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**Public Administration Reform and Anti-Corruption
A Series of Policy Discussion Papers**

**A Sectorial Study of Transparency
and Corruption in Land Acquisition
in Viet Nam**

January 2017

The series of *Policy Discussion Papers on Public Administration Reform and Anti-Corruption* is commissioned by the Policy Advisory Team (2007-2016) and the Governance and Participation Team (from 2017) at UNDP Viet Nam.

Ms. Do Thanh Huyen, Policy Analyst is currently in charge of the series.

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Abbreviation

BOO	Build, Operate, and Own
CCIA	Central Committee of Internal Affairs
DONRE	Department of Natural Resources and Environment
GDP	Gross Domestic Products
GI	Government Inspectorate
GPPs	Government Private Partnerships
NRD	New Rural Development
PAPI	The Viet Nam Provincial Governance and Public Administration Performance Index
PCI	Provincial Competitiveness Index
PPPs	Public Private Partnerships
USD	The United States dollar (currency)
VLAP	Vietnam Land Administration Project
VND	The Vietnam dong (currency)

Executive Summary and Policy Implications

Land corruption in Vietnam has stubbornly resisted concerted anti-corruption efforts. This study aims to shed light on corruption in land development government-private partnerships (GPPs)—a rapidly growing type of land investment. By analysing corruption in land development using the social construction approach, this study aims to generate new insights into the causes of corruption in land development projects, and propose fresh sets of policy-relevant insights that will lead to new anti-corruption measures.

Corruption in Vietnam is conventionally studied from the perspective of rent-seeking by deviating from formal institutions, rules and procedures. However, this law-based model of corruption analysis does not easily apply to GPPs, whereby public officials act entrepreneurially and decision-making primarily takes place outside state agencies and formal due processes.

This study adopts an analytical method based on a socially constructed understanding of corruption; it focuses on local contextual understandings of corruption rather than a law-based analysis of corruption. Specifically, this study aims at:

- Identifying corruption types in land development GPPs through case studies on infrastructure development and mining projects that involve state-led land clearance and non-state investments
- Identifying different corruption drivers in the GPP projects
- Recommending relevant anti-corruption measures from the perspective of social construction, which assess corruption based on violation of public interests rather than simply on the violation of regulations.

We initially examined two government anti-corruption measures, the Vietnam Provincial Governance and Public Administration Performance Index (PAPI) and the Provincial Competitiveness Index (PCI), which provide data and information about corruption risks from the perspectives of citizens and business owners. We then conducted in-depth interviews with citizens and business owners based on five case studies that involved different types of land development GPPs, such as new residential precincts, a new commercial market, gravel-pit mining and land consolidation in rural development.

The interviews and case studies show that GPPs do not reflect the interests of those most affected by the proposed developments. Powerful interest groups dominate land planning and development with little regard for broader social and economic interests. Citizens and business owners interviewed understood corruption as a failure of public participation to push for public interest to influence GPPs. Public interest is defined by how equitably the relative costs and benefits of GPPs have been distributed, and whether this distribution reflects public concerns.

A model for public interest corruption is intended to complement rather than replace the law-based corruption model. It is used as an analytical framework to refocus policy on bottom-up responses that make GPPs more responsive to public expectations.

Our study offers several recommendations for consideration in government policymaking to enhance local governance and to reduce corruption. The first set of policy recommendations under discussion concern a refocusing of the anti-corruption agenda towards collusion-based corruptions. This involves revising the Anti-Corruption Law to include regulations on conflicts of interest between public servants and businesses, to review new anti-corruption policies in order to examine potential collusion between businesses and decision-makers, and the promotion of genuine and quality monitoring by non-state actors.

The second set of recommendations involves the piloting of deliberative designs in policymaking processes. Micro-deliberative designs give representative groups of citizens a direct say over particular land development projects. Policymakers can learn from international experiences and pilot deliberative designs in local land development projects for the benefit of all affected citizens and/or communities. Micro-public deliberation allows citizens to contribute to policy debates, and monitor compliance through deliberative policymaking,

deliberative budget allocation, and citizen monitoring. Political support from central government and technical support from donors would be critical for the successful introduction of such a mechanism. At the macro level, several regulation revisions would be critical. These include creating a positive legislative duty for public officials in charge of land planning and development to absorb public comments. More importantly, preventive and sanctioning measures to control public-private collusions for rents should be introduced to the 2015 Anti-Corruption Law, which is currently under revision.

The third set of recommendations refers to building a socially responsible and integrative private sector. This involves creating a mechanism that gives different types of businesses a level playing field when participating in policymaking. This mechanism first and foremost requires genuine interest from public servants to absorb and respond to consultative inputs from businesses.

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Introduction

Rationale of the Research

There is growing consensus within the anti-corruption field that the most effective anti-corruption programs target interventions at a sectoral level (Khan, 2006). Reforms at this level are more likely to attract political and local stakeholder support than more broadly targeted anti-corruption programs. Much analysis of anti-corruption reforms emphasises the importance of improving transparency, public participation and accountability. What is often absent from this analysis is an acknowledgment that corruption is socially constructed; state and non-state actors frequently have different understandings about what constitutes corrupt behaviour. By examining corruption as a socially constructed phenomenon, this study aims to generate fresh sets of policy-relevant insights that will lead to new anti-corruption measures.

A number of studies have identified land administration as one of the sectors with the highest corruption risks in Vietnam (e.g. the Asia Foundation – T&C Consulting, 2014; World Bank, 2012; 2013). Some common forms of corruption are now well understood, such as administrative corruption arising from interactions between officials and citizens. Other forms of corruption, including those occurring from interactions between officials and firms, land corruption involving ethnic minorities, and corruption caused by systemic land policy distortions, are comparatively less studied and understood. There is a need to identify and analyse these under-studied forms of corruption to shed light on possible reform interventions in these sectors. In land taking cases, citizens have largely been excluded from negotiations between local authorities and land development firms (developers), even though government-private land projects greatly affect their wellbeing. There is also a growing concern about the corruption created through the development of 'local growth coalitions': alliances formed between local government agencies and developers (World Bank, 2013). As demand for local land investment outpaces central budgetary allocations, more 'local growth coalitions' are expected to fund infrastructure and housing developments. The corruption produced by 'local growth coalitions' often has far-reaching consequences, because it can encourage unfair competition, misallocate scarce public resources, and erode social trust in the government. To date, there is no detailed and credible research on this issue. We consequently know very little about whether land taking policies facilitate corrupt practices, how authority-developer collaborations occur in practice, and how these arrangements affect citizens.

Objective

The overall objective of this study is to propose some actionable initiatives for anti-corruption programming relating to government-business interactions in land projects. Specifically, this study aims at:

- Identifying corruption types in land development government-private partnerships (GPPs) through case studies on infrastructure development and mining projects that involves state-led land clearance and non-state investments.
- Identifying different corruption drivers in the GPP projects.
- Recommending relevant anti-corruption measures from the perspective of social construction.

The study is consultative and the findings will be disseminated to government policymakers and the international development community both in Vietnam and globally.

Research Approach and Methodology

This research aims to explore types of corruption that have only received cursory attention in previous studies. This study uses an unconventional and innovative approach which does not assume that corruption is always caused by self-interested deviations from formal rules (Transparency International 2012; World Bank 2012; 2013); rather, it is based on the premise that it arises from socially constructed cultures of corruption (Zaloznaya 2014; Wedel 2012). This conceptual refocusing locates corruption within the organisational norms and cognitive beliefs that shape how officials perceive and pursue self-interest (Vaughan 1998). A social construction model of corruption aims to understand differences in the ways that officials, developers and citizens conceptualise what constitutes appropriate land planning and development. This model of corruption analysis directs attention towards socially-situated interactions where the meaning of rule-breaking behaviour is constructed, negotiated and performed (Zaloznaya 2014, 194; Hasty 2005). It also promises fresh insights into corrupt behavior.

This study draws on data from the Viet Nam Provincial Governance and Public Administration Performance Index (PAPI) and the Provincial Competitiveness Index (PCI)¹ to develop an overall picture of the prevalence of corruption within firms, and citizens are compensated for land taking. Qualitative data collected during the course of the research is analysed in order to investigate current forms of corruption in land taking cases and how current land taking practices affect people's lives. To understand how the social construction of corruption influences compliance patterns, this study examines normative and cognitive understandings of land administration and land tenure from the perspectives of the key actors.

Qualitative data is examined to find evidence relating to different types of land corruption, especially relating to collusion between officials and firms, policy distortions and state-constraining corruption. Data are also analysed for evidence the influence of self-interest and different social constructions on land related corruption. The insights from this analysis inform the policy recommendation in the final section of this report.

Our case study approach aims to explore the emerging types and drivers of corruption in GPP investment projects. Caution should be exercised in any attempt to generalise the findings and apply them to other types of projects. In addition, while our social perspective of corruption did not exclude the common legal-based perspective, we focused more on explaining drivers and consequences of corruption from different actors' viewpoints. Legal-based studies that used regulations as an anchor point can be referenced in other research studies (e.g., World Bank, 2010; 2013)

Details of research methods are found in Annex I.

¹ See www.papi.org.vn/en for information about PAPI and <http://eng.pcvietnam.org/> for information about PCI

Analytical framework and the context

Corruption Types

Under the rational actor perspective, corruption is *a self-interested deviation from formal rules* (Johnson 1996; Rose-Ackerman 1978). Many incidents of corruption in our case studies do not, however, seem to show such a deviation. This would make any efforts to reform rules so as to reduce any possibility for such deviation fruitless. Rather than considering corruptions involved in case studies in regards to deviations, they can instead be classified in terms of a typology with two dimensions:

- **Policy discretion:** In ‘standard economic theory’, corruption is considered as driven by the power of discretion (Khan, 2006; Rose-Ackerman, 1978). When self-seeking officials are able to take discretionary action, they are likely to be corrupt, using such action to benefit specific interests including their own.
- **Coalition between officials and businesses:** Corruption arises when public officials and non-state partners collude for the sake of their own private interests. The collusion nullifies current policies as the coalitions make their own policies for the benefits of so-called ‘interest groups’. Such behaviours are particularly apparent when the distinction between state and non-state functions are blurred and the relationship between state and non-state is commercialised, as in GPP projects.

Based on these two dimensions, we broadly classify corruption observed in the case studies into four types:

Table 1: Typology of corruption for case analysis

		Policy discretion	
		Low	High
Coalition between public officials and non-state actors	High	“bid collusion” Firms and officials collude to deviate from or nullify rules <i>E.g.: bid colluding - illegal/small-scale mining</i>	“policy corruption” Firms and officials collude to write policies for private gain <i>E.g.: Local government makes policies for the public interest</i>
	Low	“village norms” Firms are forced or volunteer to pay informal charges <i>E.g.: informal charges for administration activities</i>	“black market” Firms and officials negotiate to divide some social benefits <i>E.g.: Pricing lands/land rights</i>

When collaboration is low, corruption comes in two types: “village norms” and “black market”. “Village norms” corruption arises when discretion is low, and firms are forced or volunteer to pay informal charges. This type of corruption mostly involves bribery, which is used to pass administrative procedures, following informal norms created by the actors (Nguyen et al., 2016). “Black market” corruption happens when public officials have large power of discretion they can use for private gains. In this situation, public officials and non-state actors can bargain to divide social benefits.

When collaboration is high, there are two types of corruption: “bid collusion” and “policy corruption”. In cases where policies are clear and specific, public officials have low discretion. They could collude with their partners to nullify the policies, i.e., by implementing the policy artificially, by delaying the

implementation, etc. This is quite evident in tendering activities (World Bank, 2016) and also in other areas where public officials and their partners collude to implicitly decide the results. This type of corruption is called “bid collusion”. When discretion power is high, public officials might collude with their partners to develop policies for their private gains. This type of corruption is “policy corruption”.

The four types of corruption will be analysed in respect to the five case studies. This categorisation of the four types can be used to identify coalition-based corruptions in GPPs and demonstrate the complexity of corruption in these projects.

Corruption from Different Perspectives

As conventionally understood, corruption is a self-interested deviation from formal rules (Johnson 1996; Rose-Ackerman 1978). This law-based definition of corruption is based on a set of assumptions:

- that a well-functioning legal system exists that can clearly define, monitor and enforce legal and procedural obligations imposed on state officials;
- that there is a close relationship between legal rules and the decision-making practices followed by state officials; and,
- that incentives and sanctions are in place that can induce state officials to follow laws and procedures.

