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Compulsory Land Acquisition and Voluntary Land Conversion in Vietnam



The Conceptual Approach, Land Valuation and Grievance Redress Mechanisms

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This publication is the product of a multi-year cluster analytical and advisory work on Social and Land Conflict management of the World Bank office in Hanoi, which aimed to assist MoNRE to improve the land acquisition and conversion process to achieve more sustainable development during the current rapid urbanization and industrialization process.

All three reports in the publication (the Policy Note on Improving Land Acquisition and Voluntary Land Conversion in Vietnam; the Study on Land Valuation Mechanisms for Compensation, Support and Resettlement in Vietnam; and the Study on Improving the System for Resolving Complaints on Compensation, Support and Resettlement in Vietnam), were prepared by Prof. Dr. Dang Hung Vo, independent consultant and former Vice Minister of the Ministry of Natural Resources and Environment (MoNRE), in collaboration with some experts of the General Department of Land Administration (GDLA), MoNRE. The case study that appears in the two last reports was conducted by the Institute of Sociology of the Vietnam Academy of Social Sciences. The task team leader was Dr. Pham Thi Mong Hoa, Senior Social Development Specialist of the World Bank office in Hanoi.

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

REPORT 1

Policy Note on Improving Land Acquisition and Voluntary Land Conversion in Vietnam

REPORT 2

Study on Land Valuation Mechanisms for Compensation, Support and Resettlement in Vietnam

REPORT 3

Study on Improving the System for Resolving Complaints on Compensation, Support and Resettlement in Vietnam

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ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
AfDB	African Development Bank
ASEAN	Association of Southeast Asian Nations
AUSAID	Australian Agency for International Development
AVA	ASEAN Valuation Association
BCSR	Board for compensation, support and resettlement
CDD	Community Driven Development
CPC	Commune People's Committee
CSR	Compensation, support and resettlement
DANIDA	Danish International Development Agency
DPC	District People's Committee
DRC	Development Rights Certificates
FAO	United Nations Food and Agriculture Organization
FDI	Foreign Direct Investment
GDLA	General Department of Land Administration
GDP	Gross Domestic Product
GRC	Grievance Redress Council
GRM	Grievance Redress Mechanism
GRU	Grievance Redress Unit
HCMC	Ho Chi Minh City
ICSID	International Centre for Resolution of Investment Disputes
IDB	Inter-American Development Bank
IDP	Investment project document
IFC	International Financial Corporation
ISO	International Standards Organization
IVSC	International Valuation Standards Committee

Land R-A/L	Land recovery, allocation or lease
LDO	Land development organization
LP&R	Land Pooling and Readjustment
LRO	Land registration office
LURC	Land Use Right Certificate
MIGA	Multilateral Investment Guarantee Agency
MONRE	Ministry of Natural Resources and Environment
MPI	Ministry of Planning and Investment
NGO	Non Governmental Organization
NR-E	Natural resources and Environment
NZAID	New Zealand for Agency for International Development
ODA	Official Development Assistance
PC	People's Committee
PCSR	Plan for compensation, support and resettlement
PMU	Project Management Unit
PPC	Provincial People's Committee
PTJR	Plan for training and job replacement
SIDA	Swedish International Development Agency
TA	Technical Assistance
TDR	Transferable Development Rights
UK	United Kingdom
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNHCS/Habitat	United Nations Centre of Human Settlements
UNEP	United Nations Environment Program
USA	United States of America
USD	United States Dollar
VAT	Valuers Association of Thailand
VCCI	Vietnam Chamber of Commerce and Industry
VND	Vietnamese Dong
VVA	Vietnam Valuation Association
WASO	World Association of Valuation Organizations
WB	World Bank
WTO	World Trade Organization

TERMINOLOGY

ADMINISTRATIVE AGENCY: A government agency that administrates a complex area of law, adopting an enforcing detailed regulations that have the force of law.

ADMINISTRATIVE APPEALS TRIBUNAL: The Administrative Appeals Tribunal (AAT) is a tribunal which provides for quasi-judicial review of administrative decisions. The AAT's decisions are subject to review by the administrative court. The AAT is not a court, is a part of the executive branch of the State, is responsible to review all complained administrative decisions. The name of AAT has firstly used by Australian Federal Government in 1975. This name can be generally used for all systems that belong to the executive branch of the State, are independent for the administrative agencies system, and responsible to review and settlement of complained administrative decisions or behaviors.

ADMINISTRATIVE COMPLAINT ON LAND: A complaint by people against administrative decisions issued by competent agencies in land management or on administrative misbehavior by State officials in the process of making administrative decisions on land management. In Vietnam, administrative decisions on land management include decisions on the approval of land use plans; decisions on land recovery, allocation and lease; change in land use purpose and land requisition by the State; decisions on the extension of the term of the use of the land; and decisions on approval of the plan for compensation, support and resettlement.

ADMINISTRATIVE SYSTEM OF VIETNAM: The administrative system of Vietnam includes 4 levels: the national, provincial (provinces and cities belong to the centre), district (rural districts, urban districts in cities, township, cities belong to province), communal (communes in rural areas, wards in urban districts, towns). Administrative agency at the national level is the central Government, including ministries and ministerial organizations and headed by the Prime Minister. Administrative agency at local level is People's Committee, headed by the chairman of People's Committee.

APPRAISAL: Estimating the market value of property.

ARBITRATION: A neutral third party who listens to each party's position and makes a final binding decision.

BOUNDARY: Either the physical objects marking the limits of a property or an imaginary line or surface marking the division between two legal estates. Also used to describe the division between features with different administrative, legal, land-use, topographic, etc., characteristics.

CADASTRE: A type of land information system that records parcels of land. The term includes: (i) Juridical cadastre: a register of ownership (land use right in Vietnam) of parcels of land; (ii) Fiscal cadastre: a register of properties recording their value; (iii) Land-use cadastre: a register of land use; (iv) Multi-purpose cadastre: a register including many attributes of parcels of land.

CADASTRAL SURVEYING: The surveying and mapping of the boundaries of parcels of land in support of a country's land administration, conveyancing or land registration system.

CAPITALIZATION: In appraising, a method of determining value of property by considering net income and a reasonable percentage of return on the investment.

CAPITALIZED INCOME METHOD OF DEPRECIATION: Method for estimating depreciation by comparing the subject's capitalized value to its replacement cost new.

CAPITALIZATION RATE: The percentage rate or rate of interest considered a reasonable return on the investment. It is used in the capitalization method of determining value based upon net return.

CASH FLOW (After tax cash flow): The new amount of cash a property produces when all cash income and other cash generated are added together and all cash expenses and other cash payments are deducted.

COMPARISON METHOD: A real estate comparison method which compares a given property with a similar or comparable surrounding properties, also called market comparison.

COMPENSATION: Anything of value or a valuable consideration, directly or indirectly paid, promised or expected to be paid or received.

COMPLAINANT: A person who makes an allegation or a charge against another (the respondent).

COMPLAINT: A document a plaintiff files with the competent organizations in charge of resolution to start a lawsuit.

COST METHOD TO VALUE (Cost-depreciation approach): A method in which the value of the property is derived by estimating the replacement cost of the improvements, then deducting the estimated depreciation, then adding the market value of the land. This is most efficient when used estimating the cost of a new building.

CUSTOMARY LAW: Unwritten law established by long usage.

DEED: A written instrument that when properly executed and delivered conveys title (a legal document laying out the conditions which land is transferred).

DEMARCATION: The marking-out of the boundaries of each land parcel on the ground.

DEVELOPMENT METHOD (LAND DEVELOPMENT METHOD): Method of vacant land valuation, development costs are subtracted from estimated gross sales, and finally, developer's profits are accounted for.

DIRECT CAPITALIZATION METHOD: Income capitalization technique, in which value is estimated by dividing net operating income by the overall capitalization rate.

DISCOUNTED CASH FLOW (DCF): Technique of income capitalization, in which estimated future investment returns are discounted to a present value.

DISCOUNTED CASH FLOW ANALYSIS: A method of financial analysis and economic analysis in which future benefits and future costs are reduced to a lower value, which is judged to be their present value, by discounting.

DISCOUNTING: The reverse of adding interest, in which the value of a cost incurred, or benefit received, is reduced by an annual percentage, i.e. the discount rate, to obtain its present value.

DISCOUNT RATE: The interest rate used to assess the present value of a future value by discounting. To simulate the investment behavior in the private sector, the discount rate is set equal to the required rate of return in that sector. To calculate the social value of benefits and costs, an appropriate social discount rate should be used.

ECONOMIC ANALYSIS (of land use): Analysis that views the monetary value of a land-use system for the community as a whole.

ENVIRONMENTAL IMPACT ANALYSIS: A procedure to predict the effects of changes in land use on the environment, particularly effects on water, soils, vegetation and human health and well-being.

ESTATE: In legal terms, an interest in land. The terms are also used to refer to the physical land and property to which that interest relates.

FINANCIAL ANALYSIS: Analysis which looks at the monetary value of a system to the farmer, other land-user or private investor.

FUTURE APPRECIATION: This appreciation is referred to as savings value.

FUTURE BENEFITS: The anticipated benefits the present owner will receive from the property in the future.

FUTURE INTEREST: An estate that does not or may entitle one to possession or enjoyment until a future time.

FUTURE VALUE: The estimated lump-sum value of money or property at a date in the future.

GRIEVANCE REDRESS MECHANISMS (GRM): They are institutions, instruments, methods, and processes by which a resolution to a grievance is sought and provided.

GROSS INCOME: Total income before expenses are deducted.

HIGHEST AND BEST USE: An appraisal phrase that means that use of real property that is most likely to produce the greatest net return on land or buildings, or both, over a given period of time.

INCOME (PRODUCING) PROPERTY: Property that generates rent (or other income) for the owner.

INCOME RATIO: The monthly payment on a loan (including principal, interest, taxes and hazard insurance) divided by the borrowers monthly gross income.

INFRASTRUCTURE: Permanent installations constructed to assist economic activity, such as roads, irrigation or drainage works, buildings and communication systems.

INTERNAL RATE OF RETURN: A financial or economic indicator of the net benefits expected from a project or enterprise, expressed as a percentage. In financial analysis, the internal rate of return can be compared with the rate of interest prevalent in the market.

JUDGMENT: A court of competent jurisdiction's final determination of a matter presented to it.

JURISDICTION: The authority of a court to hear and decide a particular type of case (the power of a court to hear and decide a case or issue).

JUST VALUE: The fair market value.

LAND: An area of the earth's surface, including all elements of the physical and biological environment that influence land use. Thus land refers not only to soil but also landforms, climate, hydrology, vegetation and fauna, together with land improvements such as terraces and drainage works.

LAND ACQUISITION: Subject to that a competent administrative organization decides to acquire compulsorily any land either on behalf of the Government, including the taking of possession.

LAND ASSESSMENT: A process that is essentially the valuation of rights to use or possess land sites. Other kinds of rights include subsurface mineral rights, riparian (water) rights, grazing rights, timber rights, fishing rights, hunting rights, access rights and air rights (in Vietnam, land users only have rights on improvements in their land). The assessor bases his estimate of the market value of land on basic economic principles which serve as the foundation of the valuation process.

LAND ADMINISTRATION: The processes of determining, recording and disseminating information about the ownership (land use right in Vietnam), value and use of land when implementing land management policies.

LAND CATEGORIES: A classification of land use that is made based on the purpose for which the land is used. In Vietnam, land is classified into 3 main categories: agricultural land, non-agricultural land and unused land. The agricultural land group includes agricultural production land (land for annual cropping and perennial planting); forestry land (commercial forest land, protected forest land and forest land for special purposes); water surface used for aquaculture and land used for salt production. The non-agricultural land group includes residential land (rural and urban residential land), land used for special purposes (land used for the national interest, national defense and security, public purposes and non-agricultural commercial land); land used by religious establishments and spirit worships; land used for cemeteries; and river water and lake surfaces used for non-agricultural purposes. The unused land group includes all land that is not currently in use or not yet allocated or leased by the State.

LAND CONTRIBUTION AS CAPITAL: On the basis of land valuation, land is considered as of capital value when it is contributed to another person for use in joint commercial purposes.

LAND CONVERSION: Refers to the variation of the use of the titled category of land from the existing category to another category.

LAND DISPUTE: A dispute between landowners (land users in Vietnam) or other related people about land ownership, land use rights, land boundaries or the benefits and obligations of the use of the land.

LAND DONATION: A land transfer, in which there is no payment by the transferee to the transferor.

LAND EVALUATION: The assessment of the suitability of land for specified uses. Assessment is made in terms of production, sustainability, the inputs needed to obtain that production, and (in the case of quantitative land suitability classification) economic return.

LAND EXCHANGE: The act of giving or taking the land use rights over one parcel of land owned by the first party in return for the land use rights of another parcel of land owned by the second party, which is regarded by them as being equivalent.

LAND GOVERNANCE: The policies, processes and institutions by which land, property and natural resources are managed. This includes decisions on access to land, land rights, land use, and land development. Land governance is basically about determining and implementing sustainable land policies and establishing a strong relationship between people and land.

LAND INHERITANCE: A person obtains land use right upon death of an ancestor, where there is no will left by the ancestor or based upon the directions in the ancestor's will.

LAND MORTGAGE: Mortgage loan is secured by a mortgage on land use right, in which the security interest on land use granted to a lender, as in mortgage law.

LAND LEASE: Land held under a lease contract by which the right of exclusive possession of land (land use right in Vietnam) is granted by the lesser to the lessee for an agreed amount of money for an agreed period of time.

LAND MANAGEMENT: The activities associated with the management of land as a resource from both an environmental and an economic perspective.

LAND INFORMATION SYSTEM (LIS): A system for acquiring, processing, storing and distributing information relevant to suitability for land use, particularly land characteristics. Land information systems are generally, but not necessarily, stored in geographic information systems.

LAND PARCEL: An area of land under homogeneous property rights and unique ownership. In Vietnam, the term 'land parcel' is defined as a area of land under unique land use right which has been legally recognized by the State.

LAND POOLING/LAND READJUSTMENT: Land development techniques where a group of separate land parcels are assembled for unified planning, servicing and subdivision as a single estate, with the sale of some of the new building plots to recover the costs and the redistribution of the other plots back to the landowners (the land users in Vietnam). Land Pooling is differentiated as where land is legally consolidated ('pooled') by the transfer of ownership (land use right in Vietnam) of the separate parcels of land to the agency handling the transaction and redesign, with the later transfer of ownership (land use right in Vietnam) of the new building plots to the landowners (land users in Vietnam) as shown on a re-plotting plan. Land readjustment is where the land parcels are only notionally consolidated with the agency having the right to design services and subdivide the land on a unified basis, and then the landowners (land users in Vietnam) exchange their rural land parcels for their building plots as shown in the re-plotting plan.

LAND PRICE APPRAISAL: An appraisal that is essentially an expert opinion of the market value of a land site. In appraisal, a land site is a parcel of land that is finished and ready for use under the standards prevailing in its area. It might have the necessary public utilities in place, like gas, electricity, water, telephone and sewers, with streets, sidewalks drainage and grading completed.

LAND REFORM: The various processes involved in altering the pattern of land tenure and land use of a specified area.

LAND RECOVERY: A type of legal compulsory land acquisition by the State that is used in Vietnam and is based on the system of all land being owned by the population as a whole

LAND REGISTER: A public register used to record the existence of deeds or title documents.

LAND REGISTRATION: The process of recording rights in land either in the form of registration of deeds or else through the registration of title to land.

LAND RESIDUAL METHOD: Technique of income capitalization, in which the net income remaining to the land (after income attributable to the building has been deducted) is capitalized into an estimate of value for the land.

LAND SURVEY: The process by which a parcel of land is located on the ground and measured.

LAND TENURE: The mode of holding rights in land.

LAND TITLE: The evidence of a person's rights to land.

LAND TRANSFER: The transfer of rights in land.

LAND USE: The human use of land. Land use involves the management and modification of natural environment or wilderness into built environment such as fields, pastures, and settlements. It has also been defined as the arrangements, activities and inputs people undertake in a certain land cover type to produce, change or maintain it.

LAND-USE PLAN: A coherent set of decisions about the use of land and ways to achieve the desired use. A land-use plan includes: a definition of goals, an ordering of land and human and material resources, an explicit statement of the methods, organization, responsibilities and schedule to be used, and agreed targets.

LAND-USE PLANNING: The systematic assessment of land potential, alternative patterns of land use and other physical, social and economic conditions, for the purpose of selecting and adopting land-use options which are most beneficial to land users without degrading the resources or the environment, together with the selection of measures most likely to encourage such land uses. Land-use planning in Vietnam is at national, provincial, district and communal levels. It includes participation by land users, planners and decision-makers. Land use planning is an iterative process based on the dialogue amongst all stakeholders aiming at the negotiation and decision for a sustainable form of land use as well as initiating and monitoring its implementation.

LAND USERS: All people who obtain their livelihood directly, either wholly or partly, from the land. In Vietnam, the population as a whole own the land and there is no private ownership of land. Land users include all people who use land that has been allocated, leased or recognized by the State. Land users have a legal land user right which is considered as a limited property right of the landowner and granted by the State through a Land Use Right Certificate.

LAND VALUATION: Valuation of land firstly involves determining the best use of the land, estimating the value by current appraisal theory and reaching a final estimate of its value. The first step in the valuation process is to determine the best use of the site based on four absolute criteria that proposed best use is physically possible, legally permissible, financially feasible, and maximally productive. Two types of analyzes are undertaken to determine the best use; the first is the best use of the site, if it is vacant and the second is the best use of the site if it is improved, or if undeveloped as proposed to be improved. There are three standard approaches to estimating market value that form the foundation for current appraisal theory: (i) the *cost approach*, (ii) the *sales comparison approach* and (iii) the *income approach*.

LAND VALUE: The worth of a parcel of land, determined in a variety of ways which give rise to different estimates of the value.

LEASEHOLD: Land held under a lease, which is a contract by which the right of exclusive possession of land is granted by the lesser to the lessee for an agreed amount of money for an agreed period of time.

LEVELS OF LAND-USE PLANNING: The scale and intensity of a land-use plan, which is at the national, provincial, district and communal level.

LOT: A parcel of land, especially, a parcel in subdivision.

MAP SCALE: The ratio between distances on the ground and distances on a map. Small scales refer to maps which cover a large area such as a country on one map sheet, e.g. a scale of 1:1000000. Large scales refer to maps which cover a small area on one map sheet, e.g. a scale of 1:10000, 1:5000, 1:1000 or 1:500.

MARKET PRICE: The price paid regardless of pressures, motives, or intelligence.

MARKET VALUE: (1) The price at which a willing seller would sell and a willing buyer would buy, neither being under abnormal pressure; and (2) as defined by the courts or competent administrative organizations, it is the highest price estimated in terms of money that a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser with knowledge of the property's use and capabilities for use.

MASS APPRAISAL: The process of valuing a group of real-estate properties at a given date, using standard methods. In Vietnam, Provincial People's Committees are responsible to make mass appraisal of land prices for approval of land prices list, and to publicize annually by 1st January.

MORTGAGE: The conveyance of a property by a debtor (called the mortgagor) to a creditor (called the mortgagee) as security for a financial loan with the provision that the property shall be returned when the loan is paid off by a certain date. In some legal systems there is provision that the mortgagee has the power to sell the concerned property when the interest is not paid in time and the loan is not paid off by a certain date in accordance with the agreed stipulations.

NATIONAL-LEVEL LAND-USE PLANNING: Applied to planning at central government level which deals with the country's land, water or other resources as a whole.

NET INCOME: Gross annual income less income lost due to vacancies and uncollectible rents, less all operating expenses.

NET INCOME RATIO: Net income divided by gross income.

NET LEASE: Lease under which the lessee pays all property expenses.

NET OPERATING INCOME: The resulting amount when all operating expenses are subtracted from effective gross income.

NET PRESENT VALUE: The present value of the benefits of an enterprise minus the present value of its costs.

OPERATING EXPENSES: Expenses required to run a property, includes fixed, variable, and reserves for replacement.

OPEN MARKET TRANSACTION: Transaction in which both buyer and seller act willingly, with full knowledge of all details of the property and transaction, and under no pressure.

OPERATING BUDGET: A projection of income and expense for the operation of a property over a one-year period.

PRESCRIPTION: The limitation of time beyond which an action, debt, or crime is no longer valid or enforceable.

PRESENT VALUE: The value at the present time, after applying the process of discounting to its costs or benefits.

PRICE: The amount of money or other consideration given for a property, agreed upon between buyer and seller, also called purchase price or sales price.

PROFIT AND LOSS STATEMENT: An annual financial report of a property's actual net profit before taxes.

PROPERTY: Everything capable of being owned and acquired lawfully. The right to use, possess, enjoy, and dispose of a thing in every legal way and to exclude everyone else from interfering with these rights. Property is classified into two groups, personal property and real property.

PROPERTY MANAGEMENT: A branch of the real estate profession that seeks to preserve or increase the value of an investment property while generating income for its owners. The portion of the real estate business involving the operations, maintenance and marketing of property.

PROPERTY TAX: An annual 'ad-valorem' tax levied on real and personal property.

REAL ESTATE: Land, including the air above and the earth below, plus any permanent improvements affecting the utility of the land (so call land-related property).

REAL ESTATE BUSINESS: A commercial activity in which the sale, purchase, leasing rental or exchange or management of real property is conducted by qualified and licensed parties acting either for themselves or for compensation.

REAL PROPERTY: Land and anything affixed, incidental, or appurtenant to it, and anything considered immovable under the law (Land, buildings, and other immovable property permanently attached thereto).

REDEVELOPMENT: Existing structures are destroyed, a new one are built immediately.

REFORMATION: A legal action to correct a mistake in a deed or other document.

REGISTRATION: Authorization by the State to place an applicant on the register (record) of officially recognized individuals or businesses.

REGISTRATION OF DEEDS: A system whereby a register of documents is maintained relating to the transfer of rights in land.

REGISTRATION OF TITLE: A system whereby a register of ownership of land (land user right in Vietnam) is maintained based upon the parcel rather than the owner (land user) or the deeds of transfer.

REGULATION: (1) A rule adopted by an administrative agency; and (2) any governmental order having the force of law.

RENT: The consideration paid by a tenant for possession of property under a lease.

RENTAL VALUE: The value of a property in terms of the rent which may be derived from it.

REPLACEMENT COST: The cost to replace a structure with one having utility equivalent to that being appraised, but constructed with modern materials and according to current standards, design and layout.

RESIDUAL TECHNIQUES OF CAPITALIZATION: Income approach to valuation methods that separate income attributed to components of the property, such as land or building, or debt or equity, for purposes of analysis.

