

THE WORLD BANK

POLICY NOTE

**Improving Land Acquisition and
Voluntary Land Conversion in Vietnam**

Ha Noi

June, 2009

Acknowledgement

This report was prepared by Prof. Dr. Dang Hung Vo, former Vice Minister, Ministry of Natural Resources and Environment in collaboration with General Department of Land Administration, Ministry of Natural Resources and Environment. The report was commissioned by Sustainable Development Program of the World Bank office in Hanoi with the aim to help MONRE to improve land conversion process to achieve more sustainable development in such a rapid urbanization and industrialization process. The project team leaders at the World Bank were Dr. Pham Thi Mong Hoa, Senior Social Development Specialist and Daniel Gibson, Senior Social Scientist. The peer reviewers were Reidar Kvam, Latin America Regional Safeguard Adviser and Jose Vicente Zevallos, Senior Social Development Specialist. The comments were also received from Nina Bhatt (Social Development Specialist) and many land related specialists from different agencies and organizations in Vietnam. General Department of Land Administration has effectively helped to organize the workshops in Hanoi and Ho Chi Minh City to discuss the finding. Dinh Thuy Quyen (World Bank) helped with logistics arrangements for the study. The task team would like to thank all these people and organizations for their meaningful contributions to the preparation and finalization of the Policy Note. Special thanks go to Douglas Graham, Environment and Social Sectors Coordinator and Hoonae Kim, Sector Manager of the Sustainable Development Program in Vietnam for their guidance and support.

Any errors in the text are the sole responsibility of the authors, and the views expressed in this document are those of the authors.

Contents

| | |
|--|----|
| Acknowledgement | 2 |
| Executive Summary: | 5 |
| I. Introduction | 14 |
| II. Analysis of Vietnam Land Legislation System on the Compulsory Land Acquisition Measure | 22 |
| 1. History of Legal Regulations on Land Acquisition and Conversion in Vietnam | 22 |
| 2. Analysis of existing land legislation on compulsory and voluntary conversion measure in Vietnam..... | 24 |
| a. The compulsory land conversion measure: | 24 |
| b. Voluntary land conversion measure:..... | 28 |
| c. Reviews on strengths and weaknesses of the two land conversion measures: | 29 |
| 3. Theoretical and practical justifications and legal regulations on land compensation and resettlement in Vietnam..... | 31 |
| a. The political economy arguments on land in Vietnam..... | 31 |
| b. The conversion of agricultural land to non-agricultural land - an indispensable demand of the development process | 32 |
| c. The main regulations of Vietnam land legislation toward social sustainability associated with the land conversion process | 33 |
| III. Analysis of land acquisition implementation practices in Vietnam..... | 36 |
| 1. Assessment of land conversion practices under the local leaders' point of view | 36 |
| 2. Assessment of land conversion practices under the investors' point of view | 39 |
| 3. Assessment of land conversion practices under the affected people's point of view | 40 |
| 4. Compulsory land acquisition in implementation practice of Vietnam | 42 |
| a. Land legislation awareness and understanding | 42 |
| b. Inspection procedure to land legislation implementation and the supervision participation of the people | 43 |
| c. Participation of people and community in compulsory land acquisition measure in Vietnam | 44 |
| IV. Possible applications of the international and domestic experiences to practices in Vietnam | 45 |
| 1. Assessment of the applicable experiences from international projects to Vietnam | 45 |
| Possible application of the benefits-sharing policy to projects with huge social and environmental impacts: | 48 |
| b. Possible application of the land pooling/readjustment policy: | 49 |
| c. Possible application of the transferable development right policy: | 51 |

| | |
|--|----|
| 2. Assessment of the applicable experiences from some other countries to Vietnam..... | 52 |
| a. The Chinese model of land conversion | 52 |
| b. The Korean model of land conversion | 53 |
| 3. Assessment of the applicable experiences from domestic pilot implementations | 53 |
| a. Assessment of expansion in scope of application of the mechanism in which current land-users contribute land value or compensation value as the shares of the project in the compulsory land conversion measure | 53 |
| b. Assessment of the possible supply of land compensation and ground clearance services made by enterprises | 54 |
| c. Some aspects of the land price assessment procedure piloted in Ho Chi Minh City... | 55 |
| V. Proposal to innovative or alternative practices in land acquisition in Vietnam..... | 56 |
| 1. Proposal to reform the voluntary land conversion measure:..... | 56 |
| 2. Proposal to reform the compulsory land conversion measure: | 58 |
| 3. Proposal to identify the proper limit between the compulsory and voluntary land conversion measures:..... | 59 |
| 4. Some measures to improve efficiency of implementation practice..... | 61 |
| a. Capacity building for the land administration system and raising public awareness of land legislation:..... | 61 |
| b. Strengthening inspection and supervision of the land conversion implementation:.... | 61 |
| c. Creating mechanisms to facilitate the communities and people subjected to land recovery to directly participate in the process of land recovery, compensation, supports, resettlement..... | 62 |
| VI. Conclusion and the next step of the study | 64 |
| ANNEX: | 66 |
| Appendix 1: Legal regulation documents on land related to the land conversion measure during the period 1987-2003..... | 66 |
| Appendix 2: The legal documents on land related to the land conversion measure during the period from 2004 up to now | 72 |

Executive Summary:

Context

Successive policies of the Government of Vietnam for economic reform and modernization have helped Vietnam to emerge as one of the world's fastest growing economies. Early renovation policies of the Doi Moi in the mid 1980s focused on the reallocation of agricultural land held by cooperatives to households and individuals. This resulted in substantial increases in production, turning Vietnam into the third largest exporter of rice at that time. Further policies in the 1990s focused on industrialization, resulting in a reduction in the significance of agriculture in the country's economy to 20 percent of GDP in 2007 and increases in the contribution from industry and services to 42 percent and 38 percent respectively in 2007. As part of the progress, substantial amounts of land are being converted from agriculture to non-agriculture use with corresponding changes in land user.

Land laws and policies have evolved over time to find pragmatic solutions to merge socialist ideology with regard to land ownership, with the demands and pressures of an emerging modern market economy, and to redefine and refine the relationship between land, the people, investors, and the State (Table 1).

Table 1. Evolution of Laws and Policies relating to Land

| Policy document | Year | Key points relating to land |
|--------------------------------|-------------|---|
| <i>First constitution</i> | <i>1946</i> | <i>Article 12: "private ownership right on properties of Vietnamese people secured"</i> |
| <i>Agrarian Reform Law</i> | <i>1953</i> | <i>Land ownership to be removed from land lords and passed directly to tenants</i> |
| <i>Second Constitution</i> | <i>1959</i> | <i>Article 11 recognized State ownership (people's ownership), collective ownership, individual ownership, and national capitalists ownership on main materials for production including land. Agrarian ownership of peasants recognized but cooperatives encouraged.</i> |
| <i>Third Constitution</i> | <i>1980</i> | <i>Only whole people ownership recognized (Article 19), land systematically managed by the State (Article 20). State allocates and recovers land according to plans. Land used by agricultural cooperatives but production was low.</i> |
| <i>Doi Moi</i> | <i>1985</i> | <i>Land used by agricultural cooperatives allocated by State to households and individuals for permanent stable use. Land offices and land administration system established</i> |
| <i>First Land Law</i> | <i>1987</i> | <i>Rights of households and individuals to use land were recognized. All land transactions decided by the State and no land values or land market recognized.</i> |
| <i>Fourth constitution</i> | <i>1992</i> | <i>Accepted a State-managed market economy. Land owned by whole people (Article 17), land managed and allocated by the State to organizations, households and individuals (Article 18).</i> |
| <i>Second Land Law</i> | <i>1993</i> | <i>Whole people ownership recognized only, but land has a price defined by the State. Households have rights to exchange, transfer, inherit, lease, and mortgage land. State's compulsory land recovery only means to acquire land for development projects. Economic organizations can access land only via leasing land from the State.</i> |
| <i>Land Law Amendments and</i> | <i>1998</i> | <i>(i) Domestic economic organizations can access land via allocating land from the State for housing development projects and land-</i> |

| | | |
|-------------------------|------|---|
| <i>Supplementations</i> | 2001 | <i>infrastructure exchange-based projects; (ii) Domestic economic organizations can receive land via land transfer, lease and contribution as capital from households and individuals; (iii) improved mechanism of land recovery by the State from current land-users for investment projects and compensation and resettlement for users whose land was recovered.</i> |
| <i>Third Land Law</i> | 2003 | <i>Whole people ownership recognized only, but rights and responsibilities of land authorities and rights and obligations of land users clearly identified. Market price of land recognized. Domestic economic organizations can access land based on option of allocating land or leasing land from the State. Equity between foreign and domestic investors improved. Limits to compulsory land conversion applicability, voluntary land conversion introduced. Regulations on compensation and resettlement. Land administration system improved, supervision improved, system for complaints and dispute resolution improved.</i> |
| <i>Decree 84</i> | 2007 | <i>Identifies the conditions to recognize land use rights of current users with no legal documents. Permits foreign investors to undertake housing development projects in commercial purpose. Stipulates transparency and dissemination of compulsory land conversion procedures, guarantees benefits to affected land users</i> |

However, despite this constantly evolving framework to improve land management, the Ministry of Natural Resources and Environment (MoNRE) recorded more than 30,000 petitions of land disputes, complaints, and denouncements sent to them between 2003 and 2006. This steadily increasing number of complaints, and general dissatisfaction from affected people and investors alike, demonstrates the need for further clarification and refinement of the laws.

The Government of Vietnam has therefore requested assistance from international donors and organizations to help them study the issues, and recommend improvements to be incorporated into the proposed law on amendments and supplementations of Land Law. This note is based on a World Bank-funded study carried out in cooperation with the General Department of Land Administration, MoNRE. The objective of the study was to assess the issues relating to involuntary and voluntary land conversion in the current laws and policies, and the implementation of these laws, and to propose improvements to be considered in the preparation of the Law on amendments and supplementations of Land Law scheduled to be passed in 2010.

A. Recent Evolution of Legislation relating to Land Conversion and Acquisition

Second Land Law 1993

Prior to Land Law 2003, the policy framework (based on the Land Law 1993) covered only compulsory land acquisition. Land conversion was subject to administrative decision by State authorities. The investor acquired land for an investment project was required to pay a land use fee, or land rental, to the State as well as compensation to the previous land users. The State only had the right to recover land to use for national defense or security purposes, or for national or public interest, however, in practice recovery of land by the State was also carried out for economic investment projects from which the investor profited. Investors found the recovery process complicated and awkward as they had to negotiate compensation with the current land users, as well as negotiating with the province, district, and commune level committees - often involving informal procedures and informal expenses. Also, during the first five years of implementing compulsory land conversion under the 1993 Land Law, the land price was regulated by the provincial people's committees in accordance with the land price regulated by the government and was only about 10 – 30 percent of the market price for land. Land users whose land was recovered were unhappy about

the unsatisfactory land compensation and investors were unhappy about the complex process. Moreover, complaints sent to the local people's committees received little or almost always no response, and were forwarded on to higher levels of government. Increasingly people gathered at the government offices requesting direct settlement and it was clear that changes needed to be made.

Land Law of 2003

The third Land Law of 2003 introduced voluntary land conversion based on mutual agreement between the investor and land-users about whether to transfer the land, lease the land, or contribute it as capital. Compulsory land acquisition is based on administrative decisions issued by authorized State bodies. Some basic principles in the current law area as follows:

- *All land acquisition must be in accordance with land use planning approved by the State authorities and publicized. Land users may not change the land use purpose unless it is in accordance with these planning.*
- *Compulsory land conversion is to be used when converting land for (i) national or public purpose, (ii) for investment projects with 100% foreign funds (including Official Development Assistance (ODA) and foreign direct Investment (FDI)); (iii) implementation of special economic investment projects such as infrastructure for industrial zones, services zones, hi-tech parks, urban and rural residential areas and projects in the highest investment fund group.*
- *Voluntary land conversion measure is applied in cases of land converted for implementation of investment projects by domestic investors that are not subjected to compulsory land conversion measure; or where the compulsory land conversion measure can be applied but the investors volunteer to conduct the voluntary land conversion measure.*

The other provisions are made with respect to compulsory land acquisition as follows:

- *The land price stipulated by the Provincial People's Committee must be in accordance with market price of land, and the market price should also be used to determine compensation.*
- *The state authority authorizing land recovery is also responsible for the implementation of compensation and resettlement in accordance with approved procedures.*
- *Investors receiving land allocated by or leased from the state are obliged to pay land use fees or land rental at market rates.*

Voluntary land conversion is clearly regulated and the procedures are simple and meet international standards. It has been used for a number of commercial investment projects and initially worked well. However, after some years problems started to arise whereby some of the current land users demanded price above market rate and investors, having acquired a large proportion of the land at market rate were unable to complete the land acquisition for a specific project. No procedures were laid out in the prevailing legislation for addressing this situation.

B. Stakeholder views of, and participation in land conversion practices

Local leaders views of land conversion practices

The views of local leaders was gained through public media, local reports to central authorities or legal documents issued by provincial authorities in the central cities in three key economic regions: Hanoi, Ho Chi Minh City, and Da Nang.

*The point of view of the leaders in **Hanoi**, where the land price is the highest in Vietnam, is that the land price should be closely controlled by the State and the market price should not prevail as per the regulation, as this was not in line with local practices. Therefore, the land price in Hanoi was set at 50 - 70 percent of the market price for land. Leaders in Hanoi also felt that other aspects of the regulation such as compensating with a non-agricultural parcel near a commercial area where more*

than 30 percent of agricultural land was lost, was impractical. Local authorities did not support voluntary land conversion as they felt it obstructed investors as long as there was no legal provision to deal with the situation where a few land users may not agree reasonable price and hold up a project implementation, and also because the land price under voluntary conversion would always be higher than under compulsory conversion leading to inequity.

On the other hand, resettlement in Hanoi is efficiently managed with tens of thousands of apartments prepared for resettlement. However, the quality of housing, and location, is often an issue and it has been found that most resettled families sell the house they were resettled to and move to a location more appropriate for their lives.

Da Nang is well place to become the urban center of the Central part of Vietnam. The leaders have focused on planning and infrastructure development to make a modern city. Da Nang has applied its own approach to land and the land value is used as the main income for the local government budget which is then used for developing local infrastructure, arranging resettlement on a large scale, executing land recovery associated with land pooling/ readjustment policies under the responsibility of the People's Committee of the city. Local banks are accountable for credit granting and paid back from local budget with the income from land revenue. Land conversion is based on the procedures for compulsory land conversion and consensus is reached between local authorities and the people. Da Nang has successfully raised income by recovering more land than is necessary for specific infrastructure projects and then tendering the excess land for servicing and commercial use.

The most important economic center in the southern provinces is **Ho Chi Minh City**. Many investors there used voluntary land conversion prior to 2004 and have preferred to use it after even where compulsory land conversion would apply. The city leaders apply a market oriented approach to land and land compensation is determined in accordance with the market price of land based on land price assessment supplied by the price evaluation service organizations. The two organizations providing this service are the Southern Center for Consulting and Price Assessment Services of the Ministry of Finance and the Center for Price Assessment of the Ho Chi Minh City Department of Finance. Non-state owned enterprises are also allowed to provide the services to land compensation and resettlement.

Investors view of land conversion practices

Opinions of investors were collected from various meetings that have been held between investors and government. The results showed that problems were at a peak between 2002 and 2004 prior to introduction of the new Land Law. Most of the issues raised were related to land administration procedures - especially land access, and the land rights of enterprises. Problems with land administration procedures reduced for a while but increased again in 2007 as issues with investment locations, and dealing with situations where a few current land users blocked project progress, became more troublesome.

Affected people's view of land conversion practices

In 2005 MoNRE executed a supervision of the implementation of the land law in all localities. Land users with complaints met with the supervising missions to lodge their complaints. These complaints were analyzed and classified, and it was found that 70 percent were related to improper execution of land compensation and resettlement; the remainder related to land legislation violations by administrative offices, complaints against administrative decisions on land dispute settlements, claims for land being used by other people. Of the 70 percent relating to improper execution of land compensation and resettlement, 70 percent (or half of all complaints) were related to the large discrepancy between the land price applied for compensation and the market value of the land. The majority of these were regarding the low price for agricultural land due to the method based on the profits from agricultural production, according to the law.

Awareness

Although the legislation has been continuously improved and updated, the MoNRE supervision review found that district and commune land officials do not correctly understand the 2003 Land Law and the guiding decrees. Most of them still refer to legislation and procedures in the 1993 Land Law. MoNRE regularly carries out workshops whenever there are changes in the legislation however, these do not appear to have been effective in really improving the understanding of the laws.

Among the public, the awareness is even worse, and there is a very poor understanding about people's rights relating to land, especially among ethnic minority groups or in rural areas. Arguments made in complaints rarely refer to the legal justification for the claims.

Participation

Most of the current compulsory land acquisitions are dealt with by the Board of Compensation and Ground Clearance (BCC) established by the District People's Committees. This board is responsible for all aspects of land recovery, compensation, and resettlement. Their activities are based on administrative procedures and participation by communities, social associations, and affected people is still poor. Throughout the country the procedures are similar and largely administrative. Socio-economic factors such as the unique circumstances of ethnic minorities, are not always taken into consideration. On the other hand, the lack of participation may also lead to higher than necessary compensation costs as it precludes negotiation with communities on innovative solutions that may be to mutual advantage.

Supervision

MoNRE has stated their view that higher administrative authorities are responsible for periodical supervising the implementation of land legislation by lower authorities. MoNRE undertook a country-wide supervision of implementation of the Land Law in 2005, and in 2006 they continued but with a specific on cases where (i) approved land use planning could not be implemented; (ii) land compensation/resettlement could not be completed after the land recovery decision had been made; (iii) where projects were not implemented after land had been acquired. Prior to their missions, MoNRE publicized its schedules and set up a "hot line" for receiving emails, phone calls, and post mail from people and enterprises to gain information about violations in the area. They received thousands of responses and concluded that people were ready to participate in supervising implementation of the Land Laws.

C. Issues with current legislation and its implementation

Compulsory land conversion

An analysis of the current procedures for compulsory land conversion raised the following issues:

- *There are currently two types of Implementing Unit for Land Compensation and Ground Clearance. The first is the Land Development Organization (LDO). This is a permanent organization established by the Provincial People's Committee that is responsible for recovering land according to land use planning and not for specific investment projects. They are responsible for land recovery, managing recovered lands, conducting land auctions for investment projects, and transferring land to investors. The second is the Board for Land Compensation and Ground Clearance (BCC), which is temporary committee established under the District People's committee to work on land compensation and resettlement for a specific project. This committee follows administrative regulations and not market mechanisms.*
- *When land recovery is carried out according to land use planning and not for specific projects, the land is evaluated in accordance with current use, but the recovered land may then lie unused for some time because of no interested investors. However, when land recovery is carried out for*

specific projects the market price tends to be higher and current users more dissatisfied if the higher price is not applied for land compensation.

- *It has not been clarified whether the LDO is a public service organization, a state owned enterprise, or a non-state owned enterprise. The LDO needs operational funds but is unable to request a loan from a commercial or investment bank.*
- *Although the law calls for market price of land to be used in assessing land compensation there are no procedures set out for the assessment of market values of land. In practice therefore, the Provincial People's Committee still establishes the price and there are no methods for those that do not agree with this price to establish and justify an alternative in order to make their case.*
- *Under the land legislation, the price of agricultural land is established based on the profit gained from agricultural production, which gives a very low price. In cases where agricultural production land is converted to non-agriculture land, the price after conversion would be considerably higher. Current legislation allows for an addition of 20 - 50 percent of the value of the residential land to be applied in cases where the agricultural land is in a single parcel with the residential property, but this is not sufficient to cover other cases.*
- *A general principle of the current Land Law is to ensure sufficient support for land-users whose land is recovered so that they can restore their livelihood, change of job, and lost income. However, compensation and support is still delivered all at once when the State recovers the land, the compensations for losses of non-monetary benefits and long term benefits are not fully and reasonably considered. Also, a number of regulations are impractical or are not welcomed by the Provincial People's Committees, and affected land-users may not be fully compensated for the losses recognized by legal regulations. The biggest impracticality associated with the regulations relates to opportunities for affected land-users to change their job and restore their livelihood. Affected farmers may not be qualified for a job in the non-agricultural sector, and local government and the investor may not be proactive in looking for practical solutions to this issue. A number of solutions have been proposed in cases where land recovery causes people to lose their livelihoods. One such solutions is to provide agricultural land users who lose more than 30% of their land with a plot of commercial land near industrial zones or residential land in urban areas.*
- *Compensation and support are not considered in association with the investment project concerned, i.e. the compensation and resettlement for affected land-users and the land allocation for investor are conducted in two separate processes. On the one hand, the investor wants to follow their own investment plan without considering their further responsibility for the affected land-users, while on the other hand the local government considers that their responsibility is to be ended after the compensation, supports, resettlement process is completed.*
- *Current regulations are not specific on the rights of people living on recovered land with respect to benefit sharing. Investors may be requested to "voluntarily" contribute roads or other public infrastructure though this may actually be a payment required from them to speed up land transactions.*
- *Only when resettlement site is ready can the decision to recover residential land be issued. The resettlement conditions must be better or at least equal to the original living conditions and the resettlement area must be planned as a part of the whole provincial planning with access to good infrastructure conditions. However, these principal regulations are often not fully followed in implementation. People subjected to lost house often have no option in selecting resettlement locations but have to follow what is decided by authorized State body. Resettlement sites are often of poor quality, in remote areas where land price is low, and cultural, spiritual, belief values are not considered in resettlement site planning.*
- *The Land Law and its guiding decrees of Government have step by step provided fairly clear eligibility criteria about compensation, supports, resettlement for land-users that hold no Land*

Use Right Certificate (LURC). The Land Law provides specific regulations on what land use deeds are to be an alternative to the LURC. The guiding decrees of Government go even further by defining cases that land-users holding no land use deeds are eligible for compensation, support, resettlement when their land in current use is recovered by the State. These are regulations with a high social aspect, aiming to protect the rights and benefits of land-users who have been continuously using their land since before the effective date of the Land Law 1993 but hold no land use deeds.

- *The Land Law of Vietnam is developed and applicable to a full range of land users, without specific regulations dedicated to land acquisition, compensation, supports, resettlement for vulnerable groups such as ethnic minorities and the poor; the policies are not fully associated with supporting policies for ethnic minorities, poverty reduction policies, gender equity policies, etc.*
- *The Land Law and its guiding decrees of Government have provided a number of regulations so as to allow for only effective projects and capable investors to proceed. However, there are still cases where investors are allocated with lands but make no investment, leaving the lands unused for several years seemingly waiting for the land price going up to transfer the lands to others, while the affected land-users cannot find other lands for their living. While this is regularly occurring in several provinces there are no legal provisions detailed enough to prevent it.*

The critical issue is that the current land legislation focuses more on arranging land for development but not enough on derived social sustainability for affected people and communities. In practice, acquisition of land for investment projects is confronting big challenges. Firstly, provincial leaders of Vietnam prefer economic development as a way to bring their provinces out of poverty and therefore offer more favours to investors and their investment projects, and as a result taking less concern about land-users whose land is recovered by the State. Secondly, a number of legal provisions are not implemented at local levels or are implemented in such a way that allows more favours for investors; in several cases, there are signs of bureaucracy or private collusion with investors. Thirdly, land prices decided by authorized State bodies for computing compensation and resettlement are often much lower than market prices; supports provided by the government to affected land-users to restore their residential place, livelihood and job are still not sufficient. Fourthly, there is still an absence of clearly defined mechanisms and periodical implementation for land inspection by upper level administrative authorities over its lower level authorities; inspection is not rendered on a regular basis; violations are not detected and treated in a timely manner. Fifthly, there is still a lack of good mechanisms to facilitate the participation of people, communities, social organizations in supervising the land legislation implementation by administrative authorities, monitoring the land conversion process, arranging the consensus in benefits sharing between parties related to the land conversion, and settling affected people's complaints.

