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Guaranteeing Principles of Equity and Equivalence in Land Valuation when the State Recovers Land in Vietnam

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Abstract

When it comes to land recovery, compensation, support, and resettlement in Vietnam, land compensation and prices are always the main concerns of the mass media. This is because complaints and lawsuits of the people in land recovery are mainly about land prices for compensation. To clarify the criteria to ensure that the land valuation for compensation is equitable and equivalent to the standards of the United Nations and the developed countries, the article collates these criteria with the land law of Vietnam. From there, this article indicates the shortcomings in determining land prices in Vietnam, finds the causes, and proposes feasible and appropriate solutions in the land valuation for compensation in Vietnam to ensure that core factors are equitable and equivalent.

Keywords

Land price, compensation for damage, the balance of interests, etc

JEL Classifications: J11, F43

1. Overview of Land Recovery and Land Valuation for Compensation when the State Recovers Land in Vietnam

1.2 Relevant concepts

As per Clause 11, Article 3 of the (McAuslan, 2013), "*The State recovers land means the State decides to recover land use rights from a person that is allocated land use rights by the State, or from a land user that violates the land*

law." Article 16 of the (McAuslan, 2013) states three cases in which the State shall resolve to reposses land. Specifically, most of the complaints and lawsuits witnessed from 1993 to-date were triggered by the state's decision to recover land on the grounds of enhancing national security or defence; as a matter of national or public interest and or socio-economic development. In this case, people sacrifice a legitimate interest to contribute to the general interests of society and national economic development, i.e., they are credited. Hence, the Law stipulates the procedure to be followed in compensating, supporting and resettling those who are affected. Therefore, the "land valuation" discussed in this article is a land valuation activity used for indemnifying land owners when the State repossesses their land in the enhancement of national security or defence; as a matter of public or national interest or socio-economic development as stipulated in the (McAuslan, 2013) - articles 61 and 62. In addition, it should also be explained that Vietnamese Law does not recognize private ownership of land. The Constitution, the Land Law, and legal documents affirm that the land is owned by the whole people and managed by the State. As a result, instead of using phrases such as "compulsory purchase" (UK), "compulsory acquisition" (Australia), or "eminent domain" (USA), Vietnam uses the phrase "land recovery" ("See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices," 2014)

The State exercises its right to represent its owners by doing land valuation. In accordance with the applicable Law, the cost of land is pegged on "land use rights" as determined for each land area unit. In particular, "the value of land use rights is the monetary value of land use rights for a specified area of land over a specified land use term." ("See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices," 2014) According to Point dd, Clause 4, Article 114 of the (McAuslan, 2013), the land price for land compensation is "specific land price." One of the important bases for specific land price valuation is the land price list It is developed by the "People's Committees of provinces and cities" to concretize the land price frames issued:

According to the definition of the Vietnamese Dictionary, "Valuation is the regulation of commodity prices." Meanwhile, according to the Law Dictionary: "Asset valuation is the final decision on the price of a product or an asset." In addition, as per the definition in Clause 5, Article 4 of the Law on Prices of 2012: "Price determination means provision on prices of goods or services by competent State agencies or production or business organizations and individuals." Thus, "land valuation means that a public authority or organization empowered by the State determines the monetary value of land use rights for a specified area of land over a specified land use term" ("Nguyen Dac Thang and Phan Trung Hien: Principles suitable to popular land prices in the market in the process of determining lthe and price for compensation ", 2019) The land price

determination for compensation when land is repossessed by the State to ensure the principle of "land-use rights protected by law" as stipulated in Clause 2, Article 54 of the 2013 Constitution. On the other hand, *the determination of specific land prices* to calculate land compensation also aims to ensure the principle that "land recovery shall be public, transparent and *compensated* following the law," as stipulated in Clause 3, Article 54 of the 2013 Constitution.

