



Compulsory land conversion experience of certain countries and suggestions for revising the land law in vietnam

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Abstract

The development of countries may depend on many factors, but it is inseparable from land. Land conversion from agricultural to non-agricultural purposes has become inevitable during industrial revolutions in all developed countries worldwide. In particular, compulsory land conversion, although not the optimal solution, has become one of the methods for countries to implement this request. Referring to the experience of compulsory land conversion in several other countries, this article selects advanced points that can be “transplanted” into the land legal system of Vietnam. Also, such points may contribute to raising awareness and expanding the horizons of developing legal norms in the face of the current requirement to amend Vietnam’s land law.

Keywords

land conversion, land recovery, compensation, support, resettlement

1. Introduction

The need for compulsory land conversion has become unavoidable since the Vietnamese Party and State recognized the country’s development based on the “socialist-oriented market economy” and industrialization and modernization. In the Land Law 1993, the issue of land recovery for national defense and security purposes was raised, although the guiding document of this Law implies land recovery for economic development purposes¹. When the Land Law 2003 was introduced, land recovery for economic development purposes was officially

¹Point dd Clause 2 Article 1 of Decree No. 22/1998/ND-CP of 1998 dated April 24, 1998 on compensation for damage when the State recovers land for national defense-security purposes, national and public interests.

recognized.² Then, it was known as land recovery for socio-economic development purposes in national and public interests in the Land Law 2013, and it is being further improved in the Draft amended Land Law³. However, contrary to the Party and State's expectations, compulsory land conversion has been the issue causing the most complaints and appeals in Vietnam for nearly 30 years. In Resolution No. 18-NQ/TW dated June 16, 2022⁴, the Party commented: "Disputes, complaints, denunciations, and violations of land law have been complicated; petitions and denunciations about land are increasing; many cases have been solved tardily, causing social matters." One of the fundamental reasons is that the compensation, support, resettlement, and land recovery in some localities is in tardiness and not in accordance with the Resolution and legal regulations. It affects the benefits, life, and livelihood of the people whose land is recovered, and also causes the loss of the State budget." The article thereby gathers the most urgent issues with inadequacies in compulsory land conversion. To facilitate the approach, based on structured content, each topic will be presented by determining its inadequacies, analyzing the causes, referring to the applicable experience of other countries, and proposing solutions in the final section of that topic.

- 1. Specific contents of compulsory land conversion need to be improved**
- 2. The issue of using terminology to express compulsory land conversion**
- 3. Current situation in Vietnam**

Based on the 1980 Constitution, Vietnam has developed regulations on the land ownership of entire people since the first Land Law was introduced in 1987.⁵ Land users in Vietnam are identified with land use rights through the scheme of "land allocation, land lease, land use right recognition." The term "land recovery" was born in the administrative law relation, where the State distributes land to users and the State holds a central position in coordinating the planned, centralized and subsidized economy. This is explained by the fact that land in Vietnam, under the socialist regime, is placed under a social rather than an economic perspective. For many years of seizing power to build an independent nation, the Party and

²Article 41 of the Land Law 2003.

³The Draft of revised Land Law has 245 articles, submitted to the Government on September 27, 2022.

⁴Resolution No. 18-NQ/TW dated June 16, 2022, June 16, 2022 of the Fifth Plenum of the 13th Party Central Committee on "Ongoing innovation and improvement in regulatory institutions and policies; enhancement of efficiency and effectiveness in management and use of land, serving as the driving force in developing our country into a high-income economy".

⁵Article 19 of the Constitution 1980: "Land, forested mountains, rivers, mines, natural resources in the ground, in the sea and the continental shelf, the enterprises of industry, agriculture, forestry, fisheries, commercial enterprise; banking and insurance organizations; the work serves the public interest; Railway, road, river, sea, road; dykes and important irrigation works; the facility serves the defense; communication system, radio, television, cinema; the basis of scientific studies, technical, cultural and social establishments along the other property that is regulated by the State-owned, are part of the entire population."

State advocate the establishment of a land management regime for the goal of class struggle and the desire to create social justice. As a result, the land use regime in Vietnam is broadly diversified. All regulations on the scope of rights and obligations are set out for each group and each type of land user, gradually expanding in terms of the number of users, land use regime, and form.

Since the transition to a socialist-oriented market economy, land allocation, land lease, and land use right recognition cases have become more diversified with many different land users and forms. Also, the increasing expansion of the land use term and land use limit has been recorded. Simultaneously, although "land recovery" constantly expands in its meaning, it is the only term used in all relations when the State needs to recover land from the "land user" or grant to another subject. This leads to some following problems: The term "land recovery" applies to not only those who violate the land law but also those who are required to be recovered land by the State. It even applies to those who have contributed land to the State. That is not to mention the "inconsistency and disunity" between the legal contracts and deeds provided by the State when "granting land use rights" and the State's alternation of plans when "recovering land use rights".