Voluntary land conversion

Analysis of the procedures used in voluntary land conversion raises the following issues:

- *Voluntary land conversion applies to some kinds of projects funded through domestic, or joint venture foreign-domestic funds while compulsory land conversion applies to all projects funded 100 percent by foreign funds leading to inequity between domestic and foreign enterprises.*
- *Land legislation has no provisions for solving cases where a few land users expect a much higher price than the majority or more than the market value. Investors wary of being held to ransom in such cases may be more cautious about entering the area.*

D. International Practices that may be considered in Vietnam

Benefit sharing

Benefit sharing policy studies are being undertaken to look at the feasibility of introducing this, for example in projects that have significant environmental and social impacts such as hydropower projects, mining, economic park construction, or large irrigation systems. Each would need to develop its own appropriate systems of benefit sharing. Benefit sharing could be in the form of monetary benefit, or non-monetary benefits. Monetary benefits could be in the form of additional compensation to affected populations, establishing a long-term regional development fund, establishing a partnership between developer and communities to share long term returns of the project. Examples could be supplying preferential electricity and other water related rates in the case of hydropower projects; revenue sharing in the form of royalties paid to local authorities; equity sharing by local authorities or taxes paid directly to them. Non-monetary benefit sharing could be in the form of livelihood restoration, social infrastructure such as housing, schools, and healthcare, or custodianship of catchments.

Land Pooling/readjustment policy

Urban land pooling/readjustment is widely used in Australia, Japan, Korea, Taiwan and is currently being explored in some Asian countries. Rural land parcels are acquired and converted into a planned urban area with full infrastructure facilities such as services, public facilities, open spaces, and residential areas. The area available for returning to the affected people is calculated and divided among them as compensation. The asset value of the new area will be much higher than the original area. Affected people have the opportunity to participate in the planning and implementation. This mechanism is only suitable under specific conditions and while the advantages are consensus and equity, the disadvantage is that it can take a long time to plan and implement.

Transferable Development rights

Transferable Development Rights (TDR) originated in the US where they were used in schemes to protect environmentally sensitive areas, they have been used in India to acquire land for public non-commercial purposes such as roads, schools, hospitals, and for open spaces. TDR are granted on lands reserved for these facilities and the people granted TDR have the right to construct houses on their remaining land, or on their other. They can also transfer the TDR to other people. In Mumbai for example, affected people can choose compensation or TDR.

E. Recommendations

This report recommends revision of the current Land Law of Vietnam, focusing on the following issues:

1. Improving the voluntary land conversion measure based on agreements between land-users and investors, in such a way to allow more room for application of this measure. Improvement of this measure is rooted in amendment/supplementation to the legal framework, including: (i) the investor shall register the voluntary land conversion in association with land valuation process and public participation; (ii) the administrative system or the court should be involved if the agreements on land conversion are reached with most of current land-users concerned but some remaining ones refuse to cooperate with investors or quote an unacceptable price of land; (iii) modifying the rights on land for domestic and foreign investors based on the WTO's principle of equity to facilitate investors to have the direct access to land via negotiating with land-users.

2. Improving the compulsory land acquisition measure based on administrative decisions by authorized State bodies, in such a way to reduce direct influence from the administrative system and to bring it closer to the consensus principle in benefits sharing between the parties concerned. Improvement of this measure is rooted in amendment/supplementation to the legal framework,

including: (i) improving the operational mechanism of the Land Development Organization to allow it to act on behalf of the administrative system in implementing administration decision on land recovery, this is to prevent the possible bureaucracy and private of the administrative system and is easier to get agreements on benefits between related parties, and is also to allow other enterprises to provide services in the land recovery, compensation, ground clearance activities; (ii) adopting and operating a land valuation service system closed to the market so that compensation, supports, and resettlement for affected people can be computed with a reasonable market-based price of land; (iii) there should be specific regulations about long term benefits sharing for big projects that have an impact on a wide range of residential communities such as hydropower projects, mineral exploitation projects, airport construction projects, large economic zones and hi-tech zones development projects, etc.; (iv) there should be specific regulations on land pooling/readjustment in relation to urban development projects or housing development projects in poor areas, etc.; (v) creating a fund for compensation, supports, resettlement which is based on contributions from the government budget, investors, and the society to form a good source of long term supports for affected communities and people in the land conversion process.

3. Identifying reasonable limit for applying compulsory or voluntary measures which based on principle that the compulsory land acquisition will only be applied to development projects for national and public interests, national defense and security, and for economic development projects that serve national and public purpose.

The report also provides continued recommendations on improving land policies to ensure efficiency of their practical implementation and to target at both economic development and social sustainability. Policies with regard to voluntary benefits sharing, promoting the participation of communities and social organizations, strengthening the dialogue between the government and the people, creating real consensus across parties related to investment projects, enhancing inspection works by upper level administrative authorities over their lower level ones are analyzed and specifically recommended in this Policy Note.

I. Introduction

Vietnam has been independent since 1945. The First Constitution, called the Constitution 1946, was passed in 1946 by the First Inaugural Vietnamese National Assembly. Since then, the country's socio-economy developed based on the model of centralized command economy in which the Government executed the subsidy system for all economic activities. In the Constitution 1946, the Article 12 confirmed that "the private ownership right on properties of Vietnamese people is secured", in which land is the most important property of people. Land policy in this period primarily focused on using the agricultural land effectively to blunt the famine in 1945. From 1946 to 1954, the Vietnamese Government mobilized the population to resist the occupation of French colonialism. The most important land policy of this period was based on the Agrarian Reform Law passed in 1953 by the National Assembly. This agrarian reform was implemented until 1955 on the principle of removing the land ownership of land lords, passing it directly to the peasants.

After the restoration of peace (in 1954), the Vietnamese National Assembly passed the Second Constitution in 1959, called the Constitution 1959. The Constitution 1959 recognized the State's ownership (people's ownership), collective ownership, individual ownership and national capitalist's ownership on materials for production including land (Article 11), but affirmed the Government's closely protected state and collective ownership of economy (Article 12 and 13). In this Constitution, the agrarian ownership of peasants is protected by the State, but farmers are encouraged by the State to join the agricultural cooperatives (Article 14). In the first few years (1960-1965), the agricultural cooperatives model had brought Vietnam's agricultural productivity to the highest level in South-East Asia.

Since 1965, Vietnam again mobilized the population to resist the American occupation of the South. In 1975, the war ended and Vietnam became unified. In 1980, The National Assembly passed the Third Constitution, called the Constitution 1980, in which the state recognizes only one type of land ownership - the whole people ownership on land (Article 19), and lands are systematically managed by the State based on the general planning (Article 20). In this time, the State allocated land free of charge to people who needed land for use, and recovered land while land-users didn't want to use. For investment projects on infrastructure, industrial, or urban development, the State decided to recover agricultural land and adjust land between agricultural cooperatives. This system of State's subsidy on land underscored the influence in preventing land disputes, complaints of land-users. In this period, the land administration system was not really important; however, the crucial task was to identify the exact land areas used by agricultural cooperatives for the taxing purpose.

During this period, the State heavily subsidized the economy, then people had no financial fears and land disputes, complaints was minimized, but ultimately failed to create dynamic development from all economic sectors and effective land use. Agricultural production from the agricultural cooperatives had low yield and productivity. The entire country began to feel the effects of the inadequate food situation. In the industrial and servicing sectors, the State enterprises were holding massive non-agricultural land but encountered minimal effectiveness of land use. Additionally, yield and productivity of non-agricultural economic sectors were very low.

In 1986, the State of Vietnam decided to carry out country renovation "DOI MOI", firstly focused on economic improvements by implementing a breakthrough change in its agricultural land policy: cooperatives' agricultural production land was allocated by the State to households, individuals for stable permanent use. It means that the agricultural production was transferred from the cooperatives' production model to the household production model. This policy had a significant effect on agricultural economy development in Vietnam, taking it from a country with the foodless to one of the top 3 rice exporters in the world. The policy's success in agricultural economy sector carried over to innovative policies for the industry and service economy sectors as well. The agricultural land allocation policy to households, individuals required establishing land laws, land administration system, and also organizing land offices at all administrative levels. The first land law was adopted by the National Assembly in 1987. The Land Law 1987 was only concentrated on the regulations of the agricultural production land allocation to households, individuals for stable permanent use. The State-subsidized regime on land policy remained unchanged, it was no value of land, no price of land, and no land transactions in the market, transfer of land use were to be decided by administrative authorities of the State.

In 1992, the Vietnam National Assembly adopted the fourth Constitution, referred to as The Renovation Constitution (so called the Constitution 1992). The Constitution 1992 accepted a market economy with the State's management (also called socialist-oriented market economy). The new legislation system was built on the basis of the Constitution 1992 to ensure economic development and social equity with the participation of economical multi-ownership sectors. For land, the Constitution 1992 continued to reaffirm that all land belongs to the whole people (Article 17); all lands also systematically managed by the State on the basis of planning and legislation, and allocated by the State to organizations, individuals for stable permanent use (Article 18). The Vietnam National Assembly adopted the second land law in 1993 which stated, most importantly, that land has price which is defined by the State, and also that households, individuals have five rights on land: exchange, transfer, inheritance, lease, and mortgage. To encourage the investment for economic development, the State defined a low price of land, equal to about 10-30% of the price in the land transfer market.

In 1994, the State of Vietnam decided to carry out the next step in its economic renovation process, which was an industrialization and modernization program of the country. The Vietnam market created investment opportunities for domestic and foreign investors to develop businesses in the infrastructure, industry, and service sectors. The demand for land increased as these investment projects got under way and the land concessionary was an important aspect in attracting investors. According to the Land Law 1993, the land acquisition for investment projects was made by the compulsory land conversion measure only. This measure meant that the State promulgates administrative decisions to recover lands of current land-users and allocate these lands to investment project, and project investors have to pay land-use fee/land rental to the State, land compensation/resettlement to the people subjected to land recovery.

After 1988, provincial people's committee realized that economic development investment projects play an important role and are the only way to develop the economy. Hence, provincial leaders tried to find out how to support and encourage investment and how to attract investors to their province. Good land policy is one of the effective ways that investors

are interested in. Investment encouragement by open land access policy supported the economic development but also created social pressures on people whose land are recovered. In 1998, the Vietnam National Assembly adopted the Law on amendment and supplementation of Land Law, mainly focusing on broadening rights for project investors, but did not change the compulsory land conversion measure.

In 2002, Vietnam carried out the project “Summarizing 10 Years of Implementing the Land Legislation” to construct a new land law that would be most suitable for the period of country's industrialization and modernization speed-up. The final report pointed out many inadequate aspects of the current land legislation. The two most important points were: firstly, the needs to extend investors’ rights in land transactions in accordance with the market mechanism; secondly, the needs to continue innovating land compensation and resettlement policy for people subjected to land recovery by the State based on the benefit sharing between the State, investors and affected land-users.

In November 2003, the National Assembly adopted the third land law of Vietnam, which took effect July 1st, 2004. The Land Law 2003 almost created a complete renovation of the Vietnam land legislation system. First of all, the whole people ownership of land is concretized with the detailed regulations on the rights and responsibilities of land authorities of the State, on the rights and obligations of land-users, based on the principle that the land use right of land allocated by the State with land-use fee payment is considered as the property of land-user. Second, there are also detailed regulations on settling the historical complicated land relations between land-users, in which there is a regulation: land that the State borrowed or rented from the past is considered to return it to the legal land-user. Third, the land price set by the State must be suitable to the market price of land, which means the new land financial system was established on the principle of “market-based price of land”. Fourth, the economic organizations having the land use rights as their property are allowed to perform land transactions in the market. Fifth, the equity in the rights and obligations on land between domestic and foreign investors is improved. Sixth, the compulsory land conversion measure regulated in the previous land legislation is now restrained to only the cases where land is used for national, public purposes and some important economic investment projects (such as construction of industrial zones, economical areas, high-tech parks, urban and rural infrastructures, and those projects in the largest funding investment group); other cases must follow the voluntary land conversion measure based on negotiations between investors and current land-users to make land transfer/land lease/land contribution as capital. Seventh, there are the detailed regulations on the determination of land compensation value, the live conditions of resettlement locations for the cases the compulsory land conversion measure is to be applied. Eighth, the land administration procedures system is established based on the principles of detail, simplicity, inexpensiveness, transparency and publicity. Ninth, the supervising role of people in the land legislation implementation is enhanced. Tenth, the settlement of land disputes, complaints and denouncements is renovated on the principles: (i) to improve responsibilities of the local people's committees; (ii) to essentially shift the settling works from the administrative system to the court system.

In 2007, the Government of Vietnam promulgated a new decree¹ focusing in three main ideas: the first is to issue the legal criteria for recognizing the land use right to current land-users those have no any legal documents of land use; the second is to permit foreign investors to carrying out houses building projects in commercial purpose with the rights and obligations similar to domestic investors; the third is to specifically stipulate the publicized and transparent procedures to perform the compulsory land conversion measure, which guarantees the benefits of affected land-users.

Drastic innovation of the land legislation system has created driving force for development of industrial and service economy. The number of investment projects and investment funds are increased remarkably, especially from the non-State and foreign economic sectors. According to the data issued by the State Statistics Office of Vietnam, a graphic chart can be formulated to point out how fast the investment process increased with the participation of all economic sectors. (see the chart presented in the Figure 1 below).

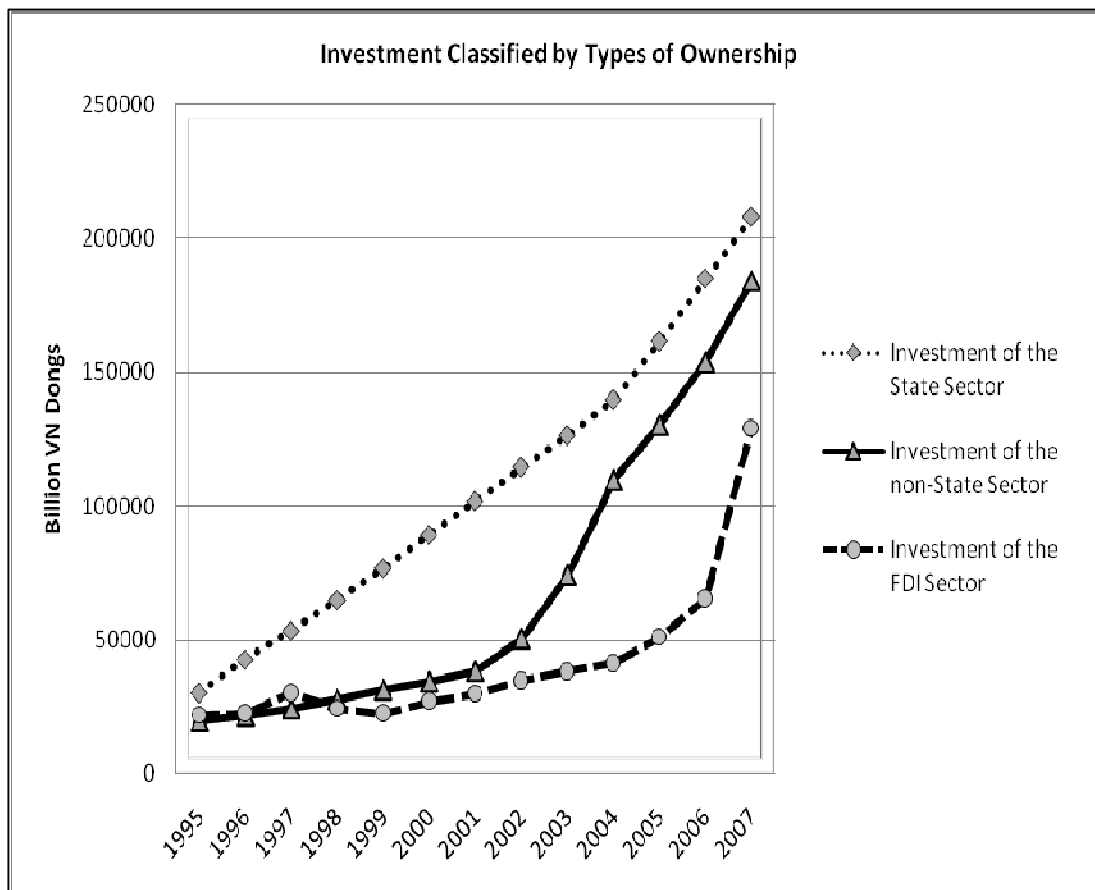


Figure 1

In the Figure 1, investment of the non-State economic sector has been fast increased from 2003 when the Land Law 2003 adopted by the National Assembly with many articles encouraging investors in land issues; foreign direct investment has been increased drastically from 2007 when the central Government promulgated the decree no. 84/2007/ND-CP that broadens rights for foreign investors.

¹ Decree No. 84/2007/ND-CP dated 25 May 2007 with additional provisions on issuance of land use right certificate, land recovery, land use right, procedures on land compensation, support and resettlement upon State's recovery of land, and settlement of land complaints.

The increase of investment projects has changed the economic structure between agricultural, industrial and servicing economic sectors. According to the data issued by the State Statistics Office of Vietnam, the following chart can be set up to point out the change of GDP proportion in agricultural, industrial, and servicing economic sectors (see the chart in Figure 2 below).

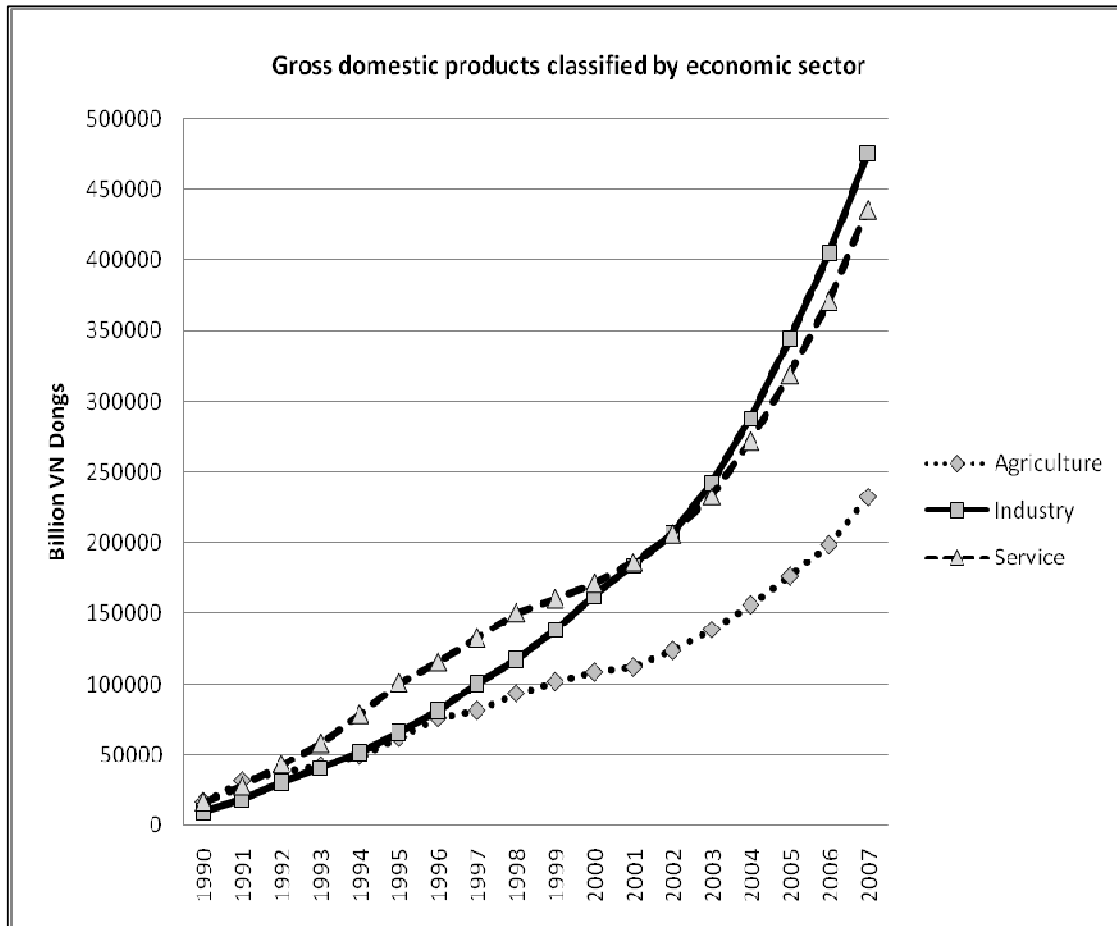


Figure 2

The Figure 2 expresses that before 1999, the agricultural, industrial and servicing economies had the GDP relatively equal; from 1999 the investment process in non-agricultural sector has been increased to make the equal GDP of industrial and service sectors, surpassing the GDP of agricultural sector.

In the period of 5 years 2001-2005, there were many land areas converted between the groups of agricultural land, non-agricultural land, and un-used land², detailed information is presented in the Figure 3 below.

In the Figure 3, it is easy to see that in this period there were about 400,000 ha of land converted from current purpose of use to other one. The compulsory land conversion measure with the land compensation value calculated based on the land price defined by the provincial people's committees makes people affected by land recovery to realize that the land

² Statement No. 22/CP-TTr dated 22 May, 2006 of Government to National Assembly on 2006 - 2010 land use plan

compensation value is really lower than the value received from land transfer in the market. Hence, number of land complaints is increased very high, about 70% of the total people's complaints, and number of land compensation/resettlement complaints on land recovery by the State is about 70% of the total land complaints³.

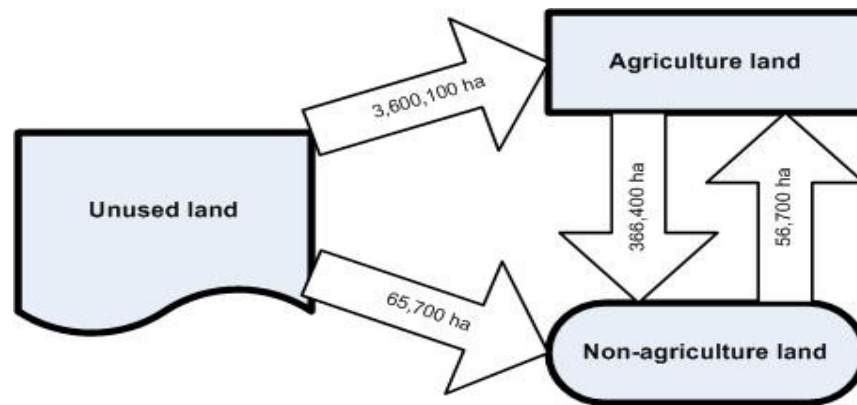


Figure 3: Land conversion situation in Vietnam from 2001 to 2005

The area of 56,700 ha of non-agriculture land converted to agricultural use has almost been land with water surface used in industrial-servicing purpose converted to use in aquaculture purpose.

According to statistics provided by the Inspection of Ministry of Natural Resources and Environment (MoNRE), during the years 2003-2006, the total 30,822 petitions of land disputes, complaints and denouncements was sent to MoNRE, of which the specific figures for every single year are presented in the Figure 4 below.