2. Overview of the Process of Developing Regulations on Land Valuation in Vietnam

Reynolds and Marks (1987) is the first law document governing land in Vietnam. This Law stipulates that land has no price, land tax is collected according to agricultural output, and no transfer of land use rights is allowed. With that view, in this period, Vietnamese Law did not raise the issue of land compensation but only raised the issue of new land allocation when the State recovers land. Specifically, it is as follows "when the land in use is recovered for the State or social needs, it shall be compensated for actual damage, and another land shall be allocated" (Reynolds & Marks, 1987). Thus, in the (Reynolds & Marks, 1987), the determination of value of land and specific prices for compensation purposes was not mentioned.

In reference to the (Bisharat, 1993), the concept of land price began to introduce. Article 12 of the (Bisharat, 1993) stipulates that "The State determines the prices of land types to calculate the tax on the land use rights transfer, collect money when land is allocated or leased, calculate the worth of the property when land is allocated, and compensate for damage incurred when land is recovered." However, during this period, the land tax was regulated by agricultural output. "See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices" 2014) Therefore, despite the existence of the concept of "land price," the State has not fully acknowledged the "land price in the market." In calculating compensation to be paid when land is recovered by the state, the guiding documents of the (Bisharat, 1993) stipulate as follows. In addition to the compensation price provided by the State in the land price list, the Law also stipulates a K factor ("The K factor is the ratio between the land price calculated according to profitability or the actual land use right transfer price and the price specified by the provincial People's Committee Section I.1 Circular No. 145/1998/TT-BTC dated November 4, 1998 of the Ministry of Finance guiding the implementation of ") to overcome the inadequacies in the land price specified in the compensation.

In reference to the (Home, 2003), the price of land stipulated by the State shall be "close to the transfer price of land use rights on the market under an ordinary condition, (Home, 2003) with the desire that land price is applied to all instances where it is required to determine the price the state is pay for land

("See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices," 2014). Previously, the government's 27th July 2007 Decree No. 123/2007/ND-CP amending and supplementing several articles of 16th November 2004 Decree no. 188/2004/ND-CP on how the Government determines the price of land and frames of land type price has prescribed that the cost of transferring land use rights is not affected by factors causing a sudden or unreasonable increase or decrease in prices, such as speculation, natural disasters, wars, economic and financial crises, changes in planning, transfers in forced status, blood relations or incentives, etc. Land prices are objective, not influenced by any subjective factors. This concept is true but only theoretical because there is no implementation mechanism.

The (McAuslan, 2013) stipulates that the State's "*land prices* shall be suitable with the popular market price" (Clause 3, Article 112). "*The popular market price* that appears with the highest frequency in the transactions that have been successfully transferred in the market, the land price winning the land use right auction, and the land price determined from the cost and income of the land plots with the same use purpose in a certain area and for a certain period. However, in reality, land prices in this period still have shortcomings and difficulties in the application process. In fact, the most difficult point is the determination of the popular market price by the land market in Vietnam. Therefore, the (McAuslan, 2013) introduced a specific land valuation process, in which there are key steps such as independent valuation, price appraisal at the provincial assessment council and the provincial People's Committee to determine the cost of land.

3. United Nations and Developed Country Criteria for Equitable and Equivalent Land Valuation

According to the general principles of the orientation of compensation valuation proposed by the United Nations, namely, Principles of equity and equivalence in valuation for compensation (Lawson, 2008).

"*Equivalence* - people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land." Researchers have demonstrated a close relationship between land valuation and theories of real estate valuation. Specifically, the origin of real estate valuation theories is derived from the need for land valuation for tax purposes of the State. Therefore, one of the best bases for determining the land market value in land price determination for compensation is to study the background methods in determining the market land prices of real estate valuation theories. It is because, in terms of mere nature, the land is also the most existent type of real estate in the natural world (Lawson, 2008). However, the study also argues that the compensation based on the market price may not fully compensate for the

damage suffered by the landowner because this approach does not consider intangible losses such as mental losses to the land that the owner suffers (Tagliarino, 2017).

