

# Empirical studies of Vietnamese's women land inheritance disputes

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## ABSTRACT

Gender inequality is one of the key factors that prevents women from asserting their land rights in Vietnam. The *Civil Code* (2015) in Vietnam allows a wife, daughters, and sons to claim an equal share in familial property upon the death of a family member. The goal of the *Civil Code* (2015) was to empower women within Vietnamese society by giving them rights to property through inheritance. Despite these laws being clear in their intent, there are number of legal and cultural barriers that women face when trying to enforce their land inheritance rights. This paper explores the main barriers women face when they seek to claim their land inheritance rights in local courts. Through a series of 60 in-depth interviews with Vietnamese female litigants, lawyers, court officials (clerks and judges), local officials, and chairwomen of the Vietnamese Women's Union (VWU) in 6 cities (Ha Noi, Tuyen Quang, Thanh Hoa, Vinh Phuc, Hung Yen, and Hai Phong) in Vietnam, this paper finds that the most common barriers to women's successful assertion of their land inheritance rights are Confucian thought (such as the desire to live harmoniously and to avoid litigation) and the low quality of the professional legal service, local officials, and chairwomen of the VWU. This paper applies gender relations feminist legal theory to the case of Vietnam, taking into account East-Asian socio-cultural traditions. The gender relations feminist legal theory perspective considers women as community members, viewing their situation, and development as closely related to other community members. Through the gender relations feminist theory lens, family is a community, and the wife is one of the two most important people in the family. Gender relations feminist legal theory forms an important aspect of the conceptual framework. This paper adds to the literature by showing how women employ inheritance laws to resist gender roles within families and state.

**Key words:** gender equality, women's rights, land inheritance rights, disputes, Vietnam

## INTRODUCTION

This paper explores the barriers that women face when seeking to enforce land inheritance laws in Vietnam and demonstrates that there is a significant gap between law on the books and law in practice. The *Civil Code* (2015) in Vietnam allows a wife, daughters, and sons to claim an equal share in familial property upon the death of a family member. The goal of the *Civil Code* (2015) was to empower women within Vietnamese society by giving them rights to property through inheritance. Despite these laws being clear in their intent, there are a number of legal and cultural barriers that women face when trying to enforce their land inheritance rights. These barriers are explored in this thesis.

While the *Constitution of Vietnam* (2013) and the *Law on Land* (2013) provide strong recognition of women's rights to inherit land, changes within society to accept women as legitimate landholders is still evolving<sup>1</sup>. Notably, inequality of access to economic or financial resources persists, despite constitutional

steps taken to end gender-based discrimination. How are women's land inheritance rights perceived and understood in a cultural context where daughters are rarely provided for in their parents' wills and a wife's 'only duty' and 'main purpose in life' is to be of service to her husband<sup>2</sup>? This paper explores the main barriers women face when they seek to claim their land inheritance rights in local courts. Through a series of in-depth interviews with Vietnamese female litigants, lawyers, court officials (clerks and judges), local officials, and chairwomen of the Vietnamese Women's Union (VWU), this paper finds that the most common barriers to women's successful assertion of their land inheritance rights are Confucian thought (such as the desire to live harmoniously and to avoid litigation), the lack of judicial independence of Vietnamese court system, and the low quality of the professional legal service, local officials, and chairwomen of the VWU.

Property rights play a significant role in shaping gender inequality. Land is a valuable asset which women in rural areas can use to generate income either by

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accessing credit against land title or earning income from the land; for example, from agriculture. Previous studies have found that where a female has control of the household's income, child nutrition and food security is more prioritised than where household income is controlled by a male. Allendorf explored that women's land rights give women the right to have a final decision at their homes (a measure of empowerment) and children who have mothers own land are importantly less likely to be severely underweight<sup>3</sup>. Rao observed that, in India, men had better access to higher, for example, off-farm jobs. However, women had less opportunity to access job far from their homes. Further, Rao questioned whether land rights alone were sufficient to strengthen gender equality and food security and argued that equal access to resources for women needs to be coupled with the strengthening of a range of entitlements supporting, for example, political decision-making. In addition, Garikipati found that, in Indian, loans procured by women may easily be diverted to enhance their household assets and incomes. On the other hand, women with a lack of co-ownership of family's productive assets, may not result in her empowerment. Accordingly, while the overall household benefits from lines of credit extended to women, this may not actually advance the pursuit of gender equality.

