pleased to sell some of this land to the government. However, a statement of policy from the Apostolic delegate in Saigon would be required for an official church stand.

* Appendix B-4.

† Appendix K: NC News Service (Foreign), Father Patrick O'Connor, "Diem Gave No Rice Fields to Church," August 14, 1967, p. 6.

‡ Ibid.

§ Recorded statement by former Director General of Land Affairs, September 8, 1968.

Montagnard Lands

As shown in Chapter 3, Montagnard lands have been encroached upon, and there is a need for laws that will clearly indicate and protect the rights of the Montagnards according to their particular cultivation patterns.

Given the traditional Montagnard cultivation patterns, effective "ownership" may mean to them not only the effective assurance that no one will attempt to assert a right to collect rent or to evict them from the plot they are cultivating this year, but also assurance that their custom of rotating to other lands in future years is to be respected, and furthermore, that their communal right to the land is left inviolate.

If the principal indications of Montagnard ownership (no rent, no eviction, right to rotate, and communal ownership) are fully recognized, the most important legal questions for the future may then revolve around resolution of conflicting claims between Montagnard individuals and/or villages on the one hand, and purported voluntary grantees or simple squatters on the other. There currently appears to be little concrete administrative or judicial machinery to protect the Montagnards in this respect.

Lands Returned to GVN Control (Confused Lands)

As shown in Chapter 3, the so-called "confused lands" are those that are now under GVN control after having been distributed by the Viet Cong to persons other than the original legal owners. The government has tried to resolve questions of ownership by various administrative orders, and the policy has been reaffirmed in an instruction from Vice President Ky to Corps Commanders, Province Chiefs, and District Chiefs. This instruction provides that the "small owner-operator" to whom the land is registered can displace any persons placed on his land by the Viet Cong if the area does not exceed "3 to 5" hectares. For areas in excess of "3 to 5" hectares, the provision is for the Viet Cong-appointed farmer to get one-third of the land if he is landless, and the registered owner to get two-thirds. A further provision requires a Type A contract between the Viet Cong-appointed farmer and the owner.

Like the refugees, the occupants of confused lands may indicate a need for upward revision in the estimates of potential landowners. Present occupants are probably not legal landowners and very likely were not included in Hamlet Resident Survey estimates of landless tenants; thus, they would represent an addition to the number of landless desiring to own land.

A consensus of Vietnamese opinion is that an equitable solution to the confused land problem rates the highest priority among the objectives of land reform policy. At the same time, a common belief is that village authorities can provide, better than written statutes, the discretion necessary for the great variety of individual confused ownership situations.

Fortunately, the GVN is making the Village Administrative Committee responsible for all enforcement of orders pertaining to confused lands. Field observations by SRI indicate that the village officials are deciding on rights and ownership of these lands with practical good sense and, generally, justice for all parties concerned, also recognizing the acquired rights of occupancy of the loyal farmer placed on the land by the Viet Cong.

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GLOSSARY

General

Land Affairs. This term covers all matters pertaining to the administration of land, including both routine land administration and land reform. The term may be used in a specific sense, as the "Director General of Land Affairs," or in a generic sense, such as "the administration of land affairs." In the latter sense, the term land tenure administration is considered synonymous.

Land Administration. As used here, the term "land administration" has a restricted meaning, embodying the routine tasks for identifying and measuring land and for recording, transferring, and storing title documents showing ownership of land.

Land Reform. As used here, the term "land reform" includes the dictionary definition, "the more equitable distribution of agricultural land, especially by governmental action," as well as the more equitable regulation of landlord-tenant relationships. Land reform is generally policy-oriented and includes policy, laws, administration of land affairs and programs concerned with improving conditions of land tenure and creating a more equitable distribution of land.

Agrarian Reform. Often used synonymously with land reform (and used somewhat interchangeably in translations from VN documents), the term "agrarian reform" is usually used here in a broader sense to embrace all of the related actions beyond mere distribution of land to assure its comprehensive, beneficial use by the farmer, i.e., including such matters as seed, fertilizer, credit, and markets, and indeed rural development in the broader sense.

Land Registration System

Dia Bo. "Dia Bo" refers to land registers kept originally under the Vietnamese kings and improved by the French administration. The system was established by the French before the turn of the century.

So Dien Tho. "So Dien Tho" refers to land registers kept under the 1925 full Torrens system.

New Dia Bo. "New Dia Bo" refers to land registers kept under the 1962 modified Torrens system.

