LAND USE POLICY IN VIETNAM AND THE PROCESS FOR ITS IMPROVEMENT

DISCUSSION PAPER

by

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The Constitution and the Land Law are two legal documents of extreme importance which clearly indicate the attitude of any political system towards land use.

Due to social and historical changes the first Constitution of Vietnam established in 1946 has been revised three times in 1959, 1980 and 1992. In conformity with the Constitution for each period, also the land policy has been changed and adjusted until the Land Law was issued in 1988 and revised in 1993.

1. CURRENT POLICY AND LEGAL CONTEXT FOR AGRICULTURAL AND FOREST LAND IN VIETNAM

1.1 The Constitution of 1980

The Constitution of 1980 was established when Vietnam had been completely reunified after 20 years of division and the united Vietnam took its way towards socialism. The Constitution of 1980 passed the National Assembly at 18 December 1980 on the 7th Session of the IVth National Assembly. It is the constitution of the transition to socialism on a nationwide scale indicating a central and subsidised State-managed economy.

In order to develop the national economy, the Constitution of 1980 recognised two economic sectors: The State-run economic sector under the ownership of the entire people, and the co-operatives sector belonging to collective ownership. It did not yet recognise land use rights of non-state economic entities.

As a consequence, only State enterprises and co-operatives were allowed to enter into forestry activities in these days. Based on this principle, many forest enterprises were established covering almost all forest land area. However, these enterprises were widely lacking organisational and managerial skills resulting in huge wastage of forest resources.

But already then, practical life required adjustment of general land use policies. Therefore, even before the promulgation of the Land Law in 1988, the Government planned to gradually allocate the land to different economic sectors and family households. This programme started already from 1979.

1.2 The Constitution of 1992

The constitution of 1992 was approved by the VIIIth National Assembly on its 11th Session at 14 April 1992. The revised Constitution of 1992 is the result of the economic renovation process of the Party and the Government.

In contrast to the Constitution of 1980, the Constitution of 1992 confirmed the existence of the multi-sectoral commodity economy under a State-managed and Socialist-oriented market mechanism. The multi-sectoral
economy is based on ownership of the entire people and collective ownership, but first recognises also private ownership (Article 15).

The objective of the economic policy under the Constitution of 1992 can be seen as "to satisfy material and spiritual requirements, based on the liberation of all productive capacities, mobilising all potentials of State, collective, individual, private and State capitalist sectors under various forms, urging the establishment of the material and technical basis for expanding the economic, scientific and technical co-operation in relation with the world market" (Article 16).

All organisations and individuals have the right to set up business enterprises of unlimited size and operational area. All enterprises of all economic sectors are equal before the Law (Article 22).

With regard to land management and land use, the Constitution of 1992 regulates as follows: Land belongs to the entire people (Article 17), only the State is entitled to manage the whole land in accordance with planning and the Law ensuring correct and effective land use. The State allocates land to all organisations and individuals for long term and permanent use (Article 18).

Hence, through the Constitution of 1992, the State recognised and protected the existence and development of individual land ownership for productive purposes beside the two other forms of ownership. This was the key to development of the national economy at this stage. The three above-mentioned economic sectors are allowed to develop equally, independently, jointly, co-operatively and competitively before the Law in their production and business activities.

In the Constitution of 1992, the right to own land is seen as follows: The land belongs to the entire people and can only be managed by the State according to planning and the Law, ensuring correct and effective land use. The State allocates the land to different organisations, households, individuals for long term and permanent use. The State protects the rights and legal benefits of the land users. The land user has the right to transfer the land to others.

In due course, allocation of agricultural land to co-operatives has been abolished, and this land was quickly allocated to farmers for management and use. Regarding forest land, the Government plans to allocate 7 million ha of land, previously managed by State enterprises, now stepwise to non-State units and family households.

1.3 The Land Law 1993 and the Land Law 1988

The Land Law of 1993 was promulgated right after the Constitution of 1992. The regulation for use of different types of land is one of the important aspects of the Land Law, reflecting the on-going reform of different land policies by the Government and the Party.

To reflect the political and economic structure as well as the economic policy of the Constitution of 1992, the first article of the Land Law 1993 regulates that the land belongs to the entire population and is managed by the State (Article 1). This regulation clearly indicates the socialist system of Vietnam. At the same time, the Land Law institutionalises the new line of the Party towards economic development with a multi-sectoral market economy under State management. Compared with the Land Law of 1988, regulations and rules for land use in the Land Law of 1993 have been added and amended to fit the Constitution of 1992. The following changes were made:

- To ensure sustainable development, the new Land Law defines that those who use the land in a sustainable way, in accordance with Law and without disputes will receive land use certificates (Red Book). The State does not recognise the withdrawal of land which has already been allocated to other users. The State policy is to ensure those who engage in agriculture and forestry to obtain land for production (Article 3).

- The State protects the legal rights and benefits of the land user. Family households and individuals with land allocated by the State have the right to transfer, exchange, lease, inherit the land use right and use it as a collateral in accordance with the regulations of the Law (Article 3).