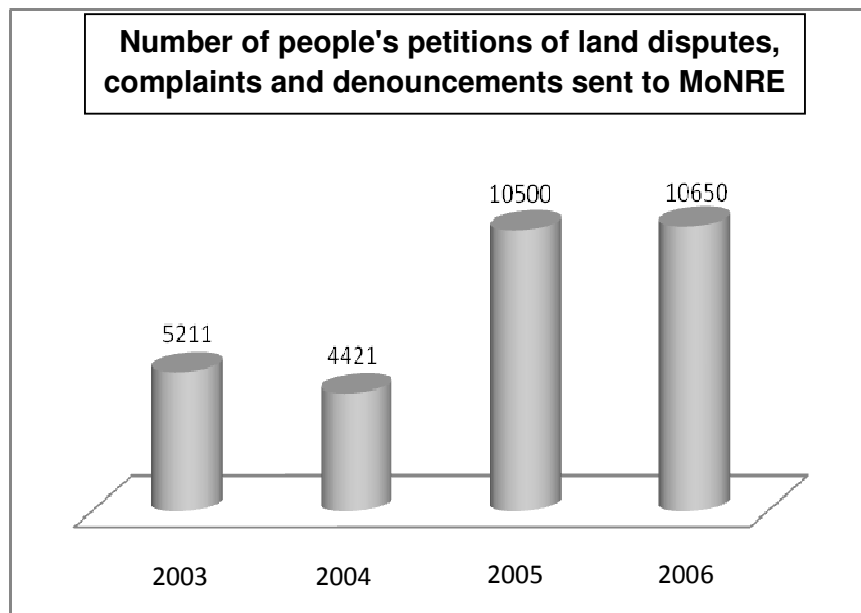


Figure 4

³ Dang Hung Vo, Long-lasting disputes and complaints on land: reasons found in the land legislation implementation, Paper presented in the Seminar on the current status of long-lasting disputes and complaints on land: reality and solutions, organized by National Assembly Office, Buon Me Thuot, 8-9 October, 2008.

The irrational implementation in land compensation/resettlement under the compulsory land acquisition measure is supposed to be the direct cause to this claim situation of affected people. This irrationality itself originates in the impractical legal regulations and improper land legislation implementation executed by local government authorities.

Recently, a number of important international organizations such as World Bank (WB), Asian Development Bank (ADB), United Nation Environment Program (UNEP), Food and Agriculture Organization (FAO), and etc. have focused on the studies of land acquisition, land compensation/resettlement mechanism to propose proper land policies for developing countries. The policies on the benefit-sharing basis for hydropower investment projects, land pooling/readjustment process for urban areas development projects, have been piloted. The implementation practice of these policies would provide valuable experiences for land conversion policy reforming process in Vietnam. Two years ago, ADB has supplied a TA project for Vietnam on the study of benefits sharing policy applied to hydropower projects in Vietnam (see the final report of the project TA-4689 VIE "Benefit Sharing Mechanisms for People Adversely Affected by Power Generation Projects in Viet Nam").

According to Vietnam's prevailing land legislation, the land conversion is conducted under both compulsory and voluntary measures by the following regulations:

1. All acquisitions of land are to be made in accordance with the land use planning approved by the State's authorities and publicized, current land-users have no right to convert current purpose of land use to the purpose unlike the land use planning.
2. The compulsory land conversion measure is applied in the cases of converted land to be used for: (i) national/public purposes (including national defense/security purposes); (ii) implementation of investment projects with 100% foreign funds (including funds from Official Development Assistance - ODA and Foreign Direct Investment - FDI); (iii) implementation of investment projects for commercial purpose of domestic investors but should be suitable to national benefits, such as projects of infrastructure construction for industrial zones, services zones, hi-tech parks, economic areas, urban and rural residential areas and projects belonging to the group of highest investment funds (so called group A).
3. The voluntary land conversion measure is applied in the cases of converted land to be used for implementation of investment projects in commercial purpose of domestic investors are: (i) not subjected to the cases in which the compulsory land conversion measure can be applied (as mentioned above); (ii) subjected to the cases in which the compulsory land conversion measure can be applied but the investors volunteer to conduct the voluntary land conversion measure.

In Vietnam's current context, a number of questions should be looked at in order to improve the land conversion measures in the market economy:

1. Under prevailing law, the limit between compulsory and voluntary land conversion measures is sensible or not? Should it be adjusted or not?
2. In the compulsory land conversion measure, what amendments/supplementations should be made to the land legislation to become more adapted to the market economy, to ensure the benefit-sharing based principles applied to benefits determination for current land-users,

community where the land located, investors and the State? What solutions should be applied to well implement this amended/supplemented regulations of the land legislation?

3. In the voluntary land conversion measure, what amendments/supplementations should be made to the land legislation to exclude the situation that current land-users don't want to cooperate with investors, require very high land price which can't be accepted by investors?

In 2009, the World Bank in Vietnam has approved a study on “Effective Land Allocation in Vietnam” as an assistance to Vietnam Government in the study on the renovation of land policy and also implementation solutions for the compulsory land acquisition measure based on the process “State’s recovery of land and State's implementation of land compensation, support, and resettlement for affected people” to improve the market-based measures in land acquisition and land conversion in Vietnam. This World Bank study program highly aims to support the General Department of Land Administration (GDLA), the MoNRE of Vietnam, Vietnam Government in finding out solutions to better convert land for use in the period of the country's industrialization and modernization speed-up. This would also directly contribute to the preparation of the Law on amendment/supplementation of Land Law by the end of 2010 in accordance with the Vietnam National Assembly’s Law Construction Program. Currently, the Vietnam Government is considering a new decree guiding Land Law implementation, which is concentrated on improving the compulsory land acquisition measure. The World Bank continued studies would be useful for preparation of this new decree as well.

The World Bank in Vietnam together with the GDLA prepares the Policy Note as the first-step of action to support the improvement of land policy for reforming the compulsory land conversion measure. Based on the initial results, further studies on a larger scale will then be considered for direct contributions to the drafting process of Law on amendment and supplementation of Land Law, which will be submitted to the National Assembly for consideration at the beginning and for adoption at the end of 2010. The studies would also look to the future and aim to construct a Land Code for the next few years as well.

The Policy Note includes six Chapters: Chapter I, is the general introduction of this document; Chapter II, focuses on analyzing the prevailing land legislation system for land conversion and the process of land legislation construction to determine its insufficiency issues; Chapter III, mainly analyzes the practical implementation of land conversion in Vietnam, based on the analyses of opinions from provincial leaders, investors and affected people; Chapter IV, carries out analyses of the international and domestic experiences on land acquisition/conversion measures to find the possibilities of application to Vietnam; Chapter V, suggests land policies, legal regulations and implementation procedures to continuously reform the land acquisition/conversion measures in Vietnam. The Policy Note ends with the last Chapter, which recommends some issues for further studies in the World Bank Vietnam study program on land policies improvement in the upcoming years.

II. Analysis of Vietnam Land Legislation System on the Compulsory Land Acquisition Measure

1. History of Legal Regulations on Land Acquisition and Conversion in Vietnam

As mentioned above, the Vietnam land legislation system was built on the basis of the State's subsidy system on land with the whole people's ownership regime of land. Later on, it was gradually reformed to comply with the market system.

Prior to the Land Law 2003, legal regulations on land conversion in Vietnam covered only the compulsory land acquisition measure, in which the land conversion was subject to administrative decisions made by the competent State's bodies on land recovery from one current land-user to allocate or lease this land to another land-user. The person with land allocated or leased had to pay land compensation to the person whose land was recovered and pay land use fee or land rental to the State (may be considered to reduce land use fee or land rental because of the paid land compensation). The Law regulated only that the State has the right to recover land to use for the purpose of national defense, security, and national, public interest. However, the measure of land recovery by the State has also been applied to the land acquisition for economic investment projects in commercial purpose for investors' profit only. In such legal context, the investors found this compulsory land conversion measure to be very complicated and awkward. On one hand, the investors had to directly negotiate land compensation amount with current land-users. And on the other hand, to access land, they had to directly discuss with the province, district and commune-level people's committees, including in almost cases complicated informal procedures with informal expenses. Consequently, the investors proposed to reform the land conversion measure where to it has less complications, more transparency and allows investors to have the right to receive land by the market land transfer directly from economic organizations, households and individuals.

Actually, a number of active investors applied an informal voluntary land acquisition measure. However, due to lack of clear regulations of the voluntary land conversion measure, most of the local people's committees then decided land recovery and requested investor who had already paid for land transfer to pay land use fees or land rental to the State in compliance with the compulsory land acquisition process. This practice showed the demand to continue further reform on Land Law to specify the content of voluntary land conversion measure.

During the first 5 years of implementing the compulsory land acquisition measure in Land Law 1993, the land price used to calculate land compensation and resettlement was regulated by provincial people's committees in accordance with land price frame regulated by the Government (so called the State's price, see appendix 1). This State's price of land was equaled only 10 to 30% market land price resulting from the actual land transfer. The land compensation was first regulated by this principle with some general legal provisions, but then was gradually reformed in its specific details regarding benefits of affected people (see appendix 1). In general, Land-users subjected to land recovery by the State received dissatisfactory land compensation. Investors paid land use fee or land rental to the State with the State's land price, which was much lower than the market land price. Investors might have to go through very complicated procedures to access land however they could gain much profit from the paid land value in comparison with the market value. Within the period of 1993-2004, the compulsory land acquisition measure had assisted promptly in freeing land for investment

projects for economic development, yet at the same time it increased the number of complaints on land compensation and resettlement. The complaints were first sent to local people's committees but there were no response, after that they were sent to central State's authorities such as the General Department of Land Administration (GDLA), Ministry of Natural Resources and Environment (MoNRE), State's Inspection, Central Government and National Assembly. Late responses caused to an increasing number of people gathering at the State's authorities asking for a direct settlement, the biggest group even had one thousand people.

In the last 5 years of the 10-year period (1993-2004) of implementing Land Law 1993, land price stipulated by the Provincial People's Committees was adjusted to closer with market price; people subjected to land recovery received higher value of land compensation and better resettlement arrangement. However, this better condition was just an effort to improve compulsory land conversion measure at that point of time, but there were several insufficient aspects to be solved in the market economy mechanism.

The Land Law 2003 has specific provisions on the two land conversion measures - the compulsory and voluntary land conversion measures, and scope of application for each measure. The amendment of the compulsory land conversion measure has been based on the following principles:

- (i) The land price stipulated by the Provincial People's Committees must be appropriate with market price of land; and after one single year of the implementation, Government has revised that the land price to determine land compensation value must be adequate to the market price of land (see appendix 2).
- (ii) The State's authority which issued the decision on land recovery, compensation, supports and resettlement is responsible to organize the implementation of compensation, supports and resettlement in accordance with the detailed procedures (see appendix 2).
- (iii) Investors who receive land allocated or leased by the State are obliged to pay land use fees or land rental according to market price of land (see appendix 2).

The voluntary land conversion measure was applied to a number of investment projects in commercial purpose. During the first implementation period, this measure had been acknowledged and implemented very well by active investors, it helped investors actively access land without any pressures from the complicated administrative relationship with local people's committees at all levels. After the first some years of implementation, several projects faced difficulties when current land-users disincorporate with investors, they raised very high price of land that investors had no way to accept. Many investors had already been transferred land of 80% area for project implementation and couldn't make it for the remaining 20% land area. Prevailing land legislation has not yet to regulate on how to resolve the situation whether current land-users disagree to transfer land to investors, or agree with extremely high price of land. This situation has shown a key disadvantage of the voluntary land conversion measure, which causes the investors, after about one-year enjoying, want to apply only the compulsory land conversion measure.

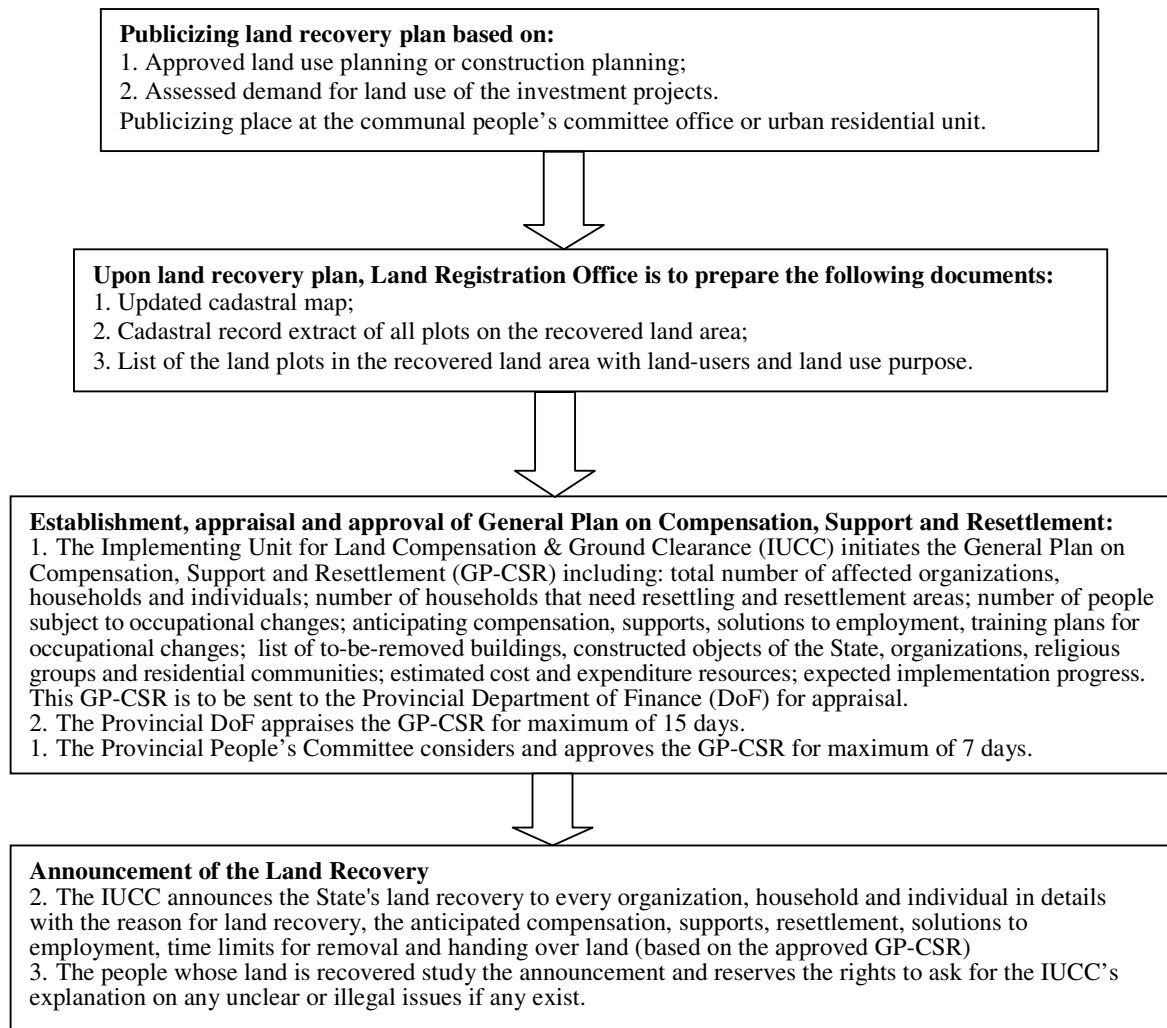
2. Analysis of existing land legislation on compulsory and voluntary conversion measure in Vietnam

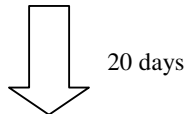
The following analysis concentrates on two contexts of compulsory and voluntary land conversion measures in accordance with current Vietnam land legislation.

a. The compulsory land conversion measure:

- Scope of application: This mechanism is applied to the following cases:
 - (i) Land converted to use for the purpose of national defense, security, and national, public interest;
 - (ii) Projects invested by official development assistance funds of foreign governments or international organizations (ODA);
 - (iii) Projects invested by 100% foreign direct investment (FDI);
 - (iv) Investment projects of infrastructure construction for industrial zones, economic parks, hi-tech parks, urban development or rural residential development areas, tourism areas and cattle-breeding farms.
 - (v) Investment projects for economic development funded by domestic capital or domestic-foreign joint venture capital with investment amount in the highest amount group (so called group A, the capital amount stipulated for every economic branch).
- Procedures:

The compulsory land conversion measure follows the procedures as below diagram:

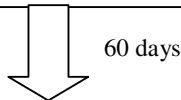


**Promulgating the Land Recovery Decision**

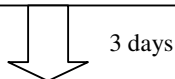
1. The Department of Natural Resources & Environment (DoNRE) submits the Draft of Land Recovery Decision to the Provincial People's Committee.
2. The Provincial People's Committee considers and approves the Land Recovery Decision for maximum of 20 days. The decision is then to be sent to every land-user whose land is recovered.
3. In case the land-users subjected to land recovery disagree with the Land Recovery Decision, those have the right to send an administrative complaint to competent authorities.

**Inventory of affected people, lands and properties attached to land:**

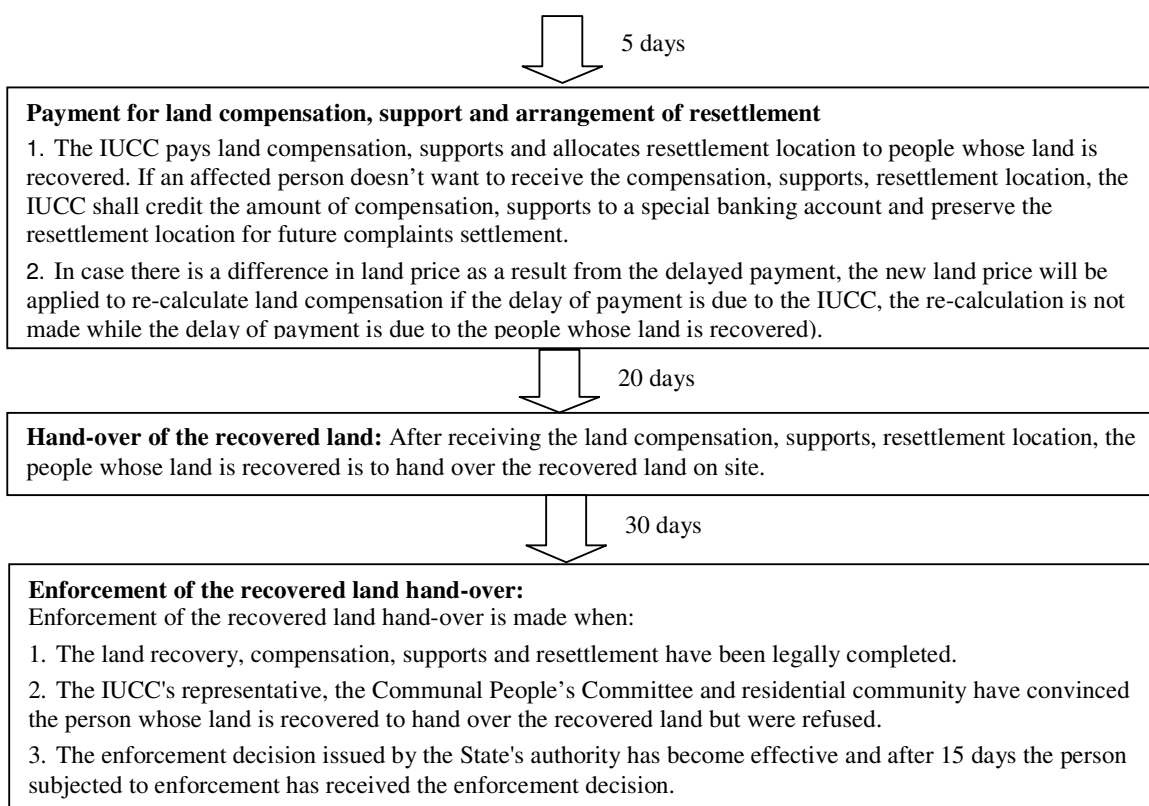
1. The people whose land is recovered conducts the inventory of land and properties attached to land, quantity and quality of these properties; number of affected people, expectation of occupational change and resettlement, and the number of to-be-moved graves. The inventory follows the form provided and guided by the IUCC.
2. The IUCC has to study the inventory and conduct the field inventory at the presence of a Communal People's Committee representative and the person whose land is recovered. The inventory report has to be documented with signatures of the field inventory conductor, the person whose land is recovered, communal land officer, district and commune-level authority representative as well as a representative of IUCC.
3. The IUCC works with the Land Registration Office and Communal People's Committee to identify the land origin.

**Establishment, appraisal and approval of the Plan for Compensation, Support and Resettlement:**

1. The IUCC together with the investor and representative for households with land recovered establishes the Plan for Compensation, Support and Resettlement (P-CSR) with specific details: name and address of the people whose land is recovered; land area, land use purpose; land location and land origin; quantity and quality of the properties attached to land; basis for calculating land compensation, supports and resettlement; value of land compensation and supports, resettlement places; methods to move the constructed objects and graves.
2. The IUCC publicly posts the P-CSR at the Communal People's Committee Office or urban residential unit and collects people's opinions on the plan. The posting has to be reported with confirmation from representative of the communal authorities, social organizations, community and of the people whose land is recovered. The posting duration is 20 days at least.
3. The P-CSR is completed by collecting and documenting all people's opinions, which clearly states the number of agreement and disagreement and other views. The completed P-CSR is to be sent together with the people's opinions report to the DoF for appraisal.
4. The DoF appraises the P-CSR within maximum of 15 days. In case there is disagreement with some points in the P-CSR, it shall be sent back to the IUCC for further completion within maximum of 7 days. After completed appraisal, the DoF submits the P-CSR to the Provincial People's Committee for approval.
5. The Provincial People's Committee considers and approves the P-CSR within maximum of 15 days.

**Publicity of the P-CSR:**

1. The IUCC is responsible in cooperating with the Communal People's Committee to publicize the P-CSR at the Communal People's Committee Office or urban residential unit.
2. Send the decision on land compensation, supports and resettlement to people whose land is recovered.



- Reviews on legal regulations:

The above diagram and the prevailing land legislation have suggested number of comments on the compulsory land acquisition measure as follows:

1. There are two type of IUCC (Implementing Unit for Land Compensation & Ground Clearance): first is the Land Development Organization (LDO) in case of land recovery according to the land use planning (there are not any approved investment projects), and second is the Board of Land Compensation and Ground Clearance (BCC) in case of land recovery according to approved investment project. The LDO is permanently established by the Provincial People's Committee and responsible for implementing land recovery in accordance with approved land use planning, managing recovered lands, conducting land auction for investment projects, putting investment projects using land out to tender, transferring land to investors. Activities of the LDO are closer to the market economy, which makes this organization a tool that can transfer content of land use planning to the market under the consensus principle based on the benefits sharing between current land-users, investor and the State. The BCC is temporarily established by District People's Committee to work on the land compensation, supports, resettlement for particular project. The BCC is headed by a District People's Committee leader, and comprising leaders of some related departments at provincial level, representatives of the project investor, residential community and people subjected to land recovery. Activities of the BCC follow administrative regulations and do not suit the market mechanism.

2. The land recovery based on the approved land use planning has the advantages of encouraging a good sense of initiative; people subjected to land recovery don't see any projects in implementation, then their land can be evaluated only in accordance with current land use status. However, it has the disadvantage that the recovered lands can become bare lands because the investors do not want to use such land for their projects due to infeasible land use planning. The land recovery based on the approved investment projects has the advantage of avoiding land left abandoned but also has the disadvantage of increasing complaints from people subjected to land recovery due to an incompatible land price. Since projects are being implemented, the people subjected to land recovery can see an increase in the land price in the near future and require compensation at future oriented land price.

3. The LDO, established under provisions of the Land Law 2003, is responsible for executing the compulsory land recovery measure with methods closer to the market mechanism. Up to now, this LDO has not been clearly defined as a public service organization or a state-owned enterprise or non-state-owned enterprise. The LDO, of course, needs to call for operative funds but it is unable to ask for a loan from commercial banks or investment banks. In fact, the LDO is currently doing the management of the lands, which is not yet allocated or leased to use.

4. Current land legislation stipulates that the land price applied to land compensation determination has to be suitable to the land market price, not using the land price regulated by the provincial people's committees. Such regulations are built only in principle, and there are not any specific provisions on market-based land price assessment procedures. Thus, according to these provisions of the prevailing law, market price of land is still decided by the provincial people's committees. People subjected to land recovery, those do not agree with the price decided by provincial people's committees, also do not have any justifications to prove their right views. Finally, the decision of the State's authorities should be implemented. Thus, different opinions on land price only slow down the land acquisitions process for investment projects.

