

Vietnam's Land Policy in the Transition Period

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Land, a kind of political issue, has influenced on socio-economic growth of all the nations in the world, especially in the developing countries. Policy Research of World Bank (2004) reported as follows: Land plays an indispensable role to the steady growth, the effective national management, welfare and economic opportunities opening for all rural and urban people, particularly for the poor.

The aim of the article is to summarize land policy in the transition period in Vietnam from 1981 till now in order to evaluate achievements that the policy creates towards farmers, economy and society and at the same time to identify shortcomings of the policy so it can be changed or adjusted better in the near future.

Keyword : Land Policy, Land Law, Land ownership, Right of land use, Right of transferring, Right of exchanging, Right of leasing, Right of mortgaging, Right of inheriting, Certificate of land use right, Transition Period

過渡期におけるベトナム土地政策

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政治問題の性格を有する土地政策は世界中の国民、とりわけ発展途上国の国民の社会・経済的成長に影響を及ぼしてきている。2004年の世銀報告書は「土地は着実な成長、効果的な国民経済の運営、都市・農村の全ての人々、とりわけ貧しい人々、に対して開かれた福祉・経済機会の提供に関して欠かすことのできない役割を果たしている」と指摘した。本論文は、土地政策が農民、経済社会にもたらした成果を評価するために、1981年から今日までの過渡期ベトナムにおける土地政策を簡潔に述べると同時に、近い将来に向けた土地政策の改善に寄与できるような政策課題を明確にすることを目的としている。

キーワード : 土地政策、土地法、土地所有、土地使用権、土地譲渡権、土地交換権、借地権、抵当権、相続権、使用権証明書、過渡期

I. LAND POLICY IN GENERAL IN THE TRANSITION PERIOD (1981-2008)

The sixth National Congress in December, 1986 marked a turning-point of the socio-economic development in Vietnam. The innovation in economic thought contributed to switch from economy of budget subsidies to socialist-regulated market economy, creating a new face of the country and the Vietnamese people today.

This switch was an objective indispensability consistent with the reality of the domestic and exotic situations. It met on time the pressing demand of the current conditions such as hyperinflation, high unemployment, stagnant production and circulation and the adverse balance of trade. Most of the macroscopic index was below the safe level, causing grave crises in socio-economic life.

The change first was in policy and land laws in rural agriculture, noticeably among them was the Instruction 100 issued by Secretary Committee in 1981 (or often called 'Product-based contract 100', the purpose of which was to pay labors a flat rate for their products), making good progress in farm production. After the good results of 'product-based contract 100' in 1988, the 10th Resolution published by Politics Ministry made a major breakthrough when the first time households were acknowledged to be self-governing economic units. Land Law came into being in 1993 to institutionalize the previous land policies and at the same time define and adjust socio-economic relations in long term.

Thanks to the important breakthroughs in land policy, there were great achievements in

rural agriculture and economic growth in Vietnam in the past 20 years, contributing to the preservation of socio-political stability.

The new land policies, however, primarily focused on adjusting socio-economic and land relations in rural agriculture, whereas the modern market economy required general land policy in all fields such as business manufacture, investment, tourism, planning, transportation and reality trade, etc. Thus, in recent years, when the market economy has developed rapidly, there has been an increase in the demands of using, transferring and trading in land in all regions and in all fields. As a result, there have been problems that land policy has solved without success. In particular, the fluctuations of the reality market in the recent time have confused many citizens, investors and even policy makers. What is the reason? Is it because of the fluctuation of the market mechanism or the indispensable result of the market economy developing but being tied to the unsuitable land mechanism?

With the above disadvantages, all levels of local government found out various and even arbitrary solutions, causing dissatisfaction in public. Without regard to details, they were just situational solutions. So, the clauses of Land Law (the Land Law amended in 1998 and 2001) and the under-law deeds were issued and amended under the guide of Party and Government.

The question is that it is high time to have all-side serious evaluations of the role and the significance of land policy in the economic transition period and to make theoretical and practical problems clear to provide solid foundation in making land policy consistent with the transition period to the socialist-

regulated market in Vietnam.

II. LAND POLICY IN ECONOMIC INNOVATION PERIOD 1981-2005

2.1 *Viewpoints and land policies of Party and Government*

● *Phase 1981-1992: Implementation of land policy*

This was the period when the model of budget concentrated economy showed all its negative sides, which caused serious socio-economic crisis in 1970s and in the early of 1980s. In the early of 1980s, food production hardly met the demand of people so every year more than 1 million ton of food was imported.

In difficulties, some local areas, with confidence, found out better measures and tried to do new management. On June 27, 1980, the 24th Resolution promulgated by Hai Phong City Party on the pilot program of giving work and products to each co-op member and their groups. It was also carried out as an experiment in some areas such as Vinh Phu and Nghe Tinh provinces and evaluated as a good measure that could increase output, bring into play the attitude of working hard, enhance the sense of economizing on production cost and explore part of materials of co-op members' families. As a result, Secretary Board of Central Committee allowed local areas expand this program.