For example, in some countries where women do not have equal rights to land, their children are on average 60 percent more malnourished, and in countries where women cannot access credit (due to, for instance, a lack of property rights), then the number of malnourished children is an estimated 85 percent higher than average<sup>4</sup>. Likewise, land tenure security for women in developing countries is fundamental to reducing women's vulnerability to domestic violence and potential of contracting HIV, both of which influence food security outcomes<sup>5</sup>.

Agarwal underlined the need for women to obtain an official title to land and property to achieve economic power. Similarly, Menon, Rodgers and Nguyen find a positive relationship between Vietnamese women's land rights and the improvement of their children's education and health<sup>6</sup>. Despite the importance of access to land, Scott states that women's land rights are still under-acknowledged in Vietnam<sup>7</sup>. Therefore, female access to land in Vietnam requires closer consideration to achieve gender equality. In addition to these economic benefits, researchers in other parts of the world have found that women with property ownership are less vulnerable to domestic violence from their husbands<sup>8</sup>.

## CONCEPTUAL FRAMEWORK AND RESEARCH METHODOLOGY

### Gender Relations Feminist Legal Theory

This paper draws upon gender relations feminist legal theory to explore cultural, social, and legal barriers influencing women's land inheritance rights in Vietnam. Socially constructed gender norms mean that women have different experiences to men in the Vietnamese legal system. These socially constructed norms influence the way women view themselves as litigants, the way the communities and family members perceive female land inheritance litigants, the way that government officials deal with women lodging such claims, the way that the legal profession deals with female clients, and ultimately the decisions reached by the judiciary on women's land inheritance dispute cases. While the laws theoretically promote gender equality, in practice, the laws are heavily influenced by socially constructed norms about what a 'good woman' should and should not do. Women are expected to be 'good at home and excellent at work', and women themselves prioritise family and household harmony over political gains<sup>9</sup>. The women interviewed for this study who have brought land inheritance claims are exceptional women - perhaps even trailblazing women - who have defied cultural norms and demanded the legal system uphold and enforce their legal entitlements to land.

### Research methodology

Two methods were utilised to collect data. The first method was qualitative semi-structured interviews. I interviewed 60 people who were extensively involved in women's land inheritance disputes in 6 cities (Hanoi, Tuyen Quang, Thanh Hoa, Vinh Phuc, Hung Yen, and Hai Phong) in Vietnam. These included female litigants, court officials (judges and clerks), lawyers, local officials, and chairwomen of the VWU. The second method of data collection was documentary research. I collected documents, including statutory laws and administrative regulations; international legal instruments; papers and reports of various state agencies and foreign actors, such as the United Nations Development Programme (UNDP), the World Bank; newspaper articles; and scholarly works published internationally and within Vietnam.

## CASE STUDIES, RESULTS, AND DISCUSSION

### Case 1: Nguyen Thi Thu Nga

Mrs. Nga's family lives in Tuyen Quang city within Tuyen Quang province, in what might be called a middle-class family. Her sad but steady voice tells me of a life filled with land inheritance dispute cases with her younger brother-in-law. She recounts how she strived to maintain respectability despite of her brother-in-law's attempts to bully and humiliate her. As she told me about her decision to sue her younger brother-in-law, Mrs. Nga was very careful to stress that rectifying this power imbalance was one of the reasons why she proceeded in the local courts: 'My brother-in-law dared me to sue him in the local courts. He thought that because I am a woman, I do not have any ability to access the court system'. Mrs. Nga resisted her parents' advice: asserting her land inheritance rights despite her parents' pressure.

- Although my parents did not support my decision to lodge my case in the local courts, I had to sue my brother-in-law to show him that I have the right to land inheritance. I also needed to do it on behalf of my daughter.

In this case, Mrs. Nga's brother-in-law sold her husband's land without her husband's consent. Mrs. Nga wanted to sue her brother-in-law to inherit her late husband's property. In the first instance of Mrs. Nga's trial, the judge decided Mrs. Nga would essentially take back the land from buyers whom the younger brother-in-law sold it to. When I asked Mrs. Nga about her perceptions of working with the VWU's staff, she said:

- The VWU is still charging members' fees to its already-deceased members, as they do not update or care about their members. They want to acquire as many members' fees as possible.