RESTRICTION: A limitation on the use of real property arising from a contract or a recorded instrument.

SOCIAL ANALYSIS: The analysis of a plan in terms of its impact of different sections of the community. Social analysis gives particular attention to the interests of minority groups, women and the poor.

SUBDIVISION: A legal definition of those divisions of real property for the purpose of sale, lease or financing which are regulated by law.

SUSTAINABLE LAND USE: The central concept underlying use of this term is production combined with conservation. Alternative definitions are: (i) land use which maintains production at or above its present level while, at the same time, conserving the natural resources (water, soil, pastures, forests, etc.) on which that production depends; (ii) land use which does not progressively degrade its productive capacity; (iii) land use which meets the needs of the present while at the same time conserving resources for future generations. The achievement of sustainable land use is not confined to technical measures, but includes the economic and social conditions necessary for the success of these.

TAX: A compulsory charge on property or individuals, the payment of which supports a government.

TAXABLE INCOME: Gross income minus tax deductions. Net operating income plus reserve for replacements minus financing costs and allowable deductions.

TAXABLE VALUE: The assessed value less allowable exemptions resulting in an amount to which the tax rate is applied to determine property taxes due.

TERM: A prescribed period of time, especially, the length of time a borrower has in which to pay off a loan, or the duration of a lease, or the duration of land use.

THIRD PARTY: Persons who are not parties to a contract which affects an interest they have in the object of the contract.

TITLE: (1) The right of ownership of land (land use right in Vietnam); and (2) the evidence of a person's ownership or interest in property.

TORRENS SYSTEM: A governmental title registration system that uses certificates of title issued by a public competent organization (the registrar of title) as evidence of title.

VALUATION: (1) Estimated worth or price, and (2) the act of valuing by appraisal.

VALUE: Present worth of future benefits arising out of ownership to typical users/investors. The monetary worth of property, goods or services to buyers. You receive value when net operating income is divided by the capitalization rate.

**Policy Note on Improving
Land Acquisition and
Voluntary Land Conversion
in Vietnam**



EXECUTIVE SUMMARY

Context

Successive economic reform and modernization policies of the Government of Vietnam have helped Vietnam to emerge as one of the world's fastest growing economies. Early renovation policies of the 'Doi Moi' period 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 world's 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 made by industry and services to 42 percent and 38 percent respectively in 2007. As part of this continuing progress, substantial amounts of land are being converted from agricultural to non-agricultural use with corresponding changes in land user.

Land laws and policies have evolved over time to find pragmatic solutions to merge socialist ideology on 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).

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 the general dissatisfaction of affected people and investors alike, demonstrates the need for further clarification and refinement of the law.

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 the 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 the Land Law scheduled to be placed before the National Assembly in 2013.

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

Second Land Law 1993

Prior to the Land Law of 2003, the policy framework (based on the Land Law of 1993) covered only compulsory land acquisition. Land conversion was subject to administrative decision by State authorities. The investor acquiring land for an investment project was required to pay a land use fee, or land rental,

Table 1. Evolution of Laws and Policies relating to Land

Policy document	Year	Key points relating to land
First constitution	1946	Article 12: “the right of private ownership of property by the Vietnamese people is secured”
Agrarian Reform Law	1953	Land ownership is removed from landlords and passed directly to tenants
Second Constitution	1959	Article 11 recognized State ownership (people’s ownership), collective ownership, individual ownership, and national capitalist ownership on the main materials for production including land. Agrarian ownership by peasants recognized but cooperatives encouraged.
Third Constitution	1980	Only ownership by all citizens 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 productivity was low.
Doi Moi	1986	Land used by agricultural cooperatives allocated by the State to households and individuals for permanent and stable use. Land offices and land administration system established
First Land Law	1987	Rights of households and individuals to use land was recognized. All land transactions are decided by the State and no land values or land market is recognized.
Fourth constitution	1992	Accepted a State-managed market economy. Land owned by all citizens (Article 17), land managed and allocated by the State to organizations, households and individuals (Article 18).
Second Land Law	1993	Only all citizen ownership recognized, but land has a price defined by the State. Households have the right to exchange, transfer, inherit, lease, and mortgage land. State’s power of compulsory land recovery is the only means to acquire land for development projects. Economic organizations can access land only by leasing land from the State.
Land Law Amendments and Supplementations	1998 2001	(i) Domestic economic organizations can access land by gaining allocated land from the State for housing development projects and land-infrastructure exchange-based projects; (ii) Domestic economic organizations can receive land by land transfer, lease and contributions 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 is recovered.
Third Land Law	2003	Only all citizen ownership recognized, 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 the options of gaining allocated land or leasing land from the State. Equity between foreign and domestic investors improved. Limits to compulsory land conversion applied, voluntary land conversion introduced. Regulations on compensation and resettlement. Land administration system improved, supervision improved, system for complaints and dispute resolution improved.
Decree 84	2007	Identifies the conditions for recognition of land use rights of current users who have no legal documents. Permits foreign investors to undertake housing development projects for commercial purposes. Stipulates transparency and dissemination of compulsory land conversion procedures, guarantees benefits to affected land users

to the State as well as compensation to the previous land users. The State only had the right to recover land for use in national defense or security purposes, or in the 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 user(s) 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 published land use plans approved by the State authorities. Land users may not change the purpose for which the land is used unless it is in accordance with the plans.
- Compulsory land conversion is to be used when converting land for (i) national or public purposes; (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.
- The voluntary land conversion method is applied in cases of land converted for the implementation of investment projects by domestic investors that are not subjected to compulsory land conversion; or where the compulsory land conversion may be applied but the investors volunteer to conduct the process through voluntary land conversion.

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 the 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 prices above the market rate and investors, having acquired a large proportion of the land at the 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.

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

Local leaders views of land conversion practices

The views of local leaders were gained through analysing public media, local reports to central authorities and 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 compensation with a parcel of non-agricultural land near a commercial area where more than 30 percent of agricultural land was lost, was impractical. Local authorities did not support voluntary land conversion. 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 prices and therefore hold up 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 its location is often an issue and it has been found that most resettled families sell the house they were resettled in and move to a location more appropriate for their lives.

Da Nang is well placed to become the urban center of the Central part of Vietnam. The leaders have focused on planning and development of infrastructure to make a modern city. Da Nang has applied its own approach to land whereby the land value is used as the main income for the local government budget. This is then used for developing local infrastructure, arranging resettlement on a large scale and 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 granting credit and are paid back from the local budget along 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 concerned. 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 continued to prefer 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 a 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 for 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 the progress of projects became more troublesome.

Affected people's view of land conversion practices

In 2005 MoNRE undertook an assessment 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 procedure. The remainder related to land legislation violations by administrative offices, complaints against administrative decisions on disputed land settlements and claims about land being used by other people. Of the 70 percent relating to improper execution of land compensation and resettlement procedures, 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 concerned the low price paid 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 understand the 2003 Land Law and its guiding decrees correctly. Most of them still refer to the 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 substantially improving understanding of the law.

Among the public awareness is even worse and there is a very poor understanding of people's rights relating to land, especially among ethnic minority groups and 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 for compensation, support and resettlement (BCSR) 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. 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 mutually advantageous.

Supervision

MoNRE has stated that higher administrative authorities are responsible for periodical supervision of 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 this continued but was focused specifically 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 supervision missions MoNRE publicized its schedules and set up a "hot line" for receiving emails, phone calls, and postal mail from people and enterprises to gain information about violations in the supervision themes. They received thousands of responses and concluded that people were ready to participate in supervising the implementation of the Land Laws.

3. Issues on current legislation and its implementation

Compulsory land conversion

An analysis of the current procedures for compulsory land conversion has 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 published land use plans 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 compensation, support and resettlement (BCSR), which is a 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 plans and not for specific projects, the land is evaluated in accordance with its current use, but the recovered land may then lie unused for some time because there are no interested investors. However, when land recovery is carried out for specific projects the market price tends to be higher and the current users are more dissatisfied if the higher price is not applied for land compensation.
- It has not been clarified whether the Land development organization is a public service organization, a state owned enterprise, or a non-state owned enterprise. The Land development organization needs operational funds but is unable to request a loan from a commercial or investment bank.
- Although the law calls for the market price of land to be used in assessing land compensation there are no procedures established for the assessment of the market value 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 price in order to make their case.
- Under the land legislation, the price of agricultural land is decided based on the profit gained from agricultural production, which is very low. In cases where agricultural production land is converted to non-agriculture land, the price following 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 job, and be compensated for lost income. However, compensation and support is still delivered all at once when the State recovers the land and compensation 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 the 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 solution is to compensate 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 allocation of the land to investors

are conducted as two separate processes. On the one hand, the investor wants to follow their own investment plan without considering any further responsibility for the affected land-users while, on the other hand, the local government considers that their responsibility ends after the compensation, support and resettlement process is completed.

- Current regulations are not specific on the rights of people living on recovered land with respect to the sharing of benefits. Investors may be requested to “voluntarily” contribute roads or other public infrastructure although this may actually be a payment required from them to speed up the land transactions.
- Only when the 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 process with access to good condition infrastructure. However, often these key regulations are not fully followed in implementation. People subjected to lost housing often have no option in the selection of resettlement locations but have to abide by what is decided by the authorized State body. Resettlement sites are often of poor quality and in remote areas where land prices are low. Cultural and spiritual beliefs and values are not considered in resettlement site planning.
- The Land Law and its guiding decrees established by the Government have, step by step, provided fairly clear eligibility criteria concerning compensation, support and resettlement for land-users who hold no Land Use Rights Certificate (LURC). The Land Law provides specific regulations on what land use deeds can be used as an alternative to the LURC. The guiding decrees of Government go even further by defining cases where land-users holding no land use deeds are eligible for compensation, support and resettlement when their land in current use is recovered by the State. These are regulations with a high degree of social characteristics, aiming to protect the rights and benefits of land-users who have been using their land continuously since before the effective date of the 1993 Land Law but hold no land use deeds.
- The Land Law of Vietnam has been developed to be applicable to a comprehensive range of land users but is without specific regulations dedicated to land acquisition, compensation, support and resettlement for vulnerable groups such as ethnic minorities and the poor. In addition, the policies are not fully associated with supporting policies for ethnic minorities, poverty reduction, gender equity, etc.
- The Land Law and its guiding decrees of Government have provided a number of regulations so as to allow only effective projects and capable investors to proceed. However, there are still cases where investors are allocated with land but make no investment, leaving the land unused for several years and seemingly waiting for the land price to go up so they can transfer the land to others; while the affected land-users cannot find other land to make a living. While this is a regular occurrence in several provinces there are no legal provisions that are detailed enough to prevent it.

The critical issue is that the current land legislation focuses on organising land for development but does not pay enough attention to ensuring social sustainability for affected people and communities. In practice, the acquisition of land for investment projects is confronted with big challenges. Firstly, provincial leaders in Vietnam prefer economic development as a way to bring their provinces out of poverty and therefore offer special treatment to potential investors and their investment projects. As a result they are less concerned about land-users whose land is recovered by the State. Secondly, a number of legal provisions are not implemented at the local level or are implemented in such a way as to create positive discrimination towards investors. In several cases, there are signs of bureaucracy or private collusion with investors. Thirdly, land prices decided by the authorized State bodies for computing compensation and resettlement are often much lower than market prices and support provided by the government to affected land-users to restore their housing, livelihood and jobs are still not sufficient. Fourthly, there is still an absence of clearly defined mechanisms and periodical implementation of land inspection by upper level administrative authorities over lower level authorities. Inspection is not undertaken on a regular basis and violations are not detected

and treated in a timely manner. Fifthly, there is still a lack of good mechanisms to facilitate the participation of individual citizens, communities and social organizations in supervising the implementation of land legislation by administrative authorities; monitoring the land conversion process; facilitating consensus in the sharing of benefits 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 types of projects funded through domestic or joint venture foreign-domestic fund while compulsory land conversion applies to all projects funded 100 percent by foreign funds. This leads 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 into investments.

4. International Practices that may be considered in Vietnam

Benefit sharing

Benefit sharing policy studies are being undertaken to look at the feasibility of introducing them in Vietnam; for example in projects that have significant environmental and social impacts such as hydropower projects, mining, the construction of economic parks and large irrigation systems. Each policy would need to develop its own appropriate systems of benefit sharing. Benefit sharing could be in the form of monetary benefits or non-monetary benefits. Monetary benefits could be in the form of additional compensation to affected populations; establishing a long-term regional development fund; or establishing a partnership between developer and communities to share the longer term returns of the project. Some possible examples are: supplying preferential electricity and other water related charges 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 the restoration of livelihoods; social infrastructure such as housing, schools and healthcare; or custodianship of catchment areas.

Land pooling/readjustment policy

Urban land pooling/readjustment are widely used in Australia, Japan, Korea and Taiwan and is currently being explored in some other ASEAN 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 to be returned to the affected people is calculated and divided amongst 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 of the scheme. This mechanism is only suitable under specific conditions and while there are advantages of consensus and equity, there are disadvantage in that it can take a long time to plan and implement.

Transferable Development Rights

Transferable Development Rights (TDR) originated in the USA where they were used in schemes to protect environmentally sensitive areas. They have also been used in India to acquire land for public non-commercial purposes such as roads, schools and 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 land. They can also transfer the TDR to other people. In Mumbai, for example, affected people can choose compensation or TDR.

5. Recommendations

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

- Improving the voluntary land conversion mechanism, based on agreements between land-users and investors, in such a way so as to allow more room for application of the mechanism. Improvement of this mechanism can be undertaken through amendment/supplementation of the current legal framework, including:
 - > The investor shall register the voluntary land conversion in conjunction with the land valuation process and public participation;
 - > The administrative system or the court should become involved if agreement on land conversion is reached with most of the current land-users concerned, but some remaining ones refuse to cooperate with investors or quote an unacceptable price for their land;
 - > 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 negotiation with land-users.
- Improving the compulsory land acquisition mechanism, through administrative decisions by authorized State bodies, in such a way so as to reduce the direct influence of the administrative system and to bring it closer to the consensus principle of benefit sharing between the parties concerned. Improvement of this mechanism can be undertaken through amendment/supplementation of the existing legal framework, including:
 - > Improving the operational mechanism of the Land development organization to allow it to act on behalf of the administrative system in implementing administrative decisions on land recovery. This is to prevent possible bureaucracy and private gain within the administrative system and is easier to gain agreement on sharing benefits between related parties. It is also to allow other enterprises to provide services in land recovery, compensation and ground clearance activities;
 - > Adopting and operating a land valuation service system so that compensation, support and resettlement for affected people can be calculated to give a reasonable market-based price for land;
 - > There should be specific regulations about long term benefit sharing for big projects that have an impact on a wide range of residential communities such as hydropower, mineral exploitation and airport construction projects, large economic zones and hi-tech zone development projects, etc.;
 - > There should be specific regulations on land pooling/readjustment in relation to urban development projects, housing development projects in poor areas, etc.;
 - > Creating a fund for compensation, support and resettlement which is based on contributions from the government budget, investors, and society to form a good source of long term support for affected communities and individuals in the land conversion process.
- Identifying a reasonable limit for application of compulsory or voluntary mechanisms which is based on the principle that compulsory land acquisition will only be applied to development projects in the national and public interest, for national defense and security.

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

1. INTRODUCTION

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

Following the restoration of peace (in 1954), the Vietnamese National Assembly passed the Second Constitution in 1959, called the 1959 Constitution. The 1959 Constitution recognized the State's ownership (the people's ownership), collective ownership, individual ownership and national capitalist's ownership on materials for production, including land (Article 11), but affirmed that the State's ownership and collective ownership is closely protected by the State (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 agricultural cooperatives (Article 14). In the first few years (1960-1965), the agricultural cooperative model brought Vietnam's agricultural productivity to the highest level in South-East Asia.

After 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 1980 Constitution, in which the State recognized only one type of land ownership – that of the whole population's ownership of the land (Article 19) and that lands are systematically managed by the State based on general planning (Article 20). During this time, the State allocated land free of charge to people who needed land to use and recovered land where land-users did not want to use it. For investment projects on infrastructure, industry or urban development the State decided to recover agricultural land and adjust the land between agricultural cooperatives. This system of State subsidy on land underscored the State's influence in preventing land disputes and 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 area used by agricultural cooperatives for taxation purposes.

During this period the State heavily subsidized the economy; people had no financial fears or land disputes and complaints were minimized, but the policy ultimately failed to create dynamic development in all economic sectors and effective land use. The agricultural cooperatives produced low yields and productivity. The entire country began to feel the effects of the inadequate food situation. In the industrial

and service sectors the State enterprises had massive holdings of non-agricultural land but created minimal effectiveness in their use of the land. In addition, the yield and productivity of the non-agricultural economic sectors were very low.

In 1986, the State of Vietnam decided to carry out a country-wide renovation, “DOI MOI”, firstly focusing on economic improvements by implementing a breakthrough change in its agricultural land policy. Cooperatives’ agricultural production land was allocated by the State to households and individuals for their stable and permanent use. This means that agricultural production was transferred from the ‘cooperative production’ model to the ‘household production’ model. This policy had a significant effect on agricultural economic development in Vietnam, taking it from a country with inadequate food supplies to one of the top 3 rice exporters in the world in 2007. The policy’s success in the agricultural sector carried over to innovative policies for the industrial and service sectors of the economy as well. The agricultural land allocation policy to households and individuals required establishing land laws, a land administration system and organizing land offices at all administrative levels. The first land law was adopted by the National Assembly in 1987. The 1987 Land Law was concentrated purely on the regulation of agricultural production land allocation to households and individuals for their stable and permanent use. The policy of State ownership of land remained unchanged; there was no value given to land, no price for land and no land transactions in the market. Transfer of land use was only to be decided by the administrative authorities of the State.

In 1992, the Vietnam National Assembly adopted the fourth Constitution, referred to as The Renovation Constitution (the so called 1992 Constitution). The 1992 Constitution accepted a market economy under the management of the State (also called the socialist-oriented market economy). A new system of legislation was built on the basis of the 1992 Constitution to ensure economic development and social equity with the participation of multi-ownership economic sectors. For land, the 1992 Constitution continued to reaffirm that all land belonged to the population as a whole (Article 17); all land was also systematically managed by the State on the basis of planning and legislation and allocated by the State to organizations and individuals for their stable and permanent use (Article 18). The Vietnam National Assembly adopted the second land law in 1993 which stated, most importantly, that land has a price which is defined by the State and also that households and individuals have five rights over land: exchange, transfer, inheritance, lease, and mortgage. To encourage investment for economic development the State defined a low price for 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 for the country. The Vietnam market created investment opportunities for domestic and foreign investors to develop businesses in the infrastructure, industrial and service sectors. The demand for land increased as these investment projects got under way and land concessions was an important aspect in attracting investors. According to the Land Law of 1993, land acquisition for investment projects was made only through the compulsory land conversion mechanism. This method meant that the State promulgates administrative decisions to recover the land of current land-users and allocates this land to investment projects. Project investors have to pay a land-use fee/land rental to the State and land compensation/resettlement to the people subjected to land recovery.

After 1998, provincial people’s committees realized that economic development investment projects played an important role and were the only way to develop the economy. Hence, provincial leaders tried to best establish how to support and encourage investment and how to attract investors into their province. Good land policy is one of the things that investors are interested in. Encouraging investment by open land access policies supported economic development but also created social pressures on people whose land was recovered. In 1998, the Vietnam National Assembly adopted the Law on amendment and supplementation of the Land Law mainly focused on broadening the rights of project investors; but did not change the compulsory land conversion method.

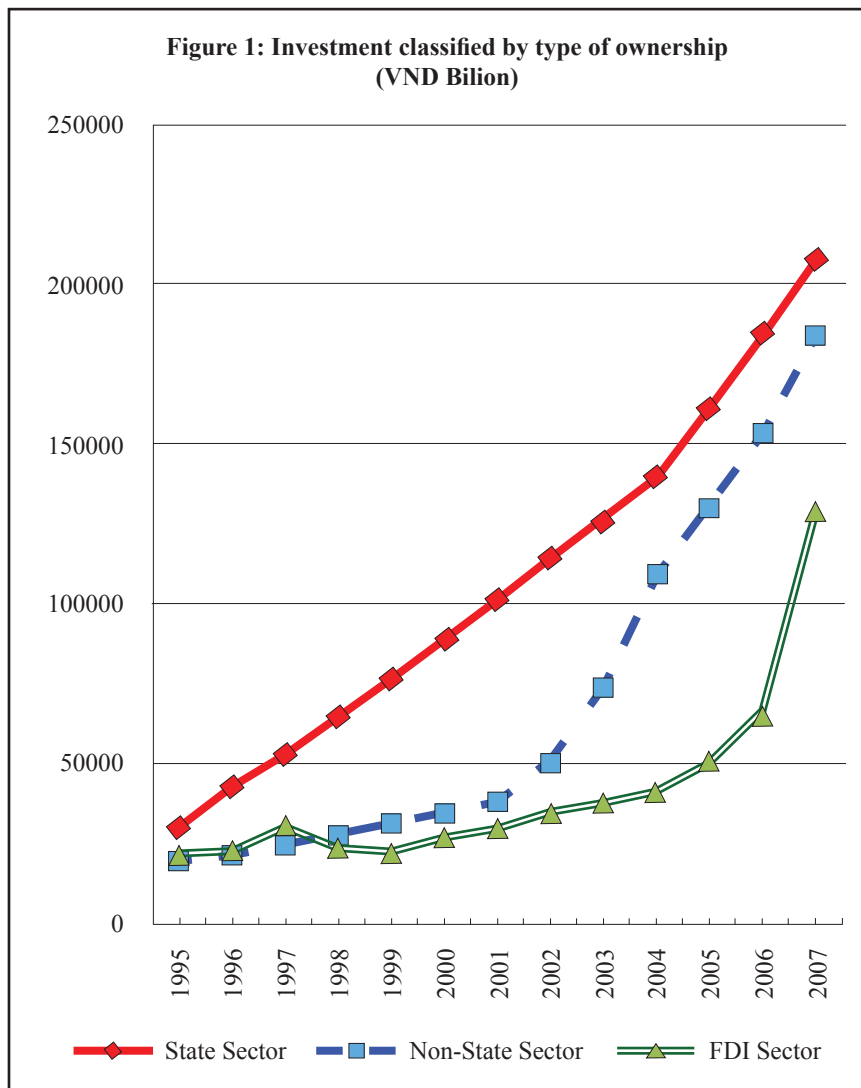
In 2002, Vietnam carried out the project “Summarizing 10 Years of Implementation of the Land Legislation” to provide the basis for a new land law that would be most suitable for the period of acceleration in the country’s industrialization and modernization process. The final report pointed out many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

In November 2003, the National Assembly adopted the third land law of Vietnam, which took effect on July 1st, 2004. The Land Law 2003 created an almost complete renovation of the Vietnam land legislation system:

- The policy of ownership of land by the people was concretized with detailed regulations on the rights and responsibilities of the land authorities of the State and on the rights and obligations of land-users based on the principle that the right of use of the land allocated by the State together with the payment of a land-use fee is considered to be the property of land-user.
- There are detailed regulations on settling historically complicated land claims between land-users in which the regulation states that land that the State has borrowed or rented in the past is considered to be returned to the legal land-user.
- The land price set by the State must be in accord with the market price of land, which means that the new land financial system was established on the principle of “market-based pricing of land”.
- The economic organizations having the land use rights as their property are allowed to undertake land transactions in the market.
- The equity in the rights and obligations on land between domestic and foreign investors is improved.
- The compulsory land conversion method enacted in the previous land legislation is now confined only to cases where land is used for national and public purposes and some important economic investment projects (such as construction of industrial zones, economical areas, high-tech parks and urban and rural infrastructure and those projects in the largest funding investment group). All other cases must follow the voluntary land conversion method based on negotiation between investors and current land-users to agree land transfer, land lease or land as a capital contribution to the project.
- There are the detailed regulations on the determination of the value of land compensation and the living conditions in resettlement locations for those cases where the compulsory land conversion method is to be applied.
- The land administration procedures system is established based on the principles of detail, simplicity, inexpensiveness, transparency and publicity.
- The supervising role of the people in the implementation of land legislation is enhanced.
- The settlement of land disputes, complaints and denouncements is renovated based on the principles: (i) to improve the responsibility of local people’s committees; (ii) to essentially shift the work of settlement of disputes from the administrative system to the court system.