On the basis of evaluating the reality and drawing experience from the piloted regions, on January 13, 1981, Secretary Board of Central Committee V gave the Instruction 100 about giving products to groups of labors and working people in agricultural co-operatives. It guides them how to give products to

households and labors and allows co-op members to invest their funds and labor power in land given and to get all products above the mark. This instruction is regarded as a break through opening the innovation. It had the effects on preventing the decline and made an impetus in farm manufacture in Vietnam. Since then, agriculture made a rather successful start with an increase from 14.4 million tons in 1980 to 18.4 million tons in 1986 (an increase of nearly 700 thousand tons a year on average, a 3 fold amount as compared to its previous increase.) The efficiency of 5 tons of rice per ha in Thai Binh province was exceeded by other local areas which were trying to reach to 10 tons per ha. Instruction 100, however, failed to solve difficulties in farm production. For this reason, on April 5, 1988, Instruction 10 about the innovation in agricultural economic management was issued. It suggested new ways of giving land and products and considered farm co-operatives as units in charge; households of co-op members as self-governing economic units which get land and products from the co-operatives. It meant that household economy was the first time approved as a self-governing economic unit. This instruction was greeted with widespread approval of the peasant class, creating deeply changes in food production. It was from 19.5 million tons in 1988 to 2105 million tons in 1989, an increase of 2 million tons in just 1 year. The growth rate of 10% in agriculture was a record that had never reached before. It provided enough food at home but also enough for exportation. In June, 1989 that the first 1.2 million tons of rice was exported from Sai Gon port to abroad opened up the first historical page of Vietnam's rice exportation.

However the Instruction 10 did not mention right of land use for farmers and the construction new co-operatives.

The first act of land issued by the State was the 1987 Land Law, which showed the renewal of Congress VI.

After this Land Law, on Dec 18, 1991 Inter-ministerial Circular 5 announced officially by Ministry of Sea Product and General Department of Land Management guided to give small ponds, ditches in gardens to households; big ponds and lakes to groups of households and the unused surface of water to organizations or individuals.

On July 15, 1992 the President of Minister Committee proclaimed the Decision 327 about policy of land use included bare hills and mountains, forests, alluvial ground by the sea and surface of water. Households are a manufacture unit to be given forest land. Alluvial ground is given with the open conditions: each household is given forest land within their abilities including 5,000m² garden economy (to forest land), 300m² to land for growing industrial trees, 700m² to alluvial ground. 60% of project capital was for upgrading infrastructure and 40% was for non-interested loans. Households moving to new industrial zones were allowed to transfer the right of using farmland and building land to get funds. In this Decision, the President encouraged enterprises, domestic and exotic private companies to invest in plantations and farms. In brief, land policy in 1981-1992 basically: (1) manifested the cautiously exploratory innovation (2) adjusted in agriculture and in group units such as farms, afforestation yards and co-operatives (3) mentioned that long term and stable land use right was not acknowledged.

• Phase of pushing up the implementation of land policy from 1993 till now

Thanks to the good results of the Instruction 100 and the Instruction 10, the 5th Conference of Government Committee VII issued the Resolution of keeping on the innovation and socio-economic development in rural areas. This Resolution was the foundation of passing the Land Law and tax law of using farmland at the 3rd meeting of Congress IX on July 14, 1993. The 1993 Land Law was with the purpose of institutionalizing the land policy to fit well with the socio-economic requirements.

After the 1993 Land Law, the Government and Ministries and the concerned branches issued a deed to carry this law out. It included the 64th Resolution on September 27, 1993 about farmland, the 88th Resolution on August 17, 1994 about building land and the 2nd Resolution on January 15, 1994 about forestland. This Law affirms that land is owned by the entire people and given to organizations, households and individuals in long term. Along with land use right and some other rights such as rights of exchanging, inheriting, mortgaging, leasing and transferring to strengthen self-control and ensure legally economic benefits for land users.

However, the development of the market economy together with more complicated social relations and frequent needs of buying and selling land have generated so many troubles that the 1993 Land Law resolved without success. Thus, residuary law and amending act were promulgated on December 2, 1998 and October 1, 2001. They focus on economic aspects of land and the State's role

of land management. It is showed by the stipulations of the price frame of all kinds of land, tax of transferring land use right, the value of property calculated when land is given or in case it is compensated, zoned or granted certificate of land use right.

On December 10, 2003, the 2003 Land Law amended to fit well with the socialist-regulated market economy was issued and started to be valid on July 1, 2004. It is showed in Land Law, Articles 61, 62 and 63 in which admitted officially the right of land use in real-estate market.

