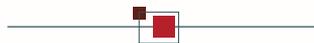


RESEARCH NOTE  
Diffuse Cities & Urbanization Network - DCUN

## Norms of illegal construction in periurban Hanoi

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## Norms of illegal construction in periurban Hanoi

**The peripheral areas of Hanoi have experienced significant land pressure, notably since the enlargement of the capital in 2008. New business zones, new urban sectors or planning goals of various kinds compete for space with villages that have their own land needs.**

**Against this background, construction and real estate practices that flirt with the boundaries of state legality have developed, reflecting the pragmatism of the urban stakeholders. To meet the pressing needs for housing and to bypass the delays in administrative procedures, these practices – which operate on a continuum of legality that varies in its distance from strict legal prescriptions – seem to form an integral part of the urbanisation process. Bringing flexibility to construction in periurban areas, these activities follow customary practices and stabilised rules and thereby contribute to the shaping and transformation of the city.**

1- Figures produced by Vietnam's National Statistics Centre, to which we apply the formula proposed by the UN for calculating annual urban growth. For Vietnam, average annual urban growth from 1995 to 2019 was 3.40% for the country as a whole and 5.01% in Hanoi, including the urban and rural districts.

2- "Khu đô thị mới": spatial development models for residential areas with infrastructures of more than 50 ha, developed since the 1990s.

The opening up to the market economy initiated by the Vietnamese Communist Party since the late 1980s unquestionably stimulated the country's socio-economic development. This economic boom was accompanied by sustained urban expansion which continues to this day: in Hanoi, the country's capital, average urban growth has remained at around 5% since 1995.<sup>1</sup> This dynamic of spatial development over a relatively short period has caused planning difficulties and hence problems for the authorities in managing the process of urbanisation (Fanchette, 2015; Quertamp, 2010).

This is particularly the case for the periurban areas around Hanoi, which have experienced significant land pressure, notably since the enlargement of the capital in 2008. Periurban areas are understood here as the zones on the edge of the dense city fabric that experience urbanisation as a result of the expansion of urban functions (Leaf, 2009). The establishment of business zones, the development of new urban areas<sup>2</sup> (Labbé and Musil, 2017) or projects of other kinds compete for space already occupied by villages that claim their own land needs.

Under these circumstances, construction and real estate projects that flirt with the boundaries of state legality emerge as a pragmatic response by urban stakeholders such as investors, developers, brokers and public authorities, but also by families and individuals with real estate projects. To meet the pressing needs for housing and to bypass delays in administrative procedures, such activities – which might be considered illegal or a legal grey area – seem to form an integral part of the process of urbanisation. This results in a blurring of the lines between processes that are legal and those that are not: even though the legal provisions seem clear, at local level they are often tested, adapted or circumvented.

This phenomenon is one that can be better elucidated by legal anthropology, which contextualises the law, than through the prism of legal positivism, which considers only the law as dictated by the authorities. The aim here is to look at the actual practices of the stakeholders and the dynamic they create with respect to state law (Rouland, 1988; Le Roy, 1999). Rather than maintaining a sharp distinction between legal and illegal, this approach tackles the issues in

terms of a spectrum of legality, a continuum along which differences are defined by their distance from state law. The stakeholders' choices in each stage of a land development process can therefore be classified in terms of that distance. For example, a building without land-use rights would nevertheless come close to state legality if its occupant had succeeded in obtaining a construction permit. Similarly, an occupant who had not been granted a building permit, but had nevertheless obtained "authorisation" for their construction by paying a small fine to the competent authorities, would also maintain proximity to state legality.

The purpose of this article is to contribute to research into land development activities that operate along this continuum of legality. What unwritten norms do they obey? To what extent and in what circumstances do they contribute to the dynamism of Hanoi's urban expansion?

The findings of this article are based on qualitative exploratory surveys conducted between December 2019 and February 2020 through some fifteen semi structured interviews. The people interviewed were local and provincial land and real estate operatives such as small and medium-sized investors, property developers, public or private urban development stakeholders, and brokers, as well as individuals wishing to improve their homes or invest in a plot of land. In particular, the survey followed the experience of several individuals through the process of building or extending homes under restrictive regulatory conditions.