In 2007, the Government of Vietnam promulgated a new decree¹ focusing on three main ideas. The first was to issue the legal criteria for recognizing the right to land use for current land-users who had no legal documents of their land use. The second was to permit foreign investors to carrying out house building projects for commercial purposes with rights and obligations similar to domestic investors. The third was to specifically stipulate the publicity and transparency procedures in undertaking compulsory land conversion which guarantees the benefits of affected land-users.

Drastic innovation of the land legislation system has created a driving force for the development of the industrial and service economy. The number of investment projects and investment funds have increased remarkably especially from the non-State and foreign economic sectors. (A chart detailing the acceleration of the investment process for each sector, based on data issued by the State Statistics Office of Vietnam, is presented in Figure 1 below).



In Figure 1, investment by the non-State economic sector has been increasing rapidly from 2003 when the 2003 Land Law was adopted by the National Assembly and included many articles encouraging investment in land. Foreign direct investment has increased drastically since 2007 when the central Government promulgated Decree no. 84/2007/ND-CP broadening the rights of foreign investors.

The increase in investment projects has changed the economic structure between agricultural, industrial and service economic sectors. The following chart, at Figure 2, is based upon data issued by the State Statistics Office of Vietnam and points out the change in the proportion of GDP devoted to the agricultural, industrial, and service sectors of the economy.

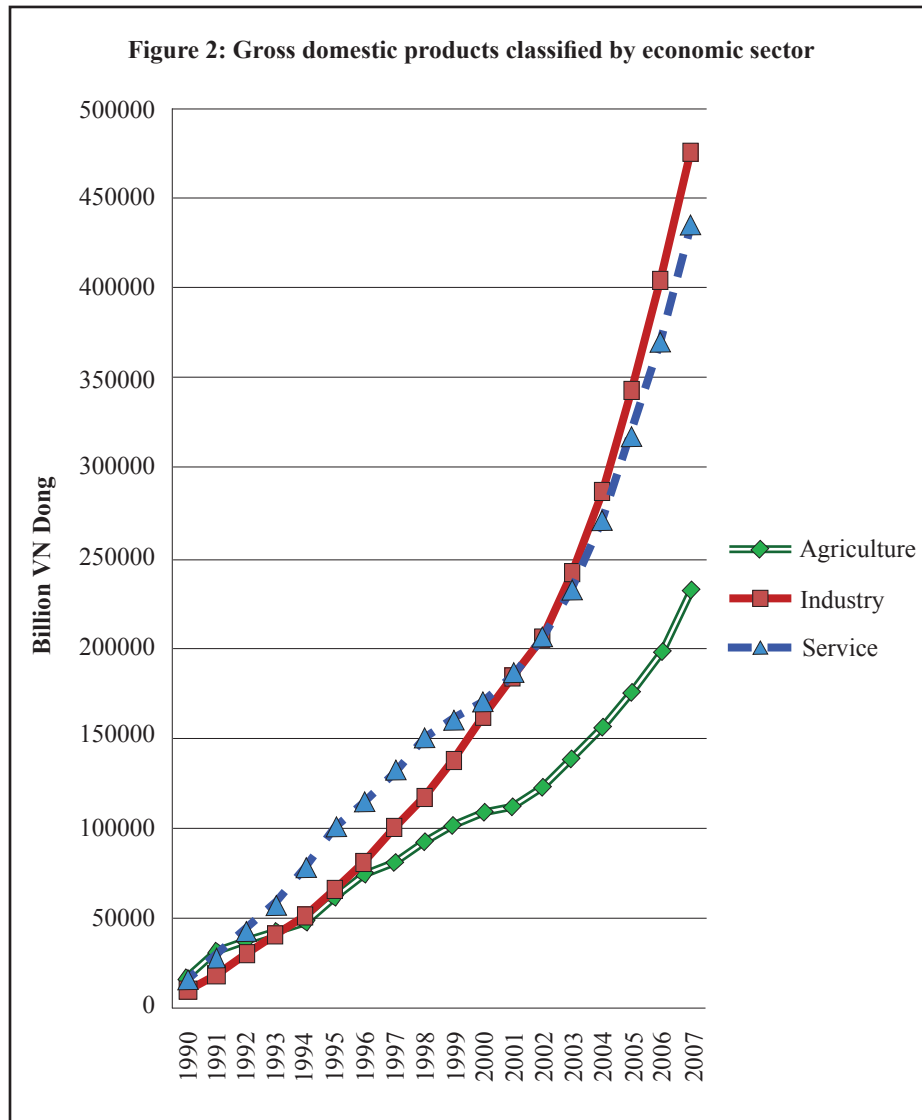
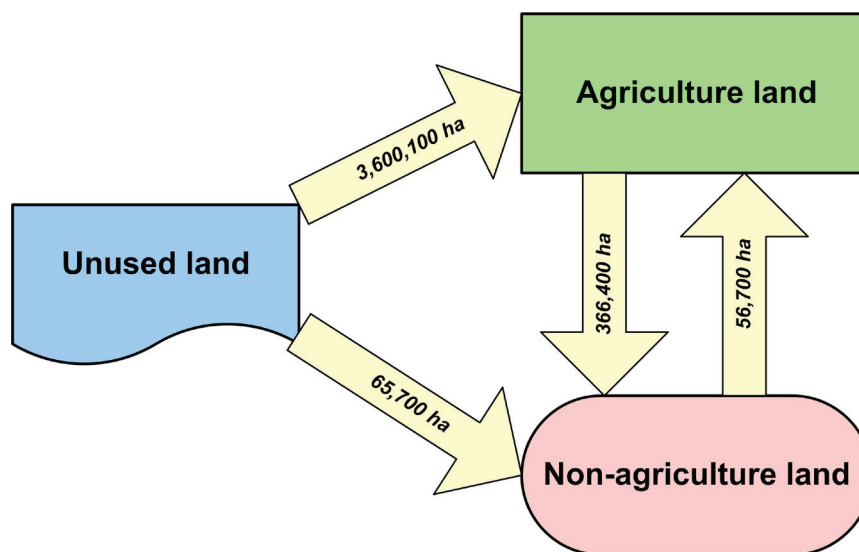


Figure 2 shows that before 1999 the agricultural, industrial and service economies were relatively equal in terms of GDP. From 1999 investment in the non-agricultural sectors increased and resulted in roughly equal acceleration in the proportion of the GDP provided by the industrial and service sectors and surpassing that of the agricultural sector.

In the 5 years from 2001-2005 many areas of land were converted between agricultural land, non-agricultural land, and unused land². Detailed information is presented in Figure 3 below.

Figure 3 shows that in the 5 year period approximately 400,000 ha of land was converted from one use to another. The compulsory land conversion method with the value of land compensation calculated on the basis of the land price defined by the provincial people’s committees, made people affected by land recovery realize that the value of the land compensation was far lower than the value received from land transfer in the market. Hence, the number of complaints concerning land increased sharply to about 70% of total complaints and the number of land compensation/resettlement complaints on land recovery by the State increased to about 70% of the total land complaints³.

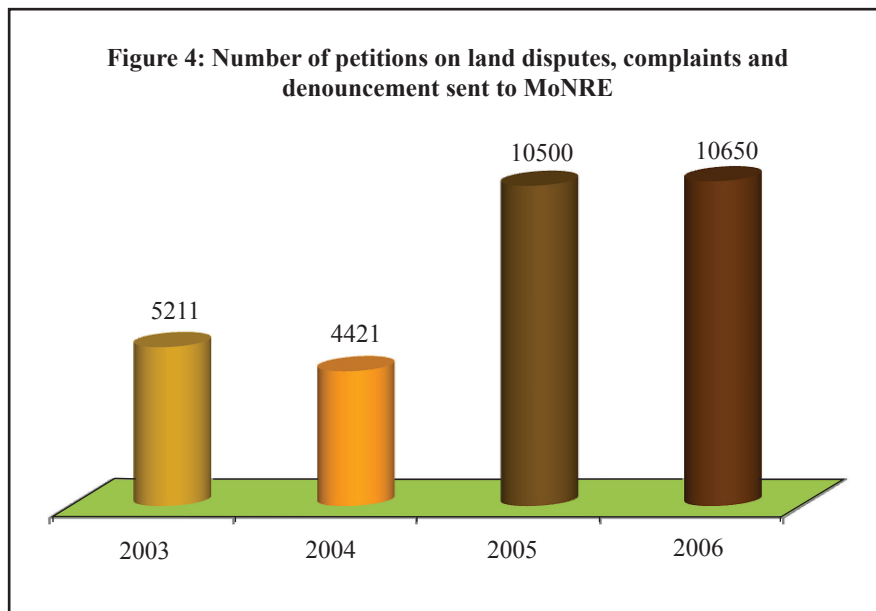
Figure 3: Land conversion situation in Vietnam from 2001 to 2005



The area of 56,700 ha of non-agriculture land converted to agricultural use was almost entirely water covered land that was converted from industrial or service purposes for use in aquaculture.

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

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



Recently, a number of important international organizations such as the World Bank (WB), the Asian Development Bank (ADB), the United Nations Environment Program (UNEP), the UN Food and Agriculture Organization (FAO), etc. have focused on the studies of land acquisition and land compensation/resettlement mechanisms to propose improved land policies for developing countries. The policies on the benefit-sharing basis for hydropower investment projects and the land pooling/readjustment process for urban area development projects have been piloted. The implementation practice of these policies will provide valuable experiences for the land conversion policy reform process in Vietnam. Two years ago, ADB supplied a TA project for Vietnam on the study of the 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 land conversion is conducted under both compulsory and voluntary mechanisms through the following regulations:

- All acquisition of land is to be made in accordance with land use planning approved by the State’s authorities and publicized. Current land users have no right to convert the current purpose of land to any purpose which is different from the land use plan.
- The compulsory land conversion mechanism is applied in cases where converted land is to be used for: (i) national/public purposes (including national defense/security); (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 purposes by domestic investors. However, the purpose should provide national benefits such as projects on construction of infrastructure 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).
- The voluntary land conversion mechanism is applied in cases where converted land is to be used for implementation of domestic investment projects which have a commercial purpose and are: (i) not subject to the cases in which the compulsory land conversion mechanism can be applied (as mentioned

above); (ii) subject to cases in which the compulsory land conversion mechanism can be applied but the investors volunteer to conduct the process through the voluntary land conversion mechanism.

In Vietnam's current context, a number of questions need to be examined in order to improve the land conversion mechanisms in the market economy:

- Under prevailing law, whether the distinction between compulsory and voluntary land conversion mechanisms is sensible or not? Whether it should be adjusted or not?
- With the compulsory land conversion mechanism, what amendments/supplementations should be made to land legislation to allow it to become more adapted to the market economy and to ensure that benefit-sharing based principles are applied to benefits determination for current land-users and the community where the land located, investors and the State? What solutions should be applied to properly implement these amended/supplemented regulations of the land legislation?
- With the voluntary land conversion mechanism, what amendments/supplementations should be made to the land legislation to exclude the situation where current land users do not want to cooperate with investors or demand very high land prices which cannot be accepted by investors?

In 2009, the World Bank in Vietnam approved a study on "Social and Land Conflict Management in Vietnam" as assistance to the Vietnam Government in the study of the renovation of land policy. It is also intended to provide solutions for the implementation of the compulsory land acquisition mechanism based on the process of the "State's recovery of land and State's implementation of land compensation, support, and resettlement for affected people" and to improve the market-based mechanism in land acquisition and land conversion in Vietnam. The World Bank study is intended to support the General Department of Land Administration (GDLA) of the MoNRE of Vietnam Government in finding solutions to improve the conversion of land for use in accelerating the country's industrialization and modernization. It will also directly contribute to the preparation of the Law on the amendment/supplementation of the Land Law by the end of 2013 in accordance with the Vietnam National Assembly's Law Construction Program. On 13th August 2009, the Vietnam Government issued Decree No 69/2009/ND-CP on additional stipulations for land use planning, pricing, recovery, allocation, lease, compensation, support and resettlement, which is concentrated on a new step of improving the mechanism on land recovery by the State and compensation, support and resettlement. Currently, the Vietnam National Assembly has approved a new program of law construction in which a new Land Law will be considered and adopted before 2013.

The World Bank in Vietnam together with the GDLA has prepared this Policy Note as the first step in supporting the improvement of land policy to reform the compulsory land conversion mechanism. Based on the initial results, further studies on a larger scale will be considered to make direct contributions to the drafting process of the new Land Law. The studies will also look to the future with the objective of constructing a Land Code within the next few years.

The Policy Note includes six Chapters: Chapter I, comprises the general introduction to the subject area of the policy note; Chapter II, focuses on analyzing the prevailing land legislation system for land conversion and the process of land legislation construction to determine issues of insufficiency; Chapter III, mainly analyzes the current implementation of land conversion in Vietnam, based on analyses of the opinions of provincial leaders, investors and affected people; Chapter IV, analyses international and domestic experiences on land acquisition/conversion mechanisms to establish the possibilities of their application in Vietnam; Chapter V, recommends land policies, legal regulations and implementation procedures to continuously reform the land acquisition/conversion mechanisms in Vietnam. The Policy Note ends with Chapter VI, which recommends some issues for further study in the World Bank Vietnam program on land policy improvement in future years.

2. ANALYSIS OF VIETNAM'S LAND LEGISLATION SYSTEM AND THE COMPULSORY LAND ACQUISITION MECHANISM

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

The Vietnam land legislation system was originally built on the basis of the State subsidy system for land incorporating the collective citizens ownership system of land. Later the system was gradually reformed to meet the requirements of the market system.

Prior to the Land Law of 2003, legal regulations on land conversion in Vietnam only covered the compulsory land acquisition mechanism through which land conversion was subject to administrative decisions made by the competent State's bodies and recovered land from one current land user in order to allocate or lease the land to another land user. The person to whom the land was allocated or leased had to pay compensation to the person whose land was recovered and pay a land use fee or land rental to the State (consideration could be given to reducing the land use fee or land rental if compensation was paid). The Law only regulated that the State had the right to recover land to use for the purpose of national defense, security, and national and public interest. However, the mechanism of land recovery by the State has also been applied to land acquisition for economic investment projects and commercial purposes for the profit only of investors. Investors found the legal requirements of the compulsory land conversion mechanism to be very complicated and awkward. Investors had to directly negotiate an amount of compensation for the land with current land-users and in order to access the land they had to directly discuss the matter with the province, district and commune-level people's committees, including in almost all cases complicated informal procedures with informal expenses. Consequently, investors proposed a reform of the land conversion mechanism so it less complicated, more transparent and allowed investors the right to receive land through market based land transfer directly from economic organizations, households and individuals.

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

During the first 5 years of implementation of the compulsory land acquisition mechanism through the Land Law of 1993, the land price used to calculate land compensation and resettlement was regulated by provincial people's committees in accordance with the land price framework regulated by Government (the so called 'State's Price', see appendix 1). This State's Price of land was equal to only 10 to 30% of the market land price resulting from the actual land transfer. Land compensation was first regulated by this principle with some general legal provisions, but then was gradually reformed into specific detail regarding

the benefits of affected people (see appendix 1). In general, land users subjected to land recovery by the State received unsatisfactory land compensation. Investors paid a land use fee or land rental to the State together with the State's land price, which was much lower than the market price. Investors might have to go through very complicated procedures to access land however they could gain a great deal of profit from the paid land value in comparison with the market value. In the period 1993-2004, the compulsory land acquisition mechanism assisted in promptly freeing up land for investment projects for economic development yet at the same time it increased the number of complaints regarding land compensation and resettlement. When the complaints sent to the local people's committees were not responded, they were then sent to central State's authorities such as the General Department of Land Administration (GDLA) of the Ministry of Natural Resources and Environment (MoNRE), the State Inspection of Central Government and the National Assembly. Late responses caused an increasing number of people to gather at the State's authorities offices asking for a direct settlement. (The biggest group consisted of over a thousand people).

In the last 5 years of the 10-year period (1993-2004) of implementing the 1993 Land Law the land price stipulated by the Provincial People's Committees was adjusted to become closer to the market price. People subjected to land recovery received greater compensation and better resettlement arrangements. However, these improved conditions were just an effort to improve the compulsory land conversion mechanism at that point in time whilst there were several problems to be solved in the market economy mechanism.

The Land Law of 2003 has specific provisions on the two land conversion mechanisms, the compulsory and voluntary land conversion mechanisms, as well as the scope of application of each mechanism. The amendment of the compulsory land conversion mechanism was based on the following principles:

- The land price stipulated by the Provincial People's Committees must be in accordance with the market price of land; and following one year of implementation the Government revised the land price to ensure that the value of compensation for land was equal to the market price of land (see appendix 2).
- The State authority which issued the decision on land recovery, compensation, support and resettlement is responsible to organize the implementation of compensation, support and resettlement in accordance with the detailed procedures (see appendix 2).
- 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 mechanism was applied to a number of investment projects for commercial purposes. During the first implementation period, the mechanism had been acknowledged and implemented very well by active investors as it helped them to access land without any of the pressures exerted by the complicated administrative relationship with local people's committees at all levels. After some years of implementation several projects faced difficulties when current land users disagreed with investors and demanded very high prices for their land that investors could not accept. Many investors had already been transferred up to 80% of the land required for project implementation but could not obtain the remaining 20%. Prevailing land legislation has not yet regulated how to resolve the situation where current land users refuse to transfer land to investors or require an extremely high price for their land. This situation has shown up a key disadvantage of the voluntary land conversion mechanism which caused the investors to want to only apply the compulsory land conversion mechanism.