For instance, although the State grants the certificate of land use right for "long-term, stable" use, the State "recovers" when the user has used it for 2 years; or although the land lease contract takes effect in 30 years, the State decides to recover the land after only 3 years, etc.

Obviously, this implies that the State only cares about "their side", their needs. It lacks the necessary attention to whether land users use land legally and the previous commitment between the State and land users. Moreover, the State inadvertently puts both meritorious land users and those who commit violations in the same situation, "land recovery". It affects the psychology of users whose land is recovered, directly affects the thinking of the executive cadres, civil servants, and officers, and raises the possibility of inadequacies if the investor "manipulates" the land recovery process. In many cases, by the authority of the competent state agency to recover land, the investor puts pressure on the land user. Admittedly, on the side of state management, the manager is also under pressure on local economic growth and investment attraction. The "collaboration" process between local state agencies and investors has thus become essential. However, the land law and current legal documents are not deterrents to ensuring that such collaborations are conducted in a morally sound and beneficial manner for the community.

4. Experience of some countries and suggestions for Vietnam

In most bourgeois states, compulsory land conversion is the "compulsory land purchase". Although the terms are used differently,⁶ their essence is the

⁶In fact, countries use different terms as follows:

- UK: Compulsory purchase
- Australia, Canada, New Zealand: Compulsory acquisition of land, land acquisition

compulsory purchase with multiple forms of ownership, including private ownership of land. "Compulsory purchase" harmoniously expresses the nature of this activity. "Compulsory" expresses the intention of the State to have the requirements for national activities. Also, "purchase" expresses the civil and commercial nature and shows fairness and parity when offsetting the damage from this activity. This clarifies the special nature of the type of property that is land but also contributes to social justice when clearly showing the nature and properties of each different activity. In Resolution No. 18-NQ/TW, our Party affirmed: "Land use right is a special kind of property and goods but ownership⁷." The author thereby recommends changing the terminology as follows:

Firstly, land recovery is only used for cases of violation of land law or natural reasons such as death without an heir, expiry of the land allocation period, or land lease without extension. The characteristic of this case is no compensation for land users due to the end of the "expiration" of land allocation, land lease, land use right recognition, or due to land law violation or other violations prescribed as land recovery without compensation.

Secondly, all cases of compulsory land conversion according to the needs of the State, serving the purposes prescribed in the Law, should be called "compulsory land use right purchase" ("compulsory purchase" for short). For example, compulsory land purchase for national defense, security, and socio-economic development in the national and public interest. It is to distinguish between land recovery as administrative sanctions is the natural solution, without compensation and compulsory purchase of land use rights for public purposes. In essence, the compulsory purchase of land use rights is an activity associated with benefits. When people converse their land and have to move to a new residence, they are involved in property valuation fairly and proportionately. Obviously, this must be accompanied by an amendment to paragraph 3 of Article 54 of the Constitution 2013 and relevant provisions of Land Law 2013. Accordingly, Clause 11, Article 3 of the Land Law 2013 should be amended as follows:

"The State recovers land means the State decides to recover land use rights from a land user that violates the land law or due to natural reason without compensation."

"The State compulsorily purchases land use rights (referred to as compulsory purchase) is the State's decision to receive the transfer of land use rights ahead of time by organizations and individuals that are using them in cases of extreme necessity prescribed by Law for national defense and security purposes; socio-economic development for national and public interests. Compulsorily

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- US: Eminent Domain
 - Other countries: Land taking, etc

See webpage: Constitute, 'The World Constitution to search, work and compare', (constituteproject.org), [Constitutions - Constitute \(constituteproject.org\)](https://www.constituteproject.org), [accessed October 31, 2022].
⁷Resolution No. 18-NQ/TW dated June 16, 2022, June 16, 2022 of the Fifth Plenum of the 13th Party Central Committee on "Ongoing innovation and improvement in regulatory institutions and policies; enhancement of efficiency and effectiveness in management and use of land, serving as the driving force in developing our country into a high-income economy".

purchasing land must be public and transparent, and compensation must be paid in accordance with the Law.”

5. The issue of determining the purpose of land conversion in case of a profit factor

6. Current situation in Vietnam

One of the shortcomings in implementing the Land Law 2013 is the issue of land acquisition for socio-economic development in the national and public interest, which has not yet defined the principle criteria. On the other hand, terms such as “new urban and rural residential area construction projects; urban and rural residential renewal projects...” according to point d, Clause 3, Article 62 of the Land Law 2013 have many inconsistent interpretations. This leads to land recovery in some localities rampant and difficult to control.