- **Balance interests** - Land recovery should also uphold people's land ownership and use rights but still make sure public interest is upheld too. One of the bases for this criterion is the theory of ensuring a balance between the public and private interests in land recovery. (Hien, 2007) Accordingly, in a democratic society, not only do the needs for public purposes need to be prioritized, but the fundamental rights related to private interests also need to be guaranteed. Balancing between public and personal interests is generally understood as respecting the "interests" of the parties in land recovery. It is expressed through the following contents: clarity in the purpose of land recovery, transparency in the land recovery process, the strict mechanism in ensuring the balance of interests between the parties, and compensation commensurate with the benefits that have been taken away. More specifically, land recovery should ensure the following basic contents: (i) The power of land recovery can only be applied under certain conditions, by certain subjects prescribed by Law; (ii) This power shall be exercised in a strict process in such a way as to ensure that the exercising subject cannot abuse their power; (iii) The person whose land is recovered shall be heard not only by the exercising subject of the land recovery power but also by a third subject which is completely independent (Phan, 2021). Therefore, in combination with the content analyzed above, it is necessary to involve the following three groups of subjects:

- + *Firstly*, the subjects represent the public interest: including subjects representing the State.

- + *Secondly*, the subjects represent private interests: including landowners whose land has been recovered and representative organizations protecting their rights.

- + *Thirdly*, the neutral subjects representing objectivity and social supervision include subjects with expertise in land prices and organizations with social supervision functions.

- **Flexibility** - The law should stipulate explicit guidelines and also be flexible to accommodate special cases and determine suitable indemnification. This flexibility can be seen when there is a change in the timing of compensation payments when determining land prices for compensation purposes. However, data on transactions in land registries in countries around the world are generally manipulated for tax purposes. To solve this problem, the authors believe that the Government shall be responsible for researching land price information, price factors, and their impact on land prices to ensure the authenticity of market land transaction data. This, on the one hand, will transparency the land market. On the other hand, private valuation organizations will avoid manipulating data in case they are associated with landowners to provide compensation higher than the actual market value. In addition, according to the authors, when calculating

compensation, most valuation entities only use the market value without considering the concept of stable and sustainable use. These concepts will minimize the possibility of disputes with land owners that are recovered (Vikram & Vã, 2015).

- **Fairness** - There should be a fair balance between the powers bestowed up the agency mandated with recovering land and the people who are affected by the acquisition. Also, the people whose land is recovered (including the poor and the illiterate) should be cushioned from the costs arising from the process (costs incurred should be part of the indemnification). This implies that reasonable costs associated with protecting the rights of the person affected by the land recovery about the price of land for which indemnification is made should be taken into account to ensure fairness, such as the cost of hiring appraisals to represent the landowners whose land is recovered. In particular, common valuation methods that satisfy the above conditions include Market Comparison, Income Method, and Cost Method (Kahr & Thomsett, 2006). Meanwhile, determining the price of land for compensation is determining *the "market" price*. If not specified, it will be determined by assessing their profitability, such as income from the land lease (Kahr & Thomsett, 2006).

- **Transparency** - The exercise of land recovery should be participatory with all interested parties (e.g the government, current owners and occupants as well as non-governmental organisations) involved in the entire process. Moreover, there should be constant supervision and monitoring to ascertain that the agency tasked with the acquisition is held accountable for its. Publicity and transparency are the basic conditions to ensure the objectivity of determining land prices for compensation. The publicity and transparency in the valuation process are expressed in the participation of all parties concerned, the most prominent of which is the participation of subjects whose lands are recovered. In Vietnam, the current Constitution stipulates that "the Socialist Republic of Vietnam is a State of the People, by the People and for the People" (Article 2). However, the special thing is that land owned by the whole people is representatively owned and managed by the State. Thus, the general subject who owns the land and price information, in particular, is not the State but the People. This confirms that Vietnam shall strictly implement publicity and transparency so that all people can know and understand the information published about the land valuation plan.

Thus, the criteria of international organizations and foreign countries related to the topic show that due to the characteristics of the Law on land acquisition and real estate valuation of countries in the world, there are differences in ownership regimes and ways of settlement when the State recovers land.