5. There are a number of opinions on the price assessment method for agricultural production land. According to the land legislation, agricultural production land is assessed on the basis of profit gained from agricultural production, which makes the price considerably low. This is true when agricultural land is only used for agricultural production (in fact, the price of agricultural land assigned to agricultural production is relatively the same). The issue of the agricultural land assessment is to become complicated while this land will be converted to non-agricultural land under approved land use planning. Current land legislation allows an addition of 20-50% value of the residential land to calculation of the compensation for agriculture land, which is gardens attached to residential house in the same land parcel, is located or adjoined to residential areas. The agriculture production land price assessment for land compensation is to be improved.

6. The Vietnam Government has carefully considered the supports for the people subjected to land recovery to change their job with a number of solutions to ensure life and job for them. The support solution by allocation of a plot of the commercial land near industrial zones or residential land in urban areas to the agricultural land-user whose land is recovered more than 30% total land in use to help change business to servicing activities. Some

localities have carried this solution out successfully, while others believe this solution is unsuitable because it requires more non-agricultural lands which should be converted from agricultural lands. This solution sounds good but needs to be planned out carefully and put into land use planning for higher feasibility.

7. The current legal regulations on land have not paid much attention to the rights of the communities living on recovered land areas. The State budget law has only some regulations on the revenue sharing among provincial, district and communal level. This mechanism does not ensure the necessary benefits for administrative localities and local communities. In fact, investors have to “voluntarily” contribute some investments to infrastructure construction for district and communal levels under the suggestion of local governments or local communities. This is an extra amount of money that investors have to pay “voluntarily” but in fact they must pay "involuntarily" in order to acquire the desired land easier and faster.

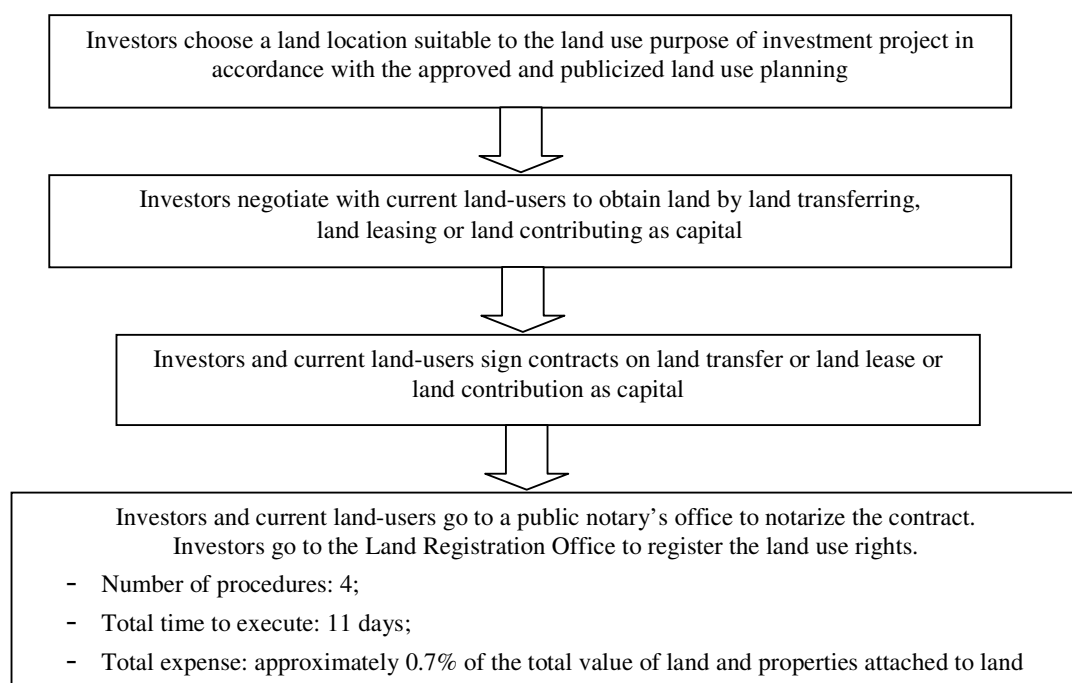
8. The solutions which are more compatible with the market mechanism, such as current land-users being able to contribute their land value as the shares with investors or land compensation is paid to current land-users by holdings in investor's enterprise, could be applied in the compulsory land conversion measure. Both of which have been suggested several times, but have not yet been seriously piloted to put legal provisions into the land legislation system.

b. Voluntary land conversion measure:

- Scope of application: This measure is applied to economic investment projects in commercial purpose with domestic capital or foreign-domestic joint venture capital with lower total investment capital than that of group A (as the said above).

- Procedures:

The procedures for the voluntary land conversion measure are described in the following diagram:



- Reviews on legal regulations:

The above diagram and current land legislation have suggested some comments on the voluntary land conversion measure as follows:

1. This land conversion measure is clearly regulated by current land legislation with easy procedures, which meet the international standards on administrative procedures. In the period of 1999 - 2004, active enterprises were eager to execute this measure because the enterprise could attain the total active role over the administrative system.
2. In current time, the voluntary land conversion measure is applied to projects invested by domestic funds or domestic-foreign joint-venture funds; however, the compulsory land conversion measure is applied to projects invested by 100% foreign funds. That means there is the inequity between domestic and foreign enterprises.
3. Land legislation has not yet provisions on solving cases when some land-users do not want to cooperate with investors, require an unaffordable land price, which consequently makes enterprises hesitant to access the planned land area. This weakness shows a huge difficulty to enterprises, especially when investors have already paid for a part of land but it will be unable to acquire the remaining part of land for project.

c. Reviews on strengths and weaknesses of the two land conversion measures:

So far, Vietnam has witnessed 20 years of implementation of the compulsory land conversion measure and 10 years of implementation of the voluntary land conversion measure (implementation was informal in the first 5 years, and was formal in the latter 5 years). The current land legislation and its implementation might suggest the following strengths and weakness of each measure as analyzed below.

| | Compulsory land conversion measure | Voluntary land conversion measure |
|-----------------|--|--|
| Strength | The execution time will be reduced because of the administrative supports from local authorities, if the issue of land compensation, supports and resettlement for people subjected to land recovery is well solved. | <ol style="list-style-type: none"> 1. The execution time will be reduced because of very simple procedures, if investors and current land-users have got a high agreement on land transaction. 2. The equity in benefits sharing between investor and current land-users is ensured; benefits of the State and community are regarded with respect to the tax system on real estate and regulations on the State's revenue at each administrative level. 3. The remarkable reduction of affected people's complaints is enabled on the basis of the properly solving the benefits sharing issue, to ensure the social sustainability for the economic development process. 4. The administrative costs and labor are reduced, and the bureaucratic and private possibilities of administrative system are eliminated because procedure needs the participation of investor and land-users at public notary's office and land registration office only. |

| | | |
|-----------------|---|---|
| | | <p>5. The accordance of this system with the market mechanism encourages investors to be more active in equitably negotiating with current land-users by various ways of the land acquisition, such as land transfer, land lease or land contribution as capital, etc.</p> <p>6. This measure can help exclude opportunistic investors which have no financial capability for investment, but they want only to acquire land from the State and then transfer it to other investors while land price rises.</p> |
| Weakness | <p>1. Partiality normally occurs due to thinking of economic development priority, which has a bias in favor of investors' benefits and improper dealings on the benefits of people whose land is recovered.</p> <p>2. The needs of participation of many administrative bodies increase the administrative costs and labor.</p> <p>3. The inherent bureaucracy of the administrative system would cause an obstruction to every participant in the administrative procedures.</p> <p>4. This measure is very close to the "ask-give" mechanism of the State's subsidy economy, which encouraged corruption by granting the rights of benefit division among its participants to administrative authorities.</p> <p>5. On implementing in Vietnam, the lack of real estate valuation system in market economy easily leads to unsolvable disputes on price of land and properties attached to land.</p> <p>6. The community benefits are not yet regarded in the land legislation, and thus investors have to pay additional informal costs for the community benefits.</p> <p>7. Improper dealing with the land compensation, supports and resettlement leads to an increasing number of complaints from people whose land is recovered and consequently causes social non-sustainability.</p> | <p>There are not yet any legal provisions to solve the case current land-users charge an unaffordable price because they don't want to cooperate with investor, thus causing the investors to rarely access the land. Consequently, most of the investors are now in favor of the compulsory land conversion measure.</p> |

3. Theoretical and practical justifications and legal regulations on land compensation and resettlement in Vietnam

a. The political economy arguments on land in Vietnam

All legislations are always constructed on the basis of a consistent argument system. The land legislation of Vietnam is built based on the Karl Marx's political economy arguments. Consistently, the legal regulations on compensation, resettlement for people subjected to land recovery by the State are formulated in accordance with the land value argument from this political economy and amended step by step to suit the market economy mechanism.

In political economics, land is considered as an important resource for every nation which wants to seek the wealth. In 1776, Adam Smith, a famous economist in the classic economics school introduced his view on land as the root of wealth for nation⁴. Land rent or profit from land was formed into an economic theory on land. Adam Smith wrote in the book *An Inquiry into the Nature and Cause of the Wealth of Nations* that "Land is a fund of a more stable and permanent nature; and the rent of public lands, accordingly, has been the principal source of the public revenue of many a great nation" (Book V, Charter 2, paragraph 14). Based on this thought, he provided the analyses on land tax in relationship with land rental paid for landlord and benefits from land use, and land tax should become a main revenue of the nation (Book V, Charter 2, Part 2). About 40 years later, in 1817, the economist David Ricardo introduced a sensible tax system on land that contributed the easy, stable and permanent revenue from land to the nation⁵. In the famous book *On the Principles of Political Economy and Taxation*, David Ricardo analyzed the land value and profits from land use in economic relation between landlord and people leasing land of the landlord (Charter 1 - On Value and Charter V - On Profits). From this relation, he defined the land rent and land tax, that is a part of land rent to be contributed to the State's revenue (Charter VIII - On Taxes).

The theory of political economics on land applied in Vietnam has been built on the basis of Karl Marx's theory on land rent, which was presented in the book *Capital*⁶ (the first publication in 1867). Inheriting the political economics theory on land rent from Adam Smith and David Ricardo, Karl Marx introduced his political economics theory on land rent, based on classification of land rent into 3 types: (i) differential land rent no. 1 originating from the natural advantages, (ii) differential land rent no. 2 originating from the increasing land profitability due to users' investment, and (iii) absolute land rent, which is the land rental that the land-users have to pay the land-owners in order to use the land. From this point of view, he proposed to exclude absolute land rent by the way to eliminate private ownership on land so that there would be to accept only the State's or whole people's ownership on land. All member nations of the old Socialist System constructed the land legislation based on the principles of the State's ownership or whole people's ownership on all lands. In Vietnam, the land ownership by whole people is the legal foundation to implement the compulsory land acquisition measure.

⁴ Adam Smith, *An Inquiry into the Nature and Cause of the Wealth of Nations*, London, Methuen and Co., Ltd., ad. Edwin Cannan, 1904 (first published in 1776)

⁵ David Ricardo, *On the Principles of Political Economy and Taxation*, London, John Murray, 1921 (first published in 1817)

⁶ Karl Marx and Frederick Engels, *Capital*, National Publishing House of Politics, Moscow, 1955 (first published: Volume 1 - 1867, Volume 2 - 1885, Volume 3 - 1894)

From the argument of the whole people's ownership on land, the compulsory land acquisition is considered as an administrative process, based on administrative decisions on land recovery, land compensation, supports, resettlement, and people are responsible to execute these decisions. That means the process of compulsory land acquisition implementation should be regulated only by the administrative legislation. In this concept, some market-based solutions must not be applied to the compulsory land acquisition measure. From the practical aspects, several opinions are to believe that market-based solutions are able to apply to implementation of land compensation, supports, resettlement after issuance of administrative decision on land recovery.

Concerning the voluntary land conversion measure, it is legally considered as a civil relationship between investor and current land-user, cannot be integrated with any administrative decisions. This measure is regulated only by the civil legislation. Consequently, there is no way to solve the case that some land-users don't agree to transfer last land parcels in project location to investor. From the practice, investors are expecting an administrative decision on land recovery to the last land parcels in project location which have disagreement between investor and current land-users.

Land Law 2003 of Vietnam has very detailed and transparent regulations on the whole people's ownership on land, in which there are disposal rights of the State made by State's authorities and disposal rights of the land-users. The recognition of land ownership by the State or the whole people with some extensions of land-users' disposal rights or the recognition of private ownership on land with restrictions on some disposal rights of land-owners are actually two approaches to the same economic execution in land use. In the present trend of land reform, studies are not concerned to the analyses of land ownership then focused on the reforms of land policies aiming to secure the practical rights of direct land-users in the sustainable development for the economy and also the society⁷.

b. The conversion of agricultural land to non-agricultural land - an indispensable demand of the development process

Recently, the demand for non-agriculture economic development has become an indispensable developing trend of all nations. The demand on land conversion has created a huge pressure not only in developing countries but also in highly developed countries such as the United States. According to some papers, the conversion of land from agricultural use to non-agriculture use in the United States also needs re-limiting. Specifically, in the 5-year period (1992 - 1997), the entire United States had 15.8 million acres (6.4 million ha) of agricultural land converted to urban land. The land conversion rate in this 5 years period was 30.2% while population growth rate was only 5.3%⁸. Currently in Vietnam, there are about 400.000 ha of agricultural land converted to non-agriculture land during a 5-year period, which makes the conversion rate of 13.3%, also higher than the population growth rate. In the common condition of strong land conversion, the issue of sustainable development needs to be placed in the center of the land conversion process. With such analysis on land ownership, name of the ownership is no longer of importance, but instead a substantial look into the

⁷ The World Bank, 2006, Land Law Reform, Achieving Development Policy Objective, prepared by John W. Bruce, Renée Giovarelli, Leonard Rolfes, Jr., David Bledsoe, Robert Mitchell

⁸ James B. London and Nicole L. Hill, Land Conversion in South Carolina: State Makes the Top 10 List, Clemson University, 2000

content of the land-users' rights, State's rights on land and the land value should be taken in order to create a good measure for the land conversion oriented to sustainable development.

The Land Law 2003 of Vietnam introduces two measures of land conversion, the compulsory and voluntary measures, and their scope of application, of which the effects evaluation is made based on the benefits of all parties participating in the land conversion process. Such analysis of strengths and weaknesses of the two land conversion measures currently applied in Vietnam will help to suggest appropriate amendments and supplementations to the land legislation in accordance with the sustainable development demand. In Vietnam, the issue of finding proper measures for land acquisition is the "hot" topic in seminars, workshops, conferences, scientific researches on theoretical and practical considerations. Ministry of Natural Resources and Environment, General Department of Land Administration has delegated several missions to different countries which have similar socio-economic conditions to get practical experiences for application to Vietnam. In these study-tours, the implementation models of land conversion in China and Korea are mostly concerned.

c. The main regulations of Vietnam land legislation toward social sustainability associated with the land conversion process

As already mentioned, the conversion of agricultural land to non-agricultural purpose of use is an indispensable demand to be met for the sake of development. The point is there must be legal regulations and specific policies to ensure social sustainability during the process of compulsory land conversion. The Government of Vietnam has paid a lot of attention to finding out solutions to this issue when developing the land legislation framework.

The principal regulations of the current land legislation framework of Vietnam toward social sustainability in the State's recovery of land for investment projects include:

1. General principle of the current Land Law is that the land compensation price must be close to the market price of land; however, there are no specific regulations as how to assess the market price or in some cases, specific regulations are against that general principle. For example, the price of agricultural land which is set based on the value of income gained from land is much lower than the market price, mostly in case of agricultural land to be converted to non-agricultural use. In view of that, the Government has decided to increase the compensation for agricultural land associated with house, or in residential areas, or adjacent to residential areas. Moreover, the land price is still decided by the Provincial People's Committee based on the own view of an administrative body, which often does not reflect the market price. On the other hand, disagreeing with the PPC-decided price, land-users subjected to land recovery also request for a higher price based on the own view of a land loser. There are still no any supports of land valuation services for both sides.
2. General principle of the current Land Law is to ensure a reasonable benefits sharing between the State, the investor, and the land-users whose land is recovered by the State, but there are still no specific regulations as how the reasonable sharing should be addressed. Therefore, the way this principle is followed largely differs among the provinces, every province sees the way they take is correct and there is no legal basis for judgment. The

current Land Law only deals with the benefits of the State, the investor and the affected land-users, but not the community where the recovered land is located.

3. General principle of the current Land Law is to ensure sufficient supports for the land-users whose land is recovered so that they can restore their livelihood, change of job, and lost income. The Government has also provided specific regulations on the level of supports for different groups of affected people and requested the Provincial People's Committees to decide additional supports when necessary. However, there are still constraints with such regulations on compensation and supports, which make only a part of the full losses for land-users. Firstly, compensation and supports is still delivered as one-time when the State recovers the land, the compensations for losses of non-monetary benefits and long term benefits are not fully and reasonably considered. Secondly, a number of regulations are impractical or are not welcomed by the Provincial People's Committees, leading to the fact that affected land-users are not fully compensated for the losses recognized by legal regulations. The biggest impracticality associated with the regulations relates to opportunities for affected land-users to change their job and restore their livelihood. This is partly because the affected farmers are not qualified for a job in the non-agricultural sector, and partly because the local government and the investor are not proactive in looking for practical solutions to this issue. Thirdly, compensation and supports are not considered in association with the investment project concerned, i.e. the compensation, supports, resettlement for affected land-users and the land allocation for investor are conducted in two separate processes. On the one hand, the investor wants to follow their own investment plan without considering their further responsibility for the affected land-users, while on the other hand the local government considers that their responsibility is to be ended after the compensation, supports, resettlement process is completed.

4. General principle of the current Land Law is that only when resettlement site is ready it will be allowed to issue decision to recover residential land; and that the resettlement conditions must be better or at least equal to the original living conditions; and that the resettlement area must be planned as a part of the whole provincial planning with access to good infrastructure conditions. However, these principal regulations are often not fully followed in implementation practice. People subjected to lost house have often no option in selecting resettlement locations but have to follow what is decided by authorized State body. Resettlement sites are often of poor quality, in remote areas where land price is low, and cultural, spiritual, belief values are not considered in resettlement site planning.⁹

5. The Land Law and its guiding decrees of Government have step by step provided fairly clear eligibility criteria about compensation, supports, resettlement for land-users that hold no LURC. The Land Law provides specific regulations on what land use deeds are to be an alternative to the LURC. The guiding decrees of Government go even further by defining cases that land-users holding no land use deeds are eligible for compensation, supports, resettlement when their land in current use is recovered by the State. These are regulations

⁹ Several articles writing on this situation have been publicized in public media at central and local level.

with a high human nature, aiming to protect the rights and benefits of land-users who have been stably using their land since before the effective date of the Land Law 1993 but holding no any of land title deeds.

6. The Land Law of Vietnam is developed and applicable to a full range of land users, without specific regulations dedicated to land acquisition, compensation, supports, resettlement for ethnic minorities and the poor group; the policies are not fully associated with supporting policies for ethnic minorities, poverty reduction policies, gender equity policies, etc.

7. The Land Law and its guiding decrees of Government have provided a number of regulations so as to allow for only effective projects and capable investors to proceed. However, there are still cases where investors are allocated with lands but making no investment, leaving the lands unused for several years, seemingly waiting for the land price going up to transfer the lands to others, while the affected land-users cannot find other lands for their living. This is a case fairly popular in several provinces but legal provisions are still not detailed enough to prevent.

The above mentioned legislation analyses indicate that the theme about social sustainability in association with the compulsory land acquisition and compensation, supports, resettlement implementation is already there in the land legislation development in Vietnam. However, there is still an absence of specific regulations to overcome the mentioned shortcomings and to ensure genuine social sustainability. This is what the future land legislation amendment and supplementation has to deal with.

III. Analysis of land acquisition implementation practices in Vietnam

1. Assessment of land conversion practices under the local leaders' point of view

In practical implementation, land conversion for economic development investment projects has been intensively conducted in provinces, central cities of the key economic regions (in the North, it is the economic quadrangular region including Hanoi, Hai Phong, Quang Ninh, Lang Son; in the Centre, it is the coastal provinces string including Thua Thien - Hue, Da Nang, Quang Nam, Quang Ngai, Binh Dinh, Phu Yen, Khanh Hoa; in the South, it is the East region including Ho Chi Minh city, Ba Ria - Vung Tau, Dong Nai, Binh Duong, Long An, Tien Giang). Among these developed provinces, Hanoi and Ho Chi Minh city and Da Nang have the biggest demand for land conversion and also have the largest converted land area, of which each city has specific way to implement the land conversion. Analysis of the point of view from leaders and the land conversion implementation in these three cities can help to express a common picture of the land conversion process in localities.

a. During the 5-year period 2001-2005, **Hanoi** was granted the right to convert 5,667 ha of agriculture land into non-agriculture land by the Government¹⁰. However, only 4,580 ha¹¹ were converted (equivalent to just 82.3% the approved quota). The noteworthy issue here is that the leaders of Hanoi have point of view "land price should be closely controlled by the State", different than the legal regulation "land price determination should be suitable to market price". The practical problems with land issues are not caused from local improper implementation of land legislation, but the legal regulation "land price determination should be suitable to market price" is not suitable to local practices, which is real cause to make that localities can't implement this legal regulation¹².

Using this approach, Hanoi stipulated the land price at 50-70% the market price of land. In general, Hanoi is very difficult to apply the new policies of increasing land compensation and supports for people subjected to land recovery. For example, it was a lot of negative opinions from Hanoi's leaders about the land compensation policy "the persons subjected to recovery of more than 30% their current agriculture land will be compensated with a non-agriculture land parcel in commercial or servicing use for their job transition (decrees of Government issued in 2006 and 2007)¹³.

With such point of view, the voluntary land conversion measure hardly received any considerable supports from the local authorities. Hanoi believes that this measure actually obstructs investors because there is no legal provision that accounted for the situation when current land-users wouldn't want to cooperate with investors. From the financial context, Hanoi's leaders don't agree to apply the voluntary land conversion measure because of no equity between land-users participating in two measures of land conversion. The land value which land users receive from land transfer in this land conversion is always higher than the

¹⁰ Decision No. 1115/QĐ-TTg of Prime Minister, dated 25th Nov. 2002 on approval of land use plan of Hanoi city for the period 2001-2005.

¹¹ Land use plan of Hanoi city for the period 2006-2010.

¹² Pham Quang Nghi (Communist Party Secretary of Hanoi), Land Management: the specific aspects, E-Newspaper VietnamNet, 6th August 2007

¹³ Speech of Vice Chairman of Hanoi People's Committee at the Conference of natural resources and environment in March 2006; Speech of Director of Hanoi Department of Natural Resources and Environment at the 2008 annual Conference of natural resources and environment.

land compensation which affected land-users receive in the compulsory land conversion measure. This situation is a very common occurrence in Hanoi where land price is the highest throughout country. Hanoi mainly focuses on implementing the compulsory land conversion measure by involving participation from administrative systems at all levels. Hanoi has strongly executed its land recovery for land auction, which has brought in a high income from land to the local revenue.