Mrs. Nga did not receive help from the VWU at the local level. Additionally, Mrs. Nga suggested that the VWU was motivated purely by profit. She was in fact hostile to the VWU, although the VWU is responsible to protect its members' rights, for example, women's rights. The relationship between Mrs. Nga and her local officials and the VWU's staff spotlights the difficult issues such as lack of support for women from local officials and the VWU's staff to women. Regarding Mrs. Nga experiences with lawyers, she discussed how she worked with four lawyers in different cities over the course of her case:

- Mr. Cuong was my first lawyer. However, Mr. Cuong and I did not get on well as he did not respect me. Especially, his attitude to women's rights is still patriarchal.

In terms of Mrs. Nga's lawyers, her second lawyer was sick. She explained, 'I then hired another lawyer in Ninh Binh city. Unfortunately, my case took a very long time, he had a stroke, and therefore he had to stay at hospital'. Later on, Mrs. Nga hired Mrs. Lan as a lawyer in Tuyen Quang city. Mrs. Lan is a retired judge who now works as a lawyer. Mrs. Nga explained why she hired Mrs. Lan because Mrs. Lan was well experienced in the local courts. She knew the court system very well and had good connections not only with court officials but also with local government officials. This helped Mrs. Nga to acquire the evidence needed in her land inheritance dispute case quicker than what was normally expected for these procedures.

Due to the need to acquire evidence for the land inheritance dispute case, Mrs. Nga had to wait for the outcome of her case far longer than she expected. Her land inheritance dispute case took almost a decade to complete. This issue also affected her daily life and her business. As Mrs. Nga pointed out that she had to come to the local courts as many times as they requested. These meetings with court officials or other related officials took time.

In Mrs. Nga's case, she was very active in accessing lawyer's services to evaluate which lawyer she wanted to work with. This was very unusual among the women I interviewed. Many women did not even know that they could hire lawyers to present their land inheritance dispute cases in the local courts or help them to write a litigation. Notably, Mrs. Nga was empowered to constantly seek better representation because she had a strong personality and since her parents had a high position in society. Additionally, her economic status was sufficient to meet the requirements of funding her lawyer's services.

In Mrs. Nga's case, lawyers who she hired illustrated one aspect of a comprehensive mural in how the legal professional community works in women's land inheritance dispute cases. How Mrs. Nga had to act extremely proactively, as an agent rather than a victim to successfully enforce her land inheritance rights. It shows the role of lawyers in assisting their clients to pursue their land inheritance rights. In addition, Mrs. Nga's case also indicates the limitation of local officials and the VWU's staff to assist women to access social justice.

### Case 2: Doan Thi Kim Ngan

Mrs. Ngan's family lives on the outskirts of Hanoi. Mrs. Ngan is in her late thirties. Mrs. Ngan has suffered threats of physical violence from her father-in-law and humiliation from her family-in-law. She told

that she has worked hard to support herself and her children, alongside the kind support of her birth family. The situation facing Mrs. Ngan was bleak:

- My husband died in an accident. During my marriage, my husband and I bought a shared property, in part through a loan from my parents-in-law. My parents-in-law wanted to own the entire property. My parents-in-law did not want me to use the property or to apply for a land user certificate for the property.

Under Confucian thought, women are expected to follow their fathers when they are at home, to follow their husbands when they get married, and follow their eldest sons after their husbands die. This traditional thought still applies in Vietnamese society, particularly in rural and remote areas. Accordingly, Mrs. Ngan's parents-in-law expected her to follow the traditional rules. Those rules also suggest that the daughter-in-law has responsibility to obey her parents-in-law's decisions. However, Mrs. Ngan did not comply with her parents-in-law's wishes. The conflict between traditional custom and land inheritance laws escalated and led to the dispute parties arguing over their land inheritance dispute case in the local courts. Mrs. Ngan also described the issues she experienced with local officials who tried to prevent her from lodging a case in the local courts. She said:

- I had to send many petitions to Dong Anh District People's Committee, the Office of the Vietnamese Prime Minister, and the *News of Hanoi Women*.

Mrs. Ngan explained her case was delayed for several years and her application for the land user certificate was also delayed due to the land inheritance dispute between Mrs. Ngan and her parents-in-law. Both the local government and the local court rejected Mrs. Ngan's petition for several times. Finally, Mrs. Ngan approached the *News of Hanoi Women* to raise her land inheritance dispute issue as the *News* is a local newspaper that protects and promotes happy family, introduce new laws in terms of women's rights. Mrs. Ngan explained to me why she approached the local media to help progress her case:

- When my neighbours have problems, they usually write their concerns to local media which presses the responsibilities of the local government. That is why I also followed their way to resolve my land inheritance dispute case in a practical way.