- The State encourages land users to invest labour, material, capital and to apply scientific and technical methods aiming at effective use of land (Article 5). On the other hand, the State strictly forbids
encroachment, illegal transfer, misuse and deterioration of the land (Article 6).

While in 1988 the Land Law explicitly listed "agricultural and forest enterprises, co-operatives, agricultural production teams, people's armed forces, State bodies, social organisations and individuals" as land users, the Land Law of 1993 defined only three types of land users: organisations, family households and individuals. By doing so it indicates each entity in a more generalised and clear way, avoiding duplication or missing, and making the definition more suitable for the dynamic character of the market economy. For the first time in Vietnam the concept of "family household" was put into the Law as an entity of land users, reflecting the views and approach of the State of Vietnam to regard the family household as an independent economic unit.

The Land Law of 1988 defined three forms of land allocation: land allocation for long term and permanent use, land allocation for time-fixed term use, and land allocation for temporary use. The Land Law of 1993 retains only one form of land allocation, i.e. land allocation for long term and permanent use. At the same time, the State allowed land lease as a new form under which land can be leased by organisations and individuals, including foreign organisations and individuals.

Thus, the Land Law of 1993 has paved the way for forming two kinds of land: land for allocation and land for lease. While land for allocation is essential to create permanent use of land, land for lease aims at regulating land use to suit each period and to encourage investment from domestic resources and from abroad.

Under the Land Law of 1993, for the first time, the land user has five rights: the right to exchange, transfer, lease, inherit, and to use land use certificates as collateral. However, with each type of soil and each kind of land user, these principles may be applied in a different way.

Also for the first time in the Land Law of 1993, the State defines different soil types as a basis for tax and other charges, for transfer of land use rights, for allocation or lease of land, for assessing the land value for compensation of damages or for withdrawal of land. The Government regulates the price frame for all kind of soils, for each region and each period of time (Article 12).

Thus, the Government concretised the fact that "land has its own price". It allows the change of land use thus making land management suitable for conditions of the market economy. The price of land is an economic instrument for the land managers and users to get access to the market, while it also is the basis for assessing the equity of land distribution according to planning and the Law. The land price is also a means to assess the value of land use rights for exchange, transfer, lease, heritage and use as collateral.

2. CURRENT POLICY ON AGRICULTURAL AND FOREST LAND AND THE PRACTICE

2.1 The need to revise the Land Law

The Land Law of 1993 has dealt with the requirements of daily life and of the multi sectoral economy, based on the entire population's ownership, collective ownership and individual ownership, as the Constitution of 1992 has defined. However, as the Socialist oriented market economy started, there was not yet enough experience on practical matters. The fast development of the economic and social situation now clearly reveals some weaknesses in the Land Law of 1993, as expressed below:

- The Law contains many general regulations which cause confusion for the various sectors and levels in implementation. The National Assembly, the Standing Committee of the National Assembly, the Government, Ministers and other governmental bodies have promulgated more than 40 legal documents for implementing the Law, but this still appears to be insufficient.

- The Land Law of 1993 has clarified policies and regulations for the use of agricultural land, thus contributing to the stability and development of agriculture. Allocation of agricultural land to farmers has been tackled in a satisfactory way. However, forest land has not yet been clearly defined. The concrete question is how to cope with about 14 million ha of bare land. According to the land classification by the General Department of Land Administration, this is unused land. But in practice, the people have used and are using this land for different purposes, without being real owners of it according to the regulations of the Land Law. This is a gap in the present land use policy and a serious problem which needs to be resolved.
State administration and management of land has been comprehensively and strictly defined in the Law in terms of contents, authorities and implementing arrangements. But the Law has not yet concretely regulated the State management of land concerning the requirements of the market economy. So there is still no clear legal context for operating real assets, for which the land price becomes significant, e.g. in land conversion.

The existing regulations of the Law are not sufficient to address many practical matters, such as assessment of the land price in the market economy, e.g. for transfer of land use rights, using land as collateral, solving conflicts over land.

These are the reasons why the Land Law of 1993 should be revised and updated. This matter is presently being studied by the Ministry of Agriculture and Rural Development and other concerned agencies.

2.2 Allocation of agricultural land

In order to solve the matter of land use with real and legal ownership, presently the State plans to follow the previous land management system, i.e. to allocate agricultural land according to Decree No.64/CP. Allocation of agricultural land under the Decree 64/CP is much easier than its allocation based on existing agricultural land and on available agricultural maps prepared according to Directive 299/TTg during 1980-1995. Farmers have a big and urgent demand of land for food production. In the Northern provinces and in Central Coastal areas, land allocation to farmers was mostly done based on results during the period of implementing the Decision 10 of the Politbureau. This is in line with Decree 64/CP, based on which other localities just only announce the duration of land use, the benefits and obligations of the land users according to the Land Law of 1993 without much adjustment. In the provinces of the Highlands and the South, agricultural land allocation is mainly based on the present status of land use in order to confirm and issue land use certificates down to each individual household.