On the other hand, resettlement area preparation in Hanoi has also been well managed by the local authorities. By the end of 2005, Hanoi had 14,321 apartments constructed for resettlement and 11,800 apartments bought from housing construction projects in commercial purpose, which makes the total 26,121 apartments prepared ready for resettlement. From the other side, low quality of houses and improper locations for resettlement are urgent matters to be settled as soon as possible. In practice, almost all people subjected to resettlement have sold the house of resettlement to buy another house more suitable to their living conditions.¹⁴

b. **Da Nang** is a medium size city that was established in 6th November 1996 as a central city, based on merging of the old Da Nang city and the peripheral area of the former Quang Nam-Da Nang province. Da Nang is located in a suitable place to become the urban centre of the Centre Part of Vietnam. Ongoing since Da Nang's establishment until now, leaders of the city have focused on planning, infrastructure development to build a modern city. Land resource used as an internal force for the city's development. During the period 2001-2005, the land area of 3,821 ha in Da Nang were converted from agriculture land and land used for national defense and unused land to land used for development of industrial, servicing zones and urban area¹⁵. So far, Da Nang has had high socio-economic development achievements since its establishment. During the period 1996-2006, the GDP growth rate reached 11.56%. The average GDP per capita was only USD 392 in 1996, and was up to USD 1,164 in 2005; the average income per capita was only USD 272 in 1999, USD 375 in 2002 and by 2005 was up to USD 510¹⁶.

During the development of Da Nang from an under-developed city to a central city with a long-term urban development vision, Da Nang has applied its own approach to land. The city is using the value of land as the main income of local government budget, which is used for rezoning the city, developing the local infrastructure, arranging resettlement on a large scale, executing land recovery associated with the land pooling/readjustment policy in accordance with the zoning and holding land auctions or allocation of land to investment projects. The People's Committee of City is responsible for the direct execution of all tasks from city rezoning and expansion to land recovery and land readjustment and resettlement, etc. Local banks are accountable for credit granting and will be paid back from the local budget by income from land revenue. Hence, the land conversion system in Da Nang is also compulsory-based with the consensus principles between the local authorities and people. In some cases when disagreement occurs between the people over the local authorities' decisions, the Chairman of People's Committee will have a direct talk with the people to seek an agreement on the issue.

¹⁴ Houses for resettlement in Hanoi are to be qualitatively downgraded in 5 - 7 next years, Youth newspaper, 24 June, 2006, and several other articles on this topic have been publicized in public media.

¹⁵ Land use plan of Da Nang city for the period 2006-2010.

¹⁶ Padeco Co. Ltd., 2007, For the World Bank: The Evolving Role of World Bank Urban Shelter Project - Addressing Land Market and Economy-Wide Constraints, City-Specific Report - Da Nang.

Da Nang has been very successful in gaining land income mainly by recovering larger land than what is necessary for the traffic infrastructure and then tendering land on both sides of the road for servicing-commercial use. In calculating land compensation, the city also believes that the specific value of the recovered land and the roadside land, with its added value from the adjacent road, helps ensure the equity among the persons subjected to whole land recovery and persons subjected to partial land recovery. In general, during the process of land conversion for development, Da Nang has applied the compulsory land conversion measure with high effort from the local authorities and land readjustment policy based on the consensus principles with local people.

c. **Ho Chi Minh City** is an important economic center among the southern provinces, and is very dynamic in its economic development and market activities. During the period prior to 2004, many enterprises in Ho Chi Minh City expressed a strong favor for the voluntary land conversion measure, which enabled the enterprises to directly negotiate with the land-users. After 2004, many enterprises with investment projects subjected to the State's land recovery application have proposed to apply the voluntary land conversion measure.

Ho Chi Minh City has the largest area of land converted into non-agricultural land among all provincial level localities throughout the country. During the period 2001-2005, the city converted 18,000 ha of agriculture land and unused land into land used for industry and service and urban development¹⁷.

The city's leaders have applied a market-oriented approach to land. On collecting people's opinions, in early 2007, the City People's Council adopted a resolution in which land compensation will be determined in accordance with the market price of land based on land price assessment process supplied by price evaluation service organizations¹⁸. In all land compensation cases under the compulsory land conversion measure so far, the land price assessment is performed and it is the basis for consideration of People's Committee to make decision on land price applied for land and properties compensation calculation. Currently, the two major organizations that provide land assessment services are the Southern Centre for Consulting and Price Assessment Services of the Ministry of Finance, and the Centre for Price Assessment of the Ho Chi Minh city Department of Finance.

Ho Chi Minh City also allows non-State owned enterprises to supply compensation and ground clearance services. In 2007, the People's Committee of City granted a joint stock company the permission to provide services in this field as a pilot model (this is the Corporation for Compensation and Ground Clearance).

This pilot model may suggest the need to strengthen the Land Development Organizations, established already in provinces, to ensure the activities of land compensation, support, resettlement and ground clearance. Besides, the provision that non-State owned enterprises are allowed to provide this kind of service, should also be officially formed in the land legislation system.

There have been a lot of suggestions discussed in Vietnam that would involve encouraging investors to receive land value or compensation value as the shares in project from affected

¹⁷ Report on amendment of land use planning of Ho Chi Minh city up to 2010 at the 7th General Meeting of the Ho Chi Minh City People's Council (11th July 2006).

¹⁸ Resolution No. 57, dated 26th September 2006 of Ho Chi Minh City People's Council.

people. This model would ensure the long-term income for the people subjected to land recovery and associate the long-term rights of the affected persons to investment projects. Of course, it would help relieve the administrative pressure on the relationship between investors and affected people and make the compulsory land recovery measure more market-oriented. The Ho Chi Minh city Institute of Economy once suggested setting up a pilot project in the Hiep Phuoc new urban area to implement this model.

2. Assessment of land conversion practices under the investors' point of view

During the implementation of the Land Law, the Vietnam Chamber of Commerce and Industry (VCCI) suggested an annual dialogue between the Prime Minister and enterprises. At the same time, the International Finance Corporation (IFC) cooperated with the Ministry of Planning and Investment (MPI) to hold an annual business forum for the dialogues between the Vietnam ministries and enterprises on Vietnam legislations and policies (co-chaired by the Director of the WB in Vietnam, the Minister of Vietnam MPI with the presence of the Vice Prime Minister of Vietnam). During these dialogues, the opinions of enterprises have been collected and classified by the VCCI and then submitted to the Government for reforming the legislation system, policies and practical implementation in localities. Classification of the opinions from both domestic and foreign enterprises on the land legislations and policies is displayed in the following chart presented in Figure 5.

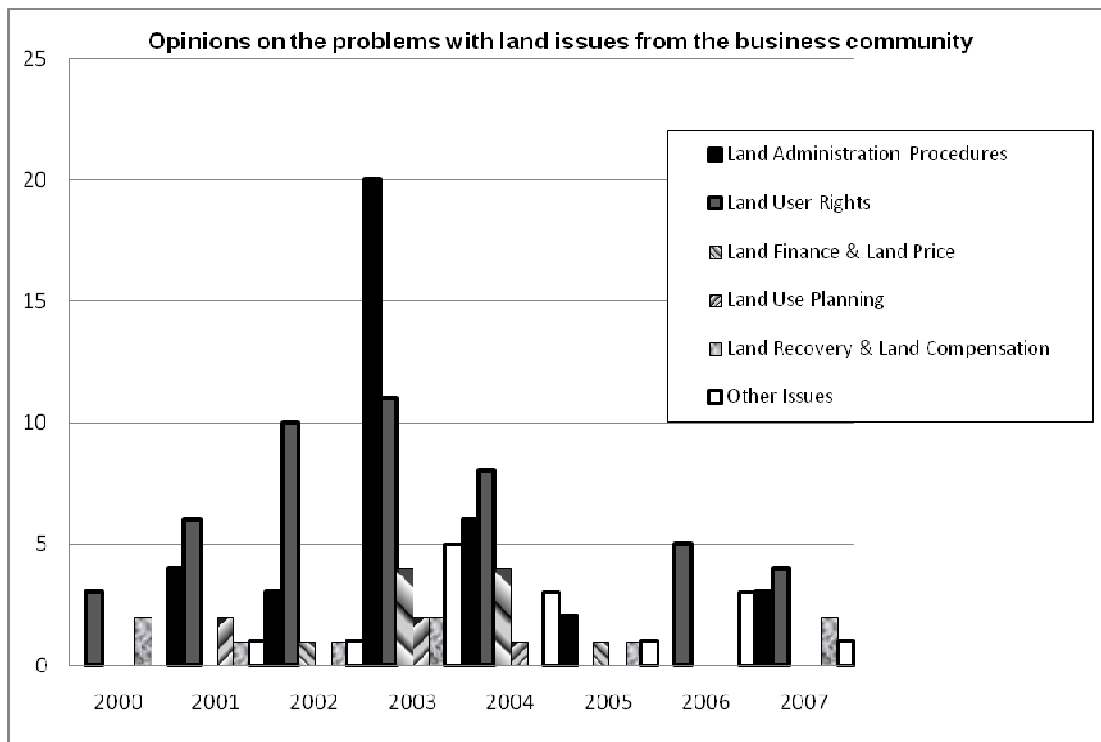


Figure 5

The above chart clearly shows that the quantity of opinions from enterprises on the land legislation inefficiencies was dramatically high during the period 2002-2004, it was the time that the old Land Law had shown its weaknesses and the Government was ready to submit the new Land Law project to the National Assembly for consideration. During this period, the opinions focused on land administrative procedures and the enterprises' rights to land.

Among the land administrative procedures, the land access procedures made up the highest rate. In the period 2005-2007, opinions on administrative procedures reduced remarkably but then increased again in 2007 when the opinions focused mainly on the procedures introducing investment locations and also for the situations when enterprises received a part of the desired land but couldn't manage to get the remain part due to the land-users' unwillingness to cooperate with investors. Concerning the land price and compensation when the land is recovered by the State, enterprises also had a few opinions focused mainly on the their "voluntary" contribution for infrastructure construction to district and communal level and other "nameless" expenses in the land access process for investment projects.

3. Assessment of land conversion practices under the affected people's point of view

In 2005, the Ministry of Natural Resources and Environment executed the supervision of the Land Law implementation in all localities. At that time, most land-users in all localities that had land complaints or denouncements had already met and claimed them with the supervising missions. After checking, evaluating and analyzing the claims, the classification of claim causes¹⁹ is displayed in the charts presented in Figure 6 and Figure 7 below.

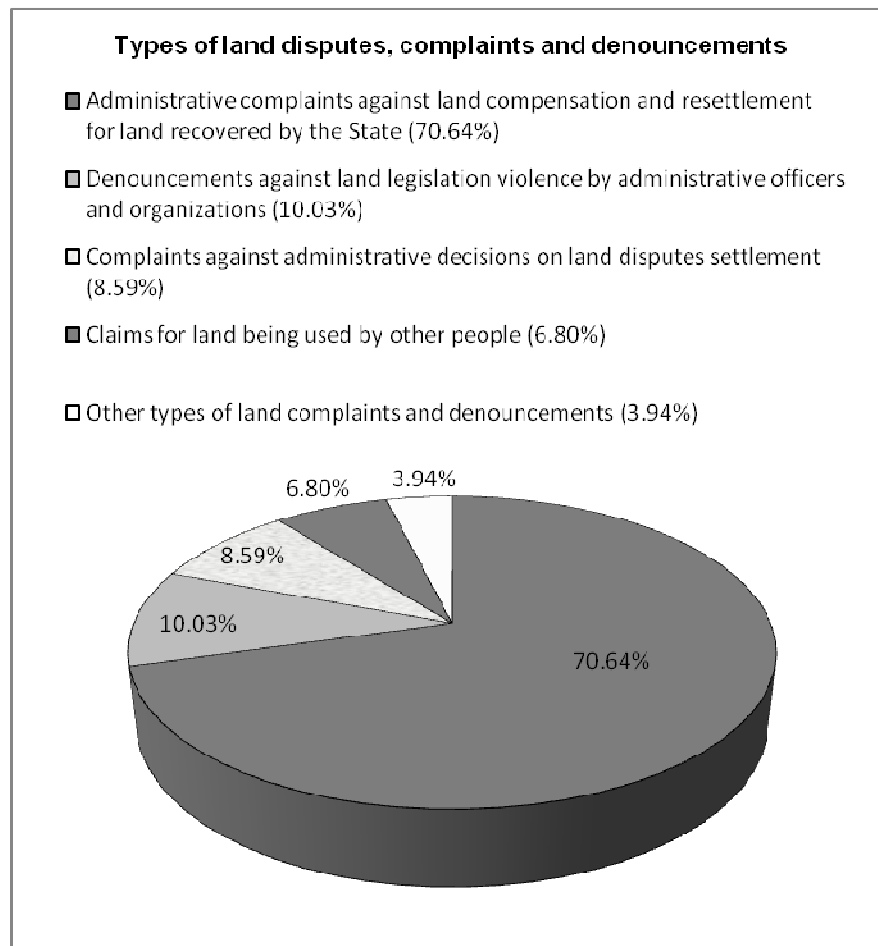


Figure 6

¹⁹ Dao Trung Chinh, Some issues of the status of land disputes, complaints and denouncement, Paper presented in the Seminar on the current status of long-lasting disputes and complaints on land: reality and solutions, organized by National Assembly Office, Buon Me Thuot, 8-9 October, 2008.

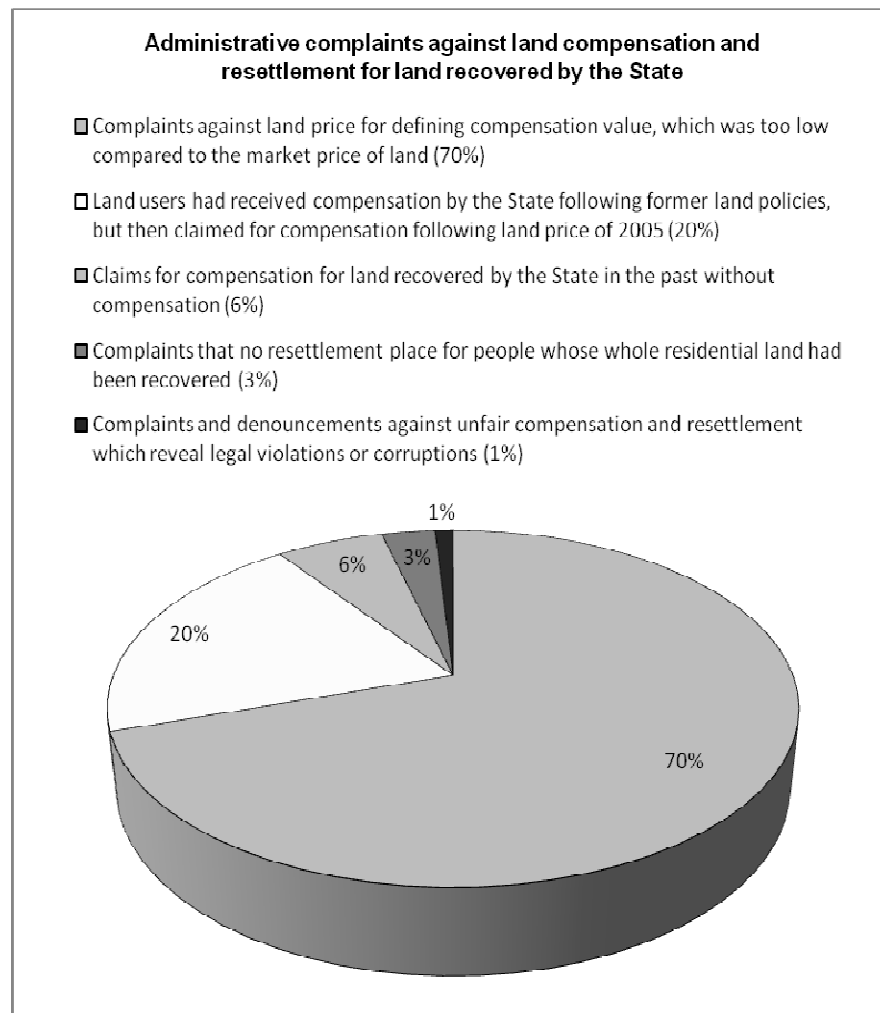


Figure 7

The two charts above show that complaints/denouncements from the people subjected to land recovery were mainly focused on the improper execution of land compensation/resettlement (70.64% total), while the land legislation violations of land administration bodies and/or land officers in legislation implementation made up a much smaller portion (10.03%). The complaints/denouncements on the improper execution of land compensation/resettlement mainly focused on the big difference between the land price applied to land compensation determination and the market price of land (70%), the request of former affected people which received already low value of land compensation calculated based on old land policy to recalculate land compensation in accordance with the new land policy for higher value (20%).

The above data show that the dissatisfaction of the people over the improper land compensation has accounted for about 50% of the total number of people's complaints/denouncements. In early 2007, there were approximately 12,000 complaints/denouncements on land throughout the country. That means there were 8,400 complaints/denouncements on land compensation, support and resettlement issues, which included 6,000 complaints/denouncements asserting that the land price for land compensation calculation is lower than the market price. This suggests that a more thorough look into the compulsory land conversion measure and the method for identifying land prices to calculate land compensation, support and resettlement is

needed. Among the land complaints on land price, the majority were for the low price of agriculture land, which is related to the method of agricultural land valuation regulated in the prevailing law.

Finally, collecting all opinions of administrators, enterprises and people on the the inadequate aspects of the compulsory land acquisition measure from the public media since 2003 there are about 110 opinions, which can be classified and displayed in the chart of Figure 8 below.

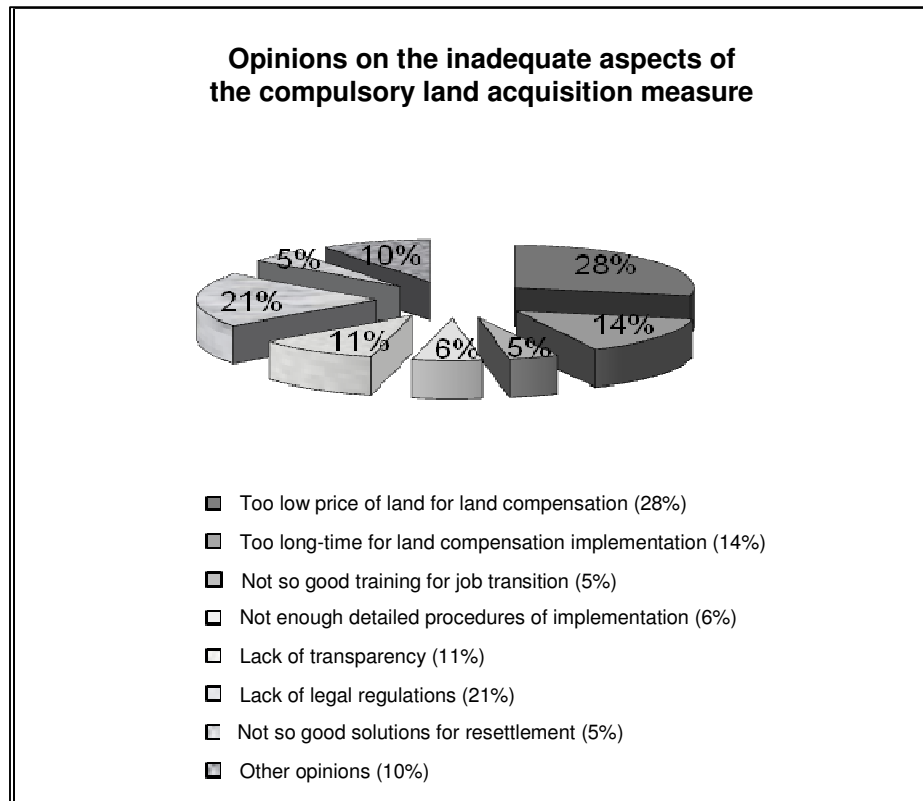


Figure 8

The chart shows that the opinions on the low land price for calculating compensation accounted for 28% total, the opinions on the improper legislation and policies made up 21% and the opinions on too long-time in implementation is 14%. This is the collective opinions suggesting the main contents to be amended or supplemented in near future.

4. Compulsory land acquisition in implementation practice of Vietnam

a. Land legislation awareness and understanding

As above mentioned, State of Vietnam is very serious about improving its land legislation framework; the land law keeps being revised every 2 - 5 years. But this way of doing also makes it difficult for both the government staff and the general public to comply with the newly revised legal provisions.

The reviews of the land legislation implementation in all provinces since the effective date of the Land Law 2003 indicate that most of district and communal land officials do not correctly understand the regulations given in this Land Law and its guiding decrees. Most of the government staff members are still clinging to the Land Law 1993.

Although Ministry of Natural Resources and Environment, Provincial People's Committees keep organizing training workshops whenever there is a change in the land legislation, but these workshops are often more a formality than an opportunity for dissemination of the change. Thus it is clear that capacity building for the land administration structures and managing staff should be a focus of work in the future.

Awareness of land legislation is even worse when it comes to the public. Arguments by the people in their petitions of complaint or disputes are mainly based on their personal understanding with moral standard analyses but not on legal provisions. This situation has resulted from the poor work on raising public awareness of land legislation, making the people poorly understand their rights and obligations on land use. The situation is even further worse among ethnic minorities, rural population groups, less developed areas, and among the poor in rural and urban areas. Therefore, public awareness of land legislation must be further developed in near future.

b. Inspection procedure to land legislation implementation and the supervision participation of the people

Ministry of Natural Resources and Environment (MoNRE) has stated its clear point of view about the role of the inspecting tool for legislation implementation, that made by higher administrative authorities over lower authorities. In 2005, this Ministry carried out the inspection on the implementation of Land Law in all provinces and some key districts, communes in each province. In 2006, the MoNRE continued to inspect the status of the compulsory land acquisition implementation, which was focused on: (i) the impossible execution of approved land use planning; (ii) the unable completion of land compensation/resettlement for ground clearance after having already land recovery decision; (iii) the unexecuted projects while acquired clear land.

Prior to the inspection, the Ministry always publicized its inspection missions' schedule and set up a "hot line" for receiving e-mails, phone calls and post mail from people and enterprises to discover violations in land law implementation at localities. At every time of inspection, the Ministry has received thousands of opinions that would help form the key inspection issues. This would also encourage people to participate directly in supervising the legislation implementation of administrative bodies.

The main results from the said above inspections are as follows:

1. Most of people's committees at all levels didn't carry out the inspection works of law implementation over lower-authorized people's committees.
2. Innovated provisions of the land legislation were not easy to become knowledge of land officers working at local levels.
3. People and enterprises were ready to participate in supervising works to land legislation implementation.

After realizing the effectiveness of inspection carried out by the MoNRE, a number of localities have conducted their own periodical inspection over their administrative bodies. Some of localities also have encouraged their people to participate in the supervision to the legislation implementation at every administrative level.

In preparation for amendment/supplementation of Land Law, the issue of strengthening the inspection mechanism to legislation implementation of administrative bodies and creating suitable ways for the people to participate in the supervision procedure to legislation implementation should be carefully considered.

c. Participation of people and community in compulsory land acquisition measure in Vietnam

At the moment, most of compulsory land acquisitions are dealt with Board of Compensation and Ground Clearance (BCC) which is set up by the District People's Committees. This Board takes care of full process from land recovery to compensation, supports, resettlement arrangement for land-users whose land is recovered. From what actually happens in the practice, it can be seen that the BCC's activities based mainly on administrative procedures, including forcing land-users to accept administrative decisions on land recovery in some necessary cases. Participation by communities, social associations, and affected people is still rather poor, which could lead to the conflicts between the officials and the people.

The procedures for land recovery, compensation, supports and resettlement are almost the same for all regions and for all kinds of investment project, which, sometimes, do not accommodate specific local socio-economic conditions and typical features of ethnic minorities. Specifically, the affected people often feel their designated resettlement place is not suitable with their life style.

At the same time, land acquisition for urban development projects in big cities where land price is very high has resulted in too expensive roads. In Hanoi, there is already a road identified as the "most expensive road in the world" and also the "most unsightly road in the world". This is a result of the rigidity in realizing the procedures in land recovery and market-based compensation without considering appropriate solutions to reduce compensation cost by encouraging people contributions to the project and also by getting full consensus of the people subjected to land recovery. The type of the Community Driven Development projects should be considered and applied in near future to such kind of the projects.