2.2. Analysis of existing land legislation on compulsory and voluntary conversion mechanisms in Vietnam

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

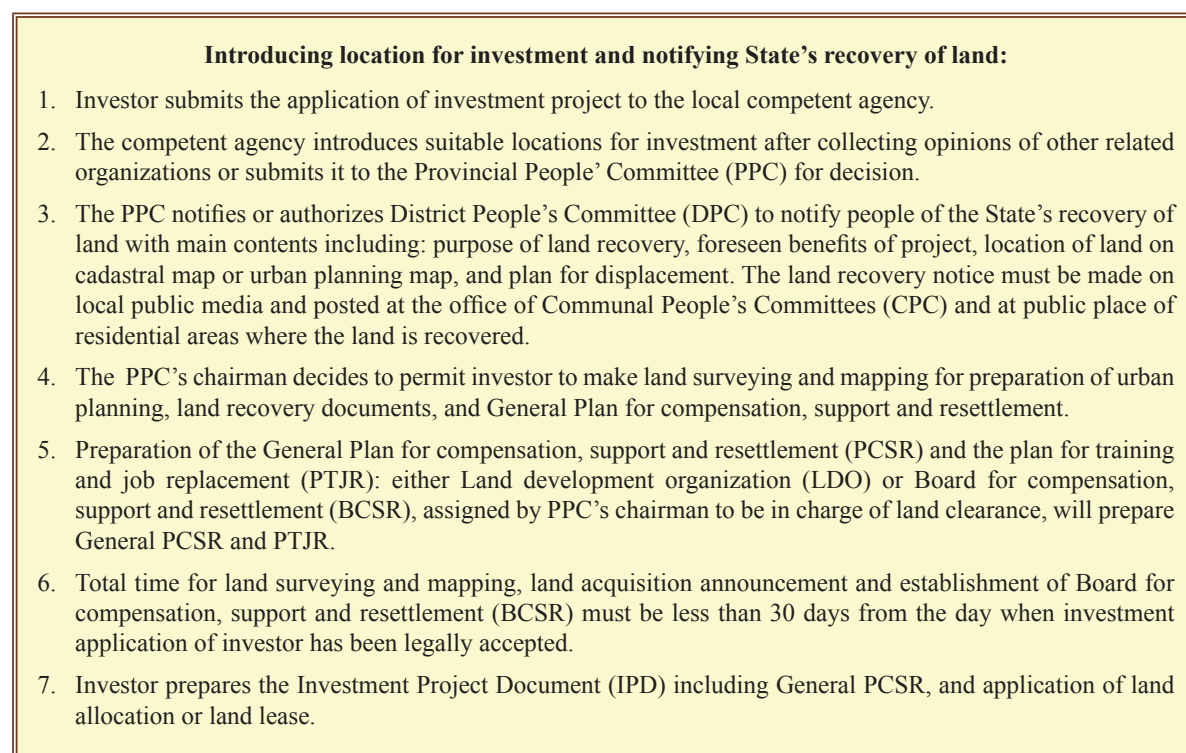
2.2.1. The compulsory land conversion mechanism:

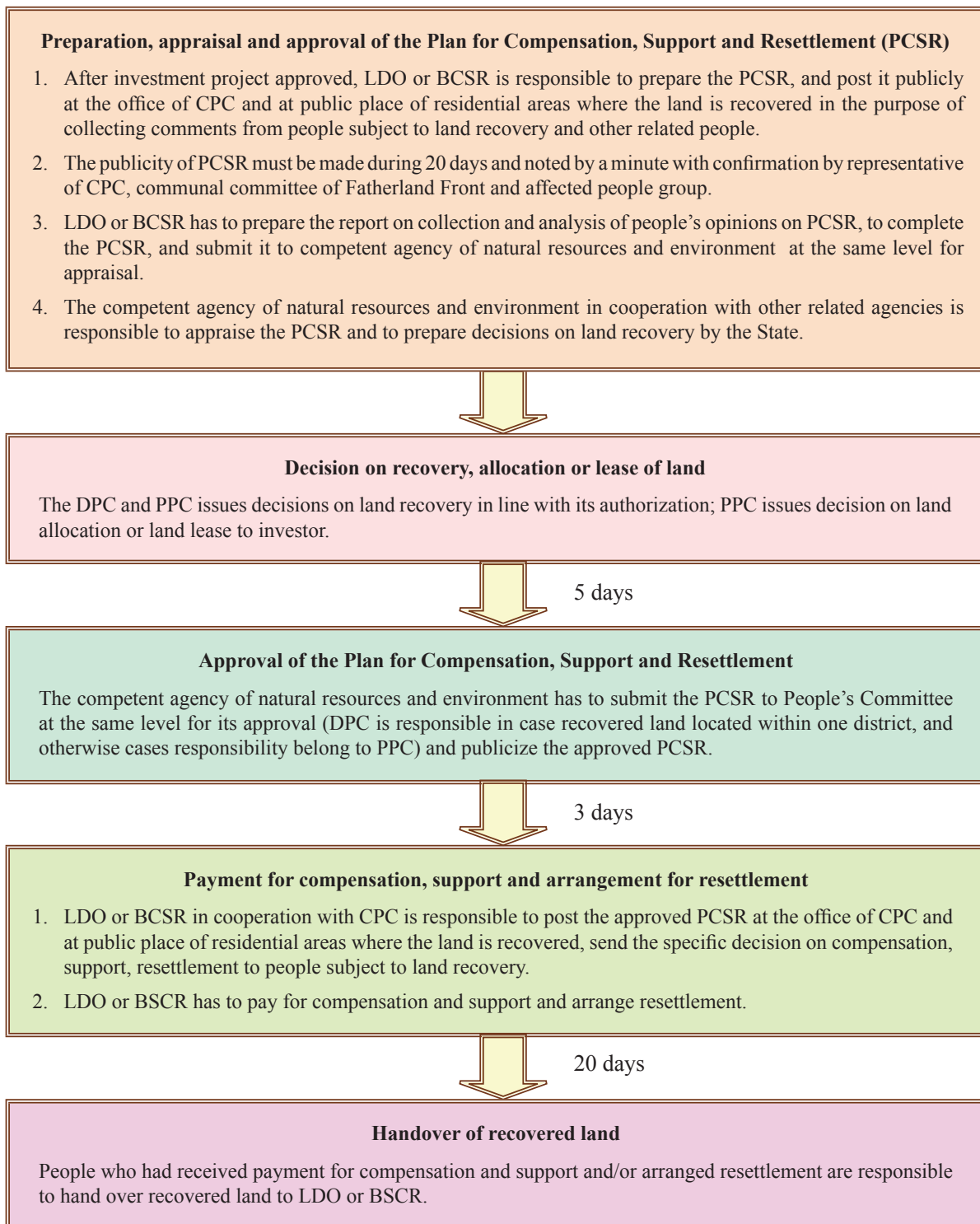
a. *Scope of application:* This mechanism is applied in the following cases:

- Land converted to use for the purpose of national defense, security, and national and public interest;
- Projects invested in by the official development assistance funds of foreign governments or international organizations (ODA); or by 100% foreign direct investment (FDI);
- 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.
- Investment projects for economic development funded by domestic capital or domestic and foreign joint venture capital with an investment amount in the highest group (so called group A, the capital amount is stipulated for every economic sector).

b. *Procedures:*

The compulsory land conversion mechanism follows the procedures as shown in the diagram below (according to the Decree No. 69/2009/ND-CP of 13th August 2009):





c. Reviews on legal regulations:

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

- According to the first decree on guiding implementation of the Land Law (Decree No. 181/2004/ND-CP), there are two types of Implementing Unit for Land Compensation, Support and Resettlement: The first is the Land development organization (LDO) for land recovery according to land use planning (when there are no approved investment projects), and the second is the Board for compensation, support and resettlement (BCSR) in case of land recovery following an approved investment project. The Land development organization is permanently established by the Provincial People's Committee and is 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, and transferring land to investors. The activities of the Land development organization are closer to the market economy, which makes this organization a tool that can transfer land use planning to the market by consensus based on benefit-sharing between current land-users, investors and the State. The Board for compensation, support and resettlement is established on a temporary basis by the District People's Committee to work on land compensation, support and resettlement for a particular project. The Board for compensation, support and resettlement is headed by a District People's Committee leader and includes leaders of related departments at provincial level, representatives of the project investors, residents and people subject to land recovery. Activities of the Board for compensation, support and resettlement follow administrative regulations and are not suited to the market mechanism. Since 2010, following the issuance of Decree No. 69/2009/ND-CP of Government, in many provinces the Land development organizations are established not only by Provincial People's Committees but also by District People's Committees. That means there are two types of Land development organizations: Land development organizations at provincial level and Land development organization at district level. According to Decree No. 69/2009/ND-CP, the implementation of compensation, support and resettlement is assigned either to the Land development organization or to the Board for compensation, support and resettlement.
- Land recovery based on approved land use planning encourages a good sense of initiative. People subject to land recovery don't see any projects in implementation, and their land can be evaluated only in accordance with current land use status. However, the disadvantage is that the recovered lands can fall into disuse if investors do not want to use the land for their projects because the prescribed land use. Land recovery based on approved investment projects could avoid the abandoning of land. However, this advantage is countered by the increasing complaints from people subject to land recovery about an incompatible land price. Since projects are being implemented, the people subject to land recovery expect an increase in the land price in the near future and demand compensation at a future expected price.
- The Land development organization, established under the provisions of the Land Law 2003, is responsible for executing compulsory land recovery with methods similar to the market mechanism. Up to now, the Land development organization has not been clearly defined as a public service organization, a state-owned enterprise or non-state-owned enterprise. The Land development organization, of course, needs to call for operating funds but it is unable to ask for a loan from commercial banks or investment banks. In fact, the Land development organization is currently managing land, which is not yet allocated or leased for use.
- Current land legislation stipulates that the land price applied to determine land compensation has to correspond with the market price of land and not the price regulated by the provincial people's

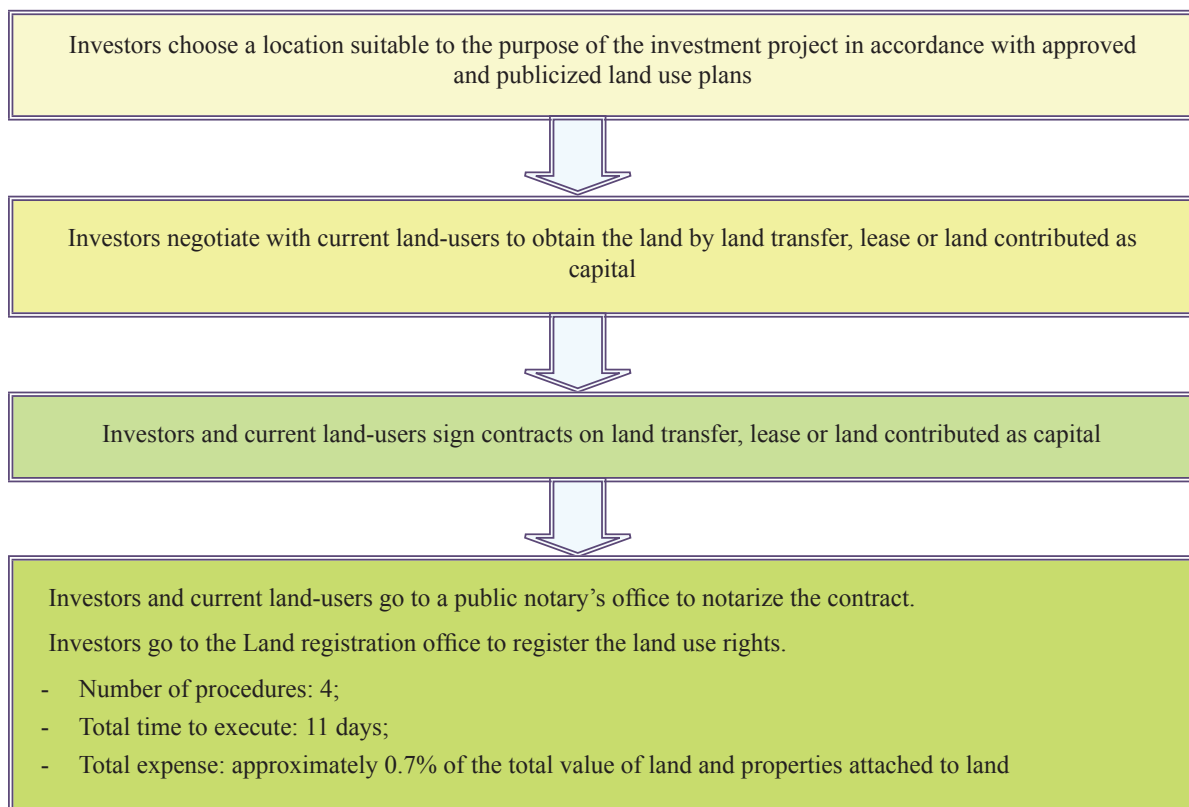
committees. Such regulations are only in principle and there are no specific provisions on market-based land price assessment procedures. Thus, according to these provisions of the prevailing law, the market price of land is still decided by the provincial people's committees. People subject to land recovery who dispute the price decided upon by provincial people's committees, have no avenues to present their views. Finally, the decision of the State's authorities should be implemented. Thus, different opinions on land prices only slow down the land acquisition process for investment projects.

- 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 lessens the price. This is true when agricultural land is used only for agricultural production (in fact, the price of agricultural land assigned to agricultural production is relatively the same). The issue of agricultural land assessment becomes complicated when this land is converted to non-agricultural land under approved land use plans. Current land legislation allows an addition of 20-50% of the value of residential land to calculate compensation for agricultural land, including gardens attached to residential houses in the same land parcel, if it is located in or adjoining to residential areas. The agriculture production land price assessment for land compensation needs to be improved.
- The Vietnam Government has carefully considered additional livelihood support for the people subject to land recovery. To assist in a change in livelihood the allocation of a plot of commercial land near industrial zones or near residential land in urban areas may be given to the agricultural land-user who has had more than 30% of the total land recovered. Some local areas have carried out this solution successfully, while others believe this solution is unsuitable because it requires more non-agricultural lands to be converted to agricultural land. This solution sounds good, but needs to be carefully planned and put used in land use planning to test its feasibility.
- The current legal regulations on land have not paid much attention to the rights of communities living on recovered land areas. The State budget law only has some regulations on revenue sharing amongst the provincial, district and communal levels. This mechanism does not ensure the necessary benefits for local administrative areas and local communities. In fact, investors have to "voluntarily" contribute to infrastructure development for district and commune levels at the suggestion of local government or local communities. This is an additional amount of money that investors have to pay "voluntarily", but in fact they must pay "involuntarily" to acquire the desired land quicker and easier.
- The solutions which are more compatible with the market mechanism, such as current land-users being able to contribute the value of their land as shares in the development or where land compensation is paid to current land-users as a holdings in an investor's enterprise, could be applied in the compulsory land conversion system. Both of these have been suggested several times, but have not yet been seriously piloted or legal provisions put into the land legislation system.

2.2.2. Voluntary land conversion system:

- a. *Scope of application:* This system is applicable to economic investment projects for commercial purposes with domestic capital or foreign-domestic joint venture capital and with a total investment capital lower than that of group A (as explained above).
- b. *Procedures:*

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



c. Reviews on legal regulations:

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

- This land conversion system is clearly regulated by current land legislation with administrative procedures which meet international standards. In the period 1999 - 2004, enterprises were eager to use this system because the administrative system was clear and transparent.
- Currently, the voluntary land conversion system is applied to projects invested in by domestic funds or domestic-foreign joint-venture funds; however, the compulsory land conversion system is applied to projects with 100% of foreign funds. That means there is inequity between domestic and foreign enterprises.
- Land legislation does not yet have any provisions to resolve cases when some land-users do not want to cooperate with investors or demand an inflated land price, which consequently makes enterprises hesitant to access the planned land area. This weakness is a huge difficulty for enterprises, especially when investors have already paid for a part of land but are unable to acquire the remaining land for the project.

2.2.3. Reviews on strengths and weaknesses of the two land conversion systems:

So far, Vietnam has witnessed 20 years of implementation of the compulsory land conversion system and 10 years of implementation of the voluntary land conversion system (implementation was informal in the first 5 years and formal in the latter 5 years). Current land legislation systems and their implementation have the following strengths and weakness as analyzed below:

	Compulsory land conversion system	Voluntary land conversion system
Strengths	<p>The execution time is reduced because of administrative support from local authorities if the issue of land compensation, support and resettlement for people subject to land recovery is resolved.</p>	<ol style="list-style-type: none"> 1. The execution time is reduced due to very simple procedures if investors and current land-users reach an agreement on the land transaction. 2. The equity in benefit sharing between the investor and current land-users is ensured; benefits of the State and community are respected by the tax system on real estate and regulations on the State's revenue at each administrative level. 3. There is a reduction in the number of complaints by affected people on the basis of resolving the benefit sharing issue, to ensure social sustainability of the economic development process. 4. The administrative costs and labor are reduced and the bureaucratic and corrupt practices of the administrative system are eliminated because the procedures need the participation of investors and land-users only at the public notary's office and land registration office. 5. As the system aligns with the market mechanism it encourages investors to be more active in equitably negotiating with current land-users using methods such as land transfer, land lease or land contributed as capital, etc. 6. This system can help exclude opportunistic investors who have no financial capability for investment, but want only to acquire land from the State and then transfer it to other investors following a rise in the land price.
Weakness	<ol style="list-style-type: none"> 1. Partiality normally occurs due to thinking of economic development as a priority. This produces a bias in favor of investors' benefits and improper dealings on the benefits of people whose land is recovered. 2. The need for participation of many administrative bodies increases the administrative costs and labor. 3. The inherent bureaucracy of the administrative system causes an obstruction to every participant involved in the administrative procedures. 4. This system is very close to the "ask-give" mechanism of the State's subsidy economy, which encouraged corruption by granting the rights of decision on division of benefits amongst the participants to the administrative authorities. 	<p>There are as yet no legal provisions to resolve the case if current land-users demand an inflated price because they don't want to cooperate with the investor. Consequently, most investors are now in favor of the compulsory land conversion system.</p>

5. In Vietnam, the lack of a real estate valuation system in the market economy easily leads to unresolved disputes on the price of land and properties attached to land.
6. Community benefits are not yet considered in the land legislation and thus investors have to pay additional informal costs for the community benefits.
7. Improper dealings in land compensation, support and resettlement lead to an increasing number of complaints from people whose land is recovered and consequently causes social unrest.

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

2.3.1. The political economy arguments on land in Vietnam

All legislation is constructed on the basis of a political and economic philosophy and system. The land legislation of Vietnam is built on the basis of Karl Marx's arguments on political economy. Consistently, the legal regulations on compensation and resettlement of people subject to land recovery by the State are formulated in accordance with the land value arguments of Marx's political economy and have been 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 wealth. In 1776, Adam Smith, a famous economist of the classical economics school introduced his view on land as the root of the wealth of a nation⁴. Land rent or profit from land was formed into an economic theory on land. Adam Smith wrote in *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, Chapter 2, paragraph 14). Based on this thought, he provided an analysis of land tax in relation with the land rental paid to the landlord and benefits from land use. He noted that land tax should become the main revenue of the nation (Book V, Chapter 2, Part 2). About 40 years later, in 1817, the economist David Ricardo introduced a land tax system that contributed an 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 the economic relationship between landlord and people leasing the land of the landlord (Chapter 1 - On Value and Chapter V - On Profits). From this relationship, he defined the land rent and land tax, that is a part of land rent to be contributed to the State's revenue (Chapter VIII - On Taxes).

The theory of the political economy of land applied in Vietnam has been built on the basis of Karl Marx's theory on land rent, which was presented in 1867 in the book *Capital*⁶. Inheriting the political economy theory of land rent from Adam Smith and David Ricardo, Karl Marx introduced his theory on land rent, based on a classification of land rent into 3 types: (i) differential land rent no. 1 originating from natural advantages, (ii) differential land rent no. 2 originating from the increased profitability of land due to the 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. He proposed the exclusion of absolute land rent by eliminating private ownership of land so that there would be only the State's or the whole people's ownership of land. All

member nations of the old Socialist System constructed land legislation based on the principles of State ownership or people's ownership of all land. In Vietnam, the land ownership by the whole people is the legal foundation to implement the compulsory land acquisition system.

From the argument of the whole people's ownership of land, compulsory land acquisition is considered as an administrative process, based on administrative decisions on land recovery, land compensation, support and resettlement; and the people are responsible to execute these decisions. That means the process of implementing compulsory land acquisition should be regulated only by administrative legislation. In this concept, market-based solutions cannot be applied to the compulsory land acquisition system. From the practical point of view, some believe that market-based solutions are able to be applied to the implementation of land compensation, support and resettlement after the administrative decision on land recovery has been issued.

The voluntary land conversion system is legally considered as a civil relationship between the investor and current land-user and cannot be integrated with any administrative decisions. This system is regulated only by civil legislation. Consequently, there is no way to resolve the case if some land-users don't agree to transfer their land parcels in the project location to the investor. Experience shows that where there is disagreement between the investor and the current land-users, investors expect an administrative decision on land recovery of these last land parcels in the project locations.

The 2003 Land Law of Vietnam has detailed and transparent regulations on the whole people's ownership of land, in which the State has the right of disposal made by State's authorities and rights of disposal by the land-users. The recognition of land ownership by the State or the whole people with some extension of land-users' right to disposal or the recognition of private ownership on land with restrictions on some rights of disposal of land-owners are actually two approaches to the same thing. Current trends in land reform and studies are not concerned with the analyses of land ownership but are focused on the reform of land policies to secure the practical rights of direct land-users in the sustainable development of the economy and society⁷.

2.3.2. The conversion of agricultural land to non-agricultural land - an indispensable requirement of the development process

Recently, non-agricultural economic development has become the major trend in all nations. The demand for land conversion has created huge pressures, not only in developing countries but also in highly developed countries such as the United States. Some commentators suggest that the conversion of land from agricultural use to non-agriculture use in the United States also needs re-defining. In the 5-year period (1992 - 1997), the United States had 15.8 million acres (6.4 million ha) of agricultural land converted to urban land. The rate of land conversion in this 5-year period was 30.2%, whilst the population growth rate was only 5.3%⁸. In Vietnam, about 400,000 ha of agricultural land has been converted to non-agriculture land during the 5-year period; a conversion rate of 13.3% which is also higher than the population growth rate. In this period of large-scale land conversion, the issue of sustainable development needs to be placed at the center of the land conversion process. With such an analysis the name of the type of ownership is no longer important, but instead requires a substantial look into the substance of the rights of land-users', the State's rights on land and the land value required to create a good system for land conversion oriented towards sustainable development.

The 2003 Land Law of Vietnam introduces two systems of land conversion, the compulsory and voluntary systems, and their scope of application, in which valuation of land is made based on the benefits of all parties participating in the land conversion process. Analysis of the strengths and weaknesses of the two land conversion systems currently applied in Vietnam will help to suggest appropriate amendments and

supplements to the current land legislation to ensure sustainable development. In Vietnam, finding good systems for land acquisition is the “hot” topic in seminars, workshops, conferences and both theoretical and practical scientific research. The Ministry of Natural Resources and Environment, General Department of Land Administration has sent several missions to different countries which have similar socio-economic conditions to obtain practical experiences for application to Vietnam. Of these study-tours, the models of land conversion in China and Korea are most closely related to the Vietnamese model.

2.3.3. The main regulations of Vietnam’s land legislation related to social sustainability and the land conversion process

The conversion of agricultural land to non-agricultural use is indispensable for the sake of development. However, legal regulations and specific policies are required to ensure social sustainability during the process of compulsory land conversion. The Government of Vietnam has paid a lot of attention to finding solutions to this issue while developing the framework of land legislation.

The principal regulations of the current framework of land legislation in Vietnam related to social sustainability in the State’s recovery of land for investment projects includes:

- A general principle of the current Land Law that the land compensation price must be close to the market price of land. However, there are no specific regulations to assess the market price or in some cases, specific regulations are contrary to the general principle. For example, the price of agricultural land which is established based on the value of income gained from land is much lower than the market price, primarily in the case of agricultural land being converted to non-agricultural use. The Government has decided to increase the compensation for agricultural land associated with housing, in residential areas or adjacent to residential areas. However, the land price is still decided by the Provincial People’s Committee and often, the view of the administrative body does not reflect the market price. On the other hand, although they may disagree with the Provincial People’s Committees price decision, land-users subject to land recovery also want higher prices to compensate them for their loss. There are no land valuation services to support either side.
- A general principle of the current Land Law is to ensure a reasonable level of benefit sharing between the State, the investor, and land-users whose land is recovered by the State. However, there are still no specific regulations on how this sharing should be addressed. Therefore, the way this principle is followed differs largely between provinces with every province producing the way they believe is correct even if there is no legal basis for their judgment. The current Land Law only deals with the benefits of the State, the investor and the affected land-users, but not the community in which the recovered land is located.
- 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 and lost income. The Government has also provided specific regulations on the level of support for different groups of affected people and requested the Provincial People’s Committees to decide upon additional support when necessary. However, there are still constraints with such regulations which make up only a part of the full losses of the land-users. Firstly, compensation and support are still delivered as a single payment when the State recovers the land and compensation for the loss 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 affected land-users not being fully compensated for the losses recognized by the 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 support are not considered in association with the investment project concerned, i.e. the compensation, support and resettlement for affected land-users and the land allocation for investors are conducted as 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 ends after the compensation, support and resettlement process is completed.