4. Status of the Law on Land Price Determination and Land Compensation

4.1 Principles of Determining Land Prices

In reference to the (McAuslan, 2013), Article 112, "Land valuation must abide by the following principles:

- Based on the *lawful land use purpose* at the time of land valuation;
- Based on *the land use term*;
- Being *suitable* with the popular market price of transferred land with the same land use purpose, or winning price in auctions of land use rights in case of organizing auctions of land use rights, or the income earned from land use;
- At a time, the adjacent land parcels with the same land use purpose, profitability, and income earned from land use have the same price."

The above principles are fundamental, but to apply them effectively, it is necessary to note the following contents:

First, the principle that land valuation shall be "based on the *lawful land use purpose* at the time of land valuation" means that the amount offered as land compensation must be based on the "lawful land use purpose" of the land plot, which may not be the "actual land use purpose." Thus, if the land plot has been built for a long time, but the land use purpose has not been changed, and the land use purpose on the paper is land for perennial crops, it is only compensated according to the price of land for perennial crops. This principle is very different from the "replacement principle" of the World Bank because the project with ODA capital concerns how people can settle after land clearance. According to the experts of this project, the existence of illegitimate/without permit houses on undocumented land or wrong land use purpose lasting annually is part of the fault of the concerned management agency. Therefore, these projects "apply" many support policies to ensure people's lives after land clearance (Son, 2014).

Secondly, according to the definition of the Vietnamese Dictionary, "*Suitable means matching, corresponding to each other.*" Thus, "*suitable*" in the sense of "*being suitable with the popular market price*" can be interpreted as coinciding with/ corresponding to the market price. From there, it is possible to give the concept of "*land valuation being suitable with the popular market price*" as follows: "*Land valuation being suitable with the popular market price is that the State empowers the competent state agency or the organization to determine the monetary value of land use rights to coincide with the price appearing with the highest frequency corresponding to such land use rights in the transactions transferred in the market, winning the auction of land use rights, land prices determined from costs, the income of land plots with the same use purpose in a given area and for a certain period.*" Thus, if the (Home, 2003) uses the phrase of "close to the transfer price of land use rights on the market under an ordinary condition," the (McAuslan, 2013) uses the phrase of "being suitable with the popular market price."

Thus, the principles of determining land prices in Vietnam do not guarantee the criteria of equivalence and flexibility according to general standards widely applied worldwide.

Methods for land price determination and conditions for application

According to Article 4 of Decree No. 44/2014/ND-CP, currently, in Vietnam, there are the following methods of land valuation:

Firstly, "the direct comparison" method involves valuation of land through analysis of the price of similar empty land plots in terms of how they are used, where they are located, profitability, the state of infrastructure, area, shape, the legality of land use rights (from now termed as comparative land plots) transferred in the market, winning the auction of land use rights for comparison and determination of the price of the land plots under valuation.

Second, the deduction technique is the land valuation technique for land plots with land-attached assets by excluding the value of land-attached assets from the total value of the real estate (including the value of land and the importance of land-attached assets).

Third, the income method is the land valuation method calculated as the quotient between the average one-year net income per unit of land area compared to the average one-year savings deposit interest rate as of the time of land valuation of the 12-month VND deposit at the State Commercial Bank with the highest savings deposit interest rate in the province.

Fourth, the surplus method is the land valuation method for land plots having development potential according to land use planning, construction planning, or allowed to transfer the land use purpose to the highest and best use by excluding the estimated total cost from the total hypothetical development revenue of the real estate.

Fifth, the method of land price adjustment coefficient is the land valuation method using the land price adjustment coefficient multiplied by (x) with the land price in the land price list issued by the provincial People's Committee.

Compared to the previous documents, the (McAuslan, 2013) also stipulates a new valuation method, the method of land price adjustment coefficient. However, in the author's view, "coefficient determination" is resulted from using one of the four methods above for determining land prices; the "coefficient determination" itself does not have the characteristics of a land valuation method. Moreover, *"based on the collected information and the conditions for applying the land valuation method to select the appropriate land valuation method, if applicable, the land above valuation methods can be combined to check, compare, collate and decide on land prices."* ("See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices," 2014)., regarding the information on land prices, successfully transferred land prices in (or near) the land valuation area is common and accessible. The declaration of "difference" in transfer prices leads to the application of the direct

comparison methods – the most commonly used way ever – but it is ineffective. When state agencies gather successfully transferred transactions for the next two years, "fake prices" are collected. Thus, the method of determining land prices in Vietnam has not ensured equivalence and flexibility according to general criteria widely applied worldwide.