Article 86 of the Draft Supplement and Amendment of the Land Law published on September 27, 2022, was supplemented with some necessary contents as required by practice, such as (i) the concept of “socio-economic development project for the national and public interest”; (ii) necessary types of projects in practice such as: “projects to renovate and rebuild old apartment complexes”, “residential areas severely degraded in infrastructure and inconsistent with planning”, etc. However, the Draft should be clarified in some points as follows:

Firstly, although “socio-economic development project in the national and public interests” is defined, it does not clearly state the “profit criteria” of socio-economic development projects in the national and public interests. Specifically, the phrases in Point a, Clause 3, Article 86 of the Draft, such as: “commercial housing projects”, “urban renewal projects”, etc., have many inconsistent interpretations, which are easily misused and circumvented. Thus, the factor that needs to determine “profit criteria” is one of the prerequisites for deciding the boundaries and scope of compulsory land recovery.

Secondly, Point a, Clause 4, Article 86 of the Draft also stipulates criteria and conditions, but it is unclear whether they are for public or private purposes: “Land is only recovered to create a land fund for auctioning land use rights or bidding for projects with land use”. It is not clearly defined as to what purpose they are used after the auction or bidding. For example, the allocation of land through “auction” or “bidding” for “commercial” and “service” projects is not in the case of “land recovery for socio-economic development purposes in the national or public interest” but should be carried out through an agreed mechanism with land users. Therefore, the State should not take the land for these projects. Suppose the criteria are unclear on the “profit or non-profit” factor. In that case, it is easy to abuse and contrary to Clause 3, Article 54 of the Constitution 2013 on land acquisition for socio-economic development for the national and public benefit.

7. experience of some countries and suggestions for Vietnam

In the United States Constitution, the first written constitution in the world, the Fifth Amendment states: "Private property may not be used for public purposes without prior compensation."⁸ One of the most controversial cases in the United States in 2005 was *Kelo v. City of New London*⁹ because the petitioner considered the State's actions unconstitutional. The compulsory land conversion from an individual to a private company was because the State could collect additional taxes, benefiting a wealthy group¹⁰.

On the other hand, in the law enforcement process, the Washington State Supreme Court has made clear and strict views on compulsory land conversion. In particular, the ruling set out very brief criteria for what "public purposes" must be "public use"¹¹. This means that the compulsorily purchased land, whether through bidding or auction, fixed-term allocation or lease, is ultimately used for "public purposes", such as roads, parks, social housing, resettlement areas, etc. As for other purposes, such as commercial and service housing, it is no longer within the scope of land for "public" use. Even in cases where both the public interest and the profit of private companies overlap, the Washington state court still ruled very clearly that compulsory land purchase is not allowed: "If the public interest and private interest are inseparable, the right to compulsory land transfer stated in the Constitution cannot be referred..."¹²

In order to address these shortcomings in the context of Vietnam, it is necessary to come up with compatible solutions. Resolution 18-NQ/TW of the 13th Central Committee identified a central cause of inadequacies in the land recovery work and pointed out that the point to be overcome is the need to determine "the purpose, scope of land recovery, specific conditions and criteria for the State's land acquisition for socio-economic development in the national and public interest". The introduction of these criteria needs to be specific about the "profit" factor to further concretize the requirements of Resolution 18-NQ/TW in the Draft of Land Law. Specifically, add paragraph 1 of Article 86 of the Draft to explain:

"Land recovery for socio-economic development in national and public interests is under non-profit projects or projects with profit goals associated with specific conditions and criteria of the State's development in each period to realize the goal of industrialization and modernization.

⁸Fifth Amendment to the US Constitution, was passed 1791 said: "Nor shall private property be taken for public use, without just compensation."

⁹See case of *Kelo* 125 S.Ct.2655 (June 23, 2005), U.S. Supreme Court opinion page <https://supreme.justia.com/cases/federal/us/545/469/>

¹⁰*Kelo*, 268 Conn.at 54 and *Hawaii Housing Authority Midiff*, 467 U.S.229, 245 (1984)

¹¹Hien Trung Phan and Hugh D. Spitzer: *The Constitutionality of Compulsory Land Acquisition in Vietnam: Issues and Recommendations*, *Law Development Review*, vol.15, No.1, 2022, pp.147-168, <https://doi.org/10.1515/ldr-2021-0114>.