Kien Dien. "Kien Dien" refers to the 1962 land identification system.

Torrens System. The "Torrens System" refers to a very complete system of land registration entailing an adjudication or detailed determination of title to land. The system has been used in the Southern Region since 1925, and a simplified system was introduced in 1962.

Civil Service

Cadre. "Cadre" refers to positions for recruiting and employment. Under the Vietnamese civil service system all civil servants are grouped by skills into cadres.

Doc Su. "Doc Su" refers to administrative cadres or civil service officials, Class A (office and field administrators).

Tham Su. "Tham Su" refers to administrative cadres or civil service officials, Class B (senior clerks).

Local Administration.

The legal administrative divisions are the provinces, the autonomous cities, and the villages. However, the regions, districts, cantons, and hamlets also are important and so all of the various territorial subdivisions are listed here in order of decreasing size.

Region. Prior to January 1, 1956, "Region" refers to the three regional governments, one in the North, one in the Central, and one in the South. Since that date, when these were abolished, it refers to the groupings of provinces, corresponding presently to the I, II, III, and IV Army Corps Tactical Zones. In each case the Corps Commander is also the Government Delegate and is charged with inspectorate authority for the provinces in his region.

Province. "Province" is the basic territorial and administrative subdivision of the central government (currently 44). It is a legal entity possessing an autonomous budget and public property and is governed by a province chief appointed by the president.

City. "City" (sometimes called "autonomous city") is a legal entity (currently six) having an autonomous budget and public property, each one governed by an appointed prefect or mayor and a city council.

District. "District" is an extension of the provincial administration embracing a group of cantons or villages.

Canton. "Canton" is a territorial unit (currently 177) that exists in some provinces (sometimes in name only, since the canton chief functions more as an advisor to the district chief); it is a group of villages within a district.

Village. "Village" (commune or Xa) is the lowest legal administrative entity possessing an autonomous budget and property.

Hamlet. "Hamlet" (or Ap) is an extension or subdivision of the village made up of a grouping of inhabitants united by a rapid and easy means of communication. It is the smallest territorial unit.

Laws

- Ordinance (in Vietnamese, Du; in French, Ordonnance) is a law issued by the former King of Vietnam, between 1949 and 1956. Many are still in effect.
- Law (in Vietnamese, Luat; in French, Loi) is a law issued by the former National Assembly of Vietnam between October 10, 1956 and November 1, 1963. Many are still in effect.
- Decree-Law (in Vietnamese, Sac Luat; in French, Decrét-Loi) is an instrument issued by the Chairman of the National Leadership Committee (the Prime Minister) to appoint judges, to announce rewards or medals, to grant reductions of punishments, to pardon, to effect an amnesty, and for such matters requiring high authority to decide but being administratively uncomplicated.
- Arrete (in Vietnamese, Nghi Dinh; in French Arrete. The closest equivalent in English is Departmental Order, but it is not used) is issued by:
- the Chairman of the Central Executive Committee (the Prime Minister) to effect routine matters,
 - Commissioners (Ministers) to implement matters within their organizations or to implement ordinances, laws, decree-laws, their provinces.
- Violations of an arrete may be brought to prosecution by the Police before Justices of the Peace.

Source: The General Commission for Justice of Vietnam as reported in the USAID Public Administration Bulletin, No. 35, Vietnam, Feb. 1, 1967

ABBREVIATIONS

ADPA - Associate Director, Public Administration

ADDP/IR - Land Reform Adviser to the Associate Director, Domestic Production (USAID)

CORDS (MACCORDS) - Military Assistance Command Civil Operations and Revolutionary Development Support (the overall organization for administering the pacification program under MACV)

DGLA - Director General of Land Affairs

DRV - Democratic Republic of Vietnam (North Vietnam)

EARI - Engineer Agency for Resources Inventory (a U.S. Army agency working on a contract in An Giang province)

GVN - Government of Vietnam

JCRR - The Sino-American Joint Commission on Rural Reconstruction (Taiwan)

JUSPAO - Joint U.S. Public Affairs Office

MACV - Military Assistance Command, Vietnam

NIA - National Institute for Administration (under the Office of the Prime Minister)

NLF - National Liberation Front of South Vietnam

NTC - National Training Center at Vung Tau

RD - Revolutionary Development

RVN - Republic of Vietnam

USAID - United States Agency for International Development

VC (Viet Cong) - Vietnamese Communist (pejorative of the term Viet Cong-San).

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