- A general principle of the current Land Law is that only when the resettlement site is ready is it allowed to issue a decision to recover residential land. In addition, 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 plan with access to good infrastructure. However, these regulations in principle are often not fully followed in practice. People who lose their houses often have no option in the selection of their resettlement location but have to follow what is decided for them by the authorized State body. Resettlement sites are often of poor quality and in remote areas where the land price is low. Cultural and spiritual values and beliefs are not considered during the planning of resettlement sites.⁹
- The Land Law and its guiding decrees have, step by step, provided fairly clear eligibility criteria about compensation, support and resettlement for land-users that hold no Land use right certificate. The Land Law provides specific regulations on what land use deeds can be used as an alternative to the Land use right certificates. The guiding decrees of the Government go even further by stating that cases where land-users hold no land use deeds are also eligible for compensation, support and resettlement when their land in current use is recovered by the State. These are regulations of a highly humanistic nature, aimed at protecting 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 title deeds for their land.
- The Land Law of Vietnam is applicable to the full range of land users, without specific regulations dedicated to land acquisition, compensation, support and resettlement for ethnic minorities and the poor. The policies are not well-developed 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 to allow only effective projects and capable investors to proceed. However, there are still cases where investors are allocated with land but make no investment. They leave the land unused for several years, seemingly waiting for the land price to rise before re-selling to others; while the affected land-users cannot find other land to maintain their livelihoods. This is fairly common in several provinces, but legal provisions are not detailed enough to prevent it.

This analysis of legislation shows that the creation of social sustainability in the implementation of compulsory land acquisition and compensation, support and resettlement is already in the land legislation of Vietnam. However, there is still an absence of specific regulations to overcome the lacunae and ensure genuine social sustainability. This is what future land legislation amendment and reform has to deal with.

3. ANALYSIS OF LAND ACQUISITION IMPLEMENTATION PRACTICES IN VIETNAM

3.1. Assessment of land conversion practices from the local leaders' point of view

Land conversion for economic development investment projects has been carried out intensively in provinces and central cities of the key economic regions (in the North, it is the four sided economic region including Hanoi, Hai Phong, Quang Ninh and Lang Son; in the Centre, it is the string of coastal provinces including Thua Thien - Hue, Da Nang, Quang Nam, Quang Ngai, Binh Dinh, Phu Yen, Khanh Hoa; and in the South, it is the East region including Ho Chi Minh city, Ba Ria - Vung Tau, Dong Nai, Binh Duong, Long An and Tien Giang). Among these developed provinces, Hanoi, Ho Chi Minh city and Da Nang have seen the biggest demand for land conversion and also have the largest converted land area. Each city has a different way to implement land conversion. Analysis of the points of view of leaders on the implementation of land conversion in these three cities can help to articulate a common picture of the land conversion process in all local areas.

a. During the 5-year period 2001-2005, the Government granted **Hanoi** the right to convert 5,667 ha of agriculture land into non-agriculture land¹⁰. However, only 4,580 ha¹¹ were converted (equivalent to 82.3% of the approved quota). Leaders in Hanoi believe that “land price should be closely controlled by the State”, and “land price determination should be aligned with market prices”. The practical problems of land issues are not caused from local improper implementation of land legislations, but by the legal regulation that “land price determination should be aligned with the market price”, which is not suitable to local practices and is the reason that local areas cannot implement this legal regulation¹².

Using this approach, Hanoi stipulated the land price at 50-70% of the market price of land. In general, it is very difficult to apply the new policies of increasing land compensation and support for people subject to land recovery in Hanoi. For example, Hanoi's leaders reacted very negatively to the land compensation policy that “the persons subject to recovery of more than 30% of their current agriculture land will be compensated with a non-agriculture land parcel in commercial or service use for their job transition (decrees of Government issued in 2006 and 2007)¹³.

In such an atmosphere, the voluntary land conversion system hardly received any support from local authorities. Hanoi believes that this system actually obstructs investors because there is no legal provision to cover the situation when current land-users do not want to cooperate with investors. From the financial point of view, Hanoi's leaders don't agree to the application of the voluntary land conversion system because there is no equity between land-users participating in the two methods of land conversion. The amount which land users receive from land transfer in this type of land conversion is always higher than the compensation received by affected land-users in the compulsory land conversion system. This situation is very common in Hanoi where land price is the highest in Vietnam. Hanoi mainly implements the compulsory land conversion method with the participation of the administrative authorities at all levels.

Hanoi has strongly executed its land recovery for land auction, which has resulted in a large amount of income from land going into local government revenue.

On the other hand, the preparation of resettlement areas in Hanoi has also been well managed by the local authorities. By the end of 2005, Hanoi had built 14,321 apartments for resettlement and purchased 11,800 apartments from commercial housing construction projects. This made a total of 26,121 apartments prepared and ready for resettlement. However, the low quality of housing and improper resettlement locations are urgent matters to be settled as soon as possible. In practice, almost all people subject to resettlement have sold the house given to them for resettlement to buy another house more suitable to their needs¹⁴.

b. **Da Nang** is a medium size city established on November 6, 1996 as a central city after merging the old Da Nang city and the peripheral area of the former Quang Nam-Da Nang province. Da Nang is located in a place suitable to become the urban centre of Central Vietnam. Since Da Nang's establishment the leaders of the city have focused on planning and infrastructure development to build a modern city. Land resources have been used as a major factor in the city's development. During the period 2001-2005, 3,821 ha of land in Da Nang was converted from agriculture, land used for national defense and unused land to land for development of industrial and service zones and urban areas¹⁵. Da Nang has achieved a high level of socio-economic development 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 but had risen to USD 1,164 in 2005. The average income per capita was 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 the local government budget, which is used for rezoning the city, developing the local infrastructure and arranging resettlement on a large scale. It has also executed land recovery on a land pooling/readjustment basis in line with zoning and held land auctions or allocated land to investment projects. The People's Committee of the City is responsible for the direct execution of all tasks from city rezoning and expansion to land recovery and land readjustment and resettlement. Local banks are accountable for granting credit and are paid back from the local budget by income from land revenue. Hence, the land conversion system in Da Nang is compulsory based on a consensus between the local authorities and the people. In some cases, when disagreement occurs between the people and local authorities' over their decisions, the Chairman of the People's Committee will speak directly with the people to seek an agreement on the issue.

Da Nang has earned a high level of land income mainly by recovering more land than is required for traffic infrastructure and then tendering that land on both sides of the road for servicing and 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 equity among the persons subject to land recovery. In general, during the process of land conversion for development, Da Nang has applied the compulsory land conversion method together with efforts from the local authorities through the land readjustment policy to achieve consensus with the local people.

c. **Ho Chi Minh City** is the important economic center of 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 the view that the voluntary land conversion method, which enabled enterprises to directly negotiate with the land-users, was favorable to the compulsory system. After 2004, many enterprises with investment projects subject to the application of the State's land recovery system have proposed applying the voluntary land conversion method.

Ho Chi Minh City has the largest area of land converted for non-agricultural use in the country. During the period 2001-2005, the city converted 18,000 ha of agriculture land and unused land into land for industry, service and urban development use¹⁷.

The city's leaders have applied a market-oriented approach to land. After collecting people's opinions, in early 2007, the City People's Council adopted a resolution by which land compensation would be determined in line with the market price of land based on a land price assessment supplied by property evaluation service organizations¹⁸. So far, in all land compensation cases undertaken through the compulsory land conversion system, the land price assessment forms the basis for the People's Committee to make a decision on the land price to be applied for land and property compensation calculations. 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 the City granted a joint stock company (Corporation for compensation and ground clearance) permission to provide these services as a pilot scheme.

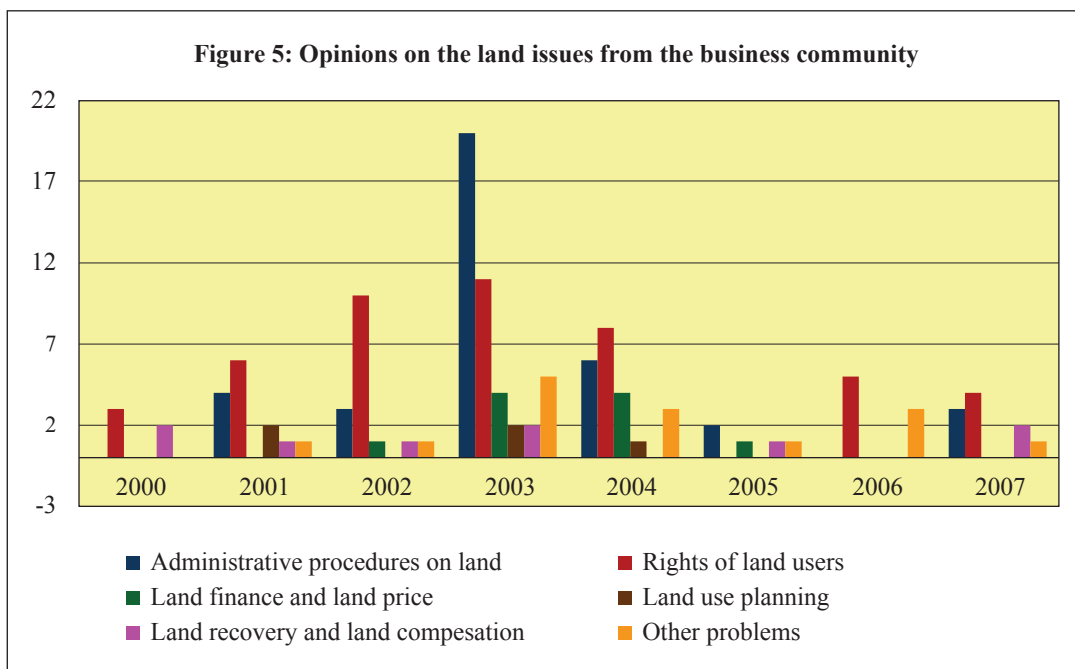
This pilot scheme suggests the need to strengthen the Land development organizations already established in provinces to ensure the quality of the activities undertaken in land compensation, support, resettlement and ground clearance. The provision that non-State owned enterprises are permitted to provide this kind of service should form an official part of the land legislation system.

There have been many suggestions in Vietnam to encourage investors to receive the land or compensation value as affected people's shares in projects. This model would ensure a long-term income for the people subject to land recovery and associate the long-term rights of the affected persons in the investment projects. It would also help relieve the administrative pressure on the relationship between investors and affected people and make the compulsory land recovery system more market-oriented. The Ho Chi Minh city Institute of Economics suggested establishing a pilot project in the Hiep Phuoc new urban area to implement this model.

3.2. Assessment of land conversion practices from 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) and the Ministry of Planning and Investment (MPI) held an annual business forum for dialogue between the government ministries and enterprises on Vietnamese legislation and policies (co-chaired by the Director of the World Bank in Vietnam and the Minister of MPI in the presence of the Deputy Prime Minister. During these dialogues, the views of enterprises were collected and classified by the VCCI and then submitted to the Government for the reform of the legislative system and policies and their practical implementation in local areas. Classification of the views from both domestic and foreign enterprises on land legislation and policies are presented in Figure 5.

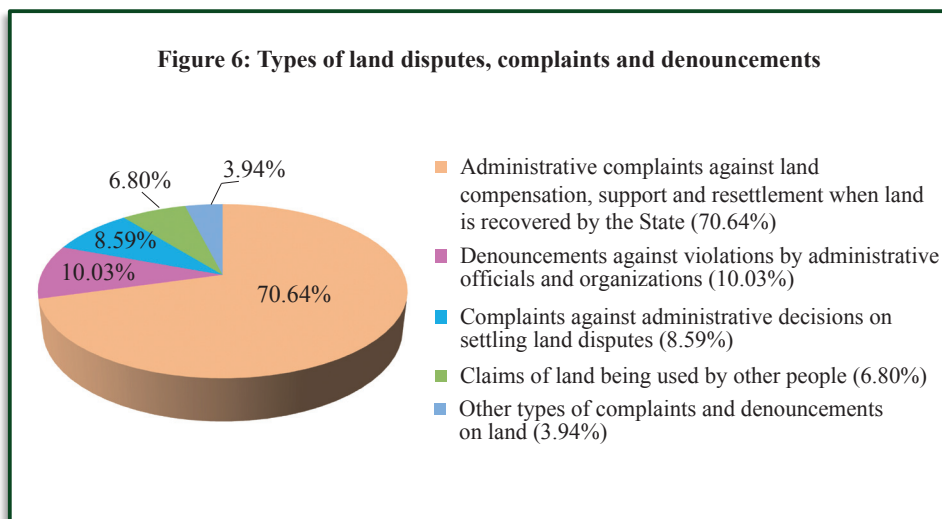
Enterprises believed that land legislation inefficiencies were very high during the period 2002-2004. This was when the weaknesses in the old Land Law had been identified and the Government was ready to submit the new Land Law to the National Assembly for consideration. During this period, the views focused on land administrative procedures and the enterprises' rights to land. Among the administrative procedures, land access procedures had the highest rate of problems. In the period 2005-2007, views on administrative procedures reduced but then increased again in 2007 when the views focused mainly on the procedures for determining investment locations and on situations when enterprises received a part

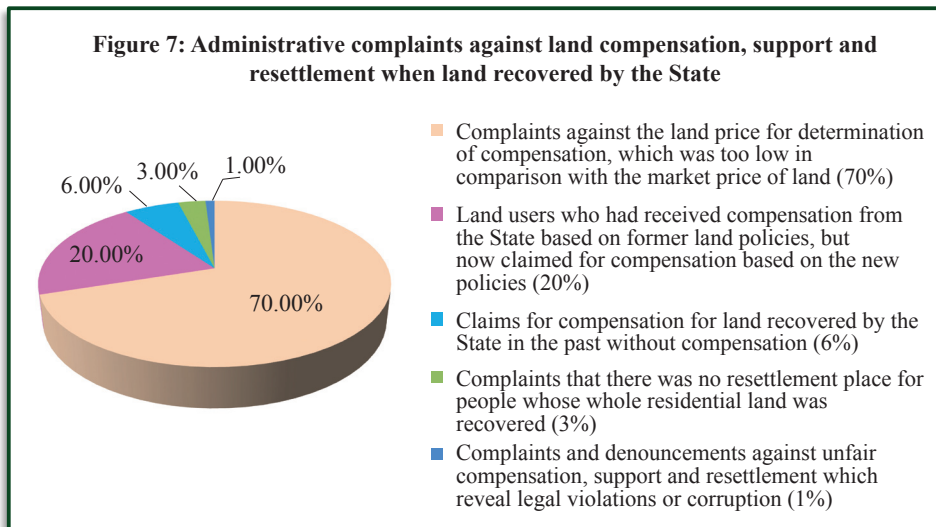


of the desired land but couldn't get the remaining part due to the land-users' unwillingness to cooperate with the investors. Enterprises also had negative views on the "voluntary" contribution for infrastructure construction at district and commune level and other "nameless" expenses in the land access process for investment projects.

3.3. Assessment of land conversion practices from the affected people's point of view

In 2005, the Ministry of Natural Resources and Environment undertook the supervision of the implementation of the Land Law in all local areas. At that time, most land-users who had complaints or denouncements had already met and asserted them with the supervising missions. After checking, evaluating and analyzing the claims, their causes¹⁹ are classified in Figure 6 and Figure 7 below.



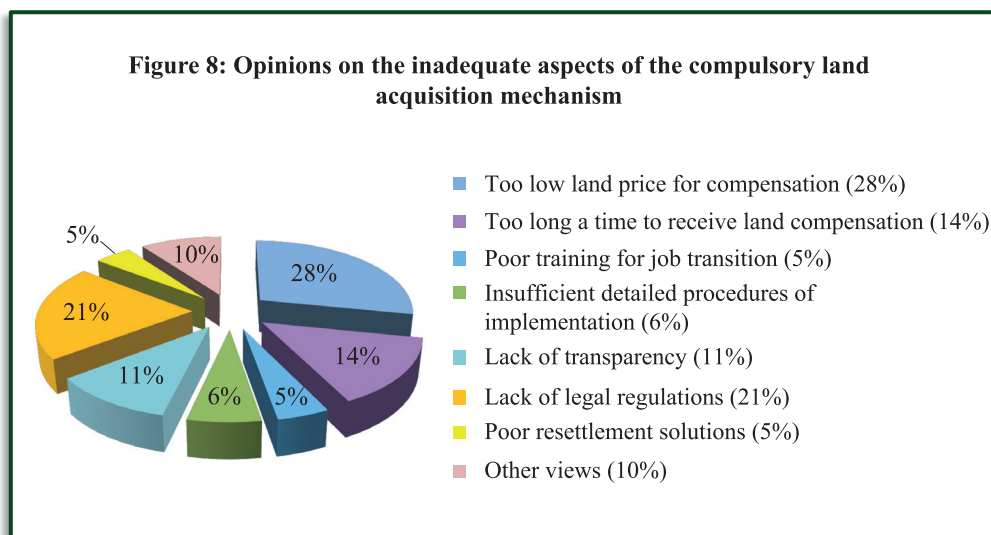


The two charts above show that complaints and denouncements from people subject to land recovery were mainly focused on the improper execution of land compensation and resettlement (70.64% of the total), while violations of land legislation by land administration bodies and/or land officers in implementing the legislation made up a much smaller portion (10.03%). These complaints and denouncements were mainly focused on the significant difference between the land price applied to the determination of land compensation and the market price of land (70%). Some of these comprised requests from the affected people who had received low compensation, which was calculated on the basis of the old land policy, to recalculate their compensation in accordance with the new land policy (20%).

The above data shows that dissatisfaction over improper land compensation accounted for about 50% of the total number of complaints and denouncements. In early 2007, there were approximately 12,000 complaints and denouncements about land throughout the country; of these, 8,400 complaints and denouncements were on land compensation, support and resettlement issues and included 6,000 complaints and denouncements asserting that the land price was lower than the market price. This suggests that a more thorough look is needed into the compulsory land conversion system and the method for identifying land prices to calculate land compensation, support and resettlement. Among the complaints on land price, the majority concerned the low price of agriculture land, which is related to the method of agricultural land valuation regulated in the prevailing law.

Since 2003, administrators, enterprises and other stakeholders had discussed the inadequacies of the compulsory land acquisition mechanism in the public media. Approximately 110 opinions were collected, which have been classified in Figure 8 below.

The chart shows that the low land price for calculating compensation accounted for 28% of the concerns; improper legislation and policies for 21%; and slow implementation 14% of the concerns. Since this is the collective opinions of all the stakeholders, amendments or supplementary legislation made in the near future need to take account of this.



3.4. Practical implementation of compulsory land acquisition in Vietnam

3.4.1. Awareness and understanding of land legislation

The State of Vietnam is very serious about improving its land legislation framework and the land law is revised every 2 - 5 years. However, this also makes it difficult for both government staff and the general public to understand and comply with newly revised legal provisions.

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

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

Awareness of land legislation is even worse when it comes to the public. Arguments given by people in their complaints or disputes are based on their personal understanding and on moral grounds, but not on the legal provisions. This situation is caused by lack of public awareness on land legislation that leaves people with a poor understanding of their rights and obligations in land use. The situation is even worse among ethnic minorities, rural groups, less developed areas and among the poor in rural and urban areas. Therefore, public awareness of land legislation must be further developed in the near future.

3.4.2. Inspection procedures for the implementation of land legislation and supervision of public participation

The Ministry of Natural Resources and Environment (MoNRE) has stated the role of inspection by higher administrative authorities over lower authorities in the implementation of legislation. In 2005, the Ministry carried out an inspection of the implementation of the Land Law in all provinces and some key districts and communes in each province. In 2006, MoNRE continued to inspect the status of the implementation of

compulsory land acquisition which was focused on: (i) delays in the execution of approved land use plans; (ii) delays in the completion of land compensation and resettlement for ground clearance after having already decided upon land recovery; and (iii) land acquisition where the projects had not been undertaken.

Prior to the inspection, the Ministry always published the schedule of its inspection missions and set up a “hot line” for receiving e-mails, phone calls and mail from people and enterprises to discover violations in the implementation of land law in local areas. During every inspection the Ministry received thousands of views that helped form the key inspection issues. This also encouraged people to participate directly in supervising the implementation of legislation by the administrative bodies.

The main results from the inspections are as follows:

- Most People’s Committees at all levels did not carry out inspection of the implementation of the law by lower-authorized people’s committees.
- Land officers working at local level had little information about the innovative provisions of the land legislation.
- People and enterprises were ready to participate in supervising to the implementation of land legislation.

After realizing the effectiveness of the inspection carried out by MoNRE, a number of local are conducted their own periodic inspections on their administrative bodies. Some local areas also encouraged people to participate in the supervision of the implementation of the legislation at every administrative level.

In preparation for amendment and reform of the Land Law, the issue of strengthening the inspection by the administrative bodies and creating suitable ways for stakeholders to participate in the supervision procedure, should be carefully considered.

3.4.3. Participation of individuals and communities in the compulsory land acquisition system

Currently, most compulsory land acquisitions are undertaken by Boards of compensation, support and resettlement which are established by District People’s Committees. These Boards deal with the entire process from land recovery to compensation, support and resettlement arrangements for land-users whose land is recovered. However in practice, the Board for compensation, support and resettlement’s activities have been based primarily on administrative procedures, including, when required, forcing land-users to accept administrative decisions on land recovery. Participation by communities, social associations, and affected people is poor and can lead to conflicts between the officials and the people concerned.

The procedures for land recovery, compensation, support and resettlement are almost the same for all regions and for all kinds of investment projects. For this reason they sometimes do not accommodate specific local socio-economic conditions and typical features of ethnic minorities. In particular, affected people often feel their designated resettlement area is not suitable to their life style.

At the same time, land acquisition for urban development projects in big cities, where land prices are very high, has resulted in expensive roads. In Hanoi, there is 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 rigidity in undertaking the land recovery procedures and market-based compensation without considering appropriate solutions to reduce the cost of compensation, by encouraging people’s contributions to the project and also by gaining full consensus amongst the people subject to land recovery. Such Community Driven Development approaches should be considered and applied in the future to these kinds of projects.

4. POSSIBLE APPLICATION OF INTERNATIONAL AND DOMESTIC EXPERIENCES TO PRACTICES IN VIETNAM

4.1. Assessment of relevant experiences from international projects to Vietnam

During the last 30 years the World Bank and regional development banks have concentrated on methods of land compensation and resettlement in compulsory land conversion for hydropower construction and urban infrastructure development projects mainly funded by the 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*).

Following this resettlement was rather considered as a development opportunity and formed part of development objectives from project planning to execution. Subsequently, policies on involuntary resettlement continued to be studied and upgraded and periodically updated. The latest update of the World Bank Operational Policy on Involuntary Resettlement (OP/BP 4.12) was produced in February and May, 2011 respectively²⁰.