The survey looked at several districts, including Dong Anh north of Hanoi and Thanh Tri to the south. These two districts were chosen among those situated on the outskirts of the capital and classified as "rural" under the classification applied in Vietnam, in order to understand the norms and mechanisms applicable to construction projects undertaken at the limits of state legality.

## **TACIT AGREEMENT AND IMPLICIT TOLERANCE**

The information collected in the survey tends to suggest the existence of a degree of tacit tolerance around land and property regulations, whether for historical reasons or for pragmatic considerations.

### **Pressing housing needs**

Since the 1960s, numerous land use rights have been granted by the Vietnamese authorities not

to individuals but to a family entity. When the family grows and the younger generations want to start their own households, new buildings are needed. In these situations, it is customary to build on the same plot, but on the part classified as "ao vuon", which translates as "pond and garden".

Under the land regulations, the family member will first need to ask for a separate "Red Book"<sup>3</sup> for their proposed building, and then apply to the local administration for permission to change the status of the land for construction purposes.

In reality, it is often accepted that construction can go ahead without these prior procedures, on the grounds that it constitutes a family need. The official procedures can be carried out subsequently, notably if the user wants to sell the land. In periurban areas, this situation remains common and reflects a degree of tolerance regarding the use of these Red Books in the case of families. By contrast, no such tolerance is granted to a new arrival who is not a native of the village and acquires land of this kind.

### **Red Books and building permits: varying levels of enforcement**

In periurban districts, land use rights and building permits are not always kept up-to-date. According to an account by a land broker in Thanh Tri, more than 80% of land in the district officially has a Red Book. However, the information in many of these documents can be out of date and they may often be in the name of someone other than the current occupant. Moreover, the vast majority of construction takes place without a building permit.<sup>4</sup> This phenomenon is less common in the central parts of the capital because of the proximity to the inspection authorities and greater clarity over the administrative status of buildings.

All the stakeholders find that this indeterminacy offers greater flexibility and can present considerable advantages. Among users, the reasons for it are various. In certain cases, the users of the land cannot apply for a Red Book, notably if their plot is too small, in other words under 35 m<sup>2</sup>. In other situations, they may not want a Red Book because of a lack of evidentiary documents, non-payment of taxes, or because they have no immediate need of one. These plots can always be bought or sold at the current market price without land-use rights. In Thanh Tri, for example, this price will be 20% to 30% lower than for a plot with land-use rights, depending on what documents the seller holds.

3- Red-covered booklet containing all the documents detailing the rights of the user of the land (land use rights, building ownership rights, title transfer records, etc.). By convention, the term Red Book also refers to the right to use the land.

4- Interview with M. D. H., land broker in Yen Xa, district of Thanh Tri, 19/12/2019. He has exercised this profession for 16 years to the south of Hanoi.

5- *Ibid.*

6- On this subject, see p.6 for the difference between a land facilitator and a land broker.

7- Interview with M. C., a land facilitator based in Hanoi, 02/11/2018.

8- Interview with M. B., a land facilitator based in Nhat Tan, an urban district of Tay Ho. M. B works on several areas north of Hanoi in the districts of Tu Liem, Dong Anh and Soc Son.

From the administration's perspective, if expropriating land for a new public project they have to pay at least the price set by the state framework if the owner holds land-use rights. In the absence of land-use rights, the cost to the local authority is lower.

### **OBTAINING INFORMATION AND OBEYING THE LAW**

For the users of the land, the main priority is to obtain information on the land they want to build on, so that they know what procedures to follow via the "normal" route. According to the land brokers interviewed, it is always preferable to stick as closely as possible to the law. Indeed, exemptions are not always possible and have to be negotiated. Despite legislation that constantly emphasises government transparency in matters of land management, information on the status of land, planning and projects is in reality difficult to obtain, or can only be acquired at a price.