Until now, nearly 8,000 communes (out of 10,050 communes in the whole country) are in the process of allocation of agricultural land in order to ensure long term and permanent land use to 7.8 million farmers (out of 10.2 million households) covering a total land area of 5.73 million ha. Land tenure certificates have been issued to 4,150 communes, so far, representing 42.3% of the total households (5.1 million households) accounting at 47% of the total agricultural land in the country.

Allocation of agricultural land is handled by the General Department of Land Management. It is expected that allocation of agricultural land will take several more years to consolidate as foundation for long term development.

Some households are not yet holding Red Books, and, therefore, can not perform the five rights as stipulated in the Land Law of 1993. But in reality are using the land and have settled their production.

At present, total agricultural land has been defined including rice fields, crop land and long rotation industrial crop land. However, shifting cultivation on slope land has not yet been defined in the land classification, neither on maps, nor in statistical data and not even on the ground. This land use in reality occupies a relatively large area which has not yet been defined in quantity and is not yet been properly managed in line with relevant policies.

2.3 Allocation of forest land

In contrast to the practice for agricultural land, land use rights have not yet been given for the forest land. So, how to settle it? During 1960-1980, the State declared that forest land should be managed and used by State-owned forest enterprises, which were established to cover almost the entire forest land of a district. So the people who live in the forest areas and practice cultivation of land in one or the other way are in reality occupying and using agricultural land managed by the forest enterprise. Facing this fact, and in line with the recent changes in the economy, the State has promulgated the policy to review and to reallocate part of the enterprises’ land to local people for management and use. At the same time, land and forest should be allocated to people for long term use in accordance with the Land Law 1993.

Land allocation to households and individuals under Decree 02/CP is still facing many difficulties. Planning
and use of forest land for the three types of forests (production forest, protection forest and special use forest) in the provinces has not yet been finalised or updated. The conflict between agricultural and forest land use has not yet been settled in a satisfactory way. Food supply in the mountainous and hilly areas is still not sufficient, leading to shifting cultivation practice, even across province borders. So, land allocation under Decree 02/CP has not yet met the present urgent demand for land. According to the statistics of the Forest Protection Department, within 3 years (1994-1996), an area of 6,060,000 ha has been allocated as follows:

<table>
<thead>
<tr>
<th>Allocation</th>
<th>Area (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocation to 327 State-run units</td>
<td>4,462,000</td>
</tr>
<tr>
<td>Allocation to 1,677 non-State collective units</td>
<td>536,000</td>
</tr>
<tr>
<td>Allocation to 334,446 families and individuals</td>
<td>1,060,000</td>
</tr>
</tbody>
</table>

Present management and use of forest land shows that, according to the stipulations of the Forest land is the forested land (natural forest and plantation forest) and non-forested land which is planned for tree planting. Bare land which is not to be used for forestry purposes and not yet used for agricultural production should be considered as unused land. In this context, the following question should be answered: How large is the actual area of this kind of land, where is it located, and how is it presently used and managed? This question needs to be urgently tackled in order to remove a big gap in knowledge on land use and management.

What criteria should be used for defining such land which was previously forest land covered with forest, but which after shifting agriculture or converting forests to illegal industrial crop plantations, became agricultural land at present? If this is recognised as agricultural land then it is obvious that the principle of land use planning and correct use as stipulated in the Land Law 1993 is not guaranteed.

3. CONTINUED IMPROVEMENT AND IMPLEMENTATION OF THE POLICY ON AGRICULTURAL AND FOREST LAND

Continued improvement and strict implementation of policies related to agricultural and Forest land become imperative for decision makers, managers at all levels and the people. In order to meet this requirement and to remove the above-mentioned problems, the following key issues should be reviewed, studied and discussed:

- The legal context of different policies and laws on use of land for agriculture, forestry, and other purposes still has some gaps. While the Government demands that all land should have a real owner and be used in a sustainable way in accordance with the Law, the allocation process, particularly allocation of forest land, is going on slowly. Still quick changes of land use take place for production and other purposes, leading to illegal transfer of land, mainly in the Southern provinces and in the Highlands.

- At present, the State concentrates on allocation of agricultural land. Thus, there is a lack of human and financial resources and other means for speeding up the allocation of forest land. This challenge and other great difficulties have to be met before the demand of the State and the legitimate aspiration of the people to exercise legal rights on forest land can be fulfilled.

- Criteria and measures should be defined to define forest land on the ground and on the map. The regulations of the land policy have to be adapted to the present status of land use and to the aspiration of the people as well. Also the land use policy needs to be concretised and adjusted to the actual situation.

- Land Law and Forest Protection Law have to be harmonised in order to solve the problem of spontaneous conversion of land to other uses (previously planned as forest land but at present under agricultural production or long term industrial crop plantation).

The Technical Working group on Land Allocation, Land Use Planning and Social Forestry will continue to contribute to the elaboration of necessary inputs and recommendations for adequate and timely solutions of problems related to land use./.