¹²The Washington State Supreme Court's decision in the case of *In re City of Seattle* (1981) helped to define "public use in such a way that the two cannot be separated, the right of eminent domain cannot be invoked..." (Sharon E. Cates and Hugh D. Spitzer, *Supreme Court Affirms Economic Redevelopment as "Public Use"* *Kelo v. City of New London*, Foster Pepper and Shefelman PLLC, Attorney at Law).

1. Non-profit projects, including:
2. Infrastructure projects, projects on building state agencies, political organizations, socio-political organizations...
3. Projects with profit objectives associated with the State's development planning, including:
4. Industrial parks, export processing zones, airports..."
5. The projects in Clause 2 must be associated with the following criteria and conditions:"

8. The issue of determination, compensation and resettlement in case of land recovery by the State

9. Current situation in Vietnam

The implementation of the Land Law has shown many shortcomings surrounding the issue of compensation when the State recovers land because it does not take the view of "determining damage" before resolving the issue of "compensation for damage".

Firstly, the applicable Land Law does not stipulate the concept of "determining damage when the State recovers land", leading to the failure to determine the correct and sufficient nature of the damage. As a result, many damages have not been compensated, or compensation is incomplete and disproportionate to all the damages caused to land users. It is worth mentioning that this Draft also has no concept of "determining damage when the State recovers land".

In fact, although land is the object of recovery, the damage suffered by the people includes the compulsory conversion of land use rights and many other assets attached to or related to the land. This lack of regulation shows that the perspective of "the persons suffering damage" was not paid attention to in the damage determination of the land recovery. "The persons who recover the land" only consider their perspective and wish to "achieve their purpose" soon.

This leads to the consequence that it has not properly and sufficiently determined the damage suffered by the people whose land is recovered. Specifically, the applicable Land Law and Article 108 of the Draft only stipulate compensation for land, plants, and livestock construction works. In particular, Clause 2, Article 108 of the Draft only stipulates that livestock is "aquatic products". People now raise a lot of animal types and breeds for different purposes, including cattle, poultry, and livestock other than aquatic such as crickets, snakes, other reptiles, worms, etc. The provisions of the Law and the Draft unintentionally limit the compensation, resulting in damages such as no compensation or support. In addition, damages such as blocking irrigation water flow, affecting domestic water sources and other indirect damages have not been identified and compensated fairly and proportionately.

In addition, the compensation for perennial trees as prescribed in Article 90 of the Land Law and Clause 1, Article 108 of the Draft Law: "For perennial trees,

compensation according to the actual damage value of the orchard according to the local value at the time of land recovery..." is not proportionate to the nature of the damage. The concept of "present value of the orchard" does not guarantee the "potential of the perennial plant" if it is in the first 5-year growing stages. The potential for harvesting crops of each type of tree can be up to 10-20 years, but the long-term damage has not been considered. Simultaneously, compensation for plants has not been stipulated as determining the actual damage value to calculate compensation for different cases. It only compensates for the same type of tree with the same growth period at the same price. This causes shortcomings because the value of compensation is not based on actual damage. The Law has not had separate provisions in compensation between specialized farming and mixed farming.

Secondly, the concept of compensation is not accurate. It only stipulates compensation for "land" but "other assets" when the State recovers land. Clause 12, Article 3 of the Land Law 2013 stipulates: "Land compensation means the State returns the value of land use rights for the recovered land area to land users." Also, there is an expansion of compensation by land without the same use purpose. Clause 4, Article 3 of the Draft states: "Compensation for land use rights when the State recovers land (hereinafter referred to as land compensation) is the State's reimbursement to land users in cash, land or other material benefits corresponding to the value of land use rights for the recovered land area in accordance with this Law." In addition, the Draft recognizes the content of the applicable regulation lacks quantitative factors. The word "reimbursement" is reminiscent of the "land for land" period from the Land Law 1987 with the provisions that are only "interchangeable". There is no commitment to ensuring commensurate benefits and equal prices between "recovered land" and "land for reimbursement".

Thirdly, there is still confusion between the concepts of compensation and support. Articles 83 and 84 of the Land Law 2013 stipulate compensation support for stabilizing life and production, vocational conversion and job search, resettlement, and other support. In particular, the total amount of vocational conversion support for agricultural land is often larger than the compensation for agricultural land. On the other hand, whether the losses of economic organizations that are stopped from production and business when the State recovers land will be compensated or supported. According to the principle in Clause 2, Article 88 of the Land Law 2013, the above damage is compensated, but in Article 19 of Decree No. 47/2014/ND-CP, it is considered for support. This shows that the applicable Law is ambiguous between compensation and support. In many cases, the term "support" was used but of the nature of "compensation".