Briefly, land policy from 1993 till now has had good and bad points. (1) Good points: the right of long-term land use of individuals is admitted, ensured and adjusted to the reality. (2) Bad points: the policy has failed to make a strategic move and a long-term forecast. Its frequent changes have been situational and short-term ones

2. The effect of land policy on socio-economic growth in the transition period

2.1. The effect of land policy on changes of land relations in agriculture and rural growth.

a. Good influence:

One of the remarkable achievements of Vietnam's agriculture in the last decade was the liberation of output capacity in rural agriculture.

Its growth rate was quite high. It was an increase of 3.905% from 1986 to 2004; especially a rise of 4.47% from 1996 to 2000 was considered an ideal rate to ensure the economic growth, security and food supply for the country. Many rural areas had changes for a better life. Material living standard and

living conditions such as houses of households increased up to nearly 99.95%. House appliances and infrastructure such as transportation in rural areas were improved. 91.6% of districts had roads leading to center districts in 1998 and 94.6% in 2000. 82.9% of them were supplied electricity in 1998 and up to 89.1% in 2000; 98.7% had health centers, 98.9% had elementary schools, irrigation and post offices, etc. Rate of poor households reduced from 29% in 1990 to 11% in 2004 (according to the criteria in Vietnam.)

The working time went up to 76.58% in 2001-2004 compared with 72.46% in 1996-2000. In rural areas, there are about 1.35 million of commercial establishment which have attracted over 10 million labors, contributing to better farmers' life and rural areas' face.

Changes in land relation produced a foundation and a motivation for the farmers' self-control, taking part in democratizing socio-economic life in rural areas.

b. Bad influence:

There were bad influences besides the good ones:

First, area of farmland has been more and more narrowed, unconnected and managed ineffectively.

Due to the average population growth of 1.6% per year from 1990 to 2004, farmland has been more and more narrowed. According to the 2003 statistical yearbook, the total area of land in Vietnam in 2002 was 32929.7 thousand ha but land given and leased was 24579.9 thousand ha, making up 74.46%, among which was 9406.8 thousand ha of farmland used, making up 28.57% of the area of the whole country. In 2002, there were 25.5725 million labors working in agriculture, so each farmer had 0.3678 ha of farmland on the average, the lowest rate in the world. So, each person just

had 0.3 ha of land to live on. Land distribution in other areas has been unconnected. In the Red River Delta, it was 0.05585 ha of farmland per person, lowest in Vietnam, the second lowest was 0.71 ha in the North of the Central, and the third was 0.0796 ha on the South Coast of the Central. The highest was 0.282 ha in Highland and the second was 0.175 ha in Mekong Delta.

Second, giving land and granting certificate of land use right have been being carried out nationwide but in some areas the implementation is quite slow.

This is the reason of wasting land resources. In 2002, 9440.7 thousand ha of land was not used, making up 28.56% of land area of the whole country, and about the same rate, 9406.8 ha of farmland given and leased, in which was 535.7 thousand ha of the unused flat land, making up 1.627% of the country's land,

particularly the unused mountain land was 7136.5 thousand ha, making up 21.67% of the total land; land with unused water surface was 150.3 thousand ha, making up 0.46%; rivers and streams 748.9 thousand ha; rock mountains without trees was 618.3 thousand ha, 1.88%; and other unused land was 215 thousand ha, 0.65%.

Third, former co-operatives need changes as they do not go right with the market economy any more.

According to the figures of Ministry of Agriculture and Rural Development, 17.4% of co-operatives self disbanded. Among the rest of these cooperatives, there was 10% changing their forms and activities. For example, they had production care services for good households of cooperatives and 90% is operating confusingly and at an indifferent level; about half of these has existed in name only. Some hamper the development of

Table 1 : Land use per capita according to regions

Regions	Population 2003 (thousand people)	Total area of land (thousandha)	Farmland (thousand ha)	Land on an average/capita	Farmland on an average/capita
Whole country	80902.4	32929.7	9406.8	0.407	0.116
Red River Delta	17648.7	1480.6	855.2	0.0839	0.0485
Northeast	9220.1	6532.8	916.3	0.709	0.099
Northwest	2390.2	3563.7	413.6	1.491	0.173
North of the Central	10410	5151.3	736.3	0.495	0.071
South Coast of the Central	6899.8	3306.6	549.4	0.479	0.0796
Highland	4570.5	5447.5	1287.9	1.192	0.282
East of the South	128815	3473.8	1686.6	0.0269	0.131
Mekong Delta	16881.6	3973.4	2961.5	0.235	0.175

Source : the 2003 statistical yearbook in Vietnam

household economy and rural construction, which is showed in some aspects such as collecting money per 0.1 ha, confusing finance and debt and violating land management, etc.