5. Entities for Determining the Land Price for Compensation

According to Clauses 3 and 4, Article 114 of the (McAuslan, 2013) and Decree No. 44/2014/ND-CP of 15th May 2014, by the Government on regulating the cost of land, only administrative agencies and their subordinate units are entities who request a valuation and re-valuation of the consulted land. Therefore, land price consultancy organizations will have two following pressures:

- *In terms of administration:* State administrative agencies, headed by the Chairman of the Provincial People's Committee, are the entities managing the issuance of permits and inspecting the activities of consultancy organizations in determining land prices, etc.

- *In terms of economics and business:* State administrative agencies are the main and almost only customers to serve compensation, support, and resettlement activities, whereas a company must satisfy "customers" to survive.

- *In terms of publicity and transparency:* There is no provision for people to monitor the authenticity of this land valuation, while the land valuation affects the price of each square meter of land for compensation under their use rights given by the State.

The compensation depends more or less on valuation of the land for indemnification. Thus, the entities determining the land price for compensation and directly paying compensation are also agencies or subordinate units under State administrative agencies. As a result, the land price is determined not to comply with the principle of "independence and objectivity" under the (McAuslan, 2013) Article 115, Clause 3. In fact, "the market price must be the real value of the goods traded" (Chau, 2013) instead of the land price from the perspective of the state administrative agencies. Therefore, the entities determining the land price in Vietnam have not ensured fairness and transparency according to the general criteria widely applied worldwide.

6. Process for Determining the Land Price for Compensation

- *Prepare a specific land valuation plan:* As per the district-level annual land-use plan and state-owned enterprise equitization plan, the "Department of Natural Resources and Environment" shall prepare a particular valuation of the land plan for the ensuing year and submit it to the provincial People's Committee before the 30th day of June every year.

- *Prepare specific land valuation:* Based on the particular land valuation plan approved by the provincial People's Committee, the Department of Natural

Resources and Environment shall prepare a particular valuation of land, including the following contents: (i) Determining the purpose of land valuation, implementation time and cost estimate; (2) Preparing the document for the land plot to be valued; (iii) Selecting and signing a lease contract with an organization consulting on land valuation if hiring.

- *Investigate, synthesize and analyze information on land plots and market prices*; apply the land valuation methods and develop the land price plan. In the case of hiring an organization providing the consultancy on determining the land price, that organization must create a land valuation certificate.

- *Appraise land price plans*: The "Department of Natural Resources and Environment" shall submit the plan for land value to the Land Price Appraisal Council.

- *Finalize the draft land value plan and present it to the provincial People's Committee for the decision on land price*: (i) Within 05 working days from the date of receiving the appraisal document of the Land Price Appraisal Council, the Department of Natural Resources and Environment shall finalize the draft land price plan and submit it to the provincial People's Committee for decision; (ii) Within 05 working days from the date of receiving the written proposal of the Department of Natural Resources and Environment, the provincial People's Committee shall be responsible for deciding the land price; (iii) The Department of Natural Resources and Environment shall archive all specific land valuation results in the locality; gather statistics, synthesize and report to the Ministry of Natural Resources and Environment the specific land valuation results in the locality annually before January 15.

Inland price determination, there are no rules on publicizing land value determination documents or land value appraisal results before people with recovered land, which puts them in 'already' status without disagreement, complaint, and sue. Thus, the people with recovered land have been deprived of the right to consult and monitor during the land valuation process for compensation upon the State's land recovery. Therefore, the land valuation process in Vietnam has not ensured fairness and transparency according to general criteria widely applied worldwide.