If from the point of view of determining damage, all of the above factors are damaging: land recovery caused loss of agricultural land and disturbance of life, and production, leading to the change of occupation, etc. Therefore, it is advisable to define "compensation" instead of "support" to return to the true nature of the problem. Regrettably, Articles 112 and 113 of the Draft continue to recognize the

provisions supporting a compensation nature. This limits the ability of legislative and executive bodies to comprehensively assess the damages of people whose land has been recovered. Therefore, building and implementing legal regulations has not ensured fairness, objectivity and democracy in all cases. This is not corresponding to the spirit of Resolution 18-NQ/TW, which is "creating more equality among land users".

Fourthly, applicable resettlement regulations do not guarantee reassuring people before land recovery. Resolution No. 18-NQ/TW affirmed: "The land recovery is only carried out after the compensation, support and resettlement plan is approved; In case of land recovery with resettlement, the latter must be completed before the land is recovered; the compensation, support and resettlement must be implemented first; to pilot and summarize the policy of separating the compensation, support and resettlement projects from the investment project to be implemented first". Land Law 2013 and the current Draft Law still "duplicate" the contents of the Party Resolution "Provincial People's Committees, District People's Committees are responsible for organizing and implementing the resettlement project before land recovery" without any criteria to ensure that the resettlement project must take place before the State recovers land.

10. experience of some countries and suggestions for Vietnam

In the United Kingdom, when regulating the principle of compensation, legislators not only consider the principle of equivalence but also make sure that the amount of compensation compared to damage is "no more, no less"¹³. Therefore, it is necessary to develop a mechanism of damage determination and compensation when the State recovers land based on civil law regulations. Besides, in advanced countries, when the State compulsorily purchases land, there is only one institution called "compensation and resettlement", completely absent regulations on "support". On the principle of fairness and equality of the rule of law State, all damages must be properly, adequately and proportionately compensated for. On the other hand, in Vietnam, the principle set out in Resolution No. 18-NQ/TW is: "After land recovery, people whose land was recovered are entitled to a residence, ensuring a life equal to or better than the former one". This is correct because land recovery can be administrative, but compensation is civil. Therefore, Vietnamese Law needs to supplement regulations on damage determination and compensation. They must clearly distinguish between cases of compensation and support. The principle of ensuring that the resettlement area for people with recovered land must be equal to or better than the former place should be supplemented, and the resettlement arrangement has a time constraint, specifically as follows:

¹³ Department of Transport, Local Government and Region: "Fundamental Review of the Laws and Procedures relating to Compulsory acquisition of land and Compensation", Final Report, 2000 and Section 5 (2) Land Compensation Act 1961.

Firstly, the concept of “damage when the State recovers land” should be added, such as (i) Damage caused by land recovery activities; (ii) Damage can be direct or indirect; (iii) Damage can be in material or immaterial form but can be calculated in money. In connection with these provisions, it is necessary to provide a compensation mechanism according to the following principles: (i) The damages provided for compensation are listed in legal documents; (ii) The damages which are not listed in the legal provisions but are real damages shall be settled by the Court¹⁴.

Secondly, the regulations on compensation can be supplemented and amended as follows: “Land compensation means the State returns the value of land use rights for the recovered land area to land users fairly and proportionately with land or money.”; “Compensation for land-attached assets when the State recovers land means the State returns the value of all land-attached assets owned by land users due to land recovery activities fairly and proportionately.”

Thirdly, the exact amount of support will be identified. Suppose it has been determined that land recovery activities cause loss of agricultural work or disturbance of production and life. In that case, compensation should be provided for the loss of jobs, compensation to stabilize life, production, etc. Thus, all damages caused by land recovery activities should be attributed to regulations on compensation when the State recovers land. Support should be applied in cases where it is “legally insufficient” to be considered for compensation (for example, houses on embankments, without land and house documents, etc.) or economic organizations that have just been allocated land recovered and want to support more jobs or health insurance costs for people whose land is recovered... it will be more reasonable.

Fourthly, it is necessary to set out regulations defining sanctions for cases of delayed resettlement. It is necessary to supplement the concept of resettlement in Article 3 of the Draft to clearly distinguish between land compensation and resettlement when the State recovers land.

“The land recovery decision, the decision approving the compensation, support, and resettlement plan, and the decision assigning the resettlement to the resettled households must be implemented on the same day. Within 30 days from the effective date of the land recovery decision, the People’s Committees of provinces and districts must allocate and hand over certificates of land use rights and ownership of houses in the resettlement area to people whose land is recovered under resettlement. Enforcement decisions shall not be issued in cases where field resettlement has not been arranged, and land use right certificates in the resettlement area have not been issued.”