Currently, the World Bank's approach to involuntary resettlement is based on the principle of "least resettlement alternative" and includes broad collaboration with NGOs and representatives of affected people in the design, implementation, monitoring and supervision of resettlement operations²¹. After 1990, other regional development banks issued involuntary resettlement guidelines such as The Inter-American Development Bank (IDB) adopted their first involuntary resettlement policy in 1993; and the Asian Development Bank (ADB) and the African Development Bank (AfDB) both adopted involuntary resettlement policies in 1995. The ADB published a Handbook on Resettlement in 1998²².

A number of United Nations (UN) agencies such as the United Nations Centre of Human Settlements (UNCHS/Habitat), the United Nations Commission on Human Rights (UNCHR) and the Food and Agriculture Organization (FAO) have had a mandate to address the issue of involuntary resettlement since 1990. In 1994, the "*Guiding Principles on Internal Displacement*" was formulated at the level of the UN Secretary-General, which recognized forced eviction as a human-rights violation. In 1997, the UNCHR 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 was hydropower investment projects, which benefit the whole society, but create losses to communities where the projects are located and people whose land and attached properties were 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 changes in environment, ecosystem, culture, and spiritual values. As a result, the World Bank and other international organizations have suggested that benefit-

sharing principles be adopted amongst the parties involved in the project. These principles include national legislation, policies, planning, income and taxation and local implementation practices related to local authorities, investors and affected communities and people²³.

As well as directly compensating affected people for land and attached properties, legal provisions and policies governed by benefit-sharing principles also aimed at: (i) arranging resettlement for the residential community including their living environment, employment, and community activities related to customs, culture and spiritual beliefs; (ii) ensuring local and community benefits accrue from taxes, fees and preferential prices of project products; (iii) associating the projects with residential communities to ensure the equity of both parties on the basis of long-term benefits of integration.

Benefit-sharing policies have been used by the international organizations in some large hydropower projects in several countries, including the hydropower Kariba Dam (Zambia-Zimbabwe), Tucuruí (Brazil) and Pak Mun (Thailand). Policy studies are conducted on hydropower projects not only in developing countries but also in developed ones, such as projects 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; and Kali Gandaki (2002) in Nepal. Such studies are also being conducted on the Vietnam hydropower projects being undertaken with ADB support (project TA-4689 VIE).

The issue of urban development in areas of aging infrastructure or slums in big cities is not only one for developing countries, but also for most developed countries. This issue brings benefits to the whole city but at the same time directly impacts on poor residential communities. On the other hand, the reduction of urban poverty should also be considered when addressing this issue. The international banks, led by the World Bank, have conducted studies in several large cities all over the world to develop answers for urban sustainable development. Many related policies have then been recommended to countries for application²⁴. The general policy is to establish solutions in which a closer relationship can be formed among city authorities, investors and poor residential communities on a politico-economic basis in order to support urban development. Land policies for poor urban areas mainly focus on land pooling and readjustment. Some countries have applied a method of granting a *Transferable Development Right* to acquire land for development of public spaces for non-commercial uses. In 2007, the World Bank also conducted a case study in Vietnamese urban areas (Hanoi and Da Nang²⁵). Since 2003, together with support to carry out urban upgrading investment projects in 4 large cities, the World Bank has also supplied a technical assistance project for the Ministry of Construction to build a country-wide strategy for urban upgrading.

Some elements of international and domestic experience in agreeing compensation and resettlement for people subject to compulsory land acquisition have been the subject of regulation in the current land legislation of Vietnam. Some others are being studied or piloted in Vietnam. Currently, Vietnam has decided to develop some big hydropower projects (of which the biggest is Son La Hydropower project) and some important urban development projects for the big central cities (such as the extended Hanoi planning project and Ho Chi Minh City upgrading project).

In the Son La Hydropower and other smaller hydropower projects, the issue of resettlement for large residential communities shows up several urgent requirements that need to be settled. Firstly, survey data is not always correct, which makes invalidates planning or makes implementation impossible. Limited participation from social organizations and affected communities and individuals in the process of resettlement planning and implementation results in resettlement locations that have acceptable residential areas but unsuitable conditions for establishing livelihoods, household production, traditional cultures and needed infrastructure. At present the resolution of compensation and resettlement is only in terms of monetary benefit-sharing and is not yet oriented to long-term benefit-sharing in monetary or non-monetary

terms. In this situation, international experiences will assist Vietnam to consider and renovate the issue of compensation and resettlement in cases of big hydropower projects. In principle, this benefit-sharing policy can be applied to other investment projects that also exert large impacts on residential communities such as mining exploitation, irrigation system construction and economic park development projects, etc.

Currently in the big cities of Vietnam, projects of urban upgrading have often to supply a large amount for compensation and resettlement (about 70-80% of the total cost of projects), but does not satisfy the affected people because the land price for compensation determination is still lower than the market price of land. This is a weakness of the current system as all losses are converted to money. Other systems, which reduce the need to pay huge amounts of compensation, but leave affected people satisfied also need to be explored.

The issue of resettling the inhabitants of poor residential areas and upgrading urban infrastructure has been carried out in Da Nang with some notable successes. The system in which residents contribute their land to upgrade urban infrastructure has also been applied to some urban residential communities in Vietnam, but is limited to some small projects at the commune level. A land readjustment mechanism is also the topic of scientific research discussions between scientific institutes. This idea has already been the subject of a scientific project conducted by the Institute of Research for Architecture (Ministry of Construction). The outcome of the project has been highly regarded; however it has not yet been recognized and evaluated by the administrative bodies. The demand for policies on resettlement and infrastructure upgrades for urban and rural residential areas is also high, and requires a suitable mechanism to allow it to be practically applied in Vietnam. Certainly, international experiences such as land pooling and readjustment could be applied in Vietnam to solve the current urban development problems.

In Vietnam, the cities 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, reconstruct aging residential buildings and upgrade urban infrastructure. Investors are interested in projects concerned with the reconstruction of aging residential buildings, however, they are generally unable to reach agreement with residents due to the lack of clarity of benefit-sharing. The benefit-sharing principle could be applied in Vietnamese cities to ensure consensus between the two parties participating in the project.

4.1.1. Possible application of the benefits-sharing policy to projects with large social and environmental impact:

As noted above, the benefits-sharing policy studies are mainly focused on large hydropower projects that will have a large effect on residential communities. The benefit-sharing principle needs to be applied relative to the nature of each project and their social and environmental impact on large residential communities, such as mining exploitation, economic park construction, large irrigation systems, etc. Every kind of project needs a different model of benefit-sharing.

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

- 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.
- Revenue sharing: A part of the revenues from hydropower projects 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.
- 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.
- 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.
- Taxes paid to local authorities: The State can allow local authorities to directly tax the project owner on the project's property value or other basis.

The non-monetary benefit-sharing mechanism can be implemented in the following forms:

- Livelihood restoration and enhancement for local communities based on sustainable agricultural and non-agricultural employment.
- Community development through 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.
- Catchment development through the custodianship of catchment resources, reforestation and afforestation and environmental enhancement for wildlife resources.

To apply the benefit-sharing policy in each country, the theoretical and practical aspects are considered in detail to ensure an equitable sharing of the benefits from development between the beneficiaries and the affected people. At the national level, there is a need to revise the system of legislation, investment policies, land compensation and resettlement, spatial planning, taxation system, business development, etc. to suit the socio-economic conditions of Vietnam.

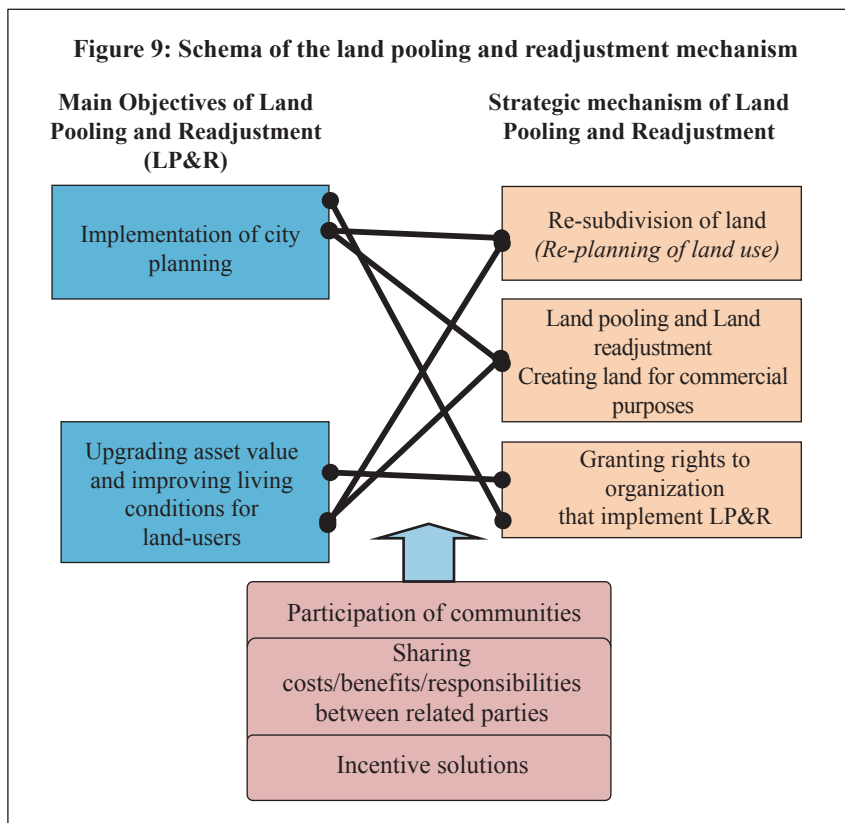
In Vietnam, the benefit-sharing principle is implemented in terms of a single compensation payment made before project implementation. This makes many affected people's unhappy. The cause of this is that long-term benefit-sharing and non-monetary benefit-sharing are not yet seriously considered. The country's industrialization and modernization requires more and more big investment projects, which have huge social and environmental impacts on the population of very large areas. The benefit-sharing policy in the land acquisition process should be studied, piloted, and implemented in practice as soon as possible.

4.1.2. Possible application of the land pooling and readjustment policy:

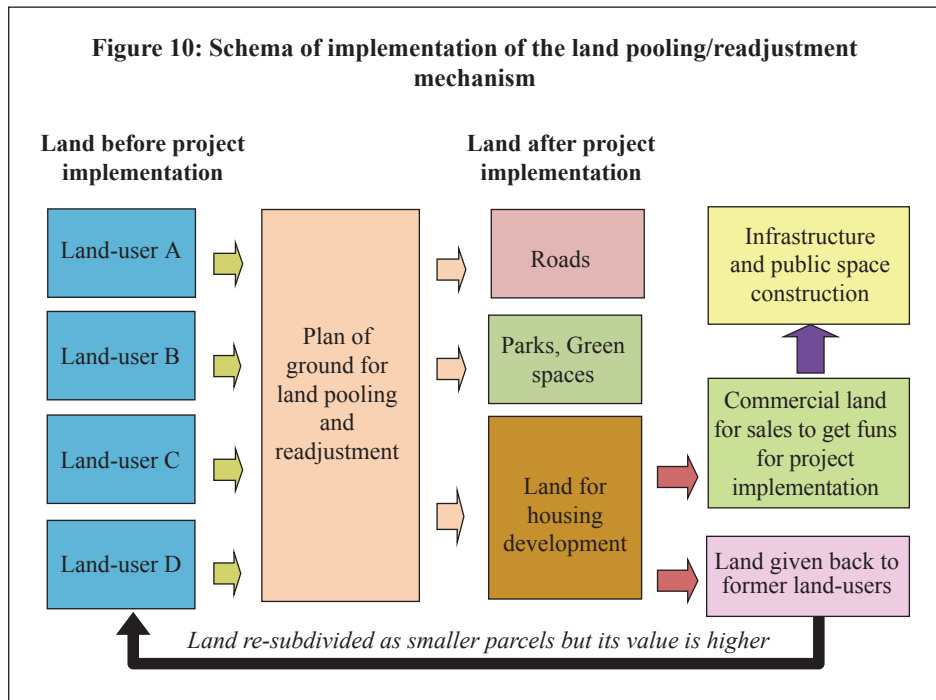
Urban land pooling and readjustment (LP&R) is a technique for managing and financing urban land development. It is widely used in Australia, Japan, Korea, Taiwan, and is currently being transferred to developing countries in Asia, such as Indonesia, Malaysia, Nepal, and Thailand²⁶. The theory of this technique is simple and hence local and central governments are undertaking LP&R projects in selected locations to assemble and convert rural land parcels into planned urban areas with adequate infrastructure such as roads, public utilities, public open spaces, residential areas, service building plots, etc.

In planning, the number of non-agricultural land parcels is calculated to be returned to current agricultural and residential land-users as the payment for compensation. In addition, a number of non-agricultural land parcels are auctioned to raise funds for 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 is discussed and agreed by current land-users and residential communities where the project is located.

In Vietnam, the Institute for Research in Architecture (Ministry of Construction) has carried out a project on the application of the land pooling and readjustment (LP&R) policy to urban development through a mechanism aligned with Vietnamese land legislation²⁷. This research can be considered as a study justifying this policy with some practical surveys of urban development projects in Vietnam. The mechanism is presented in Figure 9 and 10 below.



Practical experience in successful implementation in other countries in Asia shows that the LP&R mechanism requires some practical conditions in the project area: (i) the location of project should already have urban planning approval for upgrading and development; (ii) in the area of urban development, there are only individual agricultural land parcels used by individuals or households; (iii) the land area fully meets the legal, natural and economic conditions for urbanization; (iv) the local authority already intends to undertake urbanization through the LP&R mechanism; (v) the land-user communities have a good understanding of the mechanism and a high degree of consensus in its execution; (vi) the implementing organization has skilled staff.



The strengths of the LP&R mechanism are to create consensus, equity and equal benefits between related parties participating in urban development. The weakness of this mechanism is that it takes a long time to prepare and implement because agreement has to be reached between the local authority, developers and the current land-users.

4.1.3. Possible application of the transferable development right mechanism:

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

The Government of India has had a policy to approve development plans for all big cities, while land areas for construction of public amenities such as roads, open spaces, schools, hospitals, etc. are in private ownership. The monetary compensation is too expensive and impractical. This situation in India is similar to extended urban road projects in Vietnam where the compensation cost reaches 80% of the total cost of the project. Apart from the financial aspects, these projects always face opposition from the population.

In some big cities of India, another mechanism for compensation, the Transferable Development Right is granted on lands reserved for roads, open spaces, and public amenities. People with transferable development rights have the right to construct houses on their remaining land after a part has been acquired by the city’s authority, or in other land which has higher value, or to transfer the transferable development rights to other people.

In the Mumbai in India, people whose lands are converted to public use can choose to receive monetary compensation or transferable development rights. The transferable development rights is granted in the form of the Development Rights Certificates (DRC). The Transferable development rights has a price,

depending on the “supply-demand” in the construction market. It can be transferred to people, but it cannot be mortgaged at the banks.

The issuance of Development Rights Certificates is to create a transferable development rights market, which has certain impacts on the land market, real estate market, urban development market and the process of land conversion for urban development. Setting up the transferable development rights market is an appropriate way to help implement the planned objectives of development with low compensation costs. It also creates an easy way to develop public infrastructure and helps people subject to lands reservation for public use to make possibly more money from the transferable development rights market.

In Vietnam, a mechanism to issue transferable development rights’s needs to be carefully studied before a possible pilot scheme is implemented in a selected city. Application of the model can be decided after successful pilot studies. In Vietnam, the structure of the value of land is different from that in other countries. In some countries, there is no difference between planned and unplanned land, but there is a difference between land with development rights and land without them. For example, the value of a transferable development rights in India is the difference in the value of land between agricultural land and non-agricultural land in Vietnam. This shows the practical difficulties in application of the transferable development rights in Vietnam. However, an in depth study of transferable development rights needs to be undertaken together with a study of why agricultural land prices increase sharply after an administrative decision is made to convert the land to non-agricultural land. transferable development rights may have another form of application in Vietnam.

4.2. Assessment of relevant experiences from some other countries to Vietnam

4.2.1. The Chinese model of land conversion

The Chinese model of land conversion is similar to the implementation of industrial zone construction in Vietnam. In the first stage, land for non-agricultural development is designated on the basis of approved land use plans prepared for land recovery from current land-users and for allocation to investors. In the second stage, requisition of the land from agricultural collectives is undertaken through administrative powers (with payment of compensation in cash or kind). In the third stage, infrastructure investors receive the land and prepare infrastructure such as leveling, roads, power, water, sewerage networks and environmental processing systems. The sites are then leased or transferred to industrial or service investors via direct negotiation, a bidding process, or land auctions.

The difference between the models of the 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 for big projects using common infrastructure, but also directly for projects of an industrial or service nature after direct selection of the investors or by land auction or project bidding together with land use.

The lessons learned from the Chinese experiences are to find a suitable limit for application of compulsory land acquisition. This system can be applied to big projects which require a primary investor for preparation of the common infrastructure followed by the primary investor leasing or transferring the sites to industrial or service investors via direct negotiation, bidding process or land auctions.

4.2.2. The Korean model of land conversion

The Korean model of land conversion has some points that may be considered for application in Vietnam. In Korea, the Government establishes land zoning plans for industrial and residential areas which are then developed through land readjustment schemes. The project costs and profits are shared among the landowners and 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 people to recapture most of the project benefits and to provide cheap service sites to construction companies. Under the Urban Development Law (1999), private developers are permitted to propose urban development projects as 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 system.

4.3. Assessment of relevant experiences from the implementation of domestic pilot schemes

4.3.1. Assessment of expansion in the scope of application of the mechanism in the compulsory land conversion system through which current land-users contribute the value of the land or the value of compensation for the land as shares in the project

In the voluntary land conversion system, land-users can legally contribute land as capital or lease land to investors. Some people have proposed a mechanism that allows current land-users to be able to contribute the value of the land or the value of compensation for the land as shares in the project. Currently, Vietnamese law only allows one way to implement compulsory land conversion, by administrative decision made under State authority to recover land from current land-users and to allocate the land to investors for the implementation of projects. As previously stated, the Ho Chi Minh City Institute of Economics has been permitted by the City's People's Committee to pilot an application of the value of land or value of compensation as a contribution in shares of the project. However, the program has since ceased.

First, let us investigate whether the way in which land-users can contribute the value of land as shares in the project can be popularly applied in the voluntary land conversion system. According to some surveys on investment projects, most land-users are in favor of this method of land transfer. However, it is only rarely applied and appears only in cases when investors and current land-users have a close or family relationship. Therefore, it can be suggested that the contribution of the value of land method 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 the application of this method was terminated. The Project Director and Vice Director of this Institute said that the projects had encountered a lot of difficulties in implementation due to a lack of support from both investors and land-users and because the pilot project has been stopped. This model has been successfully applied in Taiwan but not yet in Vietnam. In other words, the Vietnamese market culture has not yet reached the level at which mutual trust between market participants can be guaranteed. In this situation legal provisions distinguishing the role and actions of a reliable third party, say a bank, to act for both parties is essential.

Practical implementation can be further discussed; however in the meantime, provisions need to be put into the law whereby current land-users have a priority to contribute the value of the land to the investor. This would help reduce the complications of the administrative relationship of the compulsory land acquisition system and make it more market-oriented.

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

As previously mentioned, there are two types of land recovery systems used by the State in Vietnam: land recovery in compliance with land use planning, in which the land compensation, support and resettlement is executed by the Land development organization (LDO); and land recovery for an approved investment project, in which the land compensation, support and resettlement is executed by the Board for compensation, support and resettlement (at district level). Each system 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, support and resettlement and it has already executed ground clearance for some projects. What needs to be considered is whether to supplement the current land legislation with a regulation allowing enterprises with different economic ownership to supply compensation, support and resettlement services.

In principle, enterprises with different economic ownership should be encouraged to participate in supplying compensation, support and resettlement services. In theory, the greater the number of service providers the more the objectives of implementation are achieved. This will help reduce administrative costs and restrict bureaucratic and corrupted behavior in administrative implementation. Using this mechanism, a supply of service is defined as the activities of land compensation, support and resettlement on behalf of responsible organizations and investors on the basis of economic contracts. This should be emphasized to prevent the enterprises from becoming a land broker between the State and investors.

By supplying compensation, support and resettlement services the non-State owned enterprises would play a role as a connecting bridge between the administrative bodies and affected people in the compulsory land conversion system. In an 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 land compensation, support, resettlement and ground clearance services for 4 big projects and current implementation is going well.
- Currently, the Corporation receives orders not only from non-State owned enterprises but also from State-owned enterprises.
- The time taken for implementation by his Corporation is always shorter than the time taken for implementation by the administrative bodies.

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

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

- The land price evaluation process is an objective means to assist in creating consensus between State bodies and affected people.
- The legal method for agricultural land valuation based on income from agricultural production is not aligned with the market price of agricultural land.
- Application of the legal method for non-agriculture land valuation for project investment based on the comparison of the land with other similar land encounters difficulties in finding similar land with a similar investment potential.
- There are no market based land price databases for application of the comparison method to non-agriculture land price assessment.
- Affected people are using the public services of land valuation but there are no regulations on the resolution of land price disputes.

The land price assessment procedure for land compensation and resettlement must be developed for application in all provinces. To formulate a suitable legal framework, several studies and pilot activities are needed. Apart from the legal aspects, the construction of a land price database should be undertaken as soon as possible.

5. PROPOSALS FOR INNOVATIVE OR ALTERNATIVE PRACTICES IN LAND ACQUISITION IN VIETNAM

At this point, three issues need to be considered: the first is how to reform the voluntary land conversion system in Vietnam; the second is how to reform the compulsory land conversion system in Vietnam; and the third is how to decide on when, where and how to apply the two systems.

5.1. Proposal to reform the voluntary land conversion system:

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

5.1.1. Current land-users are unwilling to cooperate with the investor in assigning the remaining land area after the investor has already received the first part of the land by land transfer. Thus, a legal provision that acts as a final legal decision on the remaining land is needed when the land-users refuse to cooperate with investors or attempt to charge an unreasonable or unaffordable price.