As research from a broad range of societies has shown (Hayllar & Wettenhall 2010; Van Nam, 2016), law-based definitions of corruption are difficult to apply to GPPs for a number of reasons:

- The relationships between officials and firms are complex, personal and rapidly changing.
- Officials act entrepreneurially, blurring state organisational boundaries and missions.
- Decision-making takes place outside legally defined state agencies in “extra-bureaucracies”, such as investor committees, project management units (PMUs), and government-private partnerships (GPPs)².

In these situations, law-based definitions of corruption are insufficiently flexible to address a wide range of socially damaging activities produced by GPPs (Zaloznaya 2013; Hayllar and Wettenhall 2010). A critical problem is not only the risk that GPPs might violate laws (law-based corruption), but that, in an equally problematic fashion, officials can use state power to legitimise socially damaging activities.

A Public Interest Corruption Model

This study proposes an analytical framework that identifies the socially damaging consequences of GPPs, which might otherwise escape law-based definitions of corruption. We suggest a social construction model that treats corruption as violations of the public interest (Zaloznaya 2014). According to this model, corruption is an act of appropriation that undermines, subverts or repudiates collectively agreed-upon organizational missions for non-collective ends and purposes (Zaloznaya 2014, 194; Hasty 2005). Officials who act corruptly betray the collective trust even if they do not violate prescribed laws and procedures (Wedel 2012). What constitutes the collective trust is not fixed and depends on the specific contexts of each case. The policy discussion in this report proposes ways of defining and circumscribing what constitutes the public interest for GPPs.

² The projects studied were PPPs on paper but are GPPs in reality. This paper uses the two terms interchangeably.

The public interest model of corruption complements rather than replaces law-based definitions of corruption. It influences this project in three key ways:

- First, it proposes a multi-actor definition of corruption that directs attention to differences in how officials, businesses and citizens conceptualise GPPs.
- Second, it focuses attention on land developments that violate the public interest but might currently escape legal definitions of corruption.
- Third, it generates insights that inform anti-corruption measures that make GPPs more responsive to the public interest.

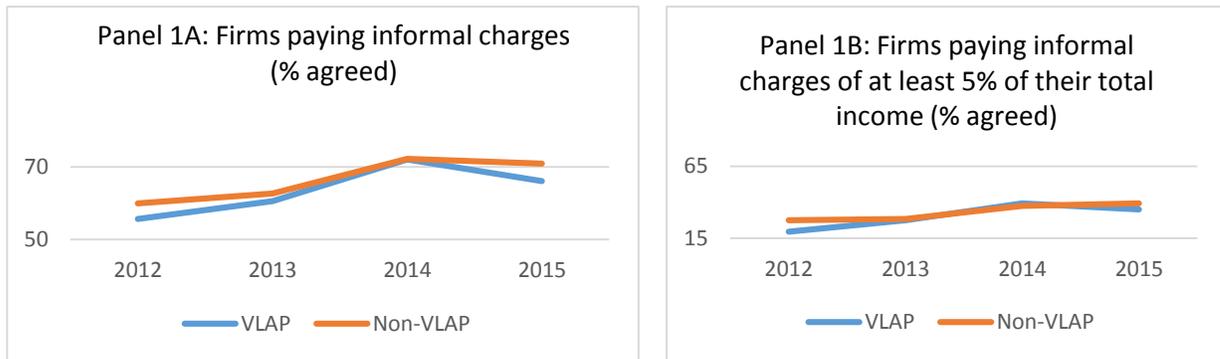
The Context: Evidence from PAPI and PCI

The last five years witnessed a number of legislative reforms aimed at improving the regulation of investment projects that mobilise non-government funding, including both the 2013 Land Law and the 2015 Law on Public Investment. With these reforms in the policy environment, one would expect a decrease in corrupt collusion, such as the payment of informal charges in land administration and public investment, and a corresponding increase in public satisfaction with compensation for land taken by investment projects.

The following section uses PCI and PAPI data to examine trends in the payment of informal charges, and public assessment of compensation for land taking. For PCI data, we limit our analysis to firms in construction, mining, and real estate businesses. In both firm and citizen analysis, we separate those in provinces that were supported by the Vietnam Land Administration Project (VLAP) from the others (non-VLAP provinces). The VLAP was implemented during the period from 2008 to 2013 in nine provinces of Vietnam, including Hanoi, Hung Yen, Thai Binh, Quang Ngai, Binh Dinh, Khanh Hoa, Tien Giang, Ben Tre, and Vinh Long. The VLAP's overall objective was to enhance the accessibility of all stakeholders to land information services, realised through the development of a complete land administration system in the nine provinces of Vietnam.

During the period from 2012 to 2015, firms perceived more frequent and more severe corruption practices in the construction, real estate and mining sectors. In 2012, 56 percent of firms in the VLAP provinces agreed that informal payments were commonly made within the sector. This figure increased to 61 percent and 72 percent respectively in 2013 and 2014, before slightly decreasing in 2015 to 66 percent. The surge in informal payments was also apparent in the non-VLAP provinces (see Panel 1A of Figure 1). During the period from 2012 to 2015, firms not only encountered more corrupt practices, but also had to pay more for each case of corruption. Panel 1B of Figure 1 indicates that, in 2012, 20 percent of firms in the VLAP provinces had to pay informal charges of at least 5% of their total income. This figure rose to 28 percent, 39 percent, and 35 percent respectively over the following three years. Relatively, in the non-VLAP provinces, firms had to pay even more for informal charges during 2012-2015; 28 percent of firms had to pay informal charges of at least 5% of their total income in 2012, then increasing to 38 percent and 39 percent in 2014 and 2015. Thus, despite changes in the policy environment, more firms have paid informal charges, and in doing so have paid more than previously.

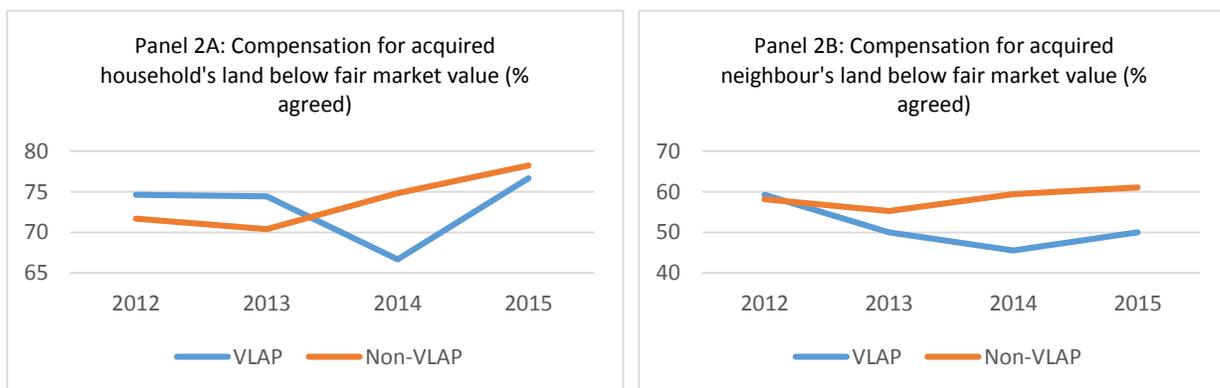
Figure 1: Informal payments by firms in construction and mining



Source: Vietnam Chamber of Commerce and Industry (2013-2016). *The Provincial Competitiveness Index*

In a similar vein, the discontent from those losing land about the level of compensation paid for the compulsory land acquisition remained profound. Data from PAPI shows that 75 percent of citizens in the VLAP provinces perceived compensation for *their own* households' land to be below fair market value. This figure remained high in the following three years, rising from 67 to 77 percent. Perceptions of unfair compensation seemed to be higher in the non-VLAP provinces, even after the Land Law 2013. Accordingly, in 2014, 75 percent of citizens in these areas perceived there to be unfair compensation associated with land acquisition by the local authorities. This figure was even higher in 2015, at 78 percent. The perception gaps between the VLAP and non-VLAP provinces increased during 2012-2015 when citizens were asked to assess their rate of compensation to that of *their neighbours* (see Panel 2B of Figure 2). In the non-VLAP provinces, the rates of discontent were higher than the rates in VLAP provinces; 55 percent versus 50 percent in 2013. This gap enlarged to 59-46 percent and 61-50 percent in the following two years of 2014 and 2015. In addition, the VLAP was likely to lower perceptions of unfair compensation among citizens, regarding their neighbours' land acquisition during 2012-2015.

Figure 2: Compensation for land taken from citizens



Source: CECODES, VFF-CRT, and UNDP (2013-2016). *The Viet Nam Provincial Governance and Public Administration Performance Index (PAPI)*

Although the policy environment continues to improve, the reality of firms paying informal charges and public satisfaction about land-taking compensation has not. Evidently there are factors other than regulations that influence this disjunction between legislative reforms and actual practical outcomes. For instance, investment in a land registration system in VLAP provinces seems to benefit land-losing citizens, but has not shown any positive impact on informal charge on businesses. Our case studies shed some light onto why corruption remains at high levels despite regulatory reforms.

Findings from case studies on investment and mining projects in Vietnam

In this section, we present the synopses of the five case studies we analysed to determine how much and in what forms corruption in land and land associated resource administration has been involved from the perspectives of different actors. The first case (the Mountain Town) is an urban development project in a mountainous province in the northern region of Viet Nam. The second case (the Greenpark) is another urban development project in a province in the Red River Delta. The third case (the Market Renovation project) differs from the first two in the fact that it is about conversion of a town-centred area of public land for a local market into a shopping mall. The fourth case is about stone mining in a mountainous province in the North. The fifth case involves a bottom-up community-based new rural development initiative. Each of the five projects has been carried out with private sector involvement; however, the name of each project has been altered to ensure the confidentiality of informants. It should be noted that land and land-associated natural resources are defined constitutionally and by law as state assets and the use of them is administered by the state through land titles or use rights for certain periods of time.

Here, we reveal why corruption has happened as per the secondary quantitative data from PAPI and PCI analysed in the previous section. Each case study is introduced with a brief introductory paragraph about its background, followed by a project corruption risk analysis using typology of discretion- and coalition-based forms of corruption, and a presentation of how corruption is seen from socially constructed perspectives. The policy implications is then presented in the next section.

Synopsis of the cases³

Case 1: Mountain Town

Background:

This case is generally representative of new residential developments in the Northern mountainous area of Vietnam. The new residential project in this study is located in a mountainous province in the north where there are about 20 other residential projects under development. The province's economy has developed quite rapidly over the past ten years with double digit GDP growth.

As in many other provinces in northern Vietnam, demand for residential housing in the province studied surged during 2008 and 2009 and decreased more recently. From the perspective of public governance, the province ranks among the top performers in the PAPI and PCI indices. On the surface, these indicators appear to demonstrate that the investment environment in this region is favourable to businesses and healthy for development. However, findings in regards to corruption, presented below, tell a different story.

Although the project in this case started after the land investment boom, it is nonetheless considered a profitable venture.

The project was licensed in 2011 but did not commence until the beginning of 2015 when demand for housing increased.

The project covers about 400 thousand square metres with more than one third of the land set aside for new houses, one third for roads, and the rest for a school, a clinic, and other public buildings. The total

³ Names of the projects and related stakeholders are pseudonyms.

investment in the project is registered at about 400-500 billion VND (about 20 million USD). The investors can sell houses under “deposit contracts” once land has been cleared.

In total, about 200 local households have been affected by the project. Most households are comprised of people from an ethnic minority who have been living in the region for generations. Some households have not agreed to relocate for a range of reasons. Many are concerned about the fairness of the processes involved in relocation, more than they are about the rate of compensation paid. Householders know very little about the development and its investors because provincial authorities have handled the clearing of land and the relocation of local people. Project planning and initial development before land clearing commenced was hidden from public view.

Project processes and corruption risks:

The development of this project has gone through several processes including: the selection of land location; government approvals; the development of project plans; and bidding to win the project. Other processes including land clearing, sale pricing, and taxes, were not complete at the time of this study. However, despite its incomplete status, the project could be analysed through the interviews we conducted which identified what informal payments from the firm were made to relevant public officials during every step of the approval process. The risk of corruption for the as-yet incomplete processes can be inferred from similar cases involving the same investor. Table 2 summarises the processes and amounts of informal payments to public officials in this project case.