If the above provisions are stipulated and applied, they will certainly ensure the principle of fairness for people whose land is recovered. It is because of the damage they suffer from land and assets attached to the land and many other indirect damages to their occupation, life and production.

¹⁴See also: Phan Trung Hien (Editor): Law on land management and use in Vietnam, Can Tho University Publishing House, pp.90-118, Can Tho, 2018.

11. The issue of land price determination

12. Current situation in Vietnam

The Land Law 2013 has made amendments and supplements to the Land Law 2003. However, contrary to the expectations of lawmakers and managers, the issue of land price complaints, especially compensation land prices, is almost not on a downward trend. It can be explained as follows:

Firstly, the principle of land price determination is qualitative and incomplete. The Land Law 2013 still uses “qualitative” phrases when expressing regulations on land price determination principles. This leads to land price determination depending on the view of each province and city. Specifically, the phrase “suitable with the popular market price” in Land Law 2013¹⁵ is used instead of “close to actual market price” in Land Law 2003¹⁶, but the semantics are almost unchanged. Determining land prices for compensation when the State recovers land lacks publicity, transparency, and democracy and causes injustice and non-proportionality between the value of land use rights recovered and the value of compensation. Specifically, Article 112 of the Land Law does not stipulate the principle of “publicity, transparency” or “fairness and democracy” in determining land prices. Clause 3, Article 114 of the Land Law assigns full rights to determine land prices to provincial-level People’s Committees under the advice of the Department of Natural Resources and Environment. In addition to an entity representing the “organization with the function of consulting on land price determination” selected by the Department of Natural Resources and Environment “in a suitable manner”, all other entities are subordinate agencies or advisory agencies of the provincial People’s Committee. Such persons determining land prices should be subjective and formalistic, unable to reflect the market price.

On the other hand, there is no principle of “publicity and transparency” and no regulation on “democracy and fairness” in the order and procedures for land price determination. With this mechanism, the land price determination for compensation becomes a “private matter” of state administrative agencies. Legal land users whose land is recovered not only do not have the right to participate in the land valuation but also cannot monitor this process until the land valuation is completed and the people are notified of the land valuation results. The above regulations contradict Article 199 of the Land Law on citizen supervision over the management and use of land. On the other hand, the above provisions have not yet institutionalized Clause 3, Article 54 of the Constitution 2013 as “the land recovery must be open and transparent”.

In that condition, apart from “removing the land price frames”, the Draft provisions barely amended to overcome the above shortcomings. Specifically, Article 163 of the Draft regulations on determining land prices does not have the principle of “publicity and transparency”. Article 165 of the Draft allocates the right

¹⁵Point c, Clause 1, Article 112, Land Law 2013.

¹⁶Land Law 2003.

to determine specific land prices to provincial-level People's Committees under the advice of the Natural Resources and Environment Agency. Point dd Clause 1, Article 163 of the Draft, has the principle of "Ensuring the professional independence, honesty and objectivity of the land valuation results between the valuation agency, the appraisal agency and the decision agency". However, these regulations are insufficient to create a mechanism to ensure that the consultation is "independent, objective and honest", as stated in the Draft regulations. On the other hand, the Draft maintaining the administrative mechanism in appraisal and determining specific land prices is a complete inadequacy.

Secondly, there is a lack of regulations on when to determine land prices. Clause 2, Article 74 of the Land Law 2013 states: "If there is no land available for compensation, the land users shall receive compensation in money calculated according to the specific land price of the type of recovered land which the provincial-level People's Committee decides at the time of the recovery decision". Thus, the Law stipulates the time of determining land prices as the time of "land recovery decision" but does not specify exactly when it is. According to the land recovery process regulations, the competent land recovery agency must issue a notice of land recovery before issuing a land recovery decision (no later than 90 days for agricultural land and 180 days for non-agricultural land)¹⁷. Thus, from the time of the notice of land recovery to the issuance of the land recovery decision is a long period (at least about 3 months for agricultural land or about 6 months for non-agricultural), so what day is the "date for valuation" of land and land-attached assets. Obviously, the "land valuation date" is certainly neither the date of the issuance of the "land recovery decision" nor the date of the issuance of the "decision approving the compensation, support, and resettlement plan" because these two decisions are issued on the same day¹⁸ and the compensation, support, and resettlement plan, which is expected to apply specific land prices, has also been consulted before. Thus, Vietnam law lacks a "valuation date". This makes the requirement of "determining specific land prices" according to the principle of "being suitable with the popular market price" "at the time of deciding to recover land" no longer have the same meaning in nature because the market is different from day to day, from time to time.