7. Consultancy on The Determination of Land Price for Compensation

Clauses 1, 3, 4, Article 115 of the (McAuslan, 2013), and Articles 17 and 19 of Decree No. 44/2014/ND-CP stipulate the following issues:

Principle: The determination of land price by consultancy must be independent, objective, honest, and follow the directions and methods of land valuation, order, and content when developing the land price frames, land price list, and specific land valuation.

Authority for selection: Based on the specific land valuation needs in the locality, the "Department of Natural Resources and Environment" shall prepare a particular valuation of the land plan, present it to the provincial People's Committee for approval, and execute the approved strategies. Selecting organizations providing the consultancy on the specific land price determination shall be in accordance with the stipulations of the legislation on bidding.

Validity: The land price determined by consultancy is among the grounds for the legal state agencies to stipulate and determine the land price. Compared with the (Home, 2003), Clause 3, Article 57 of the (Home, 2003) previously identified valuation certificates as "for reference only in the process of state management of land finance."

In reference to the (McAuslan, 2013), determining the validity of the valuation certificates is "*one of the grounds* for competent state agencies to stipulate and decide the land price list" (Clause 4, Article 115). According to the valuation process, the specific land valuation must be decided by the 'Department of Natural Resources and Environment to make a specific land valuation plan for the next year and submit it to the provincial People's Committee.'" However, there are no regulations for the Department of Natural Resources and Environment and the provincial People's Committee to "consider" this valuation certificate and people's monitoring rights. Therefore, it makes no sense for people to hire an organization providing consultancy. That the order and procedure for implementing and evaluating the land price plan are regulated expresses the State's desire to create a specific mechanism to build land prices following market prices. However, the applicable Law lacks regulations on the third entity competent to inspect and monitor and having sufficient "rights" (authority) and "resources" (people and database on land) to consider the legitimacy and veto the land prices when there are adversities for land users. Thus, determining land prices in Vietnam has not ensured balanced interests and transparency and has not followed the general criteria widely applied worldwide.

8. Time of Land Price Determination for Compensation

Although the Law of Vietnam stipulates that "*indemnification is done by allotting and with the same use purpose as that of the recovered land,*" this seems impossible in many cases for the following reasons: (i) First, the local land fund is insufficient to allocate to all households because the consistent factors between the people with recovered land in the same project and the people with recovered land in different projects in the same area must be taken into account. (ii) Second, it isn't easy to calculate the level of equivalence and difference among land plots because the land prices set by the State, in many cases, do not accord with the actual transfer price.

According to the regulations on land recovery procedures, before issuing a decision on land recovery, no later than three months (90 calendar days) for agricultural land and six months (180 calendar days) for non-agricultural land,

the legally responsible agency must give notice of land recovery.¹ Thus, it takes a long time from the land recovery notice to the issuance of the land recovery decision (at least about 90 calendar days for agricultural land or about 180 calendar days for non-agricultural land), then the "valuation date" of land and land-attached assets is. Of course, the "land valuation date" is certainly neither the date the "land recovery decision" was issued nor the date of issuance of the "decision to approve the compensation, support, and resettlement plan" because these two decisions are issued on the same date² and the compensation, support. The resettlement plan is expected to apply specific land prices and be surveyed earlier. Thus, our Law lacks the "valuation date." In developed countries, the Law provides the valuation date. According to these countries' laws, the valuation date is a fixed date to determine all assets in the open market on that day. Accordingly, depending on a particular case, the valuation date is determined using the following methods:

First, the valuation date is determined after a fixed period from the notice of "purchasing" land and land-attached assets. For example, the valuation date is after 15 working days from the date of the information of "purchasing land." An exception, in this case, is that the owners whose land is "purchased" may request a sooner date of land valuation, like a long-term treatment at a doctor's request when the competent state agency expects to determine the price.

Second, the valuation date is when the Court confirms to accept the lawsuit petition for settling the disagreement on land purchase price ("See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices," 2014)

Thus, the absence of express regulations on determining land prices in Vietnam affects the balance of interests and transparency according to general criteria widely applied worldwide.