Table 2. Corruption and corruption risks in processes

Project processes	Key activities	Informal payments
Selection of land location	Declared as “land planning” but not transparent enough to realistically find a good land location	20-100 million VND
Official approvals	Different departments may be involved in these approvals – the key is to have something in the agreement so that “my firm can join the project”	10 billion VND
Approval of detailed project plan	Investing firm makes the plan proposal – the detailed plan for the authorities (1-2 billion VND formally for the plan)	3-4 billion VND
Tendering	The firm that selects the land is usually the bid winner	5 billion VND
Starting project implementation	Land clearing and compensation.	<i>Unknown</i>
Setting prices for project houses	These prices are used to calculate taxes to the state – the lower the better for investors	<i>Unknown (significant)</i>
Paying tax for state budget	Deadline can be extended to benefit the investor	<i>Unknown</i>

Two key facts should be noted here. First, all the processes from selecting the land location to bidding and project approval occurred without public knowledge. These processes were handled exclusively by investors and relevant public officials. Citizens did not know about the project or the relevant plans for local development until the project was approved. Even after the project was announced, citizens could not actively participate in any negotiations, as the rate of compensation had already been determined. Meetings with public officials were to inform rather than consult citizens.

Second, the investors were compelled to pay informal payments to public officials. Up until land clearing was completed, investors had to pay about one million USD informally for a project capitalised at 20 million USD. Unsurprisingly, the investor in this case complained that they could never know how profitable a

project was going to be until it was completed and all houses were sold, and as such, investing such a large amount at an early stage of the development could produce anxiety. Such matters clearly impact project development if and when they scare away potential investors, especially those lacking personal connections with high-level officials. On the other hand, investors who do have connections with high-level officials, to whom they make informal payments, incur costs which are either passed on to consumers or reduce funds paid out for land compensation.

From an investor’s perspective, profit maximisation rather than socio-economic development is usually the top priority. As one firm investor explained:

“I have connections from the central so I can do projects here but I cannot know for sure how much profit I can get from this project and in any other projects.”

Corruption types in cases of interactions between firms and officials:

Different corrupt behavior and risks associated with corruption can be classified under the two dimensions of policy discretion, those being bid collusion and policy corruption and the collusion between firms and public officials. In this case study, corruption occurred in different forms (see Table 3).

When policy discretion is high, corruption may occur as either “policy corruption” or “black market” corruption. For example, investors might collude with officials to purposively hinder competing projects so that they can sell their houses first. After informal payments are made, and the project in question becomes successful, the suspended projects can then recommence. As reported by investors, in many cases, intervention from top officials at the central level can change local policies and benefit investors. In these “policy corruption” cases, policies have been “applied” by local officials for private gain.

With low coalition between firms and public officials, “black market” corruption may occur. As reported by the firm investors, the pricing of project houses can be the product of direct negotiation between firms and officials. This pricing is used to calculate the total amount of investment that the firm has made, its potential revenue, and therefore the tax payable. The lower the price, the more profitable it becomes to sell houses at market prices. In some “dirty cases”, investors may be called upon to gift land lots to local top officials in return for development approvals. High discretion gives officials power to bend rules for personal gains.

Table 3. Corruption types in the Mountain Town project

	Low discretion	High discretion
High coalition	<p>"Bid collusion"</p> <ul style="list-style-type: none"> - Areas of land in the development plan are “allocated” to different investors; - Each project has “only one bidder” (after detailed plan 1/500). 	<p>"Policy corruption"</p> <ul style="list-style-type: none"> - Local government issues orders to stop some projects so that other investors can sell their houses; - “Diplomatic lots” to officials; - Participation from top officials in the central level.
Low coalition	<p>"Village norms"</p> <ul style="list-style-type: none"> - Fees for “greasing the wheel” during the process; - “Greeting” fees from small and medium investors; 	<p>"Black market"</p> <ul style="list-style-type: none"> - Pricing project houses can be flexible resulting in direct negotiation; - Requires some land lots for free.

However, even where policies have low discretion and are more transparent, corruption can happen in two forms, as either “bid collusion” or “village norms”, depending on the coalition level between investors and officials. For example, when investors have loose connections with officials, they have to find ways to “grease the wheel” by paying bribes to the officials in charge. In these cases, the firm had to pay informally to the land development fund officials to speed up the land clearing and compensation process. Otherwise, the officials are “too busy” with other projects and work to rules by “following the procedure”. Other small investors or those without political connections have to pay higher fees to make officials pay attention to their projects. This type of “village norms” corruption is common in many areas and industries.

Collusion between investors and officials may be needed in other situations to ensure investors achieve the goals agreed to by both parties. In these “bid collusion” cases, the coalition with provincial officials helped investors to find locations for the project. The coalition also helped ensure the investor was the only bidder who could win the project. On the surface, it appears that investors want to build coalitions with officials. It should be noted that such coalitions incur costs to both investors and the society impacted by the development, although investors have the benefit of being able to find ways to recover the costs. This practice also upsets the equitable allocation of resources as land might be allocated to firms with low capacities.

Two department officials interviewed explained how bid collusion has occurred in the Mountain Town case study:

“We have not had a project with multiple bidders. Usually there is only one investor who chose the land in the first place. He must be really committed or they [investors] may have talked to each other. If there are multiple bidders, the winners may turn out to lose later if they bid with low prices. The technical requirement is fixed so the low bid price would result in losses. Or the winner is not the favoured one from the first place and would be “closely controlled to death”. We require the gravel to be round so you cannot use different-shaped ones for your construction” [Public official from Department of Construction].

“Firms can save a lot with delayed investment. But you cannot have them out. It is a ‘social issue’” [A department official].

Thus while efforts have been made to make policies more transparent and to reduce discretion for the officials, our case shows that corruption can still occur even in situations where there is low discretion. More importantly for this study, many types of socially harmful collusion do not deviate from formal rules—and thus are not legally corrupt.

Corruption from the social construction perspective

In previous sections, we have made mention of the types of corruption that occur between firms and officials. From the social construction perspective, at least three other types of corruption can be identified that are relevant to the Mountain Town case study.

First, from a public perspective, the Mountain Town development project may be considered a “forced civilisation”. For many ethnic minority citizens who are affected by the development, the modern residential accommodation provided is unsuitable or undesirable. It is not what they discussed with the investors and local officials and does not represent what they want or need. As a result, some citizens considered the project less-than-civilised. As one citizen explained: “It can be modern, yet not civilised at all.”

Second, the Mountain Town project was implemented using the method of on-site relocation, which negatively impacted the citizens' everyday lives and spiritual practices. The affected citizens were told that they would be compensated for the land they owned together with additional compensation for the plants and animals farmed on that land. They were told that they would then be assigned a specific location in the new area they could purchase at a favourable price. Before moving to the new location, however, they were temporarily relocated close to the construction site. As impacted citizens explained, this two-step relocation is harsh both physically and spiritually:

"We don't want to move yet because it would be difficult for my wife to ride a motorbike carrying our children for school every day. The road is too muddy with on-going constructions".

"We can locate temporarily but what about our ancestors from the other world?"

Third, the project may actually endanger the livelihoods of some citizens, and force unwanted changes upon the livelihoods of others. Currently, the primary forms of livelihood of the local citizens are animal husbandry and horticulture. After relocation, many citizens would find their land area reduced from 400 square metres to 100 square metres. This reduced area is only large enough for houses to be built with very small gardens, and does not provide at all for farming activities. Further, there appear to be no plans to introduce programs to retrain affected citizens for other occupations, although even if there were, there seem not to be any signs that retraining will in fact open new job opportunities. This is a problem observed in many other similar projects.

One local citizen described how their livelihood selling vegetables was affected by the development and relocation, in discussion with another citizen facing the same issue:

"I guess we can both open small vegetable shops here later and look at each other every day. No one would buy our vegetables."

In short, under the social construction perspective, it is evident that corruption causes different forms of harm. The cost-benefit analysis from this case study shows that the impacted citizens lose more than they gain. While the monetary or material compensation paid to the citizens can be valuable in the medium term, the potential loss of lifestyle, livelihood, land and changes to spiritual practices are hard to quantify. On the other hand, in terms of the outcomes for investors, while there are some market and policy risks, investors are likely to benefit substantially from the project when houses are sold, benefits which are shared with corrupted public officials but not the citizens of the area.

Case 2: Greenpark

Background

This case study contrasts with the preceding case in terms of its contextual background. Unlike the first case study, which is located in a mountainous province, this case study took place in a province in the Red River Delta of Vietnam. The province is located near the capital city but it has a lower GDP per capita. Moreover, the province is usually ranked amongst poor PCI and PAPI performers. The investment environment thus can be deemed to be less favourable to businesses and unhealthy for development.

The large-scale residential project that is the focus of this case study was unusual in its process of land clearance as one of the largest residential projects in the north and the largest project in the province. The

registered project area was 500 thousand square metres, and three communities with thousands of households were cleared to construct this development.

This project was not originally considered in the provincial or district master plan. In fact, there were no plans for this type of development in the province before the project commenced. The secretive approval processes involved were responsible for community frustration and on-going protests from thousands of citizens. This occurred despite the fact that the compensation paid for land clearance increased from 19 million to 54 million and was recently increased to 63 million VND/*sao* (1 *sao* = 360 m²), close to compensation paid for urban land, and despite the fact that laws were followed. The local government used different propaganda and persuasion campaigns to implement the project. Security forces were used several times for land clearing.

At the time the case study was conducted, the investor had completed construction of about 1500 houses and 500 villas in an area of 50 ha. This project was awarded international recognition for its architectural beauty. Today, protests still continue and citizens remain angry and resentful because of the secrecy surrounding the project and This case study clearly demonstrates the social damage caused when the public regard a project corrupt, even when the development might have followed legal processes.

Project processes and corruption

Our interviewees in this case study were not able to identify informal payments, as they were in the previous case study. This can be explained by the possibility that this project was actually “introduced” by some top-level officials. Thus the relationship between the investor and the local government was quite different from the previous case. In this case, the local governments – including provincial, district, and commune officials – acted on orders from above. Their jobs were to find ways to apply the current regulations to make sure the project followed the rules. As two provincial officials explained:

“The investor had nothing to do with property development before this project. They seemed to just pass by the area and found it to be ideal for a new urban place because it is close to the central province. The founder was actually a construction engineering tutor.”

“How could we know if the investor was committed and capable? They were actually introduced by some top central level officials so our provincial government needed to consider the development seriously.”

The project was implemented under the policy of exchanging land for infrastructure. Under this mechanism, local governments could consider project proposals from private investors proposing to build local infrastructure. Prices for exchanging land were determined by regulations from the Ministry of Finance, which usually did not reflect market prices. In fact, to obtain this land, the investor agreed to build an inter-provincial road and pay compensation for land clearance, which totaled around 400 billion VND.

In short, all the procedures appeared to be followed strictly although some (e.g. the master plan) were ‘revised’ later to align with actual activities taking place on the ground. However, no matter how ‘legal’ the development, corruption risks can still exist when we consider things from the social construction perspective.

Classifying corruption in the interaction between the firm and officials

According to the classification of corruption risks under two dimensions of collusion and policy discretion, this case study revealed no forms of ‘village norms’ or ‘black market’ corruption (see Table 4). Again this can be explained by the fact that the project was directed from the central level. Thus, in order to

implement the project, the investor did not need to grease the wheel (i.e. village norm type) or be bullied by the local government (i.e. black market). In this case, the coalition between the investors and top officials was so close that the local government was ordered to collude with the investor to implement the project. Corruption risks, however, can occur when there is high or low policy level discretion, and this is what happened in this case study.

Table 4. Corruption risks in the Greenpark project

	Low discretion	High discretion
Tight coalition	<p>"Bid collusion"</p> <ul style="list-style-type: none"> - The project was carried out with inadequate legal requirements (plan, investor capacities). 	<p>"Policy corruption"</p> <ul style="list-style-type: none"> - Strong will from local government and firm investor in land taking and developing the new urban area; - Compensation policy has changed several times.
Loose coalition	<p>"Village norms"</p> <ul style="list-style-type: none"> - Not identified 	<p>"Black market"</p> <ul style="list-style-type: none"> - Not identified

In this case study, where policies provided high discretion, officials could try to utilise flexibilities within policy discretion to manipulate the implementation of the project. Compensation policies were adjusted several times depending on different schedules. The compensation amount then increased over time from 19 million VND per acre to 63 million VND per acre. This final amount, however, was significantly lower than the 100 million VND per acre paid by the investor. The investor even claimed that he had to pay around 300 million VND per acre to the local authorities for land taking and compensation for plants and animals. Similarly, regulations were applied to ensure the project development and implementation processes adhered to the rules. This is because high-level central officials compelled local officials to obey their directions. Necessary documents were then approved and signed to make sure the project was implemented properly. Impacted citizens explained the processes of approving and signing the documents:

“Can you imagine that three documents were approved and signed in three consecutive days? The first one was from the provincial people committee to the Ministry of Natural Resources and Environment. The second one from the Ministry to the central government. And the third one was signed by the then Deputy Prime Minister.”