Thirdly, there is a lack of regulations on protecting the legitimate rights and interests of people whose land is recovered if the compensation amount is low due to the misvaluation of land use rights. Article 204 of the Land Law 2013 and Article 236 of the Draft still stipulate the settlement of complaints and appeals in the land sector in a general way, without determining the participation and role of the Court in determining the land price for compensation.

According to applicable regulations, after receiving the land recovery decision and decision on approving the compensation, support and resettlement plan, people can choose one of two options: complaints or appeals. Regarding complaints, because

¹⁷Article 67, Clause 1, Article 69, Land Law 2013.

¹⁸Article 3, Article 69, Land Law 2013.

Clause 3, Article 66 of the Land Law allows the Provincial People's Committee to authorize the District People's Committee to recover land, the Chairman of the District People's Committee will settle the complaint for the first time, while the Chairman of the Provincial People's Committee will settle the complaint for the second time (the last one). Thus, people are in a vicious circle because the Provincial People's Committee is the subject of land valuation and compensation and directs the District People's Committee to compensate according to the set land price. Therefore, there are two levels, but it is a subjective will from the Provincial People's Committee, so the complaint is difficult to bring an objective result.

Regarding appeals, currently, according to the guidance of the Chief Justice of the Supreme People's Court, "In case of appeals against administrative decisions in the field of land management on compensation, support, and resettlement when the State recovers land and requests the Court to consider the compensation price, the Court shall base on the land use planning, the purpose of land recovery and the specific land price of recovered land decided by the competent state¹⁹ agency at the time of the land recovery decision to settle the case without conducting the valuation of the land use right." Thus, in both complaints and appeals, there seems to be no way to ensure justice and fairness when determining land prices for compensation is inadequate and misleading.

13. experience of some countries and suggestions for Vietnam

As mentioned above, in the United Kingdom, when stipulating the principle of determining the price of land for compensation, legislators require the application of the principle of equivalence and "no more, no less"²⁰. In addition, according to the experience of some countries, experts of the World Bank said: "The final judgment authority on land prices should be assigned to an organization that is not part of the administrative apparatus. The valuation association is very important in assisting competent agencies in deciding and settling land price disputes...".²¹ On the other hand, on the theoretical basis of the Court's role in the rule of law State, it is possible to clearly define the requirements of the rule of law State expressed in the following way: "The Court is the highest guarantor of the rights of individuals".²² In all advanced countries in the world, the role of the Court is recognized in resolving conflicts over land prices.

In Resolution No. 18-NQ/TW, the Party stated: "The determined land price is often much lower than the land price on the market. The bordering localities'

¹⁹Section 13, Response No. 03/GD-TANDTC dated 19/90/2016 of the Chief Justice of the Supreme People's Court on a number of issues of administrative and civil procedures.

²⁰ Department of Transport, Local Government and Region: "Fundamental Review of the Laws and Procedures relating to Compulsory acquisition of land and Compensation", Final Report, 2000 and Section 5 (2) Land Compensation Act 1961.

²¹World Bank (2011), Compulsory Land Acquisition and Voluntary Land Conversion in Vietnam. Approach, land price determination and complaint settlement of the people, Hanoi, p.70.

²²Nguyen Dang Dung (2004), Judicial institutions in the rule of law State, Judicial Publishing House, Hanoi, p.33.

land price difference has not been thoroughly resolved. There is no sanction to handle violations in land price determination or land use right auction." On the other hand, according to Resolution No. 18-NQ/TW, the applicable land law, "the responsibilities between the legislative, executive and judicial bodies in the role of representing the owner and unifying the state management of land are unclear". To overcome the inadequacies of land prices, the author recommends some contents that need to be improved on land prices as follows:

Firstly, determining land prices must be regulated quantitatively, ensuring publicity and transparency. Limiting the provision of "qualitative" phrases in legal documents is recommended. In the case of using qualitative phrases such as: "suitable with the popular market price", "close to the actual market price", "equal or better than the former residence", etc., it is necessary to have specific instructions to "quantify" these phrases into direct and easy-to-apply regulations.²³²⁴ In the long run, it is necessary to study and refer to the experiences related to legislative and regulatory techniques of developed countries using the "quantitative" phrases, which are convenient in application. For example, instead of "suitable with" the market price, we should use the "quantifying" phrase such as: "equal to the market price" or "equivalent to the market price".