9. Involvement of Judicial Authorities in the Land Valuation Process

Vietnam's laws and judicial practices create a distinction between remedies under civil Law and Administrative Law, and it affects compensation issues. If private individuals or non-state organizations cause the damage, court remedies under civil procedures will be available. However, if the damage has been caused during the state acquisition process, administrative remedies. (Vo, 2012). Experience in Land Acquisition of Several Countries in the World, Order article of Information Centre, Library and Scientific Research, National Assembly Office (Hanoi, October 2012). Constitutionality of Compulsory Land Acquisition in Vietnam 15 rather than remedies under civil procedures would be available, and only some may resort to the administrative Court to resolve the dispute. (NY,

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

²Clause 3, Article 69, Land Law 2013.

2006) It should also be noted that the judiciary as guided by the Chief Justice of the Supreme people's court, Vietnamese courts do not arbitrate in land value lawsuits. "See Article 8 of dated June 30, 2014, by the Minister of Natural Resources and Environment on detailing land valuation method; developing and adjusting the list of land prices" 2014) although the Administrative Procedure Law 2015 does not restrict this right. (Slight III & Powers, 2015) "The concern is that the judicial revaluation of a household's parcel of land might lead to more lawsuits. If a litigant were successful in obtaining compensation through the court process that is higher than originally determined at the administrative level, other households in the same project who had received lower compensation might well demand a greater amount of compensation for their land acquired.

Thus, not allowing participation in the revaluation of land in Vietnam does not ensure the balance of interests and fairness according to the general criteria widely applied worldwide.

10. Some Proposed Solutions

To ensure that the determination of land price for compensation in Vietnam follows the principle of equity and equivalence according to the general standards of the United Nations and the developed countries in the world, the author has some recommendations as follows:

First, the "qualitative" phrases should be limited in legal documents. In the case of using qualitative terms such as "per the prevailing land price in the market," "close to the actual land price in the market," "equal to or better than the old place," etc., specific instructions to "quantify" these phrases into direct, easy-to-apply regulations are required. In the long term, it is necessary to study and refer to the experiences related to legislative and planning techniques of developed countries using the "quantitative" phrases for convenience in the application. For example, instead of the phrase "consistent with the market price," we should use the "quantitative" phrases such as "equal to the market price" and "equivalent to the market price." In the UK, when regulating the principle of compensation, legislators stipulate that the compensation must be "proportionate" to damages and ensure that the compensation and damages must be "no more, no less.

Everyone understands that the Law is relative, but if the legislators use the "quantitative" phrases," it facilitates the executors' application. The effectiveness of the Law is not only assessed through the highfalutin words, wishes or goodwill, but more importantly, the regulation must be concise, simple, and mass. This is the foundation for ensuring fairness in the enforcement process and applying the same "responses" in similar cases. However, the enforcement occurs in different localities and by various competent entities. This shows that the regulations not only emphasize simplicity, directness, accessibility, and application but also consider the equity between the entities, i.e., no one has more or less compensation than the damage.

Second, a mechanism for people to participate in the exercise of developing land price lists and deciding on specific land prices should be developed because they cannot stand aside when other people value their assets. Suppose the local authorities ensure that the price list issued by the local authorities is "in line with" the market price of land. In that case, the collection of tax by the actual transfer price is no longer necessary because the difference between the prescribed price and the actual one is not significant. It is recommended to amend (McAuslan, 2013), detailing some articles of the 2007 Law on Personal Income Tax, amended and supplemented in 2012 towards the personal income tax by the state price list.

Third, the valuation date should be determined by the Law. Stipulating the valuation date will ensure the principle of determining the land price "in line with the market price" because, in case of market fluctuations, the state agency can completely explain why the state agency valued the land on "this day" instead of "another day." At the same time, specific guidelines are required to segment sub-projects. If we follow the rules of market development, we have to accept the difference among timelines to an acceptable extent within the provisions of the Law.

Fourth, equal positions in the complaint settlement process (Phan, 2009) in Vietnam, particularly in the land sector, should be established. It is difficult to ensure fairness when the land recovery party is also the party presiding over the settlement of complaints. A room with two similar parties in the form of roundtables should be set. The participation of legal consultancy agencies and organizations such as legal aid centers, members of bar associations, and the Democratic and Legal Counsel under the Vietnam Fatherland Front (where this Council was established) should be ensured, and they must have access to settlement documents.