In this case study, even where discretion was low, central and local officials found ways to validate the project. Thus “bid collusion” occurred when the investor initially had no experience in or proved capability to implement such a large project. In fact, the firm never conducted previous property developments. Its initial legal capital was less than the required amount; nevertheless, the project was still approved. Another unusual aspect of the case was that the registered area of the project was large enough that the project just needed central government rather than National Assembly approvals.

Impacted citizens explained the process of project approval:

“You can see from the document that the registered area of the project is barely below 500 hectares. Developments exceeding that size should be approved by the National Assembly. But the prime minister legally approved the area.”

“We thus add up all taken areas in our land right books to have a number very close to the registered area. What about other areas including water canals, local roads, etc.?”

Corruption from the social construction perspective

No incidents of corruption have been identified in this case study from the legal perspective as all the documents appear to have been formalised to strictly adhere to the rules. From the social construction perspective, however, there are several factors at play that constitute corruption.

Firstly, the traditional livelihood of the citizens impacted by the development has been negatively affected. Citizens in this area have been well known for their skill at raising flowers and ornamental plants which are sold to different cities and provinces around the country. It is a profitable venture: it is estimated that this occupation generates around 30 million VND per *sào* per year for the local citizens. A one-off lump sum payment of the initial cost of 19 million VND per acre or even the recent cost of 63 million VND per acre is poor compensation for such profitable land. Further, while citizens were promised an additional small lot of land adjacent to the project, such promises were not fulfilled and various aspects of the compensation deal changed without further negotiations.

One farmer explained how the project took away his livelihood:

“Compensation is insignificant. They took my carp-fishing rod, then promised to give me a baby shrimp.”

An official in a district people committee involved in the Greenpark project showed concern for the locals:

“Though we had to follow the order for higher objectives, even we can feel sorry for the lost cultivated lands, not to mention the citizens.”

Secondly, the disagreement from many impacted citizens resulted in ongoing litigation which negatively affected social cohesion and stability. In fact, there are still over 200 citizens whose land was forcibly cleared who have not agreed to receive compensation. They are involved in ongoing litigation against the central authorities. Some of the forced land clearing activities resulted in violence, which the media briefly reported. Many people accepted the compensation offered because close relatives worked as local public officials or as teachers in public schools and they were forced to do so. The tension between the citizens who agreed, forcefully or not, and disagreed to receive the compensation money still persists. As a farmer impacted by the development explained:

“All party members and those who get salaries from state budget had to receive the compensation first or to be disciplined. There was a family with a female teacher who did not agree to receive the money. She got a warning not to be evaluated for good performance and was threatened to be moved to another organization.”

Thirdly, the litigation process resulted in the loss of citizenship identities for the protesting groups. Initially, many of them just wanted fair land compensation. They did not want to lose their cultivated lands. Over time, the government considered them rebels or agents of overseas anti-government groups who wanted to create social chaos. Protesting groups were not involved in direct discussions with the government. Instead the local government officials were ordered to persuade citizens impacted by the development to agree to the project policies one way or another. Hundreds of meetings over the past years were conducted for this purpose. Now many aggrieved citizens who formerly took part in protesting groups only want to re-gain their identities as normal citizens. Two protestors explained their involvement:

“There was no direct discussion with us involving members of the National Assembly and the local government officials.”

“We protested when we wanted to keep our land, our voice. We are now considered as crazy and radicalized. We are not radicalized by anyone else.”

The cost-benefit analysis from this case study shows that the impacted citizens lost more than they gained economically and socially. In this case, the strong direction from central government and the investors’ wishes prevailed regardless of the legitimate needs of the citizens.

Case study 3: Market renovation

Background

Traditional markets compete fiercely with modern hypermarkets, supermarkets and convenience stores. The renovation of traditional markets is critical for this retail sector to satisfy various consumers’ demands. This case is about a traditional market renovation and its potential corruption risks. The traditional market is located at the centre of a provincial city with high population density. Located nearby is a train station that receives dozens of cargo and passenger trains daily. Nearby is a busy international border gate, and several significant tourism sites. The market receives many people visiting for shopping and seeking business opportunities. Currently, there are approximately 250 kiosks that focus on clothing, blankets, home electronic appliances, food and vegetables, and daily consumables. The conditions prevalent in the market make them unsafe due to the presence of flammable materials in and the poor design of each kiosk. Local authorities found the need for a new market to be built to meet the demand of the business community, local government and citizens.

A new market project was licensed in early 2015 for an area of 11,500 square meters. The market, comprised of three floors, will cover 60 percent of that area. Its total investment capital is 208 billion VND and it will be completed by 2017. However, in July 2015 the project was amended with a new design that included a basement with 5 floors covering 8680 square meters, accounting for 76% of the total area. It required an investment of 468 billion VND and will be completed by 2020. The new market follows a multi-purpose design and will be open 24 hours a day. The traditional market is located on the first floor with 430 kiosks. The second floor is designed for business kiosks. Floors 3, 4 and 5 were designed for offices, entertainment areas, business and service areas, and a food court. Around the new market are 66 front-street complex kiosks and 128 kiosks for fresh food and vegetables.

This new market project has some unique characteristics:

- (i) The investor changed from ‘company’ into ‘cooperative’ after the project had been licensed without changing anything else in the operation;
- (ii) The land where the market is located used to be public land but was given to the investor under a BOO (build, operate, and own) project;
- (iii) The length of the project is 70 years, which is usually only granted for special and significant projects, and
- (iv) The new market can open 24 hours a day, 7 days a week.

By the end of October 2016, the overall design and allocation of stalls in the new market needed the agreement of existing traders.

Types of corruption in this project

Corruption risks emerging in this project result from policy discretion and collusion between public officials and developers/investors. Following are some corruption risks found in this case.

Corruption risks when low policy discretion is coupled with high collusion between public officials and developers: The main corruption risks were the existence of a single bidder; a non-transparent process and compensation; and the participation of ‘underground’ forces. Evidence of corruption risks were obvious when there were no competitive bids for the project. Although all information about the project and bidding conditions were publicly disclosed, only one investor from another province participated. As a result, no competitive bidding occurred, and the local Provincial People Committee appointed the investor to carry out this project. There is strong evidence pointing to collusion between the investor and public officials.

A leader of provincial Department of Construction explained the situation:

“As in other projects here, there was only one single investor buying the bidding documents for this project.”

In this case study, the allocation of compensation also appeared to be a corruption risk. All the traders doing business in the old market should have been granted kiosks in the new market, which would have provided an accurate tally for calculating compensation. According to the current list of compensated traders provided by the investor, over 550 traders will be granted kiosks in the new market. The question arises as to who exactly the 300 additional traders will be. Traders in the old market had some ideas:

“Pools are kiosks, hydrants are also kiosks, and named as business owners”.

The participation of ‘underground’ forces also creates corruption risks. “Underground forces” refer to people who hold informal power to influence the market’s operation and benefit sharing. The presence of “underground forces” is possible normally because local officials either ignore or back them up. The underground forces participated in this project from the beginning, during licensing, land clearing and acquisition, in the allocation of stalls, and in agreements made with related stakeholders. In this relationship, the investor is an agent balancing interests between local government, traders and underground forces. The investor uses underground forces as to facilitate the project. In general, when dealing with people, local governments cannot overuse their power; however, underground forces have few restraints. If an underground force applies “underground laws”, enterprises can call for enforcement from the local government. Citizens are afraid of the underground forces, but the underground forces are afraid of government, and enterprises in this case study take advantage of this relationship. As a result, the coalition among those stakeholders carries a potential corruption risk.

Corruption risks due to high collusion and high policy discretion: Public officials involved in the market renovation have the power to make special decisions that benefit both the investor and themselves. It is easy to see sign of corruption risks in the new market project due to high policy discretion and this collaboration between public officials and investors.

Kiosks with street-frontage: The new market is designed to have 66 street-front kiosks. This design is unusual and differs from most markets built in Vietnam in recent years. The traders believe that street-front kiosks would be more attractive to customers and that they would negatively affect the business of traders who have kiosks inside the market. Small traders also believe these ‘kiosks’ are disguised “houses” that the investors can sell for profit, and that these frontage kiosks would therefore block customers from going inside the market. As a trader in the old market explained:

“Buyers would buy stuff right there in the street-front complex kiosks. Those of us trading inside, may just be sitting and staring at each other with no customers.”

Changing status from “company” to “cooperative” to achieve favourable business conditions: After receiving its license, the investor changed its status from a “company” into a “cooperative” without changing its real ownership and operation. In doing so, the investor benefited from a tax waiver of 32 billion VND. This is a ‘profitable’ but ‘corrupt’ change.

Getting the license to build, own and operate (BOO) for 70 years for 24/7 operation: These specific characteristics make the new market more attractive than and competitive with other markets in this provincial city. It is noted that getting the license was not easy and required the investor’s resources and time. As the investor explained:

“Getting a BOO license is not easy. It is hard to get land use right certificate for market land, but this one [BOO] is ten times harder”.

Corruption risks also occur in this case study with low policy discretion and low collusion between public officials and the investor: This corruption risk, like “norms”, occurred in this case study when long and complicated procedures were required. “Corruption” made the procedures go smoothly. The initial project idea and application was submitted in 2011, but it took 5 years for approval. Further approval for utilities or services such as electricity, water, drainage, fire prevention systems, and environmental impact evaluation took an additional two years. Currently, the construction permit for the new market has not been issued because the size of the total construction area is too large and the construction permit is no longer authorised at the provincial level. Now it is authorised at the ministerial level. According to the investor, application for a six-month construction permit has not yet been reviewed.

“Black market” corruption is also found in this project whereby the investor proposes high rent for the new market: In the current proposal, the rent is 200,000 VND/m²/month for each trader, which compared to similar situations in other cities appears far too high. Critically, proposed rental prices have not been negotiated with the traders. These high service charges will apply to the temporary market as well as the new market. As traders in the old market explained:

“Doing business is harder. With such high rent, how are we to survive?”

Costs and benefits of this case

The new market project brings costs and benefits for related stakeholders. Many of these benefits are hard to evaluate and quantify, but one significant benefit is that the community will have a modern market which is safer, more hygienic, and attractive to customers. Traders will have better trading conditions. The new market will be a symbol of a prosperous community and a centre of entertainment for the province and region. Investors also clearly benefit from owning the project and deriving income for the next 70 years. They can also sell street-front complex kiosks at monopoly prices, collecting rents from both kiosks and offices, and benefiting from the supply of more services in the new market. While both sides do experience benefits, it is evident in this case study that the private benefits have overtaken any gain to the community.

The project also imposes costs on related stakeholders. The costs imposed on traders not only include higher rents but also potential losses due to their kiosks being set up in locations in the new market where they may not receive as many customers as they did previously. Further, because traders are accustomed to the ways of the traditional market and traditional customers, they are unprepared for the ways that

other, less traditional forms of business operate, and adapting to these new customs is not easy for them. As such, modern markets are not necessarily more profitable for traders.

While the project takes both formal and informal resources from investors in order to build the new market, such as expenditures for license building investments, the investor appears to have disproportionately benefited from the project despite the costs outlaid.

In this case study, benefits are evidently received by private investors and others involved in the coalition. Traders, the main actors in the market, do not receive any significant benefits because of the uncertainty of their status in the new market and the tenacity of their business engagements. This project followed the law because local officials endorsed the project plan and design were. However, the project constitutes public interest corruption as the community of small traders found it harmful to their businesses.

Case 4: Quarrying in a Northern mountainous province

Background

This case study investigates corruption risks in mineral exploitation in a northern mountainous province with great potential for mining and mineral processing. This province has low PAPI and PCI scores, and it is so poor that its state budget revenue was a mere 850 billion VND, accounting for 11 percent of its total state budget expenditure in 2015. In this province, many different kinds of natural minerals are available for exploitation and commercialisation such as raw materials for the cement industry, minerals for regular construction materials, fuel, and precious minerals. Among these, mines for regular construction materials account for 75 percent of total mineral exploitation projects licensed in the province. Mines for regular construction materials require the simplest of approval procedures. They also have the lowest value and associated costs compared to other minerals, and they are usually located in convenient sites far from residential areas.