At the same time, the first principle should be added: "The valuation of land must be public, transparent and democratic, and accountability must be implemented." The Draft should publicly specify all land valuation certificates, records, and processes for people whose land is recovered in the local media. Determining specific land prices should proceed in 2 steps, including (i) the Professional process; (ii) the Administrative process. Administrative process (approval of specific land prices) may be participated by the Chairperson of the People's Committee, departments and district People's Committees. However, the professional process (land valuation council) should be implemented by independent consultants. The members of provincial state administrative agencies, if any, must be less than 50% of the composition of the Appraisal Council.

Secondly, the issue of determining the valuation date. In developed countries, the Law provides for valuation date. According to the laws of such countries, the valuation date is the fixed date of the Law to identify all assets under the open market on that day. Accordingly, depending on a specific case, the valuation date is determined according to the following methods:

Firstly, the valuation date is determined after a fixed period from the date of the notice of "compulsory purchase" of land and assets on the land. For example, after 15 working days from the date of the notice of "compulsory land purchase" is the valuation date. This case has the exception that in special cases, the person whose land is "compulsorily purchased" may request an earlier land valuation date; for example, long-term treatment of disease as required by a doctor coincides with the time that the competent state agency plans to set the price.

²³Point c, Clause 1, Article 112, Land Law 2013.

²⁴Point a Clause 1 Article 56, Clause 3 Article 42, Land Law 2003.

Secondly, the valuation date is the confirmation date of the Court when accepting the lawsuit petition to resolve the disagreement on the price of the compulsorily purchased land²⁵.

Thirdly, the proposal to expand the jurisdiction of courts in Vietnam in administrative procedures when settling land price disputes. Specifically, perfecting legal provisions on principle: Requesting the revision of land prices is to request the Court to cancel the land prices in specific administrative decisions because the land price is considered unsuitable with the market and violates regulations on land price appraisal... At that time, the Court will review the decided land price; in case of necessity, the Court is entitled to consult with experts or set up a professional council for evaluation. The result of consultation shall serve as one of the grounds for the Court to decide to reject the petitioner's request in case the land price is determined in accordance with Law and vice versa, the Court shall cancel the land price in the lawsuit decision and request the competent agency to re-determine the land price in each specific case. Accordingly, the Court has the right to request the competent agencies to re-determine the land price for compensation if there are grounds to believe that the land price for compensation is inconsistent with the popular market price under normal conditions. Therefore, Clause 5, Article 236 should be added as follows:

"Where a lawsuit is filed against an administrative decision on land management of compensation, support, and resettlement when the State recovers land and the people request the Court to consider the compensation price, the Court shall base on the land use planning and plan, the purpose of land recovery, the principles and methods of land valuation to request concerned agencies to re-determine the value of land use rights to ensure the principles of publicity, transparency and fairness and proportionality."

14. Conclusion

For unexploited land to be used effectively and become an important resource for the country's socio-economic development, more sustainable land revenue, and the legitimate rights and interests of the people, including settlement, living, and production, to be ensured, the Draft of Land Law needs to be breakthrough. From the perspective of the researcher, to limit shortcomings, minimize complaints and appeals and ensure the implementation of the State's socio-economic development projects, the land recovery for socio-economic development purposes should be amended as follows:

Firstly, it is necessary to delineate the case of land recovery without compensation and the one with compensation and resettlement. It not only contributes to clarifying the two groups of cases but also raises the awareness of

²⁵See Section 5 (2), Land Compensation Act 1961, United Kingdom; Phan Trung Hien: The law of compulsory acquisition of land - Striking a balance Public and Private Interests in the United Kingdom and Viet Nam, VDM, Verlag Dr.Muller, Germany, 2009, pp.156-157.

the executive officer about the legitimate rights and interests of the person whose land is compulsorily purchased.

Secondly, continue to supplement and complete the scope, conditions and specific criteria of the State's land recovery for socio-economic development for the national and public interests in Article 86 of the Draft to distinguish between projects without profit objectives and projects with limited profit objectives.

Thirdly, it is necessary to determine compensation according to the principle of determining damage. All damages must be compensated. The support only applies to cases of ineligibility for compensation, policy beneficiaries whose land is recovered, or funding sources from land recovery enterprises intending to "provide additional support" to the people. On the other hand, it is necessary to specify binding regulations during resettlement implementation. This helps the legislative and executive comprehensively assess the damages of the people whose land is recovered, thereby making regulations fairer, more objective, and more democratic. This corresponds to Resolution 18-NQ/TW's spirit, "creating more equality among land users".

Fourthly, the principle of "publicity and transparency" in determining land prices in Article 163 of the Draft should be supplemented. On the other hand, it is necessary to promote the supervisory role of the state authority agency and the decisive role of the court agency in determining the land price, ensuring that the value of the damage to the people is objective, fair, and proportionate.

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