In our interviews, we tried to retrace the paths followed by individuals who have built without authorisation. The first step is to request information from the local ward administration (phuong) in urban districts, or from the commune (xa) in rural districts. They are the bodies that hold the current information on local planning intentions. The second step is to request information from the district administration. It is the district that has overall responsibility for land-use matters and that grants building permits. The first place to apply is the Planning and Architecture Department, then the Construction Department and finally the Department for the Environment and Natural Resources. With regard to planning documents, information on the existence of plans at different scales needs to be obtained from the different tiers, as well as about any exemptions to the province's strategic plan. If plans for the area exist, building will be difficult, if not impossible, depending on the status of the plans. In the case of a "suspended project", i.e. one that is planned but still pending, a decision cancelling the investment permit is needed in order to build.

In more difficult cases, people may need to employ the services of a land facilitator.<sup>6</sup> The role of the facilitator is to help with the completion of administrative procedures (registration or transfer of land titles, taxes, permits, etc.). Enjoying close relations with the public authorities, these facilitators help land users to avoid lengthy administrative procedures. In Hanoi, the facilitator's fees for submitting a land-use application range from 3,000,000 to 5,000,000 VND (125 to 200 euros)<sup>7</sup> for a relatively simple case.

### **As legal as possible: the advice of a land facilitator<sup>8</sup>**

*"In order to build in Nhat Tan, you have to go through several stages and try to stick to the law wherever possible in the procedural phases. To do this, you first have to work with the local authorities and obtain information from them. My aim here is to work out how much room for manoeuvre I have in terms of what is legal and illegal [...] People tend to do the opposite in the belief that things will go more quickly."*

*For example, if I want to build on a plot where it is too difficult to obtain a building permit as things stand and where I have no Red Book, it's always advisable to start the application procedure for a Red Book with the authorities before actually building. Or else, if someone wants to build 5 storeys and the district rules only allow 3, it is always wise to apply for a building permit for those 3 floors. This will make subsequent negotiations easier."*

The information obtained from the authorities tells the land user the status of the land with respect to the regulations and local urban planning policies. Often, users are put off by the lack of transparency, the absence of evidentiary documents and slow responses by the administration. It is only if it is difficult to take the legal route that people will adopt the backdoor route, "di cua sau".

### **ILLEGAL CONSTRUCTION: A PHASED APPROACH**

A construction process that crosses the boundaries of state legality still needs to follow several steps: request for information to establish an appropriate strategy based on the available material, construction, partial regularisation, gradual registration and the possibility of definitive regularisation. These are the steps that are generally followed, but their order can change depending on what stage agreement has reached and what strategies are chosen.

### **Identifying an appropriate strategy and a potential support network**

The best approach is to have a "nguai do dau", a sponsor. This is an influential individual with connections in the land administration who can support the procedures. When building in a periurban zone, it is easy for the local authorities and inspectors to find out what is going on. For example, it is difficult to hide the transport of building materials, which are often supplied by

a few well-known companies in each periurban district. A sponsor is therefore helpful in covering and steering the procedure.<sup>9</sup>

If the applicant has no connections of this kind, they can call on two types of actors – land facilitators or land brokers – who will undertake the necessary procedures and provide information on the cost and chances of success. Unlike the facilitator, the land broker also takes care of the procedures with the administration, the sales transactions and the transfer of land between individuals. In fact, these functions are often combined. These operatives are familiarly referred to as “Co đat”, which means “land stork”, a reference to the feeding habits of storks, which feed at night and only peck their way slowly through the rice fields. They work on all kinds of land and are involved in a large proportion of informal transactions. Facilitators and land brokers may form consultancy firms, with or without official legal status.

### Construction

The duration of this phase depends on the strategies chosen. The first strategy is to build in stages. Between each phase of construction – foundations, ground floor, the first floor, etc. – a period of waiting is observed in order to conceal the new building from the local authorities. Depending on what agreements can be reached, the builder may be obliged to demolish parts of the new building. Construction will be completed in 1 or 2 years.