The selected mining firm in this case study is one of the leading companies producing construction stone in the province. It was established in 2003 with 90 workers and staff. The company has applied up-to-date technology that minimises environmental pollution. Initially, this firm was licensed to extract stones for construction in an area of 34 ha with stone reservation of 24 million cubic metres. Since the new Minerals Law 2010 and Decrees that guide regulations and the implementation of the Minerals Law 2010 were approved, the mining firms have had to pay fees for the right to mineral exploitation. The firm in this case study returned 22ha to the local government, because they could not afford the fees. As result their stone reserves decreased to just 4 million cubic metres. Reportedly, the firm mined 160 thousand cubic metres of construction stone in 2015; however, as suggested by a manager of the firm, the actual output was 1.5 times higher.

Corruption risks in this case

This case has serious corruption risks due to policy discretion and the coalition between public officials and firms, even though the policies on managing mineral exploitation have been improved. To follow are the main corruption risks found in this case.

Corruption risk 1: Paying informal charges for smooth procedures

This corruption risk occurs when there is low policy discretion and low collaboration among stakeholders. As stipulated by law, procedures involved in mineral exploitation licensing are very complex and time-consuming. To receive a license, investors required the approval of 14 state agencies. This involves 10 submissions, that need 40 approvals—a process that takes over 3 years. These procedures have discouraged even the most patient investors. Therefore, they have to find more convenient ways (informal

payments) to smooth over and overcome the complexity of these procedures. As such, complex and time-consuming procedures related to mineral exploitation licensing result in corruption risks. As leaders of two firms in this case study explained:

“There are 14 state agencies involved, including 7 steps, 10 submissions, switching over 40 hands in 3 years. It is complex and long enough to knock out the small investors”. [A leader of a provincial department]

“Businesses are lost in the labyrinth of legal documents. Many investors stop applying for the mineral exploitation license in the middle of nowhere. [A leader of DONRE]

Corruption risk 2: Collusion risks

In this case study, corruption occurred as a result of the collusion between public officials and investors. Generally, this type of corruption disrupts markets and disables policies. As a legal requirement, investors or firms have to participate in mine surveys and disclose biddings in order to gain the right to undertake mineral exploitation. The high collusion between public officials and firms or investors prevents genuine bidding because the public officials guide single investors through the processes. In this sense, the coalition undermines policies, even those that are well intentioned and designed.

In this case study, the coalition between public officials and investors involved a conflict of interest that may increase corruption risks. Investors were guided to use the services of an entity which was supported by provincial officials who generated an environmental impact assessment report. This report was a product of a win-win arrangement between the investors and the environmental impact assessment provider. Generally, the assessment company has given little importance to the development of the environmental management plan, has developed misleading plans, and submitted reports reflecting less environmental damage than is accurate. The application has therefore been tweaked to meet statutory standards. The mineral prospecting report was similarly tweaked. Investors were also recommended to use the services of certain mineral prospecting companies, which are back-door firms of ministerial officials. As the enterprise manager explained:

“The environmental impact evaluation report was conducted by a firm owned by a son of the Director of provincial DONRE. It is selling invoices.”

“The mineral prospecting report was conducted by a suggested company that is a back-door company of ministerial officials.”

“You should not apply a mineral exploitation license! Such a small mine, as act as an unlicensed miners”. (Advise of provincial department leader to an investor)

The coalition between officials and investors led to the employment of unlicensed miners. Because of complex, time-consuming procedures and high informal costs, small investors colluded with local public officials to conduct unlicensed mineral exploitation rather than applying for licenses. Unlicensed mineral exploitation led to some consequences such as: wastage of natural resources, environmental devastation, no contribution to the state budget, and the erosion of citizens’ trust in the local government. In this sense, collaboration between public officials and mining firms has resulted in corruption risks which can be identified both from the traditional anti-corruption perspective as well as the social perspective of corruption.

Corruption risk 3: “Black market” corruption

This type of corruption risk occurs when high policy discretion is coupled with a low level of collaboration. Decree 203/2013/NĐ-CP clearly postulates that licensed miners have to pay fees for the right to mineral

exploitation, which is strictly controlled by a statutory formula. In practice the process is negotiated by public officials/committee and mining firms to determine every aspect of the processes including the calculation of fees. In this case study, this type of negotiation underestimated the total mineral deposit reserves; lowered standards used to assess socio-economic development; and resulted in both lower volumes of mineral extracted and lower prices. Negotiations followed a 'black market' mechanism that resulted in corruption risks. As the manager of the quarrying firm explained:

“Calculating payment for the right to mineral exploitation is a significant negotiation. Businesses must bargain with all parties to agree to appropriate premiums”..

“There is nothing for free. Unofficial payments of 5 to 7 million VND were made to staff, of 30 to 50 million VND to leaders of the licensing divisions, and of 200 to 300 million VND to the person who signs the license.”

Corruption risk 4: Policy corruption risks in mining projects

Policy corruption risks can occur when high policy discretion is coupled with high collusion between public officials and mining firms. In this case study, policy corruption allowed mining firms to determine for which mines they would apply for a mineral exploitation license, and then public officials make changes in the local mineral exploitation plans to meet legal requirements. Another factor related to policy corruption is the bidding rights to mineral exploitation. All mine-related information and bidding conditions in this case study were publicly disclosed to make sure of public disclosure and transparency in the bidding process. The requirements, however, were customised to meet standards for other potential projects. In this case study, coalitions either made or amended policies that fit certain mining firms, creating a policy corruption risk. As the manager of the quarrying firm explained:

“There is no problem at all. Public officials can adjust mineral exploitation plans. The issue is how you behave.”

Costs and benefits of the mining project

Costs and benefits of this mining project can be evaluated from both private and community perspectives. In terms of benefits, the mineral exploitation project brings little revenue to the local state budget through taxes, payments for mineral exploitation, and job creation. The firms gain profits but the local community may experience few benefits. In short, the benefits of the mineral exploitation projects in this province are very limited.

A leader of the provincial department explained revenue from this project:

“On-going 35 mineral exploitation projects produced a total revenue of 23 billion VND in 2015. Revenue this year [2016] could double since mining firms have to pay fees for the right to mineral exploitation.”

This stone exploitation project usually imposes high costs on both the community and firms. Costs suffered by mining firms come from both official and unofficial sources. Officially, the firm has to pay for the right to mineral extraction, mineral exploitation licensing, and environmental recovery costs. Additionally, this firm has to pay unofficial costs to smooth procedures and develop the coalition with public officials. Unofficial costs in this case study are 4 to 5 times higher than official costs.

From the perspective of the community, mineral exploitation projects impose costs to society related to environmental pollution and the destruction of infrastructure. Mineral exploitation creates negative environmental impacts such as noise, poor air quality and deforestation, while harming businesses in tourism and agricultural production. Mining firms also avoid implementing environmental recovery

activities in order to save costs. The second cost component relates to the destruction of infrastructure. Stone exploitation for construction materials involves the transportation of materials from exploitation sites to consumers. Oversized and overloaded trucks have damaged roads but the mining firm has not been fined.

“The biggest cost of this project is the environmental destruction.” [A leader of provincial department]

Using a basic cost-benefit framework for this case, it is obvious that costs exceed benefits, particularly in terms of the community, which receives almost no benefits while a group of public officials and mining firms benefit from their collusion.

Case 5: Hoa Van Commune’s New Rural Development initiative

Background:

Hoa Van is a peri-urban commune of Hanoi which has about 1700 households comprised of 6500 people. The commune relies largely on agricultural production. Hoa Van commune leaders (particularly the former chief of the commune CPV cell) conceptualised the idea of land consolidation in 1992, long before the national New Rural Development Program (NRD) was initiated. After the first failed attempt to consolidate land in 1993, consolidation resumed in 1997. Three of the four villages in the commune completed land consolidation in 2004, while the last one was completed in 2014.

Hoa Van commune faced two big challenges in undertaking land consolidation in the late 1990s. Firstly, nobody wanted to take on “low grade” parcels of land, those being areas with low fertility or those that were difficult to access. One solution is to offer a higher land exchange rate for these parcels, but the key was to build an effective transportation and irrigation system to cultivate these parcels. This posed the question of where financial resources would come from, since this commune was very poor at the time. Secondly, there was a number of unused public land parcels (*dat “xen ket”*) that were hard to farm, such as low-ground land, small parcels located between residential areas, or parcels that had been used for brick making. These land parcels could not be consolidated, nor could they generate value through agricultural production.

To solve these problems, Hoa Van people decided to sell “*xen ket*” land. This was perfectly timed, since the period from 2005 to 2011 was a good time for selling land. During the period from 2002 to 2010, the commune sold 190 parcels of land, gaining 97 billion VND. The commune then used 65 billion VND for infrastructure development and the remaining 32 BVND to establish a pension fund for the commune’s farmers. However, selling “*xen ket*” land was a violation of current land policies, and therefore the commune leaders faced reprimands from provincial authorities.

Corruption risks in the case:

There was no corruption involved in the commune’s land consolidation and auction from either legal or social perspectives. From a legal perspective, land consolidation and auctioning were very irregular at times. The district and provincial governments were concerned about corruption. An inspection delegation was sent to the commune by the provincial government during 2014. After months of inspection, the delegation recognised that a remarkable positive improvement had been made in rural development and people’s living standards in the commune. However, it also identified violations of the existing regulations in the commune’s activities:

“The NRD movement has been intensively implemented. So far, land consolidation has been completed, and the material and spiritual lives of locals have remarkably improved. However, to a large extent, the CPV Cell and the People’s Committee of Hoa Van commune have derailed from instructions of the central Party’s resolutions, directives and rules, and the government’s policies and regulations, which might create public frustration.⁴”

“The Communist Party Cell of Hoa Van commune turned on the ‘green light’ for land pooling and consolidation in the villages and then unlawfully sold or rented public and unused land plots, or exchanged land for investment ... to fund intra-commune infrastructure construction and operate the Commune’s Pension Fund for farmers.”

[Based on *An ninh thu do* Newspaper]

According to this conclusion, the officials of the Hoa Van commune violated existing regulations in letting the community sell land without permission. The money obtained was used for public purposes, and the commune’s financial organisation managed these activities. There was no evidence that corruption was involved in this case.

From a social construction perspective, land consolidation and auctioning in this case study met the vast majority of people’s interests. On the one hand, the plans were discussed, revised, agreed to, and implemented by the commune. Commune leaders facilitated and supported the process, but they neither mediated the discussions nor imposed their ideas. On the other hand, the land auction revenue was managed by the “construction committee”, which was elected by the commune. Public interest was given priority over the interests of the investors.

“When that proposal [selling land to build infrastructure] was brought into the discussion, I overheard a rumour that I wanted to build a new road mainly for my own benefit. Similarly, when I recommended widening the intra-commuting road, some local people asked me if we [the commune authorities] wanted to take some personal benefit from that recommendation. But when they knew that they were the ones who decide what and how to do, they understood that this was for all people in the commune.”

[Shared by the commune’s former CPV Chief]

“The village sold its own land. Thus, the more unused land, the more money the village could have. Fund were raised, and these were invested in village infrastructure and premises for cultural activities. A Construction Committee was established in every village. Its members were reliable and reputable individuals who had been directly elected by the villagers.”

[Shared by a member of a Village Construction Committee]

Hoa Van leaders consistently followed the principle that only villages where the full agreement was reached could start the land consolidation and auction processes. Therefore, while three villages could

⁴ Article 59 of the 2013 Land Law specifies that only provincial and district level People’s Committees (or local executive governments) have authority to decide on the allocation or lease of land, and permit change in forms of land use. The demarcation of authority between those governmental tiers is mainly based on the size of land plots to be re-plotted or changed in their use purpose. Commune authorities are authorized to lease agricultural land for households in the commune area only. The Law also prohibits provincial and district governments from delegating competence to the lower government level.

complete their land consolidation scheme within 3 years, it took the fourth village almost 12 years to complete the process. Members of the commune and village leaders were also fully aware of the need for transparency, fairness, listening, and integrity as crucial factors for building trust and avoiding disputes among households.

People in my village did not trust us right away. They even set up individual groups to resurvey the granted land parcels of the leaders. ... They had re-checked our land at night. If we wanted to have some privileges, we would have been cursed ...As a leader, if I had not set the example, who would even listen to me? [Experience from a village leader]

Costs and benefits in the case:

As a result of land consolidation, the average number of agricultural land parcels for each household decreased from about 25 parcels to just one or two. On-farm transportation and irrigation systems were developed and closely met the NRD standards. Agricultural productivity increased about two times, and most of that increase can be attributed to the application of new technology facilitated by land consolidation and infrastructure development. People's living standards improved considerably. The commune was perhaps the very first one in Vietnam that had a pension fund for farmers.