IV. Possible applications of the international and domestic experiences to practices in Vietnam

1. Assessment of the applicable experiences from international projects to Vietnam

During the last 30 years, the World Bank and regional development banks has concentrated on the measures of land compensation/resettlement in the involuntary land conversion to use for hydropower construction projects and urban infrastructure development projects, firstly for the projects invested by funds from these banks. The World Bank was the first major development agency to adopt a comprehensive policy on involuntary resettlement which was issued in 1980 (Operational Manual Statement 2.33 on *Social Issues Associated with Involuntary Resettlement in Bank-financed projects*).

After that, people's resettlement was rather considered as a development opportunity and development objectives from project planning to execution. From this point on, policies on involuntary resettlement were studied, upgraded and periodically updated by every 4 years period. The latest update of the World Bank Operational Policy on Involuntary Resettlement (OP/OD 4.12) was produced in 2004²⁰.

Currently, the World Bank's approach to the involuntary resettlement is based on principle of the "least resettlement alternative" and the broader collaboration with NGOs and representatives of affected people in the design, implementation, monitoring and supervision of resettlement operations²¹. After 1990, other regional development banks have issued involuntary resettlement guidelines such as The Inter-American Development Bank (IDB) was adopted the first involuntary resettlement policy in 1993, The Asian Development Bank (ADB) and the African Development Bank (AfDB) were both adopted the involuntary resettlement policy in 1995. The ADB published also a Handbook on Resettlement in 1998²². A number of United Nations (UN) agencies such as the United Nations Centre of Human Settlements (UNCHS/Habitat), United Nations Commission on Human Rights (UNCHR), Food and Agriculture Organization (FAO) have a mandate to address the issues involuntary resettlement since 1990. In 1994, the "*Guiding principles on Internal Displacement*" was formulated at the level of the UN Secretary-General, which said that the forced eviction was recognized as a human-rights violation. In 1997, the UNHCR formulated guidelines on displacement in the document "*The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement*", which emphasized that "the State should adopt appropriate laws and policies for resettlement and ensure that international donors carrying out in-country resettlement actions do the same".

The first case that the international organizations concern is hydropower investment projects, which benefit the whole society, but create losses to communities where projects located and people whose land with attached properties was lost. Beyond the loss that can be compensated with cash, those people and communities also have to suffer a loss that can't be monetized caused by the affection of changes in environment, ecosystem, culture, and spirits. As a result, the World Bank and other international organizations have suggested benefit-sharing principles be adopted among parties involved in the project. These principles include

²⁰ World Bank, 2004, Involuntary Resettlement, OP/BP 4.12 (www.worldbank.org).

²¹ Rew A., Fisher E., Pandey, 2000, Addressing Policy Constraints and Improving Outcomes in Development-Induced Displacement and Resettlement Projects. A review prepared for ESCOR and the Refugee Study Centre, University of Oxford (www.reliefweb.int).

²² Asian Development Bank, 1998, Handbook on Resettlement: A guide to good practice (www.adb.org).

governing from national legislations, policies, planning, income and taxation to the local implementation practices related to local authorities, investors and affected communities and people²³.

Besides the purpose of compensating directly affected people for land and attached properties, legal provisions and policies governed by the benefit-sharing principles also aim to: (i) arrange resettlement for the residential community, which includes the living environment, employment, and community activities related to custom, culture and spirit; (ii) ensure the local and community benefits from taxes, fees and preferential price of project products; (iii) associate the projects with residential communities to ensure both parties' equity on the basis of long-term benefits integration.

On complementing the benefit-sharing policy, the international organizations have invested in some large hydropower projects in several countries, including the hydropower Kariba (Zambia-Zimbabwe), Tucuruí (Brazil) and Pak Mun (Thailand). The policy studies are conducted on hydropower projects not only in developing countries but also in developed ones, such as the project Tokke (1960) in Norway; Duncan (1968), Keenleyside (1969), Mica (1975), Minashtuk (2000) in Canada; Itaipu (1980) in Brazil, Shuikou (1996) in China, Urrá (2000) in Colombia, Kali Gandaki (2002) in Nepal, v.v. The study is also being conducted on the Vietnam hydropower projects through the ADB technical support for Vietnam (project TA-4689 VIE).

Also in the previous years, the issue of urban development in areas of aging infrastructure or slums is remarkable in big cities of not only developing countries, but also most developed countries. This issue brings benefits to the whole city but at the same time directly impacts on the poor residential communities. On the other hand, the reduction of urban poverty should also be considered when solving this issue. International banks, led by the World Bank, have conducted studies in several large cities all over the world to figure out solutions for urban sustainable development. Many related policies have then been recommended to countries for application²⁴. The general policy is to find out solutions in which a closer relationship can be formed among city authorities, investors and poor residential communities on the political-economic basis in order to support urban development. Land policies for poor urban areas mainly focus on the land pooling and readjustment solution. Some countries have applied the form of granting a *Transferable Development Right* to acquire land for development of public spaces in non-commercial use. In 2007, the World Bank also conducted a case study in Vietnam urban areas, specifically in Hanoi and Da Nang²⁵. Together with the support to carry out an urban upgrading investment project for 4

²³ The WB Group, 2002, Benefit Sharing from Dam Projects, Final report of desk study. Prepared by Dominique Égré, Vincent Roquet, Carine Durocher.

UNEP, Dam and Development Project, 2006, Compensation Policy Issue: Monetary compensation for lost assets and loss of access to resources, Livelihood restoration and enhancement, Community development, Catchment development. Prepared by Vincent Roquet, Carine Durocher.

Asian Development Bank, 2007, Benefit Sharing Mechanisms for People Adversely Affected by Power Generation Projects in Viet Nam, Final report of Project TA-4689 (VIE). Prepared by Lawrence J.M. Haas, Dang Vu Tung.

World Bank Safeguard Training, 2008, Benefit Sharing & Hydropower: Enhancing Development Benefits of Hydropower Investments, Background, Lessons Learned and Recent Trends in Hydropower Benefit Sharing. Prepared by Peter Leonard, Daryl Fields, Navin Rai, Elena Correa.

²⁴ The World Bank, Guidance Note on Urban Resettlement, 2008, Prepared by F.Giovannetti.

The World Bank Group, The Evolving Role of World Bank Urban Shelter Projects: Addressing Land Market and Economy-Wide Constraints, 2007, Prepared by Padeco Co. Ltd.

²⁵ The World Bank, 2007, EAP Sustainable Development on the Urban Fringe, Vietnam Country Case Study.

large cities since 2003, the World Bank has also supplied a technical assistance project for Ministry of Construction to build a country-wide strategy of urban upgrading.

From the international and domestic experiences in settling the compensation and resettlement for people subjected to the compulsory land acquisition, some solutions have been regulated in the current land legislation of Vietnam, some other ones are in studying or piloting in Vietnam. Currently, the State of Vietnam has decided to develop some big projects of hydropower, in which the biggest is Son La Hydropower project and some important projects of urban development for big central cities such as the extended Hanoi planning project and Ho Chi Minh City upgrading project.

In Son La Hydropower or other smaller hydropower projects, the issue of resettlement for whole big residential community shows several urgent needs to be settled. Firstly, there are not so correct surveyed data, which makes the planning infeasible or implementation impossible. After that, too small participation of social organizations, affected communities, affected people in the process of resettlement planning and implementation causes that the resettlement locations have acceptable residential area only, not enough conditions for the livelihood, household production, traditional culture, spirit life, and other needed infrastructures. Finally, the compensation and resettlement solutions are aimed only to monetary benefits sharing for the present time, not yet oriented to the long-term benefits sharing in monetary or non-monetary. In this situation, the said above international experiences will help Vietnam to consider and renovate totally the issue of compensation and resettlement in case of big hydropower projects. In principle, this benefit-sharing policy can be applied to other investment projects that also exert remarkable impacts on residential communities such as mining exploitation, irrigation system construction and economic park development projects, etc.

Currently in big cities of Vietnam, projects of urban upgrading have often to supply a big amount for compensation and resettlement (about 70-80% total cost of project) but not satisfy affected people because the land price for compensation determination is still lower than the market price of land. This is a considerable weakness of the applied currently measures: all losses are converted to money. As the said above, there are several other measures which have no need to pay a big amount for compensation but affected people are very satisfied.

The issue of resettling inhabitants of poor residential areas and upgrading urban infrastructure has been carried out in Da Nang with some remarkable achievements attained. The system in which residents contribute their land to upgrade urban infrastructure has also been applied to some urban residential communities in Vietnam but limited to some small projects on the scale of administrative communal level. A land readjustment mechanism is also the topic of scientific research discussions between scientific institutes. This topic has already been a scientific project conducted by the Institute of Research for Architecture (Ministry of Construction of Vietnam). The outcome of this scientific project has been highly appreciated, however it has ended up in a library and has not yet been acquired and evaluated by the administrative bodies. The demand for policies on resettlement and infrastructure upgrades for urban and rural residential areas are also high, and require a suitable mechanism to be practically applied in Vietnam. Certainly, the international experiences from land pooling and readjustment could be applied to Vietnam to well solve the problems with current urban development.

In Vietnam, the cities only face the problem of poor urban infrastructure and poor residential areas but are generally free of slum areas. The main issue in Vietnam urban areas is to re-zone the poor residential areas, re-construct the aging residential buildings and upgrade the urban infrastructure. Investors are very much interested in projects of aging residential buildings re-construction, however, are generally not able to reach unanimity between residents and investor due to the lack of clarity in any after-project benefit. The benefits sharing principle could be applied in Vietnamese cities to ensure the consensus from two parties participating in project.

Possible application of the benefits-sharing policy to projects with huge social and environmental impacts:

As the said above, the benefits-sharing policy studies are mainly focused on large hydropower projects that will have a huge effect on residential communities. Obviously, the benefit-sharing principle would be applied relatively to the nature of each project which has huge social and environmental impacts on large residential communities, such as mining exploitation, economic park construction, large irrigation system, etc. Of course, every kind of project needs a specific proper model of benefits-sharing.

The benefits-sharing mechanism includes 2 components: monetary benefits-sharing and non-monetary benefits-sharing. The monetary benefits-sharing policy is understood not only by compensation and resettlement for affected people but also by sharing the long-term benefits between project and affected population. The long-term benefits-sharing mechanism may pursue the objectives: (i) providing additional long-term compensation to affected populations; (ii) establishing long-term regional development funds; and (iii) establishing a partnership between developer and local communities based on sharing of the economic rent generated by the project. This mechanism can be implemented in the following forms:

1. Supplying preferential electricity rates and other water related fees

Authorities may negotiate free energy or preferential electricity rates with the hydropower producer to contribute to local economic development. Similarly, water used for irrigation or other purposes can be supplied to adversely impacted communities at subsidized rates or for free.

2. Revenue sharing

A part of the revenues from hydropower are redistributed to local authorities in the form of royalties tied to power generation or to water charges, based on negotiations or regulations in the legislation.

3. Equity sharing or full ownership

A variety of mechanisms may allow local authorities to partly or fully own a dam project. Local authorities thus share the risks of the venture but also its profits.

4. Development funds

Development funds financed from power sales, water charges or government may be established to provide seed money for fostering economic development in the project-affected area, based on negotiations or regulations in the legislation.

5. Taxes paid to local authorities

The State can allow local authorities to directly tax project owner on the project's property value or other basis.

The non-monetary benefits-sharing mechanism could be implemented in the following forms:

1. Livelihood restoration and enhancement for local communities based on the sustainable agricultural and non-agricultural employment.
2. Community development with the improvement of social infrastructure such as housing, schools, health-care, financial services, domestic water supply, roads and public transportation, rural electrification, markets, meeting places, etc.
3. Catchment development with the custodianship of catchment resources, reforestation and afforestation, and environmental enhancement for wildlife resources.

To apply the benefits-sharing policy in each country, theoretical and practical aspects are considered in detailed so to ensure the equitable sharing benefits from development between the beneficiaries and affected people. In national level, there are needs to revise the legislation system, investment policies, land compensation and resettlement, spatial planning, taxation reform, business encouragement, etc. to suit the socio-economic conditions of Vietnam.

In Vietnam, the benefits-sharing principle is implemented only in the type of a monetary benefits-sharing one time before project implementation that makes many of affected people's complaints. The cause is that the long-term benefits-sharing and non-monetary benefits-sharing are not yet regarded. The country's industrialization and modernization requires more and more big investment projects, which have huge social and environmental impacts on population in very large areas. The benefits-sharing policy in the land acquisition process should be studied, piloted, and as soon as possible implemented in practices.

b. Possible application of the land pooling/readjustment policy:

Urban land pooling/readjustment (LP/R) is a technique for managing and financing urban land development. It is widely used in Australia, Japan, Korea, Taiwan, and is currently transferred to the developing countries in Asia, such as Indonesia, Malaysia, Nepal, and Thailand²⁶. The theoretical contents of this technique is so enough simple, local and central governments are undertaking LP/R projects in a selected location of land to assemble and convert rural land parcels into planned urban area with full designed infrastructure such as roads, public utilities, public open spaces, residential place and serviced building plots, etc.

In planning, the number of non-agricultural land parcels is correctly calculated to give back to current agricultural and residential land-users as the payment for compensation. Apart from these land, a number of non-agricultural land parcels is prepared to organize land auctions to get funds for the project implementation. Of course, the asset value of the reduced area of subdivided land will be significantly higher than the existing value. The planning and implementation of the project are to be discussed and agreed by current land-users and residential communities where project located.

In Vietnam, the Institute of Researches for Architecture (Ministry of Construction of

²⁶ Archer R., 1999, Land Pooling and Readjustment: Examples from Asia.

Vietnam) has carried out a scientific project on application of the land pooling/readjustment (LP/R) policy to urban development with a specific mechanism suitable to the Vietnam land legislation²⁷. This research can be considered as a study on argument of this policy with some practical surveys in urban development projects in Vietnam. The implementation of this mechanism is presented in the charts of the Figure 9 and Figure 10 below.

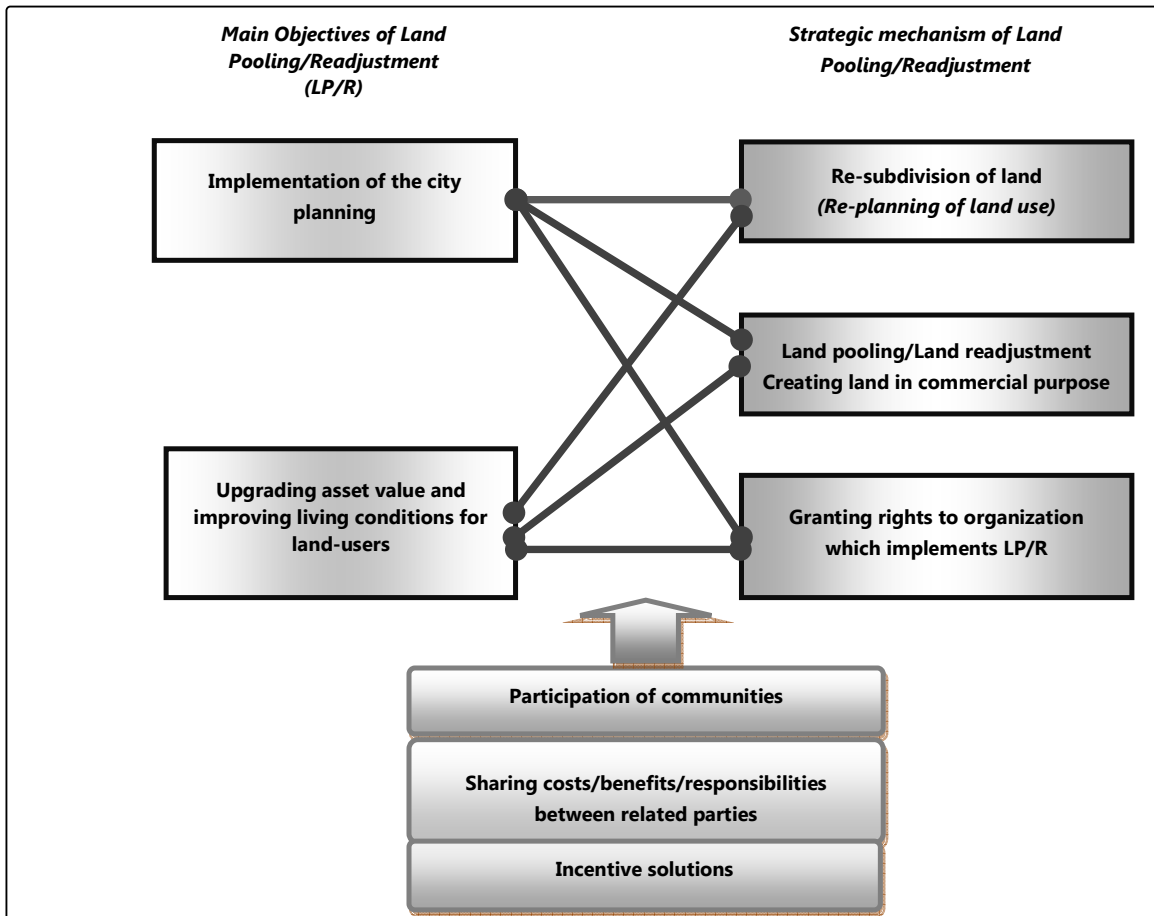


Figure 9: Schema of the land pooling/readjustment mechanism

From the practical experiences of some countries in Asia, for successful implementation, the LP/R mechanism needs some practical conditions of the project area: (i) the location of project has already had the approved urban planning for upgrading/development; (ii) in the area for urban development there are only separated agricultural land parcels used by individuals or households; (iii) the land area is to meet fully legal, natural, economic conditions for urbanization; (iv) local authority has already the intention to provide urbanization by the LP/R mechanism; (v) the land-users communities have good understanding of this mechanism and high consensus in execution; (vi) the implementing organization has a good skilled staff.

The strengths of the LP/R mechanism are to create consensus, equity, equal benefits between related parties participating in urban development. From the other side, the weakness of this

²⁷ Institute of Researches for Architecture, 2006, scientific project: Solution of land readjustment for application to ground clearance at main roads and road hubs place in cities.

mechanism is to require an enough long time for preparation and implementation because of the needed agreement between local authority, developers and current land-users.

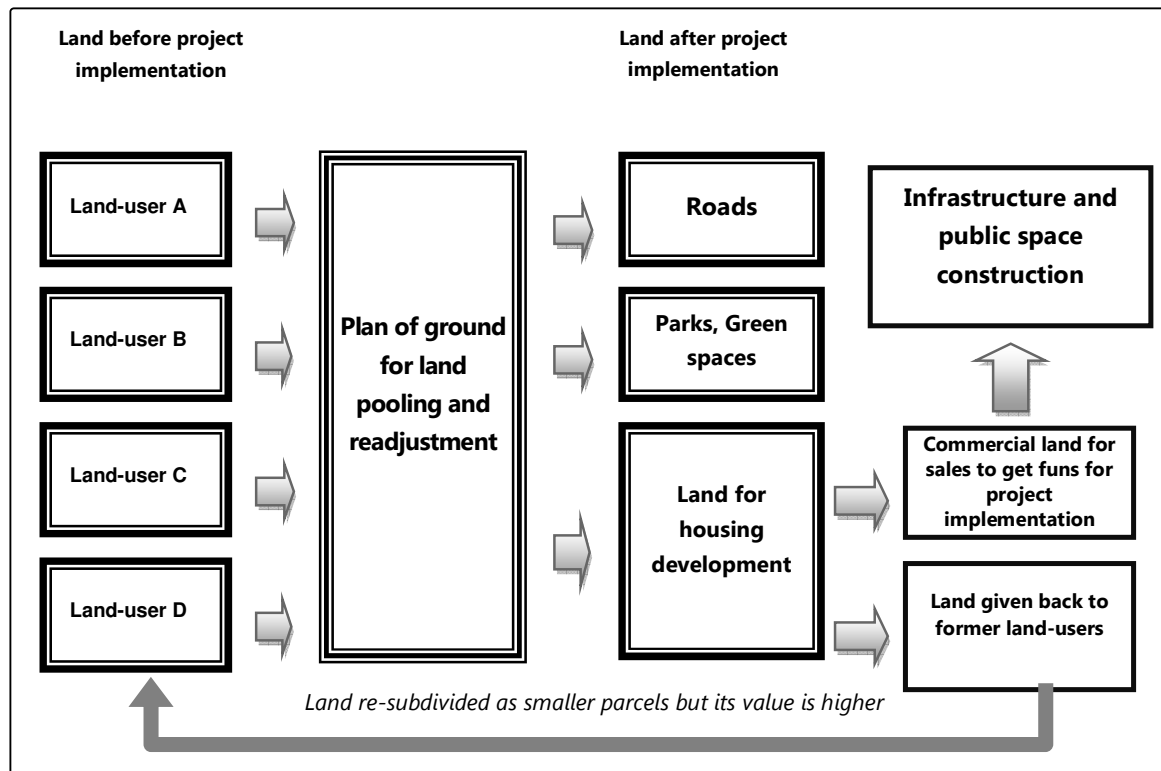


Figure 10: Schema of implementation of the land pooling/readjustment mechanism

c. Possible application of the transferable development right policy:

The concept of making transferable development rights (TDR) originated in the USA, where it was used for private land acquisition by the State to use in various non-commercial purposes such as protecting environmentally sensitive areas. In its present form in India, TDR is used as a tool for private land acquisition to construct social amenities. During the last 10 years, Indian Government applies this policy to acquire land for public use in non-commercial purposes²⁸.

The Government of India has had a policy to approve development planning for all big cities, while land areas for construction of public amenities such as roads, open spaces, schools, hospitals, etc. are private ownership. The monetary compensation is too expensive and infeasible. This situation in India is similar to the projects of extended urban roads in Vietnam with the compensation cost obtaining about 80% total cost of project. Apart from financial aspect, these projects are always to face the heavy complaints of people.

Leaders of some big cities of India permits to apply another mechanism for compensation, the Transferable Development Right (TDR) is granted on lands reserved for roads, open spaces, and public amenities. The people with the TDR have right to construct houses on their remaining land after a part has acquired by the city's authority, or in their other land

²⁸ Adusumilli A., 1999, Partnership Approaches in India.

which has higher value, or to transfer this TDR to other people.

In the Mumbai of India, City's leader give the people subjected to lands converted to public use a right to receive monetary compensation or TDR. The TDR is granted in the form of the Development Rights Certificates (DRC). The TDR has price, depending on the relation of "supply-demand" in construction market, it can be transferred to people, which has demand, but it cannot be mortgaged at the banks.

The issuance of DRCs is to create a TDR market, which has certain impacts on land market, real estate market, urban development market, and process of land conversion for urban development. Setting up the TDR market is a proper solution to help city's leaders implement planned objectives of development with low cost for compensation, create a easy way to develop public infrastructure, and to help also people subjected to lands reserved for public use make possibly more moneys from the TDR market.

In Vietnam, the mechanism to issue the TDR should be carefully studied before a possible pilot implementation in a selected city. Application of the model will be decided after getting the good success of pilot studies. In Vietnam, structure of land value is so different from some other countries. In some countries, it is no difference between the planned land and unplanned land, but there is a difference between the land with development right and land without this right. The value of TDR in India, for example, is the difference of land value between agricultural land and non-agricultural land in Vietnam. This analysis is to show difficulties in application of TDR to implementation practices in Vietnam. However, it is needs to study in depth on application of TDR together with looking for an answer to the question why agricultural land price going highly up after only an administrative decision to convert this land to non-agricultural land? TDR may have another form of application to Vietnam.