The second strategy is to build as quickly as possible in order to present the administration with a fait accompli. The builder or their intermediary can negotiate the fines once the building is completed. One variant in this strategy is to live for a time in the newly built house. As the current occupant, the user can then apply to the authorities for a house improvement permit, which is an easier procedure than applying for a construction permit. In this way, the building is implicitly legalised.<sup>10</sup>

### Partial regularisation

Between the stages of construction, the inspection departments may impose a fine or require the land user to demolish part of the new building. In this case, the user pays the fine and carries out the demolition. A record is made of the demolition process. The user temporarily suspends the work, then rebuilds a few months later.<sup>11</sup>

### Personal account by M. X, inhabitant of Dong Anh<sup>12</sup>

*“We progress gradually, without hurrying things [kho dau, go day]: if we run into a problem, we resolve it. When the police arrived and asked why there was an additional storey, I replied that I wanted to add a small laundry with a washing machine on the roof. As it was raining a great deal at that time, I wanted to cover the machine so that it would not get damaged. The police knew what I meant, I knew that the police knew, and there you are. That time round, I didn't have to pay a fine.”*

Through negotiations, possibly with the help of a facilitator, the situation can be regularised without demolishing the building when the administration identifies a legal offence. In this case, there are penalties that take the form of:

- a warning fine – “Phat canh cao”;
- a fine for an existing offence – “Phat ton tai”.

The fines imposed by the decree on penalties for land-related offences are relatively small.<sup>13</sup> By way of illustration, up to 2019, the fine imposed for building a house on agricultural land was between 2 million VND and 50 million VND (78 and 1950 euros), based on an estimation of the value of the land use right. For a building that encroaches on an adjacent plot, it was between 1 million VND and 10 million VND (39 and 390 euros), depending on the type of land on which the encroachment occurred. In 2019, after extensive discussions over the updating of the regulations, the maximum fine was still increased only to 250 million VND (9250 euros) for the building of a house on agricultural land.<sup>14</sup>

### Customary practice

Once construction is completed and the situation between the stakeholders is more or less stable, the building can remain for the long term. Under Decree N° 139/2017/ND-CP on the handling of building-related administrative offences,<sup>15</sup> the time limit on individual land-related offences is 1 to 2 years from completion of the building. In fact, however, a practice that might be described as customary is more likely to prevail, insofar as the older the buildings are, the more difficult it will be for the administration to act upon them.

### The possibility of definitive regularisation

Following these construction procedures, out of which entire neighbourhoods can emerge, the residents can sign up with public companies for

9- Interview with M. B.L., 55, former official in the Hanoi People's Committee, currently a property constructor, Pagode Hoang An, Hanoi, 06/01/2019.

10- Interview with Mrs C.H., 45, a civil servant and small land investor, Dong Anh, 25/01/2019.

11- Interview with a land investor and inhabitant of the district of Dong Anh, 25/01/2019.

12- Interview with M. P., inhabitant of Dong Anh, 14/12/2019.

13- Decree on the penalties for land offences, N° 102/2014/ND-CP, government decree, dated 10/11/2014.

14- Decree on the penalties for land offences, N° 91/2019ND-CP, government decree, dated 19/11/2019.

15- Decree N° 139/2017/ND-CP, on the handling of administrative offences relating to investment in the construction, operation, processing and commerce in minerals as construction materials; production and commerce in construction materials, infrastructure operation, real estate negotiation, housing, real estate and construction management, dated 27/11/2017.

16- Interview with M. T.P., 42, a land broker resident in the Dong Anh district, 28/01/2019.

17- The term village is used in the sense of an administrative unit. In the periurban areas around Hanoi, many former villagers are now completely urbanised zones.

18- In 2019, a 540 m<sup>2</sup> house was built by My Linh, a famous Vietnamese singer, on a piece of land partly classified as forest. The case caused a big stir in the media. As of now, the building has not yet been demolished. It is interesting to note that this house was designed so that it could be completely dismantled and reassembled.