The achievements of Hoa Van commune were summed up by the "7 Yes – 3 No" model:

"'7 Yes' means availability of (i) solid communal unity; (ii) higher living standards; (iii) improved cultural and spiritual life; (iv) open and democratic political activities; (v) distributional equality; (vi) a sustainable Social Insurance Fund for farmers and (vii) a strong political system. '3 No' means a ban of (i) disunity; (ii) social evils; and (iii) public disorder." [Explained by a citizen]

The 'price' for the Hoa Van development were the fines imposed on commune leaders for violating existing regulations. In the 2011 election of the commune's Communist Party Chief, the commune's party members and citizens insisted that the Party Chief continue, despite different instructions from the provincial and district authorities. It was only in 2015 that the Party Chief stepped down after 27 years serving the commune.

"President Ho Chi Minh said 'Do anything that benefits people'. This [land consolidation and auction] benefited people but violated the law. So the law should be revised!" [A citizen]

During 2016, the District authority persistently asked the commune authority to "take back" the commune's 32 billion VND pension fund and hand it in to the District treasury. The reason was simple: that the money came from unlawful activities and should be handed over to the state treasury. The communal officials tried to avoid having to do this. As the Chairman of the Commune People's Committee explained: "The pension fund is managed by the community. We could not just 'take it back'". However, the order was sent weekly from District to the Commune People Committee, putting pressure on officials within the commune.

The Pension Fund Management Board, elected by the community, was strongly against the idea. As a member of the Board stated: "This is people's money. Taking away people's money is wrong." During October 2016, the tension remained and no action had been taken.

This case study shows a specific dilemma arising from the relationship between trust and control that officials are caught up in at the grassroots level. While, strictly, controlling officials may enhance consistency in policy implementation, such forms of control also limit officials' creativity and innovation for development. The case also demonstrates that promoting genuine community participation, rather than reducing "policy discretion", is likely the key for curbing corruption.

Emerging Issues from the Case Studies

Decision making and corruption risks in the cases

In the cases studied, the state budget was insufficient to pay for planned projects outright and thus required non-state funding sources. In Hoa Van commune's new rural development initiative, non-state funding came from auctioning public land, while in the other four cases, the funding came from private businesses. The involvement of the private sector in these projects has three implications for policymaking. Firstly, private benefits are conflated with the public interests. Whether or not this private benefits are legally and socially acceptable often influences the prevalence and seriousness of corruption in the projects.

Secondly, the involvement of the private sector blurs the boundaries of state and non-state functions in the five projects. The planning and implementation of the projects often takes place (but not entirely) outside the core state sector in a sprawling periphery of 'extra-bureaucracies', such as project management committees, investor committees, or village construction committees. These 'extra-bureaucracies' are mandated by local government policies, either officially or unofficially (as in the Hoa Van commune case), to carry out the projects. Extra-bureaucracies exercise partial ownership rights over the revenue generated from the project (spending rights) and/or directly own or control project assets.

Finally, blurring state and non-state functions in project implementation creates ample opportunities for collusion between officials and private businesses for private gains. As demonstrated in the cases, the collusion induces two new types of corruption in the projects, namely "bid collusion" and "policy corruption". While "bid corruption" nullifies existing policies, "policy corruption" creates new policies that benefit small groups of public officials and private partners at the expense of the public interests. Both of these types of corruption are socially and economically damaging because they erode citizens' trust in local governments as well as the effectiveness of the government's functions. Thus, controlling these types of corruption is a pertinent issue in managing GPP projects.

Social problems identified in the cases

Four of the cases – excluding Hoa Van – faced strong resistance from communities due to the social problems they created. In these cases, community members identified a violation of public trust in project planning and implementation. There were clear contradictions between government and public perceptions about what constitutes appropriate development. Local governments focused on GDP growth, private businesses were interested in business opportunities, and communities were concerned about the improvement of their living standards. There were trade-offs between economic growth, business opportunities and people's living standards in these projects, leading to resentment from the communities. As perceived by the public, government officials and non-state partners used state assets for private gains at the expense of public interests.

The four projects (except Hoa Van) were initiated under public-private partnership (PPPs) guidelines, and yet followed a GPP mechanism. Local governments and private businesses worked together from project initiation, to planning, to implementation. During these processes, the public was either not consulted (in the case of quarrying development and the market renovation) or consulted in tokenistic ways (as in the two cases of urban residential area development, those being the Mountain Town and Greenpark projects).

As a result, public trust in the cases has been lost. In the two urban residential development cases, the public expectation of what their future livelihoods would look like was not met, and their social customs were disrupted. Some groups felt that their identities were lost, such as minority people in the Mountain Town project or those against the Greenpark project. Similarly, small traders in the market renovation

project found that the new modern market did not support their businesses, while the community in the quarrying project was outraged by the environmental damage caused, including pollution. In contrast, the new rural development project in Hoa Van fulfilled the desires of people, but unfortunately violated state policies and failed to meet the expectations of higher-level authorities. In all case studies, there were big gaps between the expectations of the affected communities and the outcomes of the projects and/or government expectations.

Emerging corruption risks from the public interest perspective in the case studies

Insights into the five case studies show two major outcomes of corruption risks from the perspective of public interests. These are: 1. the lack of community involvement, and 2. inherent social violence and conflicts between affected communities and local governments and/or investors. Table 5 presents the five cases by these key risks and analysis thereof by each case.

Among them, the case study of Hoa Van commune provided public benefits but did not expose the community to corruption risks. Public benefits included new infrastructure, land consolidation, an increase in productivity, and a significant improvement in people's living standards. The only harm from that project was the fines commune leaders incurred as they let people "sell land beyond authorisation". On the other hand, the other four cases witnessed large private gains at the expense of public interests. While the developers received good business opportunities from the projects, people's livelihoods were disrupted, and their lifestyles changed undesirably. As a result, high corruption risks acted as a "violation of public trust and interests".

One factor that clearly distinguishes the Hoa Van case study from the others was the involvement of the community. In the Hoa Van case, the community owned the project, and its members were directly involved in project development, planning, implementation, and monitoring. They designed the project's rules and principles and elected Construction Committees in each village. As a result, the project reflected the desires and expectations of the people, and there were few legal or public interest corruption risks.

In contrast, in the other four cases studies, the affected communities were not consulted, or consulted only in tokenistic ways. They were informed and persuaded to accept the project plans already made by local governments and developers. Their expectations and opinions were recorded, but there was no way to ensure that the project management teams carefully considered these comments and suggestions. The latter four cases demonstrate social and environmental damages facing the affected communities and expose high corruption risks involving public officials and private businesses.

The involvement of informal or "underground" actors expanded the violation of public trust in the case studies of Greenpark and the market renovation. In the Greenpark case, both citizens and officials blamed "underground forces" for this violation. Local officials believed that some "underground forces" incited people to protest against the projects, while people who were against the project reported that they were threatened by some "under world" forces. In a similar vein, both the project developer and small traders in market renovation recognised influences from these "underground forces" in the project. These "forces" influenced the design of the new market, including counting existing plots and assets for compensation, as well as influencing small traders' consent. In neither case study were these "underground forces" officially recognised or identified. However, both cases were susceptible to violence, both officially – such as through coercive land clearance – or unofficially – such as threats to individuals involved.

Trust and control dilemma

The case studies showed that a dilemma exists related to the relationship between trust and control and how government officials experience this. Detailed and rigid regulations help reduce policy discretion, which in turn may decrease corruption risks. However, corruption also arose in case studies that involved

tight formal regulations. The case studies show that corruption risks persisted despite efforts to strengthen the regulatory framework that governed land, natural resources, public officials, corruption, administrative discretion, public procurement and investment over the past decades.

At the same time, rigid regulations inhibited local innovation and creativity, both of which are necessary for GPP project development. For example, the Hoa Van community “broke the fence” to find ways to develop. Similarly, the quarrying licensing was applied and granted regardless of mine sizes. This inhibited the community’s ability to legally quarry small quantities of rock and sand mines for their own infrastructure construction.

In brief, detailed and rigid regulations may help reduce some policy discretion-based corruption, but not collusion-based corruption. However, such policies inhibit local innovation and creativity. How to balance the control of communities and their empowerment is a difficult question to address for government authorities. Our case studies suggest that the answer lies less in policymaking and top-down legal and regulatory controls, and more in community involvement. We discuss this possibility in the policy implication section.

Table 5: Comparing the case studies

	Mountain Town	Greenpark	Market Renovation	Quarrying	Ho Van New Rural Development
Private benefits	<ul style="list-style-type: none"> - Developer's revenue from sales - Individual officials' informal incomes (bribes) and sharing benefits 	<ul style="list-style-type: none"> - Developer's land use rights to 500 hectares of residential park - Potential for a large profit 	<ul style="list-style-type: none"> - Developer: revenue from sales and from owning the market for 70 years - "Underground" forces involved - Lack of information about public officials' gain 	<ul style="list-style-type: none"> - Developer: extractive resources for sales - Some public officials' "backyard" firms were contracted - Environment impact evaluation - Officials gain from bribes in allowing procedures to go ahead 	<ul style="list-style-type: none"> - No corruption was found by the provincial inspection team and project could go ahead
Public goods or harms	<ul style="list-style-type: none"> - A modern residential area and community affected inc. livelihood and traditional living - 	<ul style="list-style-type: none"> - A modern, internationally recognised residential park built - Community livelihood affected (local farmers lost productive lands) 	<ul style="list-style-type: none"> - A modern market built with potential for greater profits - Uncertainty about the livelihood of small businesses owners 	<ul style="list-style-type: none"> - Fees for mining rights and taxes - Environmental damage 	<ul style="list-style-type: none"> - New rural infrastructure developed - Land consolidated for development - Community's living standard improved - Some regulations violated
Types of collusion	<ul style="list-style-type: none"> - Collusion between developer and provincial officials in planning, compensation, resettlement, construction, etc. 	<ul style="list-style-type: none"> - Developer strongly supported by central and provincial governments 	<ul style="list-style-type: none"> - Collusion between developer and provincial officials 	<ul style="list-style-type: none"> - Approved mines: between provincial and developers - Un-approved mines: between district and commune with developers (by intentional ignorance 	<ul style="list-style-type: none"> - Commune officials and the community "colluded" to work on a new rural development initiative

	Mountain Town	Greenpark	Market Renovation	Quarrying	Hoa Van New Rural Development
				for the developer to extract small mines)	
Community involvement	- Not much: community only informed about plan and policies	- Were informed about plans and policies - Were “persuaded” to comply - Felt that they were “being forced” to comply	- Not much: community were informed about the plan and policies only	- Were not informed, since the mining was supposed not to directly affect people’s lives	- Involved as “owners” of the program
Informal forces/ violence	- Not yet visible	- Citizens claimed that informal forces threatened them - Government blamed “anti-government forces” for seducing people	- “Underground forces” informally managed some part of the market operation, e.g., guards, transportation workers [according to traders]. - “underground forces” involved in the project process [according to developer]	Not evidenced	None

Policy Implications and the Way Forward

The results show corruption from GPP projects is prevalent and complex. Current anti-corruption agendas have not effectively addressed this type of ‘collusion-based’ corruption. Our study shows that public participation is a key way of disrupting collusion-based corruption; however, anti-corruption programs do not effectively promote citizen and business involvement in decision-making processes concerning the projects under study.

Our recommendations focus on three groups of measures to better control corruption in GPP projects. They include:

- (i) addressing collusion-based corruption;
- (ii) promoting genuine citizen participation through deliberative policy making design; and
- (iii) developing a responsible, innovative and integrated private sector.

Addressing ‘collusion-based’ corruption

Over the last decade, the government has strengthened the legal framework to prevent corruption, especially in PPP or GPP projects. Firstly, an increased number of strict regulations have been issued or revised, including the Anti-Corruption Law, the Law on Public Officials, the Law on Public Employees, the Land Law (2013), the Public Investment Law (2014), and the Law for Mining (2010), etc. Secondly, the implementation of public administration reforms (PAR) that streamline procedures continue to be a government priority. Finally, capacity building for government officials has been seen as key to successful reform. Together, these de jure measures are aimed at minimising “policy discretion”, a key driver of corruption.