2. Assessment of the applicable experiences from some other countries to Vietnam

a. The Chinese model of land conversion

The Chinese model of land conversion has some steps similar to the implementation measure for industrial zones construction in Vietnam. In the first stage, the land for non-agricultural development is designated on the basis of the approved land use planning, and the plan is prepared for land recovery from current land-users and land allocation to investors. In the second stage, requisition of the land from agricultural collectives is issued by administrative powers (with payment of compensation in cash or kind). In the third stage, infrastructure investor receives the land and prepares infrastructure such as leveling, roads, power, water, sewerage network, and environmental processing system; the sites are then leased or transferred to industrial or servicing investors via direct negotiation, a bidding process, or land auctions.

The difference between the models of two countries is in the second stage, the land in China is recovered from agricultural collectives, and in Vietnam the land is recovered from individuals or households. In Vietnam, the State allocates or leases land not only to the big projects using common infrastructure as the said above, but also directly to projects for industrial or servicing investment via direct selection of investor or land auction or project bidding together with land use.

The lessons learnt from the Chinese experiences are to find a suitable limit for application of the compulsory land acquisition. This measure would be applied to the big projects which require a primary investor for preparation of the common infrastructure, and after that the primary investor will lease or transfer the sites to industrial or servicing investors via direct negotiation, or a bidding process, or land auctions.

b. The Korean model of land conversion

The Korean model of land conversion has some points to be considered for application to Vietnam. In Korea, Government establishes land zoning plans, and the land-zoned for industry and residential areas is brought into development through land readjustment schemes. The project costs and profits are shared among the landowners, with some plots are given back to landowners. The Korea Land Cooperation is allowed to implement urban development programs (this organization is similar to the Land Development Organization in Vietnam).

This mechanism allows to recapture most of the project benefits and to provide cheap serviced sites to construction companies. Under the Urban Development Law (1999), private developers are permitted to propose urban development projects so long as they obtain approval from two thirds of the landowners. In Vietnam, improvement of the Land Development Organizations should be considered to reform the compulsory land conversion measure.

3. Assessment of the applicable experiences from domestic pilot implementations

a. Assessment of expansion in scope of application of the mechanism in which current land-users contribute land value or compensation value as the shares of the project in the compulsory land conversion measure

In the voluntary land conversion measure, land-users legally contribute land as capital or lease land to investors. In the compulsory land conversion measure, some people have proposed to consider a mechanism that allows current land-users able to contribute land value or compensation value as the shares of the project. So far, Vietnam law applies only one way to implement the compulsory land conversion: it is an administrative decision made by State's authority to recover lands from current land-users and to allocate these lands to investors for project implementation. As previously stated, the Ho Chi Minh City Institute of Economy has been permitted by the City's People's Committee to pilot application of the land value or compensation value contribution as the shares of the project to the compulsory land acquisition measure. However, the program has since been ceased.

First, let's investigate whether the way in which land-users can contribute land value as the project shares is popularly applied in the voluntary land conversion measure. According to surveys on some investment projects, most land-users are in favor of the way of land transfer. The way of land value contribution is rarely applied, which appears only in the cases when investors and current land-users have a close or family relationship. Therefore, it can be seen that the land value contribution mode needs a firm basis of mutual trust between investors and current land-users. This is also one of the reasons why the pilot project on application of the land value contribution mode by the Ho Chi Minh City Institute of Economy has been ceased. The Project Director, the Vice Director of this Institute said the projects had met a lot

of difficulties in implementation due to the lack of support from both investors and land-users. This pilot project has been temporarily stopped. As well known, this model has been successfully applied in Taiwan but not yet in Vietnam. In other words, the Vietnam market culture hasn't reached the level on which mutual trust among market-participants is guaranteed. In this situation, legal provisions distinguishing the role and actions of a reliable third party, say a bank, to both parties are essential.

The practical implementation can be further discussed, however, in the meantime provisions should be put into the law that current land-users have priority to contribute land value to investor, which would help reduce the complication of administrative relationship in the compulsory land acquisition measure and make it more market-oriented.

b. Assessment of the possible supply of land compensation and ground clearance services made by enterprises

As previously mentioned, there are two types of land recovery by the State in Vietnam: land recovery in compliance with the land use planning, in which the land compensation, support and resettlement shall be executed by the Land Development Organization (LDO); and land recovery for an approved investment project, in which the land compensation, support and resettlement shall be executed by the Board for Compensation & Ground Clearance (BCGC) at district level. Each type has its own advantages and disadvantages. In contrast to these methods, the Ho Chi Minh City People's Committee has granted a joint stock enterprise permission to provide services for land compensation, supports and resettlement and it has already executed ground clearance for some projects. What needs to be considered here is whether to supplement the land legislation with a regulation allowing enterprises from different economic ownerships to supply compensation, supports and resettlement services.

In principle, enterprises from different economic ownerships should be encouraged to participate in supplying compensation, supports and resettlement services. In theory, the more service providers cause the more objective implementation, which will help reduce the administrative costs and restrict the bureaucratic and private availability in administrative implementation. Using this way, a service supply is defined as the activities for land compensation, supports and resettlement on behalf of the responsible organizations and investors on the basis of economic contracts. This should be emphasized to prevent these enterprises from becoming a land broker between the State and investors.

By the way of supplying compensation, supports and resettlement services, the non-State owned enterprises would play the role of connecting bridge between administrative bodies and affected people in the compulsory land conversion measure. In the direct interview with the leader of the Corporation for land compensation and ground clearance in Ho Chi Minh City, the director expressed his opinions as follows:

- The Corporation has supplied services of land compensation, supports, resettlement and ground clearance for 4 big projects, current implementation is going well.
- In current time, the Corporation receives some orders from not only non-State owned enterprises but also from State owned enterprises.
- The time for implementation by his Corporation is always shorter than the time for implementation by administrative bodies.

c. Some aspects of the land price assessment procedure piloted in Ho Chi Minh City

The People's Committee of Ho Chi Minh City has decided to apply the procedure of land price assessment to define the market-based price of land for the land compensation value determination. The land price assessment service is supplied by the Southern Centre for Consulting and Price Assessment Services (belongs to the Ministry of Finance) and the Centre for Price Assessment of the Ho Chi Minh City (belongs to the Department of Finance, Ho Chi Minh City). In the direct interview with the first Centre, director has opinions as follows:

- The land price evaluation process is an objective way to help create the consensus principles between State bodies and affected people.
- The legal method for agriculture land valuation based on the agricultural production income analysis is not suitable to the market price of agriculture land.
- Application of the legal method for non-agriculture land valuation for project investment based on the comparison of this land with other similar land meets also some certain difficulties in finding a similar land with a similar investment project.
- There are no any land market price databases for application of the comparison method to non-agriculture land price assessment.
- Affected people are using also public services of land valuation but there are no any legal regulations on the settlement of land price disputes.

Certainly, the land price assessment procedure for land compensation/resettlement must be developed to apply in all provinces. To formulate a suitable legal frame, several studies and pilot activities are needed to perform. Apart from legal aspects, the construction of land price database should be made as soon as possible.

V. Proposal to innovative or alternative practices in land acquisition in Vietnam

At this point, three issues need to be considered: the first one is how to reform the voluntary land conversion measure in Vietnam, the second is how to reform the compulsory land conversion measure in Vietnam, and the third is how to adjust the limit of application between the two measures.

1. Proposal to reform the voluntary land conversion measure:

In terms of legality, this is called a measure, however essentially it is the execution of rights of investors and land-users in accordance with the legal regulations based on the unanimity between investors and land-users. In practical implementation, there are 3 concerns that need to be resolved:

(1) Current land-users are unwilling to cooperate with investor on assigning the remaining land area after investor has already received the first part of land by land transfer for investment project. Thus, a land legal provision that acts as a final legal decision on the remaining land is needed when the land-users don't cooperate with investors, attempt to charge an unreasonable or unaffordable price.

Proposal 1 to reform land legal regulations on the voluntary land conversion measure:

It is essential to regulate in details the implementation procedures including:

- 1. Investor registers with the Land Registration Office (LRO) to apply the voluntary land conversion measure to the area in accordance with the approved land use planning.*
- 2. Investor hires land price evaluation service to evaluate the market-based price of the land in current purpose of use and in future purpose of use.*
- 3. Investor negotiates with land-users on the modes of land transaction (land transfer or land lease or land contribution as capital) and respective land prices with a witness present from the representatives of the residential community and LRO.*
- 4. If investor fails to negotiate with a majority of the current land-users, they shall look for another area of land suitable for his investment project.*
- 5. When investor has acquired a majority of the land and can't negotiate with land-users on the remaining part, that can request for the State's intervention to apply the compulsory land conversion measure to the remaining part of the land (may be, when investor have acquired about 80% of land area, that need to ask for the State's support on collecting the remaining 20%).*

(2) Investor receives agricultural lands by the land transfer at the market price; after that investor has to pay the difference in value of the agricultural and non-agricultural land to use this land for non-agricultural purpose. However, the agricultural land price valuation is made by the valuation method based on agricultural production income (in accordance with the law), which is certainly lower than its market price, it results in a big loss for the investors. Thus, it is essential to consider reforming the method of agricultural land valuation, mainly in case when the land is to be converted for a non-agricultural purpose of use in accordance with the approved land use planning.

Proposal 2 to reform the land valuation regulations:

- 1. It is essential to reform method of agricultural land evaluation in case the land is to be converted for non-agricultural purpose of use in accordance with the approved land use planning. Instead of current method, it is need to apply a market-oriented method.*
- 2. As mentioned in proposal 1, it is essential that investor must hire land evaluation services to conduct the land price assessment before implementing the voluntary land conversion; the difference in land value that investor has to pay the State can be identified with the result from this land price assessment process.*
- 3. It is essential to complete the regulations on the land evaluation service system while the legislation system permits organizations, individuals to supply land valuation services.*

(3) Foreign investors with 100% foreign direct investment (FDI) can apply the compulsory land conversion measure in all types of investment projects, while domestic investors or joint-venture investors can only apply the compulsory land conversion measure in some certain types of investment projects. In the current land legislation system, the difference in land transaction rights between foreign and domestic investors does not conform to the World Trade Organization (WTO) principles of equity. Thus, it is essential to consider a reform to the rights and obligations of investors on land.

Proposal 3 to modify law regulations on the rights and obligations of investors:

It is essential to reform the system of rights and obligations of foreign and domestic investors on land use and land transactions to ensure the equity between foreign and domestic investors. The specific contents are as follows:

| <i>Prevailing Law</i> | <i>Proposal to amend and supplement</i> |
|---|---|
| <i>Domestic investors have right to acquire land by land transfer, land lease, land contribution as capital from economic organizations, households and individuals.</i> | Not changed |
| <i>Foreign investors have right to acquire land by project transfer, land lease, land contribution as capital from domestic economic organizations (foreign investors don't have right to acquire land by land transfer, land lease, land contribution as capital from households and individuals).</i> | <i>Allow foreign investors to acquire land by land transfer, land lease, land contribution as capital from domestic economic organizations, and directly from households and individuals who are currently using land in the area approved for investment projects.</i> |
| <i>Domestic economic organizations can acquire land with the limited term of use by land allocation from the State with payment for land use fee or by land lease from the State with payment for annual land rental.</i> | <i>Foreign and domestic economic organizations have right to acquire land by one of the three following modes:</i> |

| | |
|---|---|
| <p><i>In the case of residential housing construction projects in commercial purpose, the domestic economic organizations can use the land permanently (unlimited term of use); in the case of residential housing construction projects in house rent purpose, the domestic economic organizations can choose the type of State's allocation of land with payment for land use fee or State's lease of land with payment for annual land rental.</i></p> <p><i>Foreign economic organizations can acquire land by land lease from the State with payment for overall land rental or payment for annual land rental.</i></p> <p><i>In case of residential housing construction projects, foreign economic organizations can acquire land by land lease from the State with the longest term of use and payment for land rental equal to land use fee like domestic economic organizations pays for land allocation by the State, when the term is due, the State will extend the use term without charging any financial obligations.</i></p> | <p>a. <i>Lease land from the State with payment for overall land rental. Economic organizations have right on land transaction.</i></p> <p>b. <i>Lease land from the State with payment for annual land rental. Economic organizations have right on transaction of properties attached to land only, the properties buyer have right to lease this land from the State.</i></p> <p>c. <i>Receive land transfer from economic organizations, households and individuals. In case of land with long term use which economic organizations receive land transfer from households and individuals, this land has the longest term of use in accordance with the law and shall be extended when it is due without any financial obligations to the State.</i></p> |
|---|---|

2. Proposal to reform the compulsory land conversion measure:

As previously analyzed, the reform to the compulsory land conversion measure should focus on guaranteeing the unanimity and the equitable benefit sharing among the involved parties and reducing the intervention ability of administrative bodies in order to prevent possible availability of bureaucratic and private aspects in the implementation of the measure. Details of the proposal are as follows:

Proposal 4 to reform the compulsory land conversion measure:

1. The Land Development Organization (LDO) should be a State-owned enterprise that executes the compensation and ground clearance to recover land for all cases including land recovery according to approved land use planning and land recovery according to approved investment projects (that means not using the Board for Compensation and Ground Clearance at district level as is currently done). The LDO is granted loans from the banks or funds for investment and development in order to execute the compensation, supports and resettlement. The LDO is the unit that executes administrative decisions of the State's bodies on land recovery and the unit that coordinates with other social organizations and residential communities to guarantee unanimity and the equitable benefit sharing among involved parties and reduce the direct influence of the administrative system on the compulsory land conversion measure.

2. Allowing enterprises from different economic ownerships to provide land recovery, compensation, supports and resettlement services on the basis of economic contracts with the LDO and investors.

3. The State sets up a fund for compensation, support and resettlement from the State's budget, investors' and social contribution to improve the long-term support to affected communities and people in the process of land conversion.

4. Closely implementing the market-based land price assessment process supplied by the price assessment service providers, which is used as a basis for the State's authorities to determine the compensation, supports and resettlement. If people whose land is recovered disagree with the land price stipulated by the State's authority, then their disagreement should be based on the land price assessment result from another land price assessment service provider. Details for the arbitration system of the economic arbitration organization over land price disputes should be stipulated.

5. Supplementing some other modes of land relationships between investors and current land-users, such as allowing land-users to contribute the land value or compensation value as the shares of investment project, instead of the land being recovered by the State to allocate this land to investors.

6. Regulating in details the implementation process of land conversion when applied to projects that exert a large-scale influence on the residential communities, such as hydropower projects, mining exploitation projects, big irrigation lakes construction projects in accordance with the international experiences of benefits-sharing principles.

7. Regulating in details the land conversion process applied to projects that upgrade urban infrastructure, suburban residential areas and reconstruct the aging residential areas in accordance with international experiences of land pooling/readjustment.

3. Proposal to identify the proper limit between the compulsory and voluntary land conversion measures:

As previously mentioned, the current limit between the compulsory and voluntary land conversion measures is identified as follows:

| | Compulsory land conversion measure | Voluntary land conversion measure |
|------------------------------|---|--|
| Political and social purpose | Land use for the purpose of national defense, security, and national, public interest. | Not applicable |
| Commercial purpose | 1. Projects to construct infrastructure for economic areas, hi-tech parks, industrial zones, service zones, urban and rural residential areas; 2. Projects with 100% foreign investment (including ODA and FDI); 3. Projects with high investment funds, classified in Group A. | Projects not subject to compulsory land conversion system. |

Currently, there are 3 main concerns about this boundary: (i) it is inappropriate to apply an assortment of compulsory or voluntary land conversion systems based on the rate of investment capital, so the criteria establishment should take into consideration whether the land use is for the purpose of private interest or non-private interest, of purely economic benefit or in association with the national and public interest; (ii) urban and rural residential area development projects benefit the whole society while residential housing construction projects benefit investors considerably, which is one of the reasons for land complaints regarding the benefits of the people subjected to land recovery; (iii) there exists inequity between projects with domestic investment and those with foreign investment.

Among those three concerns, the second concern has been resolved in the proposal 4, which put the need to regulate the land conversion process when applied to projects that upgrade urban infrastructure, suburban residential areas and reconstruct the aging residential areas in accordance with World Bank principles on land pooling/readjustment. The third concern has been resolved in the proposal 3, which mentions the reform of foreign and domestic economic organizations' rights on land. That leaves the first concern unresolved, and raises the demand to identify criteria for setting up a proper limit between the two land conversion measures when applied to projects in fully commercial purpose.

The importance of an economic development investment project should be defined through its significance to the country and the people. Regarding the experience from Chinese model, the compulsory land acquisition measure is applied to the big investment projects which need a primary investor for the construction of common infrastructure. The following table lays out a suggestion for a proper limit of two land conversion measures.

| <i>Proposal 5 to change the limit between two land conversion measures:</i> | | |
|--|---|--|
| | Compulsory land conversion system | Voluntary land conversion system |
| Political and social purpose | <i>Projects with land use for the purpose of national defense and security, national interest and public interest.</i> | Not applicable |
| Commercial purpose | <i>1. Projects to construct common infrastructure made by a primary investor (economic areas, hi-tech parks, industrial zones, service zones, urban and rural residential areas, etc.);</i> <i>2. Projects exert a large-scale influence on the residential communities (hydropower, mining exploitation, residential areas upgrade, etc.)</i> | <i>Projects not subjected to compulsory land conversion system</i> |

4. Some measures to improve efficiency of implementation practice

a. Capacity building for the land administration system and raising public awareness of land legislation:

To overcome the situation where most of the district and communal land officials do not correctly understand the land legislation, it is necessary to take comprehensive capacity building measures including awareness raising. In addition to the usual way of training workshops to disseminate new legislation (organized by Ministry of Natural Resources and Environment, and Provincial People's Committees), the following measures should be considered:

- 1. Regularly organize short term training courses on management skills for all administrative levels; the upper level provides training for the lower level using unique training documents.*
- 2. Run a website to provide guidelines on management skills; to disseminate legislation documents, land use planning information, and management experiences; to open forums to exchange management lessons across the land administration sector.*
- 3. Seek for technical assistances and capacity building supports from international development organizations or developed countries.*

For the public, a public awareness raising programme on land legislation should be developed and implemented. In addition, a free or low-cost legal service system should be arranged soon to support the public in their legal inquiries. For this, the followings should be considered:

- 1. Distribute appropriate legislation guideline documents for different population groups, including ethnic minority groups, and cooperate with different social organizations to pass on the information to the people.*
- 2. Cooperate with the mass media to disseminate legal information by topic combined with direct Q-A sessions.*
- 3. Cooperate with Ministry of Justice and the Lawyer Association to set up a free or low-cost legal service system to support those in need.*
- 4. Run a website to disseminate land legislation.*

b. Strengthening inspection and supervision of the land conversion implementation:

Vietnam's prevailing law has specific regulations on the administrative bodies' responsibility to inspect those bodies directly beneath them. The point here is determining how to execute this inspection and what administrative discipline should be applied to officers and administrative bodies whose irresponsibility has led to legislation violations committed by the junior bodies. Decree No. 181/ND-CP on the implementation of Land Law has one chapter that stipulates the disciplinary actions which are applied to land officers who misbehave in regard to their responsibility. However, these provisions are rarely applied in

practice. To increase the legal validity of the law implementation inspection, it is essential to figure out detailed provisions for every administrative body's responsibility in the annual planning and the inspection of the law implementation by those bodies directly beneath them.

In another aspect, the prevailing land law also has specific provisions for setting up the transparency and publicity in implementation of land administration procedures. A "hot line" mechanism is applied in all level of land administration system to collect opinions from people about legal violations in the land use and land administration. This system has been deployed well by the Ministry of Natural Resources and Environment (MoNRE) and also has been put to use by some province-level localities. The remaining issue concerns supplementing law provisions that encourage non-governmental organizations, residential communities and every resident to take part in supervising the law implementation.

Solutions to strengthen inspection and supervision are needed to consider as follows:

- 1. The administrative levels, the authorities are responsible for making and implementing yearly inspection and monitoring plans for legal compliance by their immediate lower level.*
- 2. Treat, seriously and in a timely manner, all staff members and authorities that commit violations of legal provisions, not exercising their given responsibility, exercising bureaucracy or self-interest actions.*
- 3. Develop suitable mechanisms to facilitate NGOs, communities, and people to participate in monitoring legal compliance.*

c. Creating mechanisms to facilitate the communities and people subjected to land recovery to directly participate in the process of land recovery, compensation, supports, resettlement

As already mentioned, it is necessary to let the Land Development Organization to take care of the land recovery, compensation, supports, resettlement process instead of the Board of Compensation and Ground Clearance set up by the District People's Committees, to reduce the influence from the administrative system, bringing the implementation work closer to the market mechanism. The next thing to do is to apply in a genuine fashion the affected communities/people participation mechanisms in the process of land recovery, compensation, supports, and resettlement. Such participation shall enable quick consensus to be reached, put a limit to affected people's complaints, and ensure good relationship between the local government and the people. In addition, there should also be thorough analysis of the local population groups' social, economic, cultural, traditional characteristics so as to work out and take appropriate solutions. Public participation in the Community Driven Development projects can also reduce investment costs and complaints by affected land-users.

During the compensation, supports, resettlement implementation, it is necessary to fully consider the benefits of affected communities, sufficiently support and compensate the affected land-users in the sense that they have to be able to restore their livelihood and job, and allow the affected people to have options in selecting a suitable place within the available resettlement space.

The following measures should be considered:

- 1. There must be specific analysis of the social, economic, cultural, traditional characteristics of communities where the acquired land is located, particularly analysis of poverty and social impacts to propose appropriate measures to minimize and mitigate all potential impacts.*
- 2. Representatives of the affected communities and affected people are fairly selected to essentially participate in the compensation, supports, resettlement process.*
- 3. All affected people and communities should be meaningfully consulted during resettlement plan preparation, implementation and supervision. Special attention should be paid to relocation options and income rehabilitation measures in consultation process to allow people to select suitable options to help them fully restore the livelihood and living standards as before the land is recovered.*
- 4. Promote the Community Driven Development project model to strengthen the role of the community, strengthen dialogues to get the real consensus, reduce investment costs, and reduce affected people's complaints.*

VI. Conclusion and the next step of the study

In scope of a study to initiate a policy note to improve the land conversion system to support the Ministry of Natural Resources and Environment (MoNRE), and General Department of Land Administration (GDLA) in the process of land law amendment and supplementation, this Policy Note has focused on summarizing the current land legislation of Vietnam and its practical implementation assessment, analyzing the international experiences and World Bank policies on land in order to recommend some legal provisions related to the land acquisition measures which is needed to reform in accordance with Vietnam's current situation. This Policy Note has been presented to MoNRE, GDLA, State bodies involved in the land administration, some non-governmental organizations interested in land polices as well as some investors and researchers for their opinions. The World Bank and GDLA have organized two workshops held in Hanoi (5th June, 2009) and in Ho Chi Minh City (10th June, 2009) to discuss and complete this Policy Note.

The World Bank will consider to expand the study in the upcoming period to support GDLA in preparing the Law on the amendment/supplementation of Land Law, which will be submitted to the Government, National Assembly by the end of the next year. At the same time, a decree of Government on guidance to Land Law implementation will be prepared for Government's consideration and approval.

The continued World Bank support for MoNRE and GDLA in the upcoming period should focus on:

1. FY10 (July 2009 - June 2010): Conduct studies on shortcomings to propose renovated regulations in land legislation related to the land conversion measures in the Draft Law on amendment/supplementation of Land Law and a decree on guidance to implementation of the compulsory land conversion measure, focusing on the application of market-based measures. Specifically, three possible studies should be considered: (i) establishing land valuation system, including land valuation methods and procedures, providing organizations and individuals with land valuation license and establishing land valuation disputes mechanism; (ii) criteria for compulsory land acquisition and voluntary land conversion to be applied (in which cases eminent domain should or should not take place) to increase market-based measures in land conversion process; and (iii) land use planning to help proper and effective land use and land conversion.

At the same time, it's proposed that there should be a design and preparation of pilot activities to implement new approaches in one or more specific sectors or programs to be basis for preparation of government decrees and circulars on how to apply new proposed approaches in land conversion.