In Mrs. Ngan's case, the local media played an important role to press the local government to comply with Vietnamese inheritance laws. This publishing forced Mrs. Ngan's case to be resolved as the local government came under pressure from public interest and media attention. As such, in the local government where Ngan lives could no longer afford to neglect Mrs. Ngan's land inheritance dispute case, they had to resolve Mrs. Ngan's case to comply with public demanding once Mrs. Ngan's land inheritance dispute case was known/published.

As Mrs. Nga's and Mrs. Ngan's cases illustrate, power relations and case outcomes in the local courts are substantially affected by family, community, legal professionals, and court officials. Accordingly, inland proceedings, the status and legal professional knowledge used by legal actors may challenge pre-existing social power relations between disputant parties and reconfigure the power dynamics of women's land inheritance dispute cases<sup>10</sup>. The institutional standing of the lawyer and his or her ability to speak legal language represents a form of discursive power in the presentation of women's land inheritance dispute cases. This has consequences either for enhancing access to social justice, or alternatively amplifying social power inequalities where legal aid is unavailable for the poorest litigants. Access to legal representation, whether through hiring a lawyer or through pro-bono assistance provided through local government agencies, can be the critical turning point for women seeking to assert their land inheritance rights. It can be the difference between success or failure.

## CONCLUSION

This paper elaborated upon the Vietnamese women's experiences in inheritance dispute cases in local courts. Agarwal's gender relations feminist legal theory proved relevant to making sense, conceptually, of the behaviours and influences of state and non-state actors in the case studies. Engaging with gender relations feminist legal theory also had the benefit of prompting a shift in thinking towards questions of actor legitimacy and authority to act. Gender relations feminist legal theory thoroughly explains the factors which help women to claim their land a share in parental property including the existing inheritance laws, the women's literacy (legal awareness), the social legitimacy of women's claim, women access to public officials, ability to access to lawyers, local courts, and women's access to economic and social resources.

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## DECLARATION OF CONFLICT

The author declares that they have no conflicts of interest.

## AUTHOR'S CONTRIBUTION

All content of the article is done by the author only.

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## REFERENCES

1. Bonnin C, Turner S. A good wife stays home: gendered negotiations over state agricultural programmes, upland Vietnam. *Gender, Place & Culture*; 2014. p.1302-20, 1; Available from: <https://doi.org/10.1080/0966369X.2013.832663>.
2. Kapadia KM. *Marriage and family in India*. Oxford University Press; 1958. p.169;
3. Allendorf K. Do Women's Land Rights Promote Empowerment and Child Health in Nepal? *World Development* 2007 November; 35(11): 1975-1988; PMID: 23700354. Available from: <https://doi.org/10.1016/j.worlddev.2006.12.005>.
4. OECD. *Gender Inequality and the MDGs: What Are the Missing Dimensions?*. [Online]. 2010 Sep [cited 2021 Sep 12]; Available from: <http://www.oecd.org/dev/development-gender/45987065.pdf>.
5. Wiesen C, et al. *Voices and Visions: The Asia Pacific Court of Women on HIV, Inheritance and Property Rights*. UN Aids; United Nations Development Programme; 2008. p.40.
6. Menon N, Van Der Meulen Rodgers Y, Nguyen H. Women's land rights and children's human capital in Vietnam. *World Development*; 2014. p54, 18; Available from: <https://doi.org/10.1016/j.worlddev.2013.07.005>.
7. Scott S. *Vietnam decollectivizes: Land, property, and institutional change at the interface*. Ph.D. Thesis, The University of British Columbia (Canada). 2001; p.68;
8. Panda P, Agarwal B. Marital violence, human development and women's property status in India. *World Development*; 2005. p823; Available from: <https://doi.org/10.1016/j.worlddev.2005.01.009>.
9. UN Women Viet Nam. *Policy Brief: Gender Equality in Climate Change Adaptation and Disaster Resilience in Viet Nam*. [Online]. 2017 Aug [cited 2021 Sep 13]; [11 screens]; Available from: [http://www.un.org.vn/en/publications/doc\\_details/550-policy-brief-gender-equality-in-climate-change-adaptation-and-disaster-resilience-in-viet-nam.html](http://www.un.org.vn/en/publications/doc_details/550-policy-brief-gender-equality-in-climate-change-adaptation-and-disaster-resilience-in-viet-nam.html).
10. Dancer H. *Women, Land and Justice in Tanzania*. James Currey; 2015; Available from: <https://doi.org/10.1017/9781782045205>.