Fourth, concretization of the 5 rights of land use such as transferring, exchanging, leasing, mortgaging and inheriting have not been done smoothly, constraining the move of land factor in the environment of production for merchandise.

Fifth, the State staff has showed negative attitudes in managing and carrying out land policy.

Some of them become degenerate, so they take advantage of information and their rights to speculate in land, causing many serious consequences on policy's effects.

2.2 The effects of land policy on shaping Vietnam's property market.

The inevitability of shaping and developing Vietnam's property market.

In the market economy, capitals, labor and real estate are input factors of a manufacturing process. Among them, real estate makes up a big portion in enterprises' capital and has a close relationship with other kinds of markets, especially the capital market. When production develops, its scale, quantity and kinds of property transactions such as purchasing, leasing, mortgaging and contributing business capital become more and more diversified, demanding a developed and flexible property market to satisfy the needs of the transactions of the economy. The population growth, high living standard and the rapid urbanization in the last few years have led a large increase in this need. Besides, the extension of economic integration in both its width and its depth require the development of this market to serve international economic cooperation activities,

particularly in a developing country like Vietnam, land is an important source of capital to cooperate with foreign investors.

The process of forming Vietnam's real estate market in general:

The real estate market in Vietnam before 1993:

After the April Resolution from 1945 to 1980, land and immovables in Vietnam was privately and publicly owned, etc., thus selling, purchasing, leasing, mortgaging land and houses were normal. After land reforms and the transformation of industry and commerce of private capital in the North, land and property was redistributed and its transactions, in reality, were still done but unpopular. Both sides joining the dealings themselves went to see each other and bargaining prices amongst themselves. In this phrase, although not any of law deeds of property dealings were made by the State, the State still accepted to regularize formalities of the transactions and collected registration tax when land ownership was registered.

The main characteristic of the property market in this phrase was spontaneous. The State did not have legal framework for it and there were not any business organizations, intermediary centers or real estate services.

The 1980 Constitution defines that land belongs to the entire people and puts a ban on buying and selling it. For this reason, law deeds for this market were not made, so registration of property ownership and land use right was not done too, as logically land is owned by the entire people and given to the state-owned and cooperative economic sectors. Relations of transferring, purchasing, selling, leasing and mortgaging were not recognized, too.

In general, in the phrase between 1980 and

the early of 1990s, the Vietnam's property market operated secretly and spontaneously.

Real estate market in Vietnam from 1993 till now:

The 1992 Constitution affirms that land is owned by the entire people and managed by the State according to laws and zoning plans to ensure that it is used purposefully and effectively

Based on this Constitution, the 1993 Land Law, Article 1 reads, '*Land is publicly owned and managed by the State and at the same time legal benefits of land users are protected by the State. Article 3 of this Law indicates, 'The State protects rights and legal benefits of land users; organizations, households and individuals given land for lease or gotten land use right from others have rights and duties of land users. They have rights to transfer, exchange, lease, inherit, and mortgage land use right. The rights and duties of land users are valid just within the term of land given or leased and used with its right aim'*. After this Law, the 1995 Civil code states conditions, contents of a contract of buying and selling immovables; and stipulates transferring, leasing and mortgaging land use right. This was an extraordinary change creating a legal foundation for the formation and development of the property market.

In spite of the fact that the market has just come into being, it has had a little-by-little contribution to better living condition and stepped up the efficiency of utilization and business of immovables and workplaces, and as a first step, turned house property into an important resource in the innovation and socio-economic growth.

However, up to now this market in Vietnam has been in a nascent stage with many imperfections of its activities and State

management work. At present, there are 2 markets existing at the same time: the official market and the unofficial one. That both of them have been coming into operation is regarded as a challenge to the society and the State's property management. According to estimates, only 30% of real property deals have been registered, mainly through some activities such as giving and leasing land; selling state-owned houses to people renting them; mortgaging or in the form of contributing as much money to business as the value land use right. 70% have been done from hand to hand and many of them done under the approval of agencies of authority. As property lacks legal conditions to take part in the dealings on the formal market together with strict regulations of these conditions, it is impossible to bring into play the positive role of the property market to the socio-economic growth.

In brief, the real estate market in Vietnam is the unofficial one. There are a great deal of immovables deficient in legal conditions when joining civil transactions such as selling house and land use right, mortgaging and leasing, etc. on the official market. Taxes and fees and complex formalities of regularization have troubled the formal market; as a result, transactions from hand to hand on the informal one are more popular, making up over 70% of the property dealings.

3. Achievements and shortcomings of land policy in the transition period from 1981 till now

3.1 Achievements:

Land ownership were established and ensured by the State.