Despite regulatory reforms, corruption remains prevalent and serious. Studies show different types of corruption, and a possible shift from discretion-based (village norms and free market) to collusion-based (policy corruption and bid-collusion) corruption. Collusion-based corruption is often socially damaging because it bends state laws for private benefit, and in doing so erodes public trust in state land management.

Our findings suggest that reforms should tackle collusion-based corruption more vigorously. First, official-business connections that create conflicts of interest need to be strictly regulated. Examples include officials who stand behind businesses (or “backyard businesses”), officials with family members who own businesses that operate in areas they supervise, officials who participate in employment outside the public arena, etc. The revision of the Anti-Corruption Law needs to address conflicts of interest arising from official-business connections. It is crucial to broaden the scope of application of conflicts of interest regulations to cover not only public servants but also other actors with close relationships with public servants, including their spouses, children, siblings, and other relatives. In addition, a database on public servants’ incomes and assets should be developed and used to monitor changes in income and wealth. An assets database will help detect and prevent conflict of interests. (See World Bank, 2016) for a more comprehensive discussion of conflicts of interest.)

New policies should be reviewed for potential “collusion”. According to the Law of Making Regulations (2015), the Ministry of Justice reviews new policies to identify potential overlaps or conflicts with existing regulations. We propose that the Government Inspectorate (GI), the Central Commission for Internal Affairs (CCIA) and their local agencies should also review new regulations. Such reviews would identify

areas of potential “collusion” between officials and businesses (or among groups of officials) for private gain. Another area for improvement is the conduct of regulatory impact assessment. According to the current Law of Making Law (2015), a regulatory impact assessment needs to be done before a law, ordinance or regulation is issued. In reality, the policy impact assessment is usually done by the drafting teams themselves, risking the objectivity of the assessment (Nguyen et al., 2015). To enhance the chance of detecting collusion-based corruption (especially ‘policy corruption’), we propose that regulatory impact assessment should be conducted by an independent agency rather than by the policy drafting teams.

Third, collusion is hard to detect through the internal state monitoring system. It is crucial to promote other monitoring systems that are outside of the state system. GI and CCIA should incorporate reports and information from the media, the public, and business associations regarding potential collusion-based corruption in GPP projects. In addition, it is critical to promote the genuine participation of the public as method for disrupting collusion-based corruption in GPPs. The next section discusses our recommendations in this area.

Piloting deliberative policymaking models

A key finding from this study is that powerful interest groups dominate government-private partnerships (GPPs) with little regard for broader social and economic interests. GPPs either did not consult the public, or consulted them in tokenistic ways. In consequence, four of the five GPP case studies did not reflect the interests of those most affected by the development. It is unsurprising that citizens regard GPPs as betraying the public interest.

We have previously defined the substitution of private interests for the public interest as public interest corruption. Under this definition, public interest corresponds to how equitably the relative costs and benefits of GPPs have been distributed, and whether this distribution reflects public concerns (Zaloznaya 2014; Wedel 2012). Our central argument is that public participation in land planning and development expands the policymaking circle and disrupts public interest corruption. To realise this objective, anti-corruption initiatives aim to change how land officials determine the public interest. This requires a shift from “command and control” regulation to deliberative regulation, which involves the public in decision-making. Research across different disciplines, especially involving restorative justice, shows how structured public deliberation not only changes government policy, but also the regulatory thinking of officials (Braithwaite 2002). (For a detailed discussion about deliberative regulation see Annex II “Background and international experience of deliberative policymaking models”.)

Research suggests that some land officials in Vietnam treat land planning and development as an arena created and controlled by the state over which the public has little or no say (The Asia Foundation - T&C Consulting, 2014). There is a tendency for officials to believe that they alone possess the technical expertise to know how to plan and develop land, and that public knowledge and concerns are unimportant. From this top-down perspective officials treat citizens as “end users” to consult with, rather than as stakeholders and development “partners”.

Citizens interviewed did in fact express a desire to influence land planning and development. They believed that GPPs violate the public interests because they substitute government and investor interests for the public interest. The land planning and development would improve, they argued, if GPPs more closely reflected the public interest. Our research demonstrates the need for a mechanism to give citizens a voice and restore public confidence in land planning and development.

Developing a pilot deliberative design

A key recommendation is to pilot a deliberative design that would increase public participation in land planning and development. International examples (see Annex II) demonstrate the importance of learning-by-doing in preparing deliberative designs specific to country. For example, deliberative design programs in Indonesia (Gibson and Woolcock 2008) and China (Zhou 2012; He 2006) evolved out of pilot projects. Given the wide range of variables operating in local government, it will be necessary to experiment with different deliberative designs to maximise public participation in policymaking. In addition to fine-tuning designs, pilot projects will provide concrete evidence that public participation has tangible benefits for governments and investors, as well as citizens.

Examples in Indonesia and China (see Annex II) provide important information that should be considered in trialing deliberative designs in Vietnam:

- **Prioritisation of land development projects.** There are well-developed deliberative designs (such as Deliberative Polling®) that enable citizens to prioritise development projects at local governmental levels. Lessons from land development prioritisation could be used to design projects that specifically target master plans and/or GPPs (see discussion below).
- **Fund land development budgets.** Pilot projects in Indonesia gained local government buy-in by funding (partially or fully) the projects that citizens prioritised. This is especially important if there is no legislative framework compelling local governments to cooperate with deliberative designs.
- **Fund the training of facilitators.** Well-trained and funded facilitators will determine the success of pilot projects. Consider funding a Vietnamese university to develop the expertise to train and support facilitators and provide experts with the capacity to prepare indicative budgets models, develop impartial land planning and provide advice to citizens.
- **Provide deliberative forums that are outside existing government structures.** Similar projects in Indonesia and China (see Annex II) show that deliberative designs must have independence from state and investor influence.
- **Develop mechanisms that monitor compliance with deliberative designs.** It is important to fund independent monitoring to ensure that tendering conforms to indicative budgets and that government land planning and development follows the priorities established by the deliberative design. This may include institutional monitoring by project agencies and/or establishing an internet platform that diagnoses, monitors, and names and shames corrupt systems. (For an example see Ipaidabrije 2016; U4 Anti-Corruption Resource Centre.)
- **Learn from existing deliberative designs.** There have already been deliberative design projects in Vietnam that have successfully increased public participation across a range of areas, such as action-based participatory design in urban spaces (Zihui 2014), environmental standards for fish farming and land pooling. A systematic study of these projects would provide useful data for the land development prioritisation pilot project.

A more detailed discussion and international examples of deliberative design can be found in Annex II.

Developing policy that encourages public participation in GPPs

There are some broad policy issues to consider when piloting deliberative designs. For example, it is essential to consider how to determine the suitable time in the policymaking process at which public participation should be invited. Further, in developing a deliberative design that specifically targets GPPs, consideration should be given as to whether public participation should occur during the development of government master plans or whether designs should specifically target GPPs. This question becomes especially important where GPPs are created as ad hoc exceptions to master plans.

A related issue is whether deliberative designs should apply to every GPP, or only in specific cases. If deliberative designs only apply in specific cases, the question is: what events or criteria might trigger an intervention? For example, should a vote upheld by 80% of land users affected by GPPs trigger the development of deliberative designs?

Some investors may wish to avoid the risk to their reputations associated with existing government-led compulsory land clearance procedures (Art. 69 Land Law 2013). In these circumstances, investors may want to submit projects to deliberative designs to ensure support from affected land users, as well as the broader community.

It is recommended that deliberative designs are applied in three situations:

1. In the development of new provincial and district master plans.
2. As ad hoc adjustments to master plans.
3. In GPPs, when requested by a prescribed percentage (i.e. 80 %) of affected land users and/or by investors.

Another significant issue that must be considered is: what type of deliberative design is most likely to work in Vietnam? And how should policymakers in Vietnam respond to deliberative designs? These questions are best answered by learning from a pilot project and from existing deliberative designs in Vietnam.

The question here is whether deliberative designs are mandatory or advisory. In Indonesian case studies (Gibson and Woolcock 2008) (see Annex II), recommendations were considered mandatory because the investor provided the funding. However, there was no legal framework compelling local governments to follow deliberative designs. In the Pudong New District case study (Han Fuguo et al 2015) (see Annex II), sub-districts were legally required by the district government to follow the deliberative design.

It is recommended that creating a legal requirement for local governments to follow deliberative designs will strengthen compliance.

Developing a responsible business sector

Our final recommendation relates to building an innovative, responsible, and integrated business sector. A sustainable business sector should comprise three key elements (Figure 1). Firstly, it needs to be based on innovation and creativity to have intrinsic value for society. The business sector in Vietnam, and the firms in our case studies, relied on cheap labour, compromised natural resources, and/or had a significant “relationship” with government officials in order to be competitive. However, these competitive advantages are not sustainable and are potentially damaging to the public interests. Value creation based on innovation and creativity is a key way for Vietnamese firms to compete on global markets. Secondly, businesses need to recognise that they exist not only in relationships (or collusions) with government officials, but more broadly, in an eco-system comprising government agencies, community, businesses, and others. Sustainable development is based on a just distribution of the value created by businesses

among the members of the eco-system. The firms in our case studies focused on relationships with government officials and largely ignored value sharing with the community. This damaged the firms' reputation. Thirdly, for innovation and benefit sharing to be genuine, firms need to operate under a system and culture that values integrity. Our studies show that when firms participate in corruption, this damages their public image, erodes cultures of integrity, and undermines innovation.

What can firms do to minimise the damage of corruption? Firstly, they should comply with regulations as the first indication of integrity. They should also work together to create "collective actions" in regulation compliance. These collective actions should be aimed at establishing transparent and integrative "rules of the game".

Secondly, fighting collusion-based corruption is critical. "Collusion" is only possible and beneficial for a few firms, but it is damaging for the vast majority of other firms. Instead of competing for "collusion", firms should act together to resist this way of doing businesses. Firms could actively participate in policymaking processes to block any attempts to create policies for private gain. Another way is to encourage experts and communities to participate in local planning, project design, and policymaking in order to widen the policy circles.

Thirdly, firms should recognise that building an integrative business culture promotes sustainable development. Developing clear corporate governance principles, codes of conduct, and following these principles are first steps. The avoidance of conflict of interests should also be incorporated in Codes of Conduct, and for the basis of campaigns to enhance business integrity. Next, firms in construction, real estate and mining should consider equitably sharing benefits with local communities. These are long-term measures, but the pay-off would be huge.

For the government, ensuring different firms have an equal chance to participate in policymaking is critical. Studies have shown (e.g., Malesky & Taussig, 2016) that the more firms that participate in policymaking, the more likely it is that they will comply with government policies. More importantly, this creates a culture of respecting state management systems, which would reduce the tendency of firms relying on collusion.

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Annex I: Research methods

A combination of research methods was employed. The research was conducted as follows:

Reviewing reports on corruption in land administration: Reports from research and newspapers were reviewed to set a baseline on what is known and what is not known about land corruption in Vietnam.

Gleaning initial insights from secondary data: The first step was to explore how investment in land registration systems influences corruption. Data from PAPI and PCI were used to conduct this analysis. The analysis focused on citizens' responses to land taking cases in PAPI data (2012 – 2015) and set the scene to show how citizens view land taking. The analysis of PCI data (2012 – 2015) revealed the extent of informal charges imposed on real estate and construction firms. These analyses also identified provinces wherein citizens experienced low levels of satisfaction with land taking projects. This information informed the selection of case studies to be examined qualitatively.

- Case studies

- *Case selection:* The goal of the research was to examine 4-6 land taking projects as in-depth case studies. Selected projects were expected to reflect key dimensions, including variations in “policy discretion”; potential forms of “coalition” between local government and non-state partners; corruption risks; benefits and harms to community; and potential impediments to social and economic development. We first consulted with government agencies (including MONRE and DONREs) and experts in the field to create a list of 8-10 possible cases. We then selected one mining and four land taking projects where interactions between local government and developers occurred intensively.
- *Individual case studies:* For each case, we collected information about stakeholders' experiences and perspectives regarding the (previously discussed) different types of corruption. Care was taken to select state and non-state informants whose responses reflected the different ways that land administration and tenure is understood in particular localities. Interviews with citizens regarding land taking, and with government officials (at central and local levels) and construction developers regarding collusion, were necessary to understand lesser-known forms of corruption from the social construction perspective. The ideas and experiences of one group of informants were used to “test” data gathered from other informants. Their responses shed light on the different types of corruption, underlying mechanisms, prevalence and harm caused by these types of corruption in the case. This multi-actor approach is especially important in understanding land corruption in ethnic minority areas. The fieldwork methodology used semi-structured interviews and focus groups to contrast the informants' viewpoints. Following a common practice in qualitative research, data were continuously analysed during the fieldwork to guide the data collection in subsequent rounds.
- *Integration of case studies:* The case studies were compared and contrasted to identify commonalities, variations, and possible causes of variations. Findings on forms of corruption,

causes of different forms of corruption, and the potential harm caused by each form of corruption were drawn from the case studies.