19- Op. cit., interview N°2 with M. B.L., 17/01/2019.

connection to the water, sewage or electricity networks. If the situation becomes embedded over time, the authorities can intervene to regularise matters, notably by providing land-use rights to families in the neighbourhood that apply for them. In different circumstances, on the other hand, if the local authority wants, for example, to develop a new project (industrial zone, housing, etc.), these situations can end in an expropriation procedure resulting in demolition of the building.

#### **Advice by M. T.P., a land broker based in Dong Anh<sup>16</sup>**

*“Everything depends on where you want to build in Dong Anh. If you want to build a house in the villages, you have practically no need of papers.<sup>17</sup> If you want to build a place with fewer than 3 storeys, I can help you, even if you have no papers. If you build higher, we have ways to get round the problem. The rule is that if the regulations provide for 5 storeys, you can build 7, but not more, otherwise that would be too obvious. For the additional 2 floors, we would work with the buildings inspector. In Dong Anh, there are many buildings on agricultural land [...] this is a risk that is borne by the builders. When a new political decision is taken about land, people risk losing their buildings, but in itself the risk is manageable and fairly common.*

*In the village of Kim Chung, for example, there is now an industrial zone. The factory provides jobs for many people and does not have enough space to house them. The company decided to move onto the nearby fields to build, which is not a problem [...] and it will not be disturbed. At present, the company rents these houses to its employees for 1 million VND (39 euros) a month for 20 m<sup>2</sup>. The situation is the same in the village of Hai Boi, near Thang Long bridge.*

*On the other hand, there are certain situations that must be avoided at the moment. We currently avoid forest land, in particular because of the My Linh scandal in Soc Son.<sup>18</sup> For the moment, demolition is automatic. The state only leases this kind of land to operators to manage. To avoid such land, you simply need to consult the local land registry department.”*

## **PRELIMINARY CONDITIONS BEFORE BUILDING**

In order to build on land not scheduled for construction, the illegality must not be flagrant: a veil of legality is required. According to the accounts of individuals with construction projects, there are two conditions that should preferably be met in order to maximise the chances of building for the long term.

The first condition is that construction in periurban areas should ideally start with existing buildings, in other words building between two plots that already have buildings on them, or near an urban area (even if it is illegal). If the administration has accepted construction in a neighbourhood as a *fait accompli*, there is no reason why it should formally oppose the building of a house alongside.<sup>19</sup> If the building is situated in an alley or away from a main street, it will be easier because it will be less visible. In the case of an isolated building, construction should proceed in stages so that the illegality is not too obvious.

In several cases of construction on rice growing land which we were told about in the district of Dong Anh, the building began as a straw hut with one or two brick walls, since Vietnamese law allows people to build sheds to store tools on agricultural land. A few months later, four brick walls were in place. In the absence of intervention by the public authorities or police inspection services, the straw roof can be replaced with corrugated iron. In the end, the building becomes a house with a tiled roof, and perhaps eventually with an additional storey. The phases takes place several months or even a year apart. According to the interviews with the builders, the aim was to wait for favourable periods, timed to correspond to any agreements reached with the authorities.

The second condition concerns the need to maintain good relations with the neighbours to avoid complaints or referrals to the authorities. An administrative referral might be handled by a different local authority than the one with which the builder had an understanding, for example one higher up in the hierarchy or a local inspection body. In this case, the situation cannot be covered. In any case, good neighbourly relations are needed, especially in the case of a neighbourhood where construction is officially unsanctioned: if a person manages to build, the neighbours may take advantage of the opportunity to build themselves, as surreptitiously as possible, in application of the first condition.