The definition and establishment of law

systems of the State to carry out rights of land ownership and other property is a basic premise to the socio-economic growth. Better approaches to the markets and population growth make the value of land higher; as a result, there will be disputes over land ownership. So, land policy must be amended by the State to give advantages of defining land ownership.

It was proved that the ways of giving land rights had influences on the long-term economic and human growth. Furthermore, the agreements of property ownership might have few benefits in both economic and social viewpoints but they could still exist for a long time. There are 3 reasons to explain the State's participation in establishing and ensuring land ownership:

- (a) There is no need to waste individuals' resources to try to set up these rights
- (b) It can bring fair and reduce fees thanks to the Government's coercive stipulations
- (c) It can also bring good results due to the consistent information between administrative units

Land ownership is a social convention supported by the State's power or by the community which allows individuals or groups of people who require to get benefits or income that the State agrees to protect through giving tasks to other people who can meet or intervene somehow in these benefits. The State plays a key role through defining these rights and the ways that can enable them to be carried out and adjusted in case economic conditions change because these rights are not in a state of standing still but moving to satisfy changes of the socio-economic environment. In Vietnam, the rights of using, inheriting, transferring, mortgaging

and leasing, in fact, economically, are manifestations of land ownership. In other words, the establishment of these 5 rights including the set-up of legal ownership of the State and economic ownership for users are, in fact, to give citizens limited land ownership.

Constitution in most countries mentions land's social function, implying that the Government has rights to take land back with the consideration of compensation fulfilled by a legally right process for a general aim. Although land rights are given to individuals, they are limited somehow. On the other hand, despite the fact that the guarantee of economic ownership influences on farmers' investment, it is really unnecessary to go with the requirement of personalizing rights and land papers entirely. This proves that there is not land privatization in Vietnam but giving these 5 rights of land to people not only suits Communist Party's political viewpoint but also ensures a normal development.

So, though land ownership absolutely belongs to private individuals, legally it is still in the hand of the State as land owners still have to transfer it to the State to use for general purposes in the form of purchasing, selling or leasing. Thus, after all, economic ownership of land owners and users is their own rights of land use. It is set up in most countries but in very various forms. Land ownership is as an example but it is also tied down by some of the State's conditions such as aim of its use and general planning, etc. In Vietnam, during the innovation, economic ownership was given back to households and organizations of production and business. The following benefits are obtained thanks to this right:

Improvements in land use and management:

Professor, Lan Williamson from Melbourne University, director of the investigation of the realty market in Vietnamese rural areas noted, 'In the past 10 years, a formal and busy market for real estate has come into being in rural areas. This is a great achievement compared with other countries and Vietnam can feel proud of it.'

In 2004, the UNDP report on the realty market in Vietnamese rural areas said Vietnam had made good progress in granting certificates of the land use right when implementing the 1993 Land Law. Official market mechanisms for transferring and mortgaging farming land have been established.

However, it is the realty market in cities that reflects clearly the progress of land policy. Rights to land held by the State and users have been determined. The State acts as a representative of the people to whom the legal ownership of land belongs. Rights relating to the use of land have been granted to citizens, thereby helping them feel confident in their investment in land and try to use it more effectively, the land is transferred and concentrated in hands of the best users. Legal recognition of transactions relating to the land has helped develop a realty market.

In the realty market in rural areas, however, there are obstacles to the equal participation by ordinary people. High fees of the land use right prevents poor families from securing certificates of the land use right – the paper that allow them to get bank loan. UNDP officials said that the main challenge to Vietnam today is to ensure market access for all citizens, especially the poor ones. Transparency of procedures and practices applied on the realty market access will help

the poor to gain more profits from the land.

Gender equality and the land policy:

Article 48, Section 3, one of important articles of the 2003 Land Law, reads, 'if the land is co-owned by husband and wife, their names must be registered in the certificate of the land use right.

This is an effort to affirm the gender equality, and women's right to land in particular. According to recent statistics, some 97% of women didn't have their names registered in the certificate of the land use right. This put them at a serious disadvantage: they could be denied this right at any time. In cases of divorce, separation, or the death of their husbands, most of them are usually provided with a small piece of land or dismissed by the husband's family.

In economic aspect, they can't secure bank loans without the certificate. They must get approval in writing from the husband or his family and from local authorities they want to borrow from banks. This situation encourages the husband to give, sell or lease their land without consulting his wife.

So, changing and granting certificate of land use right written both husband's name and his wife is needed as it affirms gender equality in obeying rights by law.

3.2 Shortcomings of land policy now and their causes

Shortcomings in making and implementing land policy

First, the distinction between the ownership and the land use right is not done properly and clearly, which leads to different interpretation and implementation of the law. Unnecessary disputes and lawsuits, and social unrest when many citizens don't agree with local officials about some solutions to their

complaints. Bad land management by the authorities of different levels has influences on the social development. It is believed that a vague theory will be carried out arbitrarily in reality.