Proposal 1: to reform the regulations of the voluntary land conversion system:

It is essential to regulate the implementation procedures in detail, including:

1. *The investor registers with the Land registration office (LRO) to apply for voluntary land conversion of the area in accordance with approved land use plans.*
2. *The investor engages a land price evaluation service to evaluate the market-based price of the current purpose of the land and its future purpose.*
3. *The investor negotiates with land-users on the method of land transaction (land transfer, land lease or land contribution as capital) and the respective land prices in the presence of a witness who represents the residential community and Land registration office.*
4. *If the investor fails to negotiate with a majority of the current land-users, the investor looks for another area of land suitable for the investment project.*
5. *When an investor has acquired a majority of the land and cannot reach a resolution with land-users on the remaining part, the investor can request State intervention to apply compulsory land conversion to the remaining part of the land (this may be when the investor has acquired approximately 80% of the land area and needs State support to acquire the remaining 20%).*

5.1.2. The investor receives agricultural land by land transfer at the market price following which the investor has to pay the difference in value of the agricultural and non-agricultural land to use the land for non-agricultural purposes. However, the agricultural land price valuation is made by the valuation method

based on income from agricultural production (in accordance with the law), which is always lower than its market price and results in a large loss for the investors. Thus, it is essential to consider reforming the method of agricultural land valuation, especially in the case when the land is to be converted for non-agricultural purposes in accordance with the approved land use plans.

Proposal 2: to reform the land valuation regulations:

1. It is essential to reform the method of agricultural land evaluation in cases where the land is to be converted for a non-agricultural purpose in accordance with the approved land use plans. Instead of the current method, application of a market-oriented method is needed.
2. As mentioned in proposal 1, it is essential that the investor engages a land evaluation service to conduct the land price assessment before implementing voluntary land conversion. The difference in land value that the investor has to pay the State can be identified from the result of the land price assessment process.
3. It is essential to complete the regulations on the land evaluation service system while the legislative system permits organizations and individuals to supply land valuation services.

5.1.3. Foreign investors with 100% foreign direct investment (FDI) can apply the compulsory land conversion system in all types of investment projects, whilst domestic investors or joint-venture investors can only apply the compulsory land conversion system 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 ensure the rights and obligations of investors on land.

Proposal 3: to modify legal 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 equity between foreign and domestic investors. The specific requirements are as follows:

Prevailing Law

Domestic investors have the right to acquire land by transfer, lease and as a contribution as capital from economic organizations, households and individuals.

Foreign investors have the right to acquire land by project transfer, lease and as a contribution as capital from domestic economic organizations (foreign investors do not have the right to acquire land by transfer, lease or by a contribution as capital from households and individuals).

Domestic economic organizations can acquire land with limited terms of use by land allocation from the State with payment of a land use fee or by lease from the State with payment of an annual land rental.

Proposal to amend and supplement the law

No change

Allow foreign investors to acquire land by transfer, lease and as a contribution as capital from domestic economic organizations and directly from households and individuals who are currently using the land in the area approved for investment projects.

Foreign and domestic economic organizations have the right to acquire land by one of the three following methods:

<p>Prevailing Law</p> <p><i>In the case of residential housing construction projects for commercial purposes, domestic economic organizations can use the land permanently (unlimited term of use); in the case of residential housing construction projects for the purpose of renting, the domestic economic organizations can choose the type of the State's allocation of land as payment of a land use fee or as the State's leasing of land with payment of an annual land rental.</i></p> <p><i>Foreign economic organizations can acquire land by lease from the State with payment of a full term land rental or payment by annual land rental.</i></p> <p><i>In the case of residential housing construction projects, foreign economic organizations can acquire land by lease from the State with the longest term of use and payment for land rental equal to the land use fee like domestic economic organizations. When the term is due, the State will extend the term without charge.</i></p>	<p>Proposal to amend and supplement the law</p> <ol style="list-style-type: none"> a. <i>Lease land from the State by payment of a full term land rental. Economic organizations have a right to transact land.</i> b. <i>Lease land from the State by payment of an annual rental. Economic organizations only have the right to transact properties attached to the land. The buyers of the property have the right to lease the land from the State.</i> c. <i>Receive land transfers from economic organizations, households and individuals. In the case of land with a long term use where economic organizations receive the land transfer from households and individuals, the land has the longest term of use in accordance with the law and can be extended without charge.</i>
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5.2. Proposal to reform the compulsory land conversion system:

As previously shown, the reform of the compulsory land conversion system should focus on guaranteeing consensus and equitable benefit sharing between the involved parties and reducing the administrative bodies' ability to intervene in order to prevent bureaucracy and corruption in its implementation. Details of the proposal are as follows:

<p>Proposal 4: to reform the compulsory land conversion system:</p> <ol style="list-style-type: none"> 1. <i>The Land development organization (LDO) should be a State-owned enterprise that executes compensation and ground clearance to recover land for all cases including land recovery in accordance with approved land use plans and land recovery in accordance with approved investment projects (this means not using the Board for compensation, support and resettlement at district level as is currently done). The LDO is granted loans from banks or funds for investment and development in order to execute compensation, support and resettlement. The LDO is the unit that executes the administrative decisions of the State bodies on land recovery and coordinates with other social organizations and residential communities to guarantee consensus and equitable benefit sharing between the involved parties and reduce the direct influence of the administrative system on the compulsory land conversion system.</i> 2. <i>Enterprises with different economic ownership should be allowed to provide land recovery, compensation, support and resettlement services on the basis of economic contracts with the LDO and investors.</i> 3. <i>The State should establish a fund for compensation, support and resettlement from the State budget and investors' and social contributions to improve the long-term support for affected communities and people in the process of land conversion.</i> 4. <i>The market-based land price assessment process supplied by price assessment service providers which are used as a basis for the authorities to determine compensation, support and resettlement should be closely monitored. If people whose land is recovered disagree with the land price stipulated by the State, then their disagreement should be based on a land price assessment from another land price assessment service provider. Details of an arbitration system by an economic arbitration organization on land price disputes should be stipulated.</i>

5. *Some other mechanisms of land relationships between investors and current land-users should be supplemented, including allowing land-users to contribute the value of their land or compensation as shares in the investment project instead of the land being recovered by the State for allocation to investors.*
6. *The detailed implementation process of land conversion when applied to projects that exert a large-scale influence on residential communities (such as hydropower projects, mining exploitation, large irrigation lake construction projects according to international experience in benefit-sharing), should be regulated.*
7. *Details of the land conversion process applied to projects that upgrade urban infrastructure, suburban residential areas and reconstruction of aging residential areas according to international experiences of land pooling and readjustment, should be regulated.*

5.3. Proposal to clearly differentiate between the compulsory and voluntary land conversion systems:

The current differentiation between compulsory and voluntary land conversion systems is as follows:

	Compulsory land conversion system	Voluntary land conversion system
Political and social purpose	Land use for the purpose of national defense, security and national and public interest.	Not applicable
Commercial purpose	<ol style="list-style-type: none"> 1. Projects to construct infrastructure for economic areas, hi-tech parks, industrial zones, service zones and urban and rural residential areas; 2. Projects with 100% foreign investment (including ODA and FDI); 3. Projects with a high level of investment funds, classified as Group A. 	Projects not subject to the compulsory land conversion system.

Currently, there are three main concerns about the boundary between the two systems:

- it is inappropriate to apply an assortment of compulsory or voluntary land conversion methods based on the rate of investment capital. The criteria for their establishment should take into consideration whether the land use is for the purpose of private interest or non-private interest;
- urban and rural residential area development projects benefit the whole society while residential housing construction projects benefit investors alone, which is one of the reasons for complaints by people subject to land recovery;
- there exists inequity between projects funded by domestic investment and those funded by foreign investment.

Among these three concerns, the second has been resolved in proposal 4 above, which concerns the need to regulate the land conversion process according to World Bank principles on land pooling and readjustment for projects that upgrade urban infrastructure, suburban residential areas and reconstruct aging residential areas. The third concern has been resolved in proposal 3 above, which reforms foreign and domestic economic organizations’ rights on land. This leaves the first concern unresolved and increases the demand to identify criteria for establishing a proper differentiation between the two land conversion systems when they are applied to projects for fully commercial purposes. In principle, the proper differentiation should be defined on the basis of the investment purpose. Investment projects

with a commercial purpose for the investor’s benefit only have a way to access land by the voluntary land conversion. Compulsory land acquisition supported by administrative intervention can be applied to investment projects with political or social purposes. This compulsory means of land access can also be used to convert remaining land where consensus with current land users has not been reached in cases where the voluntary land conversion has been applied to convert almost all the land area (at least 80% of land area) for investment an project with a commercial purpose.

The following table lays out a suggestion for a proper differentiation of the two land conversion systems.

Proposal 5: to create a differentiation between the two land conversion systems:		
	Compulsory land conversion system	Voluntary land conversion system
Political and social purpose	Projects for the purpose of national defense and security, national and public interest.	Not applicable
Commercial purpose	Projects must legally apply voluntary land conversion to access land. In case, it has been successfully acquired almost all of the area of land (at least 80% of the land area), compulsory land acquisition will be applied to the remaining part of land that has not reached consensus with current land users.	Projects for investors’ benefits

5.4. Some measures to improve the efficiency of practical implementation

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

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

1. *Organise regular short-term training courses on management skills for all administrative levels. The upper level should provide training for the lower level using bespoke training materials.*
2. *Establish a website to provide guidance on management skills; disseminate legislative documents, land use planning information and managerial experience; open fora to exchange management lessons across the land administration sector.*
3. *Seek technical assistance and capacity building support from international development organizations or developed countries.*

An awareness raising program on land legislation should be developed and implemented for the public. In addition, a free or low-cost legal service system should be quickly organized to support the legal enquiries of the public. For this, the following should be considered:

1. *Distribute appropriate legislative guideline documents to different population groups including ethnic minority groups and cooperate with different social organizations to disseminate the information to the people.*
2. *Cooperate with the mass media to disseminate legal information by topic combined with Questions & Answers sessions.*
3. *Cooperate with the Ministry of Justice and the Lawyers Association to establish a free or low cost legal services system to support those in need.*
4. *Establish a website to disseminate information on land legislation.*

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

Vietnam's prevailing law has specific regulations about the responsibilities of administrative bodies to inspect subsidiary bodies. The point is to determine how to execute inspections and what administrative discipline should be applied to officers and administrative bodies whose irresponsibility has led to legislative violations committed by the junior bodies. Decree No. 181/2004/ND-CP on the implementation of the Land Law includes a chapter that stipulates the disciplinary actions 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 inspections on implementation of the law it is essential to specify detailed provisions for every administrative body's responsibility in annual plans and the inspection of the implementation of the law by those bodies subsidiary to them.

The prevailing land law also has specific provisions for transparency and publicity in the implementation of land administration procedures. A "hot line" mechanism is set up at all levels of the land administration system to collect the views of people about legal violations in land use and land administration. This system has been well deployed by the Ministry of Natural Resources and Environment (MoNRE) and also has been put to use by some province level areas. The remaining issue concerns the supplementation of law provisions that encourage non-governmental organizations, residential communities and every resident to participate in supervising the implementation of the law.

Recommendations on strengthening inspection and supervision that may be considered are as follows:

1. *The administrative level authorities are responsible for annual inspection, work plans and monitoring legal compliance by their immediate subsidiary bodies.*
2. *All staff members and authorities that commit violations of legal provisions, do not exercise their given responsibility or undertake bureaucratic or self-interested actions will be treated seriously and in a timely manner.*
3. *Suitable mechanisms should be developed to facilitate NGOs, communities, and the population's participation in monitoring legal compliance.*

5.4.3. Creating mechanisms to facilitate communities and people affected by land recovery to directly participate in the process of land recovery, compensation, support and resettlement

It is necessary to allow the Land development organization to undertake the land recovery, compensation, support and resettlement process instead of the Board for compensation, support and resettlement established by the District People's Committees. This is to reduce the influence of the administrative system and bring the work of implementation closer to the market mechanism. In addition, it is necessary to encourage the affected communities and individuals participation in the process. This participation will enable consensus to be reached quickly, mitigate affected people's complaints and ensure a good relationship between the local government and their citizens. There should also be a thorough analysis of the local population groups' social, economic, cultural and traditional characteristics to facilitate appropriate and informed solutions. Public participation in Community Driven Development projects can also reduce investment costs and complaints by affected land-users.

Whilst undertaking compensation, support and resettlement, it is necessary to fully consider the benefits to affected communities and sufficiently support and compensate affected land-users so that they are able to restore their livelihoods and have the ability to select a suitable place from within the available resettlement areas.

The following measures should be considered:

- 1. There should be specific analyses of the social, economic, cultural and traditional characteristics of communities where the acquired land is located; particularly the poverty and social impact analysis to allow for appropriate measures to minimize or mitigate all potential impacts.*
- 2. Representatives of the affected communities and the affected people are properly selected to participate in the compensation, support and resettlement process.*
- 3. Calculation of compensation and support should account for all potential damages to people subjected to land acquisition, including impacts in non-monetary forms and long-term impacts to ensure that their livelihoods and living standards are fully restored.*
- 4. The principle of benefit-sharing should be applied, paying attention not only to the benefits of the State, investors, people subjected to land acquisition, but also the benefits of communities where the land is.*
- 5. The resettlement areas should be made public and people subjected to resettlement are eligible to select a suitable place within the available resettlement areas.*
- 6. Encourage "Community driven development" (CDD) projects in order to improve the role of communities, increase dialogues to achieve a consensus and lower the investment costs of projects, minimize the numbers of complaints from people subject to land acquisition.*

6. CONCLUSIONS AND NEXT STEPS

The scope of the study was 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. Towards this end, this Policy Note has summarized the current land legislation of Vietnam and assessed its practical implementation. It has also analyzed international experiences and World Bank policies on land in order to recommend some legal provisions related to the land acquisition mechanism required for reform in accordance with Vietnam's current situation. This Policy Note has been presented to MoNRE, GDLA, and State bodies involved in the land administration, some non-governmental organizations interested in land policies as well as some investors and researchers for their opinions. The World Bank and GDLA organized two workshops held in Hanoi (June 5, 2009) and in Ho Chi Minh City (June 10, 2009) to discuss and complete this Policy Note.

Continued World Bank support for MoNRE and GDLA in the upcoming period should focus on the shortcomings in the proposed amendment/reform of regulations in land legislation related to the land conversion mechanisms in the draft new land law and a decree on guidance in implementation of the compulsory land conversion mechanism, focusing on the application of market-based mechanism. Specifically, four 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 mechanisms in land conversion process; (iii) land use planning to help proper and effective land use and land conversion; and (iv) grievance redress mechanism in land acquisition.

At the same time, it is proposed that pilot activities to implement new approaches should be designed and prepared in one or more specific sectors or programs as the basis for preparation of government decrees and circulars on how to apply 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.

In addition to support from the World Bank, there are 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 the Ministry of Natural Resources and Environment, General Department of Land Administration and other donors will collaborate closely to improve land conversion process in Vietnam to ensure development becomes more and more sustainable. This would also increase effectiveness of land acquisition in Bank-funded projects and thereby accelerate smooth project implementation.

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ANNEX: DOCUMENTS ON LEGAL REGULATIONS ON LAND RELATED TO THE LAND CONVERSION SYSTEM

Appendix 1: Documents on legal regulations on land related to the land conversion system during the period 1987-2003

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

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

This law consists of 6 chapters and 57 articles constructed on the basis of the State-subsidized model on land. The main contents detail land allocation by the State for the use of organizations, households and individuals; the land management system; the system of land use for agricultural production land, forest land, residential land, land for special uses and unused land; the rights and obligations of the land-users; and the system of land use for foreign organizations and individuals. This law had only three articles regulating the land conversion system with the following content: (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 and forestry land allocated by the State who wish to convert this land to industrial and service purposes must pay land compensation to the State and then this compensation will be used to develop the resources of the land; (iii) If the current land-user does not continue to require use of the land, the State will recover the land to allocate to others and the current land-user will be compensated for property on the land; (iv) If the land in current use is recovered by the State to use for the purposes of the State or public interest, the current land-user shall be compensated for losses and allocated with other land.

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

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

The Land Law includes 8 chapters and 89 articles and built on the State-Subsidized model of land. It recognized that land has 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 meant that households and individuals had rights of land transaction. Economic organizations only had land leasehold rights from the State but did not have the rights of land transaction and could only transact properties attached to the land.

The land conversion mechanism of the 1993 Land Law provides regulations on the following specific provisions:

- 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 framework of land prices for every region and for every period of time;
- When it is necessary for the State to recover land from land-users that is currently being used to convert the land for use in national defense, security and the national or public interest, then the land-users shall be compensated for the land and properties attached to the land;
- Land recovery for any other purpose must be in accordance with the land use plan approved by the relevant State authority. Prior to the recovery of the land the relevant State body must notify to the people subject to the land recovery, the reason, time limit, removal plan and compensation value of the land to be recovered.

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

In complementing the Land Law 1993, the Standing Committee of the National Assembly adopted this Ordinance which mainly stipulates the following regulations:

- The domestic economic organizations using land allocated by the State without a land use fee for the purpose of agricultural production, forestry, aquaculture and salt production have the right to use the land use right as a contribution as capital and for a land use right mortgage for production development, but they must not exchange, transfer or lease this land use right;
- The State does not allocate but only leases non-agricultural land to domestic economic organizations. The domestic economic organizations only have the right to transact the properties attached to the land. State-owned enterprises have the right to use land leased to them by the State for a contribution as capital with domestic or foreign partners for commercial cooperation;
- Domestic economic organizations implementing investment projects for infrastructure construction in industrial zones have the right to lease land with invested in 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 the 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 in on the land for production development. They have no other rights to transact property invested in on the land. The foreign enterprises implementing investment projects for infrastructure construction in industrial zones have the right to lease land with invested in 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 the National Assembly, dated August 27th, 1996.

After a year of implementing the Ordinance on the rights and obligations of domestic organizations using land allocated or leased by the State, the views of domestic enterprises 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 could only access land by leasing land from the State, but not by being allocated land with a land use fee from the State and not being able to transfer land use rights from households and individuals.

For that reason, the Standing Committee of the National Assembly then issued an amending and supplementing ordinance with the major following provisions:

- The State allocated land with a land use fee to domestic economic organizations to use the land for the purpose of residential housing development for sale or lease and of industrial zone infrastructure development for transferring or leasing this land with the invested infrastructure;
- Domestic economic organizations using land allocated by the State with a land use fee have the right to transfer the residential land use right when selling houses attached to land or infrastructure invested in on the land; to lease the land use right of land attached to invested in infrastructure; to mortgage the land use right for production development; and to contribute the land use right as capital for joint business ventures with domestic organizations or individuals.

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

Following the implementation of the Ordinance on amendment and supplementation of the initial Ordinance on the rights and obligations of domestic organizations using land allocated or leased by the State, the issues relating to the rights and obligations of economic organizations on land were raised again by enterprises, especially where some of the issues concerned land conversion systems. Moreover, the inadequate national budget for infrastructure investment led to a new policy by the Government which encouraged a “land exchange for infrastructure” model. The content of this model was that enterprises invested their money in infrastructure construction such as roads, bridges and urban facilities according to Government planning and the Government then allocated to the enterprises an area of land equivalent to the value of their investment. In general, the enterprises were not in favor of this policy so long as this area of land was still only leased from the State.

The Vietnam National Assembly then decided to review all the prevailing regulations on land in preparation for issuing a new amendment and supplementation of the then current Land Law with the following new provisions:

- the form in which the State allocates land with a land use fee is applied to residential land, land for specialized use and “land exchanged for infrastructure” for an indefinite term;
- a new form of land-lease was stipulated in which the State leases land with a single payment or payment for a period of several years. If the remaining duration of the land use term is more than 5 years, the land-users have the right to make transactions with the land use right on properties attached to the land;
- domestic economic organizations have the right to receive land use rights by transfer from other economic organizations, households or individuals.

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

According to the land law of the time, the issuance of land registration and land use right certificates was undertaken 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 current land-users wanted to register their land to receive their land use right certificate. The provincial land administration and the provincial people’s committee became overloaded with land administrative tasks. The National Assembly then decided to partially empower bodies at the district level to undertake the task. The people’s committees at the district level were authorized to allocate and lease land to households and individuals and to issue land use right certificates to households and individuals in rural areas.

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

During the validity of the Land Law 1993 (15th October, 1993 - 1st July, 2004), the Vietnam Government issued 30 decrees including 3 decrees on general land management; 4 on tax on land use and transfer of

land use rights; 3 on land registration; 7 on land prices, land use fees, land rental and cadastral charges; 2 on land compensation on land recovery by the State; and 13 decrees on land lease and land allocation by the State and system of land use for all land categories, rights and obligations of land-users. Among the decrees guiding implementation of the Land Law, there were 3 groups of decrees that dealt with land conversion mechanisms. These were the group of decrees on compensation on the State's recovery of land (relating to compulsory land conversion). 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); and the group of decrees on land prices, land use fees, land rental (relating to both land conversion systems). These decrees specifically include:

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

The compensation principle is that compensation for losses in land will be made through the allocation of new land in the same category as the land has been recovered. If the State cannot find other 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 the land price announced by the provincial people's committee in accordance with the framework of land prices stipulated by the Government in Decree No. 87-CP dated 17th August, 1994. All property associated with the land will be compensated for by a sum equivalent to the existing value of the property at the standard price set by the State. This decree doesn't stipulate support for residential removal, work interruption and new job training, etc; neither does it stipulate the resettlement mechanism, but mainly compensation in cash to assist with the construction of a new residence.

- *Decree No. 22/1998/ND-CP* of 24th April, 1998 on compensation for losses when the State recovers land to use for the purposes of national defense, security and national and public interest.

This Decree replaced Decree No. 90-CP of 17th August, 1994. The land price used to calculate compensation in this Decree was decided by the provincial people's committee multiplied by a coefficient in order to ensure compatibility with the price of land use rights on the market. The person subject to recovery of residential land was compensated for the land area at the level determined by the provincial people's committee. Properties associated with the recovered land were 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. However, the total of the property compensation could not be higher than 100% and not lower than 60% of the original value of the property. This Decree also stipulated the support for people whose land is recovered, such as support for disrupted productivity and stability, removal and new job training. The decree especially stipulates the construction of resettlement locations and assigning residential land to households in the resettlement location.

- *Decree No. 11-CP* of 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 ways in which the State can lease land to foreign organizations and individuals and the rights of foreign land-users as in the Ordinance on the rights and obligations of foreign organizations and individuals using land leased by the State in Vietnam.

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

This Decree stipulates the detailed provisions for the State's allocation of land without a land use fee and the State's leasing of land and rights applicable to domestic land-users as mentioned in the Ordinance on

rights and obligations of domestic organizations using land leased and allocated by the State. The Decree especially focuses on the right to mortgage land use rights and land use rights as a contribution as capital.

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

This Decree is quite similar to Decree No. 18-CP of 13th February, 1995. It stipulates the detailed provisions for the State's allocation of land with a 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.