Fifth, a mechanism to determine land prices according to market prices should be developed. First, it is necessary to clarify the concept of market price towards determining the compensation price that people can "transfer" in the free market. In the UK, this principle is based on the "open market value," which means that it must be established based on the following requirements: (i) it reflects the will of the seller in the free market; (ii) the seller is fully able to earn its price when selling the asset in that market; (iii) the value of indemnification is pegged on the total worth and use quality of the current asset ("The K factor is the ratio between the land price calculated according to profitability or the actual land use right transfer price and the price specified by the provincial People's Committee Section I.1 Circular No. 145/1998/TT-BTC dated November 4, 1998 of the Ministry of Finance guiding the implementation of ").

Although it is known that Vietnam's market is unstable and incomprehensive, the market price can still be determined. For instance, on the one hand, Mr. A believes that the land price for compensation is low and not in line with the market price. On the other hand, the "district-level People's Committee" - the entity approving the compensation plan - believes that such

land price is consistent with the market price. What is the solution when the two entities are not on the same page? According to the author's proposal, the *open pricing process* in 6 steps should be carried out as follows:

Step 1: Assets in question are notified of going through an *open pricing process* in the local mass media. This case will be broadcasted live or briefly on local television.

Step 2: The state agency and the person with recovered land (Mr. A) have the right to choose to hire the valuation enterprise³, up to two valuation enterprises per party.

Step 3: These enterprises, in turn, come and value land and houses (if any) independently. Valuation certificates independently produced by valuation companies will be respectively sealed in the valuation box in front of the camera of the broadcaster, the public, and the inspection agencies.

Step 4: After having all the valuation certificates sealed in the valuation box, the authorities or representatives of civil organizations will open and read the valuation certificates on behalf of the parties in turn. The camera can record the certificates directly for everyone to see.

Step 5: The compensation price will be the average price of land valuation certificates. This is the final price, except that one of the parties detects a negative factor such as "collusion," "fraud," etc.

Step 6: The state administrative agencies will receive the payment receipt for valuation costs from the people and deduct the project funds to pay these costs. This is simply because people have the right to be consulted, and the state agencies in charge must consult them or pay for them to be consulted independently. This process ensures the following factors: (i) This is the process for the market to speak up, ensuring that the principle of land price for compensation is equivalent to the market price; (ii) This method limits the "collation" between the state and local administrative agencies because the customers of the valuation enterprises are very diverse and may not state administrative agencies; (iii) Because the valuation is public and transparent in public, the valuation enterprises will state the right price to build and preserve their reputation and trademark.

Sixth, the new point of the (McAuslan, 2013) is to use specific land prices for indemnification upon land recovery by the state. Considering the provincial People's Committee's decision on the particular land price as the process of issuing a separate decision, this decision may be the entity of complaints or lawsuits. At that time, the Court may also consider the legitimacy of individuals and value reached by the provincial People's Committee in approving the compensation plan. If this is recognized, the (McAuslan, 2013) opens a new page for administrative proceedings in Vietnam. However, the official recognition and application of this article require written instructions (Phan, 2021).

³ It can be a state-owned enterprise or not a state-owned enterprise that operates legally in Vietnam.

11. Conclusion

In summary, to ensure that the determination of land price for land compensation is "equivalent and objective" under the principles in the Constitution and the (McAuslan, 2013), the author has some recommendations such as (i) in the process of determining the land price for land compensation, the principle of equity and equivalence of the decision-making power of both parties, the State and the people with recovered land, should be guaranteed; (ii) The price of recovered land should be determined to be equivalent (or equal) to the market price at the time of recovery with the inspection and supervision of an independent third party on land valuation; (iii) the valuation date must be specified; (iv) People should be entitled to request a valuation, and the valuation certificates should be treated fairly with those that the State hires; (v) People hire legal consultants to defend their interests and represent them to defend their legitimate rights and interests. The costs of consultancy and valuation must be included in the project's funding to ensure that people have the right to be consulted.

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