Land is recognized legally as a kind of special goods the rights of which are valid and can be transferred, purchased and exchanged on the market. The policy of land and houses, however, cannot meet the demand of the market economy. The property market came into being and has been developing but it is still spontaneous as its law system of management and control has not been made yet. As a result, a hoard of land is more and more serious and considered as a social challenge. Many intermediary companies are simply experienced brokers who spend no capital in repairing loss, filling or improving infrastructure, etc. but still gain much benefit from buying and selling between themselves or playing an intermediary role in residential area zoning projects.

Policies on tax, fee of the land use right, compensation before land clearance, etc. do not ensure the principles of land rent between land users and owners and produce a flight of land benefits that can be gained by the State when land is transferred to its users or owners.

The task of zoning and employing the land stock by governments shows many bad points and fails to satisfy trends of the socioeconomic development and realty. For example, not until April 27, 2004 was the report of land use zoning to 2010 and land use plan to 2005 in the hand of the permanent Congress Committee-3.5 year late for a 5-year plan of land use from 2001 to 2005. Even the statistic figure of the country's land surface in the past was 33.3

million ha but now is 32.9 million ha; so where was 0.5 million ha of land? Another problem of this plan is an unreasonable distribution between the city and graveyard land. Graveyard land is larger than city one. It was 93,700 ha in 2000 and 94,876 ha in 2003 compared with 72,200 ha and 80,307 ha of city land. Such a distribution is due to burial customs of locals in various regions yet the further explanation is due to weak zoning management. Besides, granting of certificate of the land use right is done too slowly. That the process of formalization is not as fast as it is expected is the following reasons: (1) a large amount of work blocked owing to the loose administration; (2) the complicated process of the granting certificates.

The unclear and abstract responsibilities of different levels about land management lead to many deeds repeated, causing difficulties in law implementation. Planning for zoning and using land overlap as they are done by many agencies. They are well-done in provincial levels but badly done in district, village and ward levels in which need stability of residential zoning and a guarantee of infrastructure according to general requirements.

Constant changes and lack of unity of the system of law deeds and land policies issued in bulk from governments to locals cause so many obstacles in land management. A lot of deeds made by the upper levels are not very strict but become extremely rigid when they are done by the lower levels and they are even done wrong deliberately. Thus, many of them are invalidated, causing negative attitudes.

Problems caused by the informal property market

First, land and properties is used

ineffectively, causing too much waste

Operations on this market are out of the control of the State managerial organs. A rapid investment in land and properties has made a big sum of land kept for higher prices or unused for production, business and housing purposes. At the same time, using land with wrong purposes, building houses arbitrarily without in zoned areas are very popular. Similarly, State organs and enterprises use part of houses or land of office buildings for lease. Beyond the State's control, these operations have made this market become stronger.

Second, social consequences are inevitable

The complex fluctuation in the realty market such as the high rise of house and land price and the weak property management, etc. create good conditions for some individuals to become rich quickly and illegally, pushing the social inequality. Negative attitudes, corruption leading to painful social problems such as giving and leasing land without authority, invading illegally, disputes, lawsuits, etc. between individuals, organizations and even members in families are popular in recent years.

Third, there are problems in raising financial resources

The State hardly derives benefit from land and real estates due to 70% of land and property is not registered with the authorities and they are done through property transactions in the informal market. This puts much pressure on the State's budget in compensation before land clearance while land price goes up constantly. On the other hand, without legal formalities for official deals, property resources hardly turn into financial investment resources for business and

production activities such as mortgage for capital, a bank loan contribution or for lease, etc.

Fourth, this informal market decreases the competitive capacity of the economy

Owing to house and land prices increase rapidly, expectancy towards land investment arises among so many people. Thus, instead of using dead capital for business or production, they use it for the real estate market. Besides, the high fees of land use push production fees up, reducing competitive power of enterprises and the economy.

Causes of the shortcomings

The power of propagandize about obeying land laws strictly has not been developed due to lack of awareness of the role and position of land in the country's socio-economic development.

Much of work in the machinery of management overlap, letting the managerial process loosed.

Bad at both theory and professional qualification, the managerial staff force, especially administrative officers in wards and villages make unconscious decisions, causing serious damage.

The laws are not obeyed strictly.

The ways of thinking and working are bureaucratic and bothersome, causing troubles in transactions, implementation of land policy and reforms in administration.

3.3 Urgent questions of land policy in Vietnam now

The situation and shortcomings of the realty market pose many urgent questions:

The procedures for granting the certificates of the land use right is too complicated and time-consuming. How can they be improved?

Expenses on process of getting the

certificate, transferring the land use right or changing the purpose for the land are beyond reach of the poor. How can the Government cut them?

The land use right is only valid for a period. How can it be renewed? Are citizens content with this period?