- *Decree No. 04/2000/ND-CP* of 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 which clarifies the State's allocation of land with and without a land use fee, the State's leasing of land with a single payment or annual payment and land use right transfer, lease and contribution as capital between domestic economic organizations, households, individuals. The Decree also stipulates detailed regulations on the rights of land transaction made by land-users.

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

This Decree stipulates the framework of land prices (lowest to highest prices) for all categories of land. On this basis the provincial people's committee issues a land price table for every land location. The framework of land prices in this Decree is much lower than the price of land use rights transfer on the market (10% to 30%). The Decree also allows the use of a coefficient ranging from 0.8 to 1.2, by which the land price will be multiplied to ensure compatibility with the specific infrastructure conditions of urban land. After less than a year of implementation, the Prime Minister issued Decision No. 302 - TTg of 13th May, 1996 to adjust the coefficient from 0.5 to 1.8.

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

After 3 years of implementing Decree No. 87-CP of 17th of August, 1994, the Government adjusted the framework of land prices so that 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 issued detailed provisions to implement the land legislation in local areas. In general, the provincial legal documents cannot stipulate any provisions different from the legal provisions issued by the central level on administrative competence, rights and obligations of land-users. At that time, Local Government provided detailed provisions on the authorized tasks of the provincial, district and communal people's committees.

On compulsory land conversion mechanisms, the provincial legal documents focused only on issuing the land price table for all categories of land, administrative procedures for executing land recovery and compensation, support and resettlement for people who have land recovered. Consequently, matters relating to compulsory land conversion often arise in the provincial legal documents, which depend on the awareness of provincial leaders in their role in investment projects and ensuring stability in 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 mechanism during the period 2004 to the present

1. The Land Law of 2003: was passed by the fourth session of the National Assembly IX on 26th November, 2003 and came into effect on 1st July, 2004.

This law consisting of 7 chapters and 146 articles was built on the principles of the comprehensive renovation of the land policy in order to align it with the country's industrialization and modernization. The land conversion issues are in 28 articles of the Law which includes 9 articles on the State's recovery of land and the permission of the State to change the purpose of land use; 4 articles on land pricing; 9 articles on the rights and obligations of households, individuals, domestic economic organizations and foreign investors in land transactions; and 6 articles on the procedures for implementation of compulsory and voluntary land conversion.

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

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

Once the Land Law 2003 took effect and up to now, the Government has issued decrees guiding the implementation of the Land Law and amended and supplemented the decrees as necessary. There are 9 decrees: 1 each on general instructions for executing the Land Law, settling administrative violations on land use and land management, determining the framework of land prices for all categories of land and land valuation methods, land use fees, land and water surface rental, compensation, support and resettlement for people subject to land recovery by the State; and 3 decrees on amendment and supplementation of the decrees. The decrees related to compulsory and voluntary land conversion are presented in detail below.

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

This Decree consists of 14 chapters and 186 articles, called by Vietnamese the "super decree", because it specified the detailed implementation of the Land Law. This decree concentrated especially on regulations to build a land administration system based on the principles of administrative reform. It established two new public sector service organizations to support land administration work, the Land registration office and the Land development organization. The decree also clarified the procedures for land registration, acquisition, conversion, allocation, lease and recovery and established a system to discipline land officers violating their responsibilities in the implementation of land administration or showing unreasonable behavior with people.

The Land registration office system is responsible for supporting the voluntary land conversion mechanism. The objective of the Land development organization system is to act as the interlocutor between the land administrative system and current land-users whilst carrying out compulsory land conversion, aligned with the market economy.

The Decree details two land conversion systems, (compulsory and voluntary land conversion) and the detailed conditions for application of each system. On land conversion, the decree has 7 articles on the State's recovery of land, land allocation and land lease; 8 articles on the rights of economic organizations, households and individuals in the transfer of land use rights and its receipts; and 43 articles on the procedures of land registration and land conversion.

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

This Decree stipulates the principles for land price determination. The agricultural land price is based on the calculation of income from agricultural production and the non-agricultural land price is determined by the comparing it with the market price in land transfers. The Decree also stipulates the framework of land prices with the lowest and highest price for each category of land in the specific socio-economic conditions of local areas.

Currently, there are some negative views on the method of the agricultural land price determination asserting that it is not reasonable and should be changed to market-based determination for agricultural land valuation.

- *Decree No. 197/2004/ND-CP* of 3rd December, 2004 on compensation, support and resettlement when the State recovers land.

This Decree details regulations on compulsory land conversion. The Decree consists of 7 chapters and 51 articles that specify:

- > the cases in which people subject to State recovery of land receive compensation for land and properties attached to the land;
- > the method of determining compensation for the loss of land and property attached to the land recovered by the State is based on the principle of reasonable benefit-sharing between the State, the investor and the land-users whose land is recovered;
- > the first priority for compensation is to provide other land of the same category. If there is no available land, or the affected people do not want the land, then compensation is made in cash based on the land price defined in the provincial table of land prices (issued by provincial people's committee and aligned with the market price of land);
- > the value of compensation for agricultural land is increased if it is a garden associated with a residential house or agricultural land in or adjoined a residential area;
- > detailed resolutions are to support people affected by State recovery of land in stabilizing their lives, productivity and job training and any other purpose compatible with their legitimate aspirations;
- > A better solution is to implement resettlement locations for affected people based on the principle that the resettlement area should have better or at least equal conditions in comparison with the previous area and that the resettlement locations should be built before undertaking land recovery;
- > the legal implementation procedures are detailed and responsibilities of each related organization, individual are specified.

The Land Law 2003 pointed out how Land development organizations play a role as the interlocutor between administrative bodies and stakeholders (investors and affected people) to undertake compulsory land conversion closer to market conditions. However, this Decree does not give any specific answers on how to do it. In practice, the Land development organizations have not taken a direct role in compulsory land conversion. They just receive the assignment to manage the non-agricultural land that had not yet been allocated or leased to land-users.

- *Decree No. 17/2006/ND-CP* of 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 Decrees guiding the implementation of the Land Law some inadequacies were found in practice. The main areas of amendment and supplementation include:

- > to permit more priority projects to apply compulsory land conversion because voluntary land conversion was implemented for so long;
 - > to adjust the implementation time of some procedures to make them more compatible in practice;
 - > to ensure that the land price applied to the determination of compensation is aligned with the market price of land when the land price defined by the provincial people's committee is not compatible with the market price of land;
 - > to establish a new form of support to households and individuals who have greater than 30% of their total agricultural land recovered by the State's to allow the allocation of a commercial parcel of land to enable a change of job (from agricultural production to the service sector);
 - > to locate resettlement areas near developed non-agricultural areas to facilitate change in job from agricultural production to supplying services.
- *Decree No. 84/2007/ND-CP* of 25th May, 2007 on additional stipulations for the issuance of land use rights; procedures of compensation, support and resettlement when the State recovers land; application of the right to use land; and settlement of land complaints.

The Decree consists of 7 chapters and 68 articles that has important provisions to settle a number of practical shortcomings arising in the implementation of land legislation. The Decree includes:

- > to specify regulations on the issuance of land use right certificates for current land-users who lack legal documentation of their land use right or where there is no specific legal provisions for settlement;
 - > to stipulate the resolution of compensation for affected people who have no legal documents on their land use rights;
 - > to stipulate the rights and obligations of enterprises using land in which State-owned capital or foreign invested capital is included;
 - > to create a new mechanism for investment on land recovered by the State that people subject to land recovery are able to use their capital in the land as capital for shares in the investment project;
 - > to increase the value of compensation where the agricultural land is a garden co-located with a residential house or is agricultural land in or adjoined a residential area;
 - > to extend a provision of Decree No. 17/2006/ND-CP on support to households and individuals who have an agricultural land area larger than 30% of the total of their agricultural land recovered by the State, the provision of a commercial parcel of land to enable a change of job; or the affected land-users are able to select a residential parcel of land;
 - > to specify the implementation procedures on land compensation, support and resettlement based on improving transparency, publicity and ensuring the benefits of affected people.
- *Decree No. 123/2007/ND-CP* of 27th July, 2007 on amendment and supplementation of Decree No. 188/2004/ND-CP of 16th November, 2004 on the method of land valuation and the framework of land prices for all categories of land.

This Decree provides for two methods of land valuation: the separation of land price from the real estate price including the price of land and price of properties invested in on this land; and land price determination including the value added from infrastructure already in place in the area.

The Decree also amends the framework of land prices to make them more compatible to the market land price in 2007.

- *Decree No. 69/2009/ND-CP* of 13th August, 2009 on additionally providing for land use planning, land prices, land recovery, compensation, support and resettlement.

This Decree consists of 3 chapters with 41 articles, including the newest legal regulations on the compulsory land acquisition. The Decree is focused on the main contents as follows:

- > Revision of the land use planning system is focused on that each level (national, provincial, district, communal) of land use planning is concentrated on some specific categories of land, no need to consider the plan for land use among all categories of land.
- > Land rental that land users have to pay for using land leased by the State must be determined in accordance with the market price of land.
- > Improving the value of compensation, support and location for resettlement for people subject to land recovery by the State.
- > Revision of the procedure on implementation of land recovery, allocation, lease, and compensation, support and resettlement, aiming for the reform of administrative procedures. Land development organizations play an important role in the improved procedure.
- > Regulating some additional legal provisions on activities of Land development organization, issuance of certificates of land use rights and ownership of houses and other assets attached to land, land used for underground works, and procedure on extension of term of land use right.

2. Legal documents promulgated by provincial people's committees

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

- The table of land prices for all categories of land in each area according to the market price of land (promulgated annually on the 1st January each year).
- Specific regulations on the issuance of land use rights certificates.
- Specific regulations on the limit of residential land allocated by the State to households and individuals.
- Specific regulations on the limit of residential land recognized by the State for households and individuals using residential land associated with a garden or lake.
- Specific regulations on implementation of land compensation, support and resettlement when the State recovers land.
- Specific regulations on the administrative procedures in land administration.

By the end of 2006 all provinces had promulgated their table of land prices for each local area and the administrative procedures on land compensation, support and resettlement. Only half of all provinces had promulgated the 4 remaining regulations.

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

Study on Land Valuation Mechanisms for Compensation, Support and Resettlement in Vietnam



EXECUTIVE SUMMARY

Preface

Following research into “Improving Land Acquisition and Voluntary Land Conversion in Vietnam”, in 2009 – 2011 the World Bank (WB) in Vietnam conducted two studies entitled “Study on Land Valuation Mechanisms for Compensation, Support and Resettlement in Vietnam” and “Improving Mechanisms of Complaints Settling in Land Acquisition in Vietnam”. This report presents findings and recommendations of the former one. These findings are being used to support the Ministry of Natural Resources and Environment, General Department of Land Administration in the preparation of a new Land Law during 2011 and 2012 to be submitted to the National Assembly for approval in 2013. The scope of the study encompassed Vietnam’s legislation system on land valuation mechanisms that provide the basis for calculating compensation, support and resettlement of people whose land is recovered by the State. The field survey to support the study focused on the development projects of public infrastructure in urban areas with high land values and areas where there are many minority ethnic groups. Three main methodologies were utilized for the study: (i) analysis of Vietnam’s current legislation relating to land valuation for the calculation of compensation, support and resettlement needs for affected people and establishing gaps, overlaps and inappropriate regulations; (ii) analysis of the field survey results on the opinions of people subject to State recovery of land and their experience of land valuation undertaken in order to calculate compensation, support and resettlement needs in some local areas; (iii) analysis of international experiences in land valuation in selected countries which Vietnam may be able to apply.

Based on these analyses, recommendations were made to improve the land valuation mechanism for compensation, support and resettlement in Vietnam.

Analysis of the current system of legislation

In the current system of legislation on land and its implementation in practice the system of land financing does not harmonize with the mechanisms of the market. The weakest point in current regulations is the lack of a proper measure to determine the price of land in relation to market prices. State agencies and affected people have no widely accepted objective standards on land valuation. Due to the different approaches to land valuation, it takes a relatively long time to recover land and provide compensation, support and resettlement for affected people, especially in the developing urban areas. This causes too many claims of maladministration by affected people that clog the administrative complaints resolution process. The resulting situation causes both economic and social negative impacts. Examples of these impacts are:

- Late performance of investment projects reduces the speed of economic development and the national economic growth rate, damaging tax income to the State budget.

- Infrastructure investment projects are relatively costly (compensation expenses, in many cases, are four to five times higher than construction expenses in large cities); progress is slow and there is a resulting failure to meet the demand of socio-economic development of the nation and local areas.
- Local areas witness prolonged claims by affected people and settlement is very difficult; causing social instability.
- Investors fail to disburse their finance as scheduled, causing delay in the project's profitability and damaging profits.
- Site clearance is complicated and prolonged, reducing the attractiveness of Vietnam's investment environment.

In order to overcome such difficulties there is a need to solve the issue of land value between current land-users whose land is recovered, those to whom the land is allocated and the State by determining a proper land value based on the market. All policies on compensation in cash, by land or in other forms should only be conducted when land prices are specifically determined together with the value added due to investment by the current land-users and other people (the State, community or other investors). This is the primary condition for properly resolving the division of benefit amongst the people whose land is recovered, investors and the State.

The VIII National Assembly adopted the first Land Law on 29th December 1987 (valid since 1st January 1988). The law was updated several times to meet the requirements of land management in the quick changing environment. The current Land Law was issued in 2003 (valid since 1st July, 2004) to meet the requirements of the strengthening national industrialization and modernization.

According to the 2003 Land Law the approach to land price determination to calculate compensation, support and resettlement is based on the land price prescribed by the State in conformity with the market price of land. The responsibilities of the State in land price determination are:

- The Central Government regulates the method of land price determination and land price framework for all categories of land and resolves the adjustment of land prices for adjacent lands between provinces;
- The Provincial People's Committee (PPC) constructs specific land prices for the provincial area (in conformity with the land price framework prescribed by the Central Government) and submits them to the Provincial People's Council for consideration before approval. The PPC publicly notifies the land prices on 1st January, each year.

The market price of land is defined as the "price of transfer of land use in the market in normal conditions and at a given moment. It is an amount of Vietnamese currency per unit of land area with a legal land use purpose that was formed from the results of completed and common transactions between transferors and transferees in normal trading conditions. It takes no account of the impact of sudden price increases or decreases due to speculation, natural disasters, enemy-inflicted destruction, economic or financial crisis, changes in master plans, transfer in mandatory situations, blood relationships, or with preferences or other issues as stipulated by Ministry of Finance".

In fact land prices set by the local areas were lower than those in the market. In 2006, the Government promulgated Decree No. 17/2006/ND-CP in which the land price used to calculate compensation, support and resettlement should be decided in accordance with the market price of land.

Although the services of land valuers is legal, land valuation results are still only regarded as a reference. So far, there are no legal regulations on mandatory land valuation services to be used to propose a proper land price during the land price determination process for compensation, support and resettlement when

land is recovered by the State. In the current procedures, the land price is proposed by the organization in charge of the implementation of compensation, support and resettlement. The proposed land price is also appraised by the agency of natural resources and environment and other agencies under the People's Committee. There are no specific legal regulations on the establishment of land valuation boards with competent members with a high level of professional expertise from different fields. Another problem is that the Government has failed to release a specific regulation on market price-based land valuation procedures. In the provincial areas, only Ho Chi Minh City has applied the regulations on employing land valuation organizations to determine land prices for compensation, support and resettlement plans before they are appraised and approved by the competent authorities.

In addition, the State management system for land pricing overlaps between the Ministry of Finance, Ministry of Construction and Ministry of Natural Resources and Environment. Furthermore, the technical standards of land valuation, the land price database and the quantity and quality of valuers fail to satisfy practical requirements.

Analysis of international experiences

The study investigated and analyzed the experiences of Australia, Taiwan (China), some former socialist countries in Eastern Europe and Thailand to construct a land valuation system to facilitate compensation, support and resettlement. Some conclusions on possible application to Vietnam are set out below.

- Involvement of the land valuation service in calculating compensation, support and resettlement will increase the objectiveness of land price determination.
- The final judgment on land price should be assigned to an agency not belonging to the administrative system.
- In parallel with the process of improving the legal framework and its implementation, increases in the quality of the land valuation service and raising public awareness on land valuation is needed.
- The Valuation Association plays a very important role in supporting the competent authorities in charge of land valuation and in settling land price disputes through the process of compensation, support and resettlement. The Association also provides a valuable service in career development, an infrastructure information system for valuation, training to improve the skills of valuers and advice on how to apply international valuation standards.
- The qualifications and occupational ethics of valuers are the key in improving the valuation service.

Results from case study on socio-economic effectiveness of market price-based compensation

From March to May 2010, the Institute of Sociology (part of the Vietnam Academy of Social Sciences) conducted a case study on the socio-economic effectiveness of market-based land price compensation in three provincial areas. The selected areas were Bac Ninh, Ho Chi Minh City and Dak Lak. In each area, surveys were undertaken in between one and four communes in one or two districts.

The case study was conducted in two forms: (i) a social survey based on ready-made questionnaires with 600 respondents whose land was recovered (it is noted that among the six selected government-funded projects, HCMC had the largest number of affected households, but at the time of the survey only 2 out of 4 districts had completed their compensation payments. In addition, many of the affected households had moved out of the project area without leaving a forwarding address, so they were not included in the survey sample. This limits the validity of the results of the survey); and (ii) in-depth interviews or group discussions to collect thematic-based opinions with 32 administrative officials from the communal to provincial level. The aim of the survey was: (i) to evaluate the level of satisfaction of the prices of

land applied to the determination of compensation, support and resettlement; (ii) to evaluate the level of satisfaction of performance in undertaking land recovery, compensation, support and resettlement; (iii) to evaluate the current mechanism of land valuation in the local areas; and (iv) To evaluate the socio-economic effectiveness of land valuation in conformity with market prices.

The main findings are as follows:

- On the possibility of using the monetary compensation given to buy a similar parcel of land:

		Completely insufficient	Partially insufficient	Enough	Unknown
1	Residential land	80%	13%	1%	6%
2	Agricultural land	82%	12%	0%	6%

- On the satisfaction of affected people:

		Not at all satisfied	Not satisfied	Acceptable	Satisfied	Very Satisfied	Un-known
1	Land price	29%	52%	14%	2.5%	0.5%	2%
2	Compensation for house and other buildings	25%	42%	29%	4%	0%	0%
3	Support for livelihood stability	22%	53%	20%	5%	0%	0%
4	Support for livelihood restoration	25%	55%	16%	4%	0%	0%
5	Place of resettlement	16%	41%	20%	23%	0%	0%
6	Process of asset inventory	6%	16%	47%	31%	0%	0%
7	Process of payment for compensation and support	14%	29%	33%	24%	0%	0%
8	Cooperation between State agencies in implementation	11%	37%	41%	11%	0%	0%
9	Monitoring and supervision work	14%	37%	41%	8%	0%	0%
10	Information dissemination and public consultation	7%	26%	44%	23%	0%	0%
11	Whole process of compensation, support and resettlement	17%	50%	27%	5.3%	0.3%	0.4%

- On the socio-economic effectiveness of market price based compensation and support determination:

As land compensation is not based on land market prices, complaints arise on land prices and other related matters, which slows project implementation, sometimes for many years. However, according to the survey data from the cities, if a project takes place in an area, it would result in a significant increase in land prices. The Ho Chi Minh City survey data suggests that, where urban infrastructure building projects were completed, the land price was on average doubled in comparison with the initial one. One kilometer of 20-meter wide road that took two years longer than expected to be completed would increase the compensation by about VND 100 billion.

Having the site clearance stage of the project undertaken promptly was very important to the investor and comprised a major element of the cost effectiveness of the project. When investors have spent considerable amounts on implementing parts of a project and the remainder is subject to delays pending site clearance; investors have to bear excessive interest on their outstanding loans and pay contract penalties for construction and construction supervision contractors. They therefore lose the business opportunity originally defined in their investment project.

Inappropriate land compensation is a major cause of the prolonged situation of complaints by people subject to land recovery. The huge volume of complaints over long years increases the State's costs for processing the complaints and denunciations. According to the result of the public opinion survey, many people whose land was recovered by the State expressed their lack of belief in local leaders at all levels. The situation of pending complaints piling up at the doors of the State's agencies presents an adverse image of the relationship between the people and the authorities. Many people affected by land recovery have expressed their concerns about losing job and house and cannot afford a new house in the resettlement areas. During this time, all of the family's activities have ceased; the adults do not have job and children cannot go to school. When a whole community is stuck in this situation, it affects the economy of the whole residential area and can easily become an urgent social problem.

On the other hand, other evidences of land compensation in some projects in HCMC have shown that land compensation based on market prices provided by independent land valuers is acceptable to most of the affected people. This approach to compensation tends to speed up the compensation and resettlement process since most of the affected people accept the compensation offered very quickly and choose to make their own arrangements for relocation as they can buy houses freely in the market. This approach also substantially reduces the number of complaints from affected people and makes the compensation and resettlement process much more effective.

Recommendations on improving the legal regulations on land valuation applied to compensation, support and resettlement

a. To renovate the regulations on the method of defining land prices in line with the market.

In most countries, the law regulates that the Valuers Association will promulgate the technical standards on land valuation, including those that are consistent with international or regional standards. Recommendations for Vietnam are:

- (1) Whilst the Land Law is still awaiting revision, Central Government continues to have the authority to regulate the methods of land valuation. However, the Government can decide to regulate the process of implementing this authority by assigning the Valuers Association to propose land valuation methods in accordance with international standards and the Ministry of Finance can appraise the proposal and submit it to the Government for approval.*
- (2) When it becomes possible to revise the Land Law, its amendment and supplementation should be undertaken by assigning the Valuers Association to regulate upon Vietnamese technical valuation standards, including methods of land valuation.*

b. To improve the legal framework for land valuation:

Currently, provincial People's Committees have the authority to issue final decisions on land prices used to determine compensation, support and resettlement, including cases involving disputes or complaints. This is inappropriate, unfair and inequitable. The administrative agencies are often inclined to favor the State rather than affected people. Recommendations for Vietnam are:

- (1) *The Central Government should establish a National Board for Land and Property Valuation and the Provincial People's Committees should establish Provincial Boards for Land and Property Valuation.*
- (2) *Each Board should include a Chairman, Vice Chairmen, General Secretary and members. Members should be selected amongst highly qualified managers, scientists, valuers, investors, etc. The Chairman of the National Board for Land and Property Valuation should be a Vice Minister of the Ministry in charge of the management of land and property valuation. The Chairman of the Provincial Board for Land and Property Valuation should be a Vice Chairman of the