### Account by Mrs. CH. in Dong Anh<sup>20</sup>

*“On some land, you won’t be able to build without knowing the right people. This is the case in Hanoi centre, for example, in the central district of Hoan Kiem. In Ba Dinh, however, it is already easier. And if you go to Dong Anh, there it will be even easier and even recommended to build.*

*In Dong Anh, all the buildings in my neighbourhood were erected without a building permit. The rule in my neighbourhood is that if you can build 4 storeys, in reality, you can build 5.5.<sup>21</sup> When you get to the third floor, you space out the construction over several months.*

*For my house, I was having some work done and I put corrugated iron around it as camouflage. When the police came, I explained that my house was damp, so I needed to do repairs in order to prevent the situation getting worse. The police accepted my explanation. When the additional storey was built, I removed the corrugated iron. My house is located in an alleyway, so it’s discreet.*

*In Dong Anh, when you go over Nhat Tan bridge or Thang Long bridge, the area near the red river, most of the building is illegal. There are no official transactions except for people who have the right contacts. But of course, transactions take place very frequently and the market prices are well known. You should reckon with around 50 million VND (1951 euros) per square metre for a plot with a Red Book, 100 million VND (3903 euros) per square metre overlooking the river, and 500,000 VND (19 euros) per square metre if it is farmland.”<sup>22</sup>*

### THE PRICE OF ILLEGALITY

The field surveys revealed that buildings that do not comply with the law obey procedural and financial norms that are known and accepted by all the stakeholders (local authorities, inspection service, investors and inhabitants). In both Dong Anh and Thanh Tri, illegal construction in periurban areas has a price. People pay per square metre, at prices ranging from 3,000,000 VND to 4,000,500 VND (117 and 175 euros) in 2019.<sup>23</sup> The price is higher if the plot is near main transport routes. The reason for this is firstly that construction on this type of land is more obvious, and secondly that the user can make a bigger profit because it is a good place to set up a business.

In the case of a building north-west of Dong Anh,<sup>24</sup> the owner of a land-use title wanted

to enlarge his house by 20m<sup>2</sup> on a site with where construction was forbidden because it was classified as farmland. He also wanted to add a 5th floor, whereas the legislation in his neighbourhood only allows 4. The price he had to pay to the brokers was calculated as follows:

Price = (Non-build area in m<sup>2</sup> + Area in m<sup>2</sup> of the additional storey) × 3,000,000 VND.

These unwritten norms are accepted by the stakeholders, who argue that the strict application of the law might not be in everyone’s interest. For the inhabitants, these tacit agreements are a way to adjust to growing housing needs and also facilitate small land and real estate investments. For others, the aim is to obtain additional revenues to supplement low earnings.

### CONCLUSION

Given the difficulties faced by the public authorities in planning and controlling the urbanisation process, the stakeholders in urban development show a high degree of pragmatism through compromises at local level, though these can contravene the norms dictated at central government level. Norms anchored in custom and practice thus make it possible to undertake building projects without following the regulatory procedures to the letter: phasing, timeframes and stable rules, in particular with regard to price, are set through established practice.

The processual nature of these urban changes needs therefore to be taken into account in order to understand the development of the periurban areas of Hanoi: by bringing flexibility and speed to periurban construction processes, operations that flirt with the boundaries of legality are an integral part of the capital’s urbanisation process. It should be noted, however, that this is specific to the periurban areas of Hanoi, since the phenomenon is less common in the central districts because new construction is more visible to the inspection bodies and the public authorities are nearby.

Land law, designed as a tool of the urbanisation process, tries to find a balance between socio-economic development and social stability in periurban areas: it sets a legal framework within which the main stakeholders in the urbanisation process become producers of norms which, as a useful adjunct to the state system, facilitate the integration of former peasants into the new middle classes through this process of urbanisation, exemplified in construction as a symbol of social success.

20- Op. cit., interview with Mrs C. H.

21- In referring to the half storey, the interviewee means a terrace. In this case, where the terrace does not generally exceed 50% of the floor area, it is not considered an additional storey.

22- The figures above apply both to a square metre of vacant land and a square metre with a building on it.

23- Op. Cit., interview with M. B.L.

24- Interview with M. P., inhabitant of Dong Anh, 02/12/2019.

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# RESEARCH NOTE

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