Is a limit on the area of land granted to a citizen necessary? Does this limit cause bad effect on the development of the realty market?

Should auctions of right of public land use be carried out for locals' budget? If they are done, land prices will be higher while the heat of land market needs reducing.

Besides, there have tremendous demands in land use; so if public land has not been used all yet, it should be transferred to residential areas or sold for money in auctions to sponsor building apartments for the poor.

How can land rent be regulated? There are not any definitions of differences between compensation prices for land withdrawn a part and a whole. Thus, in some cases when infrastructure is improved, land value will increase as a result. This gives benefits for people who remain but damage for people who leave after land clearance. So, it is unfair for people with land withdrawn a whole. How can part of added value of beneficiaries (people with land withdrawn a part) be regulated for people damaged (people with land withdrawn a whole.)

III. SOLUTIONS FOR EFFECTIVE IMPLEMENTATION OF LAND POLICY IN VIETNAM IN THE TRANSITION PERIOD

3.1 Requirements of carrying out policies and laws of land

Reforms of land policy must fit well with the transition period of the economy. It means that supply and demand relations of the market economy are regulated, pushing the development of the realty market. This suit is manifested between economic benefits of citizens and enterprises and the effective management of the State.

The consistency of the viewpoint of ownership by the entire people must be guaranteed. It is necessary to make clarifications to rights of the State as an owner agent and open rights and duties of land owners consistent with benefits of the nation, organizations, households and individuals. Top of them is national benefits and the others are considered as an impetus. All benefits are shown in clear, definite definitions of land law deeds.

Land law policies must be strategic. They should not change very often or have arbitrary decisions and overlapped definitions made by managerial staff.

Based on the origin and history of land possession, exploration and improvements, land is not a product of an individual but public property of a whole community and it is owned by the entire people, but controlled and decided by the State as a managerial representative.

Regarded as the most powerful representative of ownership, the State can give part of these rights (top of them is land

use right) to citizens and organizations in society, which suits ownership by the entire people and can give them more conditions to improve, exploit and invest in land property in case land is zoned with stable use purposes.

Land policy should come from the rule of formation and land rent distribution of land. Basing on it, the State will collect part of value added on the land the value of which in general is made higher by social investment; when withdrawing land, the State will compensate (according to market price) for added investment value of land use owners in land improvements as well as benefits coming from land.

Requirements of land relations in rural areas should be guaranteed: farmers have no worry about their investment capital for production growth. Land is centralized to become an important economic factor moving to the trend of business of production for merchandise.

3.2 Urgent measures

First, building qualification of local officers is a key problem

It consists of providing knowledge, basic economic concepts of deciding and calculating land tax; developing educational propaganda campaigns of laws; training land officers to conciliate or solve conflicts informally; land use zoning. It was proved by a group of UN of land management in the East of Europe that great progress can be made just in a short time if land officers are trained carefully about skills, techniques, and knowledge of society, finance, law and economy.

Second, giving and granting certificates of land use right to owners quickly is now an urgent issue. According to estimates, there are 20% of households using agricultural land and

95% ones using land for other specific purposes which has not been granted certificate of land use right. Asking for granting these certificates is difficult, complicated and money-consuming.

Third, land use tax, registration tax, transfer duty of land use right should be reduced

Registration tax:

The 176 Governmental Decision about registration tax issued on Dec 21, 1999, Section 1, Article 6 reads, 'Registration tax of houses and land is 1% of land value. Land price is decided by the People's Committee of Province, and City belonging to the Central according to the price frame of the Government. This fee rate in total value of house and land is quite high and inappropriate for being a fee. Therefore, people will hardly show their positive attitudes in their land declaration and registration, producing a flight of this fee and causing problems of land management.

Transferring right of land use:

Tax law of transferring land use right was issued by Congress on Jun 22, 1994 and amended, added some Articles of tax law on Dec 21, 1999, Section 1 and 2, Article 7 reads, '(1) Tax of 2% for farmland, forestry land, land for water-product raising, land for making salt. (2) Tax of 4% for housing land, construction land and other types of land. Article 11 reads, 'People who have their land use rights transferred must pay these taxes once according to notification of tax agency. Owing to the high taxes, tax payers often declare their land value many times lower than the real value for a lower payment or carry out transactions secretly without declarations. As a result, the State can not collect enough taxes for budget and there is

an increase of land deals in the unofficial market, causing obstacles for the State management of land and houses.

To places where there are investment projects involved in transferring agricultural land to other land, the State should make policies that regulate part of value added of land gained by this investment through income tariff from the transfer of land use right before and after the projects.