- *Policy implications and corrections*: Suggested policy implications and corrections designed to minimise forms of corruption were based on a careful synthesis of the qualitative and quantitative data. A focus group was organised to gain further insight into key findings and policy implications.

Annex II: Background and international experience of deliberative policymaking models

Deliberative policymaking models

This section examines international experience in fostering public participation in land planning and development outside government controlled consultation processes. There are many forms of public participation in policymaking. We examine case studies from two countries in the region to propose new mechanisms for public participation in GPPs. Although care has been taken to select studies from analogous conditions, participatory frameworks from other countries must be localised in order to be applied to the Vietnamese context.

What is deliberative policymaking?

‘Deliberative policymaking’ has attracted considerable international attention as a way of encouraging public participation in policymaking (Heller and Rao, 2015).⁵ It is a system of policymaking based on a consensus or negotiated convergence of interests between state officials and the public.⁶ Its purpose is not merely to inform policymakers about what the public thinks on particular issues. That objective is better achieved through policy research and public opinion polls. Instead, deliberative policymaking aims to give underrepresented groups within society opportunities to express their concerns to policymakers. By expanding the range of interests reflected in land planning and development policies, deliberative policymaking aims to minimise the opportunities for public interest corruption. It attempts to enlarge the policymaking circle and integrate heterogeneous views into land planning and development designs. Ultimately it aspires to inspire well-considered, meaningful and legitimate policy decisions through broad consultation and negotiation.

The elements of effective public participation

Studies in a diverse range of countries (e.g. Brazil, China, Indonesia and Pakistan) suggest three factors are necessary for effective communication between citizens and policymakers (Heller and Rao, 2015).⁷

- Inclusive and enabling deliberation allows a representative range of citizens to voice their concerns.

⁵ John Dryzek (2000) “Discursive Democracy vs. Liberal Constitutionalism”, in M. Saward, ed., *Democratic Innovation: Deliberation, Representation and Association*, London, Routledge, 78-89. M Hajer (2003) “A Frame in the Fields: Policy Making and the Reinvention of Politics” in M. Hajer and H. Wagenaar eds., *Deliberative Policy Analysis: Understanding Governance in the Network Society*, Cambridge, Cambridge University Press.

⁶ Shawn Rosenberg 2005, “The Empirical Study of Deliberative Democracy: Setting the Research Agenda” 40 *Acta Politica*, 212-224; James Fishkin 1995, *The Voice of the People: Public Opinion and Democracy*, New Haven CT, Yale University Press. Also see Author Unknown (2004) “Direct Democracy for Public Issues,” *Thanh Nien* 19 Aug. p.3

⁷ J. Gastil and P Levin eds., *The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the 21st Century*, San Francisco, Jossey Bass.; Stephen Golub, 2000 “Participatory Justice in the Philippines”, in Mary McClymont and Stephen Golub eds., *Many Roads to Justice*, Ford Foundation, 197-232.

- Authentic and unmediated deliberation encourages a wide range of ideas and arguments and does not control how ideas are expressed.
- Consequential deliberation allows for a reflective exchange of ideas and preferences. Studies show that effective deliberation must be “reasoned”, sustained and based on a common set of understandings and knowledge. It requires policymakers and citizens to share enough relevant beliefs and desires to permit in-depth conversations about sensitive political, economic and moral issues.

Projects designed to improve deliberative policymaking have focused on establishing two key foundations, those being:

1. The mobilisation of citizens through the provision of resources and expertise to analyse, cost and respond to complex land planning and development proposals. This requires an institutional framework that provides access to expertise and resources.
2. To design deliberative forums with the aim of enhancing the quality of deliberation between policymakers and citizens. In order to convey new and possibly controversial views that might challenge policymakers, deliberative forums need to allow reflective, informed and consequential discussions outside channels controlled by government agencies involved in land planning and development. Although deliberation aims for consensus, in practice most deliberative policymaking settles for negotiated compromises.

Deliberative designs

Policymakers who want to consult the public directly face a dilemma. If they consult mass opinion, the ideas they receive are largely uninformed (Heller and Rao, 2015; He 2011). Most citizens lack knowledge about, and skills to analyse complex land development projects. But if policymakers do not consult mass opinion directly and allow organised interests to speak for the people, then land planning and development becomes unrepresentative, creating the risk of the corruption of public interest.

Various techniques (known collectively as “deliberative designs”) have been developed to enable policymakers to consult public opinion directly and bring a wide range of well-informed voices into the policymaking loop. The most commonly used deliberative designs are (Heller and Rao, 2015):

- Deliberative policy making (i.e. Citizen Polling)
- Deliberative budget allocation
- Citizen monitoring (i.e. Citizen Report Cards)

Deliberative designs differ from more conventional forms of public participation by extending the policy debate beyond the involvement of organised interest groups. This is achieved by inviting randomly selected representatives from particular localities (and/or stakeholders) to participate in policy debates. Deliberative designs encourage ‘reasoned’ discussion by providing a structured and facilitated process that encourages the informed and open exchange of ideas (He, 2011). Representatives are given detailed and easily understood information about the regulatory, economic and social implications of proposed land planning and/or developments. After questioning stakeholders and experts (such as fiscal experts, planners and academics), representatives develop a set of written recommendations that inform the policymaking process. The assumption underlying deliberative designs is that in a cooperative and well-informed environment, individuals are less adversarial and self-interested and more prepared to reflect upon different views and reach negotiated compromises.

Case Study One: Citizen planning forums Kecamatan (subdistrict) Development Project (KDP) Indonesia

Following *Reformasi* in Indonesia in 1998, farmers began to express their discontentment about land developments that compulsorily acquired their land (Bakker 2012; McCarthy and Moeliono 2012). They not only wanted more say over future land projects, but also wanted to revisit past land developments in which government-private collusion had secured unfair compensation and resettlement deals. For decades the Suharto Government had failed to consult justly with farmers, pushing grievances underground, where they intensified and became increasingly violent and difficult to resolve. To restore public trust, the new government introduced 'grass-roots democracy' reforms that decentralised land administrative powers to provincial and district level governments (McCarthy and Robinson 2016). Law No. 22 on Regional Autonomy 1999 and Law No. 25 on Intergovernmental Fiscal Relationships 1999 provided the framework for political and legal decentralization.

In response, the World Bank proposed a deliberative design at the Kecamatan (subdistrict) level to increase public participation and give villagers powers to propose and prioritise land planning and development projects (Gibson and Woolcock 2008; Widianingsih & Morrell 2007). Over a decade the KDP evolved into the largest deliberative design project in Southeast Asia prioritising land development in over 28,000 villages. From the outset the project aimed to transform top-down planning and development and give villagers deliberative mechanisms to solve self-identified planning and development problems. The project aimed to reduce public interest corruption by increasing the policymaking circle and placing community organisations on a more equal footing with state officials.

During the initial phase, KDPs gained local government support by distributing block grants of US\$60,000–\$110,000 to fund projects. Although the World Bank provided the initial funding for the project, in practice the deliberative forums drew on a wide range of funding including private sources (World Bank 2006).

KDPs developed procedures for public deliberation of land planning and development, and funded and trained facilitators to organise public deliberation at the village level. Facilitators first selected 10-30 representatives for village forums through lotteries or ballots. Next they convened a series of deliberative forums where participants determined local development priorities, such as infrastructure projects, housing etc. Throughout the process, facilitators linked villagers with fiscal, planning and other experts who provided budgetary and other technical information. In addition, the facilitators established rules of deliberation that ensured the discussions were inclusive, unmediated and consequential. The most effective facilitators encouraged participants to listen and respond to each other's arguments, and to refrain from dogmatically pursuing preconceived ideological, economic and political objectives. The provision of budgeting estimates provided villagers with a means of comparatively costing different development proposals and monitoring collusion during the tendering process.

Six representatives from each village forum were then selected to attend inter-village forums, which selected development projects for the sub-district. The deliberative forums ranked projects according to a number of criteria, such as the number of beneficiaries, economic impact and estimated cost. The inter-village forums announced development priorities for the sub-district in the mass and social media.

Studies reviewing KDPs suggested five key factors that enhanced public participation in land planning and development (Gibson and Woolcock 2008; World Bank 2006).

- Funding for local development projects convinced reluctant local officials to participate in deliberative projects.
- The training given to facilitators proved critical for encouraging inclusive, unmediated and consequential deliberation.

- The involvement of experts not only facilitated informed discussion, but in addition the estimated budgets enabled participants (and others) to monitor tendering processes.
- Electoral processes, and media scrutiny made local governments more publically accountable and receptive to public participation.
- Facilitators, NGOs and the media monitored government compliance with deliberative proposals

Case study two: Deliberative land planning in China

For many years, city officials in China were criticised for allowing developers to set the planning agenda without attending to public concerns, such as fully compensating people affected by compulsory land acquisitions (Zhou 2012; He 2006). To restore public trust, some city officials have trialled deliberative designs pioneered by James Fishkin and Baogang He (He 2011).

For example, in 2005 officials in Wenling City randomly selected 257 citizens to decide how to spend the city budget (Han Fuguo et al 2015; He 2011). Since there were few selection criteria other than age, the sample group closely reflected the broader community. The participants were divided into subgroups that were directed to investigate and report on specific projects. Participants conducted site inspections and were permitted to interview state officials, experts and local residents.

Facilitators worked with each group to stimulate informed discussion. They attempted to replicate the decision-making processes found in *kentan* or “sincere heart-to-heart discussions” found in village communes. They challenged participants to explain ‘why they reached particular viewpoints’ and to understand how different social and economics contexts produced different budget priorities.

During a plenary session the participants prioritised the projects, giving the first priority to a sewage treatment plant. Projects that relieved traffic congestion were generally given preference over infrastructure for new industrial and housing estates.

Officials and citizens were interviewed before and after the project was completed to ascertain how the deliberative techniques changed their attitudes towards policymaking. Most city officials were initially attracted to the project as a means of shifting responsibility for politically sensitive developments, such as land taking for road widening to citizens. The comments by Jiang Zhaohua Zegua, the City Party Secretary are indicative of the change brought about by the project. He admitted:

Although I gave up some final decision-making power, we gain more power back because the process has increased the legitimacy for the choice of priority projects and created public transparency in the public policy decision-making process. Public policy is therefore more easily implemented (He 2011).

There is now also a strong empirical correlation in Vietnam between public participation in policymaking and citizen compliance with state regulation (Malesky and Taussig 2016).

In 2012, the 18th Chinese Community Party Congress endorsed deliberative democracy (Xieshang Minzhu) as a key mechanism to curb corruption, improve administrative efficiency and enhance state capacity (Han Fuguo et al 2015; CCP 2012). Subsequently hundreds of small cities and districts have trialed different types of deliberative designs to increase public participation in land planning and development. For example, in 2015, the Pudong New District in Shanghai invited residents to decide how to allocate the development budgets in some sub-districts (Han Fuguo et al 2015). With support from the Centre for Comparative Urban Governance at Fudan University, citizens were randomly selected to prioritise land developments in sub-districts. This project used Deliberative Polling® – a deliberative design that involves

supplying technical and balanced information, random sampling, moderated small group discussions, and pre- and post-deliberation surveys.

Studies suggest five reasons why deliberative designs have increase public participation in China (Zhou 2012; He 2011; 2006):

- Facilitators were trained in university-based centres that specialise in deliberative designs.
- Facilitators allowed participants to deliberate issues with relative equality.
- Participants were given comprehensive briefings and time to conduct sustained deliberation to develop informed and “rational” decisions.
- The deliberative forums operated outside the influence of the city planning and budget departments.
- Independent monitoring ensured compliance with deliberative priorities.

The Indonesian and Chinese deliberative designs share some common features. By enlarging the policymaking circle, the deliberative designs reduced opportunities for public interest corruption in which officials might substitute private interests for the public interest. Surveys also showed that deliberative designs help to restore public trust in the government, because citizens feel included in the decision-making process. By conferring legitimacy on selected developments, the deliberative designs reduced public opposition to sensitive projects involving land acquisitions. Taken together, these studies suggest promising ways to increase public participation in land planning and development in Vietnam.

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