The proposed activities are expected to be conducted together with the on-going Bank-funded Vietnam Land Administration Project (VLAP), land policy subcomponent.

2. FY11 (July 2010 - June 2011): Conduct specific prepared pilot activities as mentioned above and continue some studies as emerged from FY10's studies and practice.

3. FY12 (July 2011 - December 2012): Continue pilot models to encourage participation of communities and people in compulsory land conversion implementation and supervision for

land legislation implementation, associated with activities of the on-going Bank-funded Land Administration Project (VLAP).

In addition to the support from the World Bank, there are also similar supports from Asian Development Bank and other development organizations such as SIDA (Sweden), DANIDA (Denmark), AUSAID (Australia), NZAID (New Zealand), etc. for land administration in Vietnam. The World Bank together with Ministry of Natural Resources and Environment, General Department of Land Administration and other donors will have a close collaboration in helping Vietnam to improve land conversion process to make development more and more sustainable. This would also increase effectiveness of land acquisition in the Bank-funded projects to accelerate smooth project implementation.

ANNEX:

Appendix 1: Legal regulation documents on land related to the land conversion measure during the period 1987-2003

While the State of Vietnam had been carrying out its country renovation, the land law regulations included:

1. *The Land Law 1987*, the second meeting of National Assembly VII adopted this Law on December 29, 1987 and came into effect on January 1, 1988.

This law consists of 6 chapters, 57 articles, constructed on the basis of the State-subsidized model on land. The main contents detail the land allocation by the State to organizations, households, and individuals for use; land management system; regime of land use for agricultural production land, forest land, residential land, land for special use, and unused land; rights and obligations of the land-users; regime of land use for foreign organizations and individuals. This law only has three articles regulates the land conversion measure with the following contents: (i) The State recovers land when the land will be used for the purpose of the State or public interest; (ii) Those who use agricultural/forestry land allocated by the State to convert this land to industrial/servicing land must pay land compensation to the State, and then this compensation will be used to develop land resource; (iii) If the current land-user has not demands to continue using the land, the State will recover this land to allocate to others, and current land-user will be compensated for properties invested on the land; (iv) If the land in current use is recovered by the State to use for purpose of the State or public interest, the current land-user shall be compensated for losses and allocated with another land.

According to these regulations, land-user received land allocated by the State just to use, but had no property rights on that land as well as no land transaction rights. The land-user only had property ownership on what the land-user already invested on land. Land conversion was carried out under the compulsory measures decided by the State.

2. *The Land Law 1993*, the third meeting of National Assembly IX adopted this Law on July 14th, 1993 and came into effect on October 15th, 1993.

The Land Law includes 8 chapters, 89 articles, kept building on the State-Subsidized model of land, and also recognizes land to have a price defined by the State and land-users as individuals and households had rights to exchange, transfer, inherit, lease, and mortgage their land use rights. That means households and individuals had rights on land transaction. Economic organizations had only land leasehold rights from the State, but did not have rights on land transactions; they could only transact properties attached on land.

Regarding the land conversion measure, the 1993 Land Law regulates the following specific provisions: (i) The State defines land prices for all categories of land in order to calculate land compensation upon land recovered by the State and the Government determines the frame of land prices for every region and for every period of time; (ii) When it is necessary that the State recovers currently used land from land-users to convert this land to use for national defense, security, national interest, public interest, then the land-users shall be compensated for land and properties attached on land; (iii) The land recovery for another purpose of use must be in accordance with the land use plan/planning approved by the

relevant State's authority. Prior to the land recovery, the relevant State's body must notify the reason, time limit, removal plan, compensation value of land recovery to the people subjected to land recovery.

3. Ordinance on rights and obligations of domestic organizations using land allocated or leased by the State, adopted by the Standing Committee of National Assembly, dated October 4th, 1994.

In complementing the Land Law 1993, the Standing Committee of National Assembly adopted this Ordinance mainly stipulating the following regulations: (i) The domestic economic organizations using land allocated by the State without land use fee for the purpose of agriculture production, forestry, aquaculture and salt production have the right to land use right contribution as capital and land use right mortgage for production development, but must not exchange and transfer and lease this land use right; (ii) The State does not allocate non-agricultural land to domestic economic organizations and the State only leases non-agricultural land to domestic economic organizations; the domestic economic organizations have only the right to transaction on properties attached to land; the State-owned enterprises have the right to use land leased by the State for land use right contribution as capital with domestic or foreign partners for commercial cooperation; (iii) The domestic economic organizations implementing investment projects for infrastructure construction in industrial zones have the right to lease land with invested infrastructure to production investors.

4. Ordinance on rights and obligations of foreign organizations or individuals using land leased by the State, adopted by the Standing Committee of National Assembly, dated October 14th, 1994.

This Ordinance stipulates that foreign enterprises or individuals have the right to access land only by leasing land from the State and have the right only to mortgage properties invested on land for production development, and must not have other rights in transaction on properties invested on land. The foreign enterprises implementing investment projects for infrastructure construction in industrial zones have the right to lease land with invested infrastructure to production investors.

5. Ordinance on amendment and supplementation of the Ordinance on rights and obligations of domestic organizations using land allocated or leased by the State, adopted by the Standing Committee of National Assembly, dated August 27th, 1996.

After a year of implementing the Ordinance on rights and obligations of domestic organizations using land allocated or leased by the State, the domestic enterprises' opinions showed that the poor development conditions for the investment and real estate market, especially the housing and infrastructure development market, were due to the fact that enterprises can only access land by leasing land from the State, but not allocating land with land use fee from the State, and not transferring land use right from households and individuals.

From that reason, the Standing Committee of National Assembly then issued an amending and supplementing ordinance with the major following provisions: (i) The State allocate land with land use fee to domestic economic organizations to use this land for the purpose of residential housing development for selling or leasing houses, and of industrial

zones infrastructure development for transferring or leasing this land with invested infrastructure; (ii) domestic economic organizations using land allocated by the State with land use fee have the rights to transfer residential land use right when selling houses attached to land or infrastructure invested on land, to lease land use right of land attached to invested infrastructure, to mortgage land use right for production development, to contribute land use right as capital for joint business with domestic organizations or individuals.

6. Law on amendment and supplementation of the Land Law (1998)

A while after the Ordinance on amendment and supplementation of the Ordinance on rights and obligations of domestic organizations using land allocated or leased by the State was implemented, the issues relating to the rights and obligations of economic organizations on land were raised again by the enterprises, especially some of these issues were related to the land conversion measures. Moreover, the poor national budget for infrastructure investment led to a new policy by the Government which encouraged “land exchange for infrastructure” model. The content of this model was that enterprises invest their money in infrastructure construction such as roads, bridges, urban facilities in accordance with Government's planning, and the Government will then allocate to the enterprises an area of land equivalent to their investment value. In general, the enterprises were not in favor of this policy so long as this area of land was still only leased by the State.

The Vietnam National Assembly then decided to review all prevailing regulations on land in preparation of issuing a new amendment and supplementation of the current Land Law with following new provisions: (i) the form in which the State allocates land with land use fee is applied to residential land, specialized use land and “land exchanged for infrastructure” for an indefinite term; (ii) a new land-lease form is supplemented, in which the State leases land with one-time payment or payment for a period of several years; if the remaining duration of land use term is more than 5 years, the land-users shall have the rights to make transaction on the land use right with properties attached to this land; (iii) the domestic economic organizations have the right to receive land use right by land transfer from other economic organizations or households or individuals.

7. Law on amendment and supplementation of the Land Law (2001)

According to the land law at the time, land registration and land use right certificate issuance were provided by the provincial authorities. After the Law on amendment and supplementation of the Land Law in 1998 became effective, the number of transactions in the real estate market of Vietnam accelerated as the current land-users wanted to register their land for receiving the land use right certificate. The provincial land administration body and the provincial people's committee were then overloaded with the land administrative tasks. The National Assembly decided then to partially empower the bodies at the district level. The people's committee at the district level was authorized to allocate and lease land to households, individuals and to issue land use right certificate to households, individuals in rural areas.

8. The Government's Decrees guiding implementation of the Land Law 1993, the Law on amendment and supplementation of the Land Law in 1998, the Law on amendment and supplementation of the Land Law in 2001 and the two ordinances on rights and obligations of organizations using land.

During the valid duration of the Land Law 1993 (15th October, 1993 - 1st July, 2004), the Vietnam Government had issued 30 decrees including 3 decrees on the general land

management; 4 decrees on tax on land use and transfer of land use rights; 3 decrees on land registration; 7 decrees on land prices, land use fees, land rental and cadastral charges; 2 decrees on land compensation upon land recovery by the State; 13 decrees on the land lease and land allocation by the State, regime of land use for all land categories, rights and obligations of land-users. Among the decrees guiding implementation of Land Law, there were 3 groups of decrees that were highly involved in the land conversion measures, they were the group of decrees on compensation upon the State's recovery of land (relating to compulsory land conversion measure); the group of decrees on the land leased and allocated by the State, regime of land use for all land categories, rights and obligations of land-users (relating to voluntary land conversion measure); and the group of decrees on land prices, land use fees, land rental (relating to both land conversion measures). These decrees specifically include:

a. *Decree No. 90-CP* dated 17th August, 1994 stipulating the compensations for the losses caused by the State's recovery of land to use in purposes of national defense, security, national and public interests.

This decree stipulates the compensations for the losses caused by the State's recovery of land to use in national defense, security, national and public interests. The compensation principle is that compensations for losses in land shall be made through the allocation of a new land in the same category as the land has been recovered. If the State can't find another land for allocation or the person whose land is recovered does not request compensation in land, a payment will be made with the value calculated on the basis of land price announced by the provincial people's committee in accordance with the frame of land prices stipulated by the Government in the below mentioned Decree No. 87-CP dated 17th August, 1994. All properties associated with the land will be compensated by a sum equivalent to the existing value of the properties at the standard price set by the State. This decree doesn't stipulate the support for residential removal, work interruption and new job training, etc; neither does it stipulate the resettlement mechanism but mainly the compensation in cash to assist new residence construction.

b. *Decree No. 22/1998/ND-CP* dated 24th April, 1998 on compensations on losses when the State recovers land to use in purposes of national defense, security, national and public interests.

This Decree replaced the above-mentioned Decree No. 90-CP dated 17th August, 1994. The land price used to calculate compensation in this Decree is decided by the provincial people's committee multiplied by coefficient K in order to ensure compatibility with the price of land use right transfer on the market. The person subjected to recovery of residential land will be compensated at the level of land area regulated by the provincial people's committee. Properties associated with the recovered land will be compensated by a sum equivalent to the existing value of these properties plus a sum representing a percentage (%) of the existing value of the properties but total of the properties compensation is not higher than 100% and not lower than 60% of the original value of these properties. This Decree also stipulates the support for people whose land is recovered such as support for production and life stabilization, residential removal, and new job training. Especially, this Decree thoroughly stipulates the construction of resettlement location and appointing residential land to households in resettlement location.

c. *Decree No. 11-CP* dated 24th January, 1995 on detailed provisions for implementation of the Ordinance on the rights and obligations of foreign organizations and individuals using land leased by the State.

This decree stipulates the detailed provisions for the forms of the State's leasing land to foreign organizations and individuals and rights applicable to foreign land-users as mentioned in the Ordinance on the rights and obligations of foreign organizations and individuals using land leased by the State in Vietnam.

d. *Decree No. 18-CP* dated 13th February, 1995 on detailed provisions for implementation of the Ordinance on rights and obligations of domestic organizations using land leased and allocated by the State.

This Decree stipulates the detailed provisions for the forms of State's allocation of land without land use fee, State's leasing land and rights applicable to the domestic land-users as mentioned in the Ordinance on rights and obligations of domestic organizations using land leased and allocated by the State, especially Decree focuses on application of the rights to make land use right mortgage and land use right contribution as capital with land leased by the State.

e. *Decree No. 85-CP* dated 17th December, 1996 on provisions for implementation of the Ordinance on rights and obligations of domestic organizations using land leased and allocated by the State.

This Decree is quite similar to the above-mentioned Decree No. 18-CP dated 13th February, 1995. It stipulates the detailed provisions for the forms of State's allocation of land with land use fee as mentioned in the Ordinance on amendment and supplementation of the Ordinance on rights and obligations of domestic organizations using land leased and allocated by the State.

f. *Decree No. 04/2000/ND-CP* dated 11th February, 2000 on implementing the Law on amendment and supplementation of the Land Law in 1998.

This Decree guides the implementation of the Law on amendment and supplementation of the Land Law in 1998, which clarify the form of State's allocation of land without land use fee, State's allocation of land with land use fee, State's leasing land with one-time payment, State's leasing land with yearly payment, and the form of implementing land use right transfer, lease, contribution as capital between domestic economic organizations, households, individuals. The Decree also stipulates detailed regulations on land transaction rights made by land-users in every respective case.

g. *Decree No. 87-CP* dated 17th August, 1994 on the frame of land prices for all categories of land.

This Decree stipulates the frame of land prices (from lowest to highest price) for all categories of land, based on which provincial people's committee will issue land prices table for every land location. The frame of land prices in this Decree is much lower than the price of land use rights transfer on the market (equal only from 10% to 30%). Besides, the Decree allows the use of coefficient K ranging from 0.8 to 1.2, by which the land price will be multiplied to apply for urban land to ensure the compatibility with the specific infrastructure

conditions. After nearly a year of the decree's implementation, the Prime Minister issued the Decision No. 302 - TTg dated 13th May, 1996 to adjust the coefficient K from 0.5 to 1.8.

h. *Decree No. 17/1998/ND-CP* dated 21st March, 1998 on amendment and supplementation of the Item 2 Article 4 of Decree No. 87-CP dated 17th August, 1994 on the frame of land prices for all categories of land.

After 3 years of implementing the above-mentioned Decree No. 87-CP dated 17th of August, 1994, the Government adjusted the frame of land prices in which the lowest price could be reduced by 50% and the highest price could be increased by 50% .

9. Legal documents on land conversion stipulated by the provincial people's committees

Based on the Government's Decrees and Ministries' guiding Circulars, the provincial people's committees have issued the detailed provisions to implement the land legislation in localities. In general, the provincial legal documents can't stipulate any provisions different from the legal provisions issued by central level on administration competence, rights and obligations of land-users. Local Government, in that time, provided detailed provisions on the authorized tasks of the provincial and district and communal people's committees.

Regarding the compulsory land conversion measure, the provincial legal documents focused only on issuing the land prices table for all categories of land, administrative procedures for executing land recovery, compensation, supports and resettlement for people who have land recovered. Consequently, the matters relating to compulsory land conversion measure often arise in the provincial legal documents, which depend on the awareness of the provincial leaders in the role of investment projects and stabilization securing for rural areas. The more detailed the central legal documents are, the more cohesive the legal document systems of different levels can be.

Appendix 2: The legal documents on land related to the land conversion measure during the period from 2004 up to now

1. *The Land Law of 2003*: The fourth meeting of National Assembly IX on 26th November, 2003 and came into effect on 1st July, 2004

This law consists of 7 chapters, 146 articles, was built on the principles of the comprehensive renovation for the land policy in order to suit the country's industrialization and modernization. The land conversion issues, as issued in 28 articles of the Land Law 2003, which includes 9 articles regarding the State's recovery of land and the State's permission to change the purposes of land use; 4 articles regarding the land price; 9 articles regarding the rights and obligations of households, individuals, domestic economic organizations, and foreign investors on land transactions; 6 articles regarding the procedures for implementation of the compulsory and voluntary land conversion.

The Land Law 2003 stipulates detailed regulations on two measures regarding the compulsory and voluntary land conversion as well as the application of each measure to each individual project and a number of frameworks regarding on the procedures implementation.

2. *Decree of the Government's* guidelines on implementation of the Land Law

Immediately after the Land Law 2003 took effect until now, the Government has fully issued the decrees guiding implementation of the Land Law and the amended/supplemented decrees as necessary. There are the following 9 decrees: 1 decree on general instructions for executing the Land Law, 1 decree on settling the administrative violations on land use and land management, 1 decree on determining the frame of land prices for all categories of land and land valuation methods, 1 decree on land use fee, 1 decree on land and water surface rental, 1 decree on compensation, supports and resettlement for people subjected to land recovery by the State, and 3 decrees on amendment and supplementation of the issued decrees. The decrees related to the compulsory and voluntary land conversion measures are presented in details as follows.

a. Decree No. 181/2004/ND-CP dated 29th October, 2004 on the guiding implementation of the Land Law.

This Decree consists of 14 chapters, 186 articles, called by Vietnamese as a “super decree”, because it stipulated specifically the details on implementation of the Land Law. This decree especially concentrated on regulations to build the land administration based on the principle of administrative reforms; to establish two new organizations belonging to the public service sector to support the land administration works, they are the Land Registration Office and the Land Development Organization; to clarify the procedures on land registration, land acquisition, land conversion, land allocation, land lease, land recovery; to set up the discipline for the land officers violating the rules on their responsibilities implementation in land administration or having unreasonable behavior with people.

The Land Registration Office system is responsible to support the voluntary land conversion measure. The objective of the Land Development Organization system is to be the inter-connection between the land administrative system and current land-users while

carrying out the compulsory land conversion measure, closer to the economic relations in the market economy.

This Decree stipulates details specific to two land conversion measures: the compulsory and voluntary land conversion; detailed conditions for application to each measure. Regarding the land conversion measures, the decree has 7 articles on the State's recovery of land, land allocation and land lease by the State; 8 articles on the rights of economic organizations, households and individuals on land use right transfer and its receipt; 43 articles on the procedure of land registration and land conversion.

a. Decree No. 188/2004/ND-CP dated 16th November, 2004 on the method of land valuation and the frame of land prices for all categories of land (consists of 17 articles).

This Decree stipulates the principle for land price definition: agricultural land price is determined based on the calculation of income from agricultural production; and non-agricultural land price is determined by the comparative method with the market price in land transfer. The Decree stipulates also the frame of land prices with the lowest and highest price for each category of land in the specific socio-economic conditions of localities.

Currently, there are some negative opinions on the said above method of the agricultural land price determination (based on income from agricultural production), that is not reasonable and should be changed to market-based methods for agricultural land valuation.

b. Decree No. 197/2004/ND-CP dated 3rd December, 2004 on compensation, supports, and resettlement while the State recovers land.

This Decree stipulates detailed regulations on the compulsory land conversion measure. The Decree consists of 7 chapters, 51 articles that specify in detail about: (i) the cases that people subjected to State's recovery of land receive the compensation of land and properties attached to this land; (ii) the method of compensation determination for the losses of land and properties attached to this land recovered by the State is based on the principle of reasonable benefit-sharing between the State, investor, and the land-users whose land was recovered; (iii) the first priority of the compensation is made by land of the same category, if there is no land or affected people do not want land, then the compensation will be made by cash based on the land price defined in the provincial table of land prices (issued by provincial people's committee, suitable to the market price of land); (iv) the compensation value is increased for agricultural land being garden associated with residential house, agricultural land in or adjoined to a residential area; (v) detailed solutions are to support affected people from State's recovery of land in stabilization of their life, production, and job training and any other purposes compatible with their legitimate aspirations; (vi) better solutions are to implement the resettlement locations for affected people based on the principle that the place for resettlement should have better or at least equal conditions in comparison with the old residential place, and that the resettlement locations should be built before conducting land recovery; (vii) the legal implementation procedures are detailed, and responsibilities of each related organization, individual are specified.

The Land Law 2003 pointed out the way that Land Development Organizations play a role in the inter-connection between administrative bodies and the people, who have related

benefits (investors and affected people) to make the compulsory land conversion measure closer to the market relations. However, this Decree does not have any specific solutions. In practice, the Land Development Organizations have not directly taken part in the compulsory land conversion measure; it just received the assignment to manage the non-agricultural land that had not yet been allocated or leased to land-users.

c. Decree No. 17/2006/ND-CP dated 27th January, 2006 on amendment and supplementation of some provisions of the Decrees guiding implementation of the Land Law and Decree No. 187/2004/ND-CP on converting State-owned companies into joint stock companies.

In the process of implementing the issued Decrees guiding implementation of the Land Law, some inadequate provisions happened in practices. The main contents of amendment and supplementation include: (i) to permit some more prioritized projects to apply the compulsory land conversion measure, due to the fact that the voluntary land conversion measure was executed for so long; (ii) to adjust the time for implementation of some procedures in the compulsory land conversion measure to be more compatible with the practice; (iii) to regulate that the land price applied to the compensation determination is to be suitable to the market price of land while the land price defined by the provincial people's committee is not yet compatible with the market price of land; (iv) to set up a new form of supports to households and individuals who have the recovered agricultural land area larger than 30% total of their agricultural land by the State's allocation of a commercial land parcel for change of job (from the agricultural production sector to the service sector); (v) to locate resettlement places near the developed non-agricultural areas to facilitate job changing from the agricultural production to servicing supplying.

d. Decree No. 84/2007/ND-CP dated 25th May, 2007 on additional stipulating for the issuance of land use right; procedures of compensation, supports, resettlement while the State recovers land; application of the right to use land; and settlement of the land complaints.

The Decree consists of 7 chapters, 68 articles that has the important supplemented provisions to settle a number of practical shortcomings just arisen in the land legislation implementation. The main contents of this Decree include: (i) to specify stipulations on the land use right certificate issuance for the current land-users who lack in legal documents for land use right or it is no specific legal provisions for settlement; (ii) to specify stipulations on settling the compensation for the affected people who has no any legal documents for land use right; (iii) to specify stipulations on the rights and obligations of enterprises using land of which the total capital includes a State-owned capital or foreign invested capital; (iv) to create a new mechanism for investment on land recovered by the State that the people subjected to land recovery are able to introduce their enterprises for conducting investment project on recovered land; (v) to increase compensation value for agricultural land being garden associated with residential house, and agricultural land in or adjoined to a residential area; (vi) to extend a provision of the above-mentioned Decree No. 17/2006/ND-CP on supports to households and individuals who have the recovered agricultural land area larger than 30% total of their agricultural land by the State's allocation of a commercial land parcel for change of job, instead of the commercial land parcel, the affected land-users are able to select a residential land parcel; (vii) to specify stipulations on the implementation procedures

on land compensation, supports, resettlement based on improving transparency, publicity and ensuring benefits of affected people.

e. Decree No. 123/2007/ND-CP dated 27th July, 2007 on amendment and supplementation of the Decree No. 188/2004/ND-CP dated 16th November, 2004 on the method of land valuation and the frame of land prices for all categories of land.

This Decree supplements two methods of land valuation: the first is method of the separation of land price from the real estate price including the price of land and price of properties invested on this land; the second is method of the land price determination including the value added from infrastructures already invested in the area.

After that, the Decree amends the frame of land prices to be more compatible to the market land price in the year 2007.

3. Legal documents promulgated by provincial people's committee

In the Decree No. 181/ND-CP dated 29th October, 2004 on the guiding implementation of the Land Law, the Government stipulates that the provincial people's committee must promulgate legal documents to concretize the implementation of land legislation at all local levels as follows:

- a. The table of land prices for all categories of land in each area in accordance with the market price of land (promulgated annually on the 1st January of each year).
- b. Specific regulations on the issuance of the land use right certificate.
- c. Stipulation regulations on the limit of residential land allocated by the State to households and individuals.
- d. Specific regulations on the limit of residential land recognized by the State for households, individuals using residential land associated with garden or lake.
- e. Specific regulations on implementation of the land compensation, supports, resettlement when the State recovers land.
- f. Specific regulations on the administrative procedures in land administration.

Until the end of 2006, all provinces have promulgated the table of land prices for each local area, and the administrative procedures on land compensation, supports, resettlement while the State recovers land. Concerning the other regulations, there were only half of number of provinces throughout the country has just promulgated the 4 remaining regulations.

Until the beginning of 2008, stipulating more decrees of the Government helped all provinces to promulgate 6 mentioned legal documents.