Apart from the above-mentioned fees and taxes, people in rural areas have some other payments suggested by their local authorities such as fees of irrigation and drainage, dyke preservation, veterinary services, plant protection and 10-day working for annual public benefits, etc. They are about 1.7% of a household's expenditure in 59% of total agricultural expenditure. Farming land tax is 45% of total farming tax, fee of irrigation and drainage is 21% and the rest taxes are for electrification (6%), compulsory labor (6%), road construction (3%) and dozens of other fees and taxes. This is a really burden for poor farmers, causing influences on the value of land policy.

It should be a decrease of taxes of land use and land use right transferring as well as registration fee. Local authorities are not allowed to collect, encourage or enforce for any payments involved in houses and land.

Fourth, it is necessary to consider compensation for floor clearance and land rent regulation

When there is compensation pricing for land damage and properties on land, it is necessary to follow principles suitable for the market price of a local area at the time of the decision of land withdrawing.

This pricing must be carried out in the

same way at the same place, checked and supervised by People's Committee of Province, appraised and determined on the same price rate in compensation by Finance Office at their place.

Fifth, measures of land accumulation and centralization in agriculture should be consolidated.

Though farmers who is given land use right by the State have rights to exchange land, government management agencies are in charge of propagating, canvassing so that they can understand more benefits of this right; and if land can be improved, these agencies have plans to support them to do this. Implementation of centralizing land for farmers cannot be separated from re-granting them certificate so that they have no worries about their exchanged land, thus they can apply advanced technology to farming production. Cases of taking advantages of this centralization policy to profiteer must be resolved strictly. Enlarging surface of farms is encouraged at places with a lot of unused land. Surface of given and rented land for farms must meet the business demand and fit in well with land conditions in each area.

To highland groups and ethnic minorities, there should have policies of guaranteeing land of agriculture, forestry and fishery consistent with the law and the conditions of each area; and there should have good management that can help them keep their land and settle down. When giving land, authorities should guide them to use land to produce efficiently, settle down and enrich themselves on the given land rather than let them do by themselves. Besides, ethnic minorities also need supporting, directing for production and land improvement as settled

agriculture and intensive farming on their land is completely strange to them.

Sixth, cases of breaking land laws, particularly suspended planning must be solved immediately

Using land must be often checked and investigated to deal with cases of breaking laws such as transferring purpose of land use casually, occupying and transferring land use right illegally. Responsibility of departments, levels, organizations, and individuals must be clear to be able to apply sanction to them in carrying out zoning and planning land use and prevent them from approving out-of plan projects, suspended planning; giving and leasing land without authority; let land users transfer land use purpose illegally.

Seventh, it is not allowed to consider city district population as a condition of granting certificate of land use right

In many years, in big cities there is an existing problem: if one wants to have land or houses, he must have city district population, but to have it, he must have land or houses. This has not been within Land Law as well as decisions of General Land Bureau now called Ministry of Resource and Environment. Circular number 1417, September 18, 1999 reads, 'households and individuals can get land use right at the place registered resident city district population and at other places (it means at places they have no resident city district population.) But in realty it is always an obstacle and disturbance for people who have needs to use land and houses legally. Thus, to let Land Law really come to life and property market develop, it is time to put a ban on requiring city district population in granting certificate of land use right.

Eighth, it is good to create trading and

production floor for investors and auction land use right to investment projects to get rid of 'ask-give' mechanism.

Investors now lack factory floor. Industrial zones meet 45% of demand, thus it is necessary to carry out floor clearance fast or withdraw land used ineffectively of state-owned enterprises, organisations to produce land resources for investors at these zones and for other enterprises.

Up to now right of using building land has been auctioned to sell real estate to consumers, not for investment. Auctioning this right has not been interfered by land management agencies. If there is zoning for industrial parks, it will be more difficult. If land used for investment is auctioned, 'ask-give' mechanism will be stopped, ending cases of being given land due to asking well despite lack of investment ability. In reality, there used to have many units given to make them workplaces for production but they were not carried out. There are many negative cases: people given land ask for transferring to other plans which are not the purpose of investment for production. Land is in zoned areas for public works such as supermarkets, restaurants, private schools, and hospitals are still auctioned.

CONCLUSION

Land policy in Vietnam in the transition period has been fitted in well with the development and economic innovation of the country. Thinking deeply of land policy generates profound effects on changes in land relation, agriculture and rural growth and exciting existence of real estate market.

In recent years, when the economy has turned into the market economy, land policy

shows imperfections in all sides, producing an increase of the complication and controversy of land issue, leading the following bad results: the property market has become out of control and changed frequently, causing artificially high land prices and some social problems such as disputes, lawsuits, conflicts, social differentiation due to land centralization.

In conclusion, the big distribution of the State that can deal with land policy better in the future is providing right of land guaranteed, reducing fees of land transactions, building infrastructure to increase land value, supplying security network to avoid selling out land and resolving problems of compensation for land clearance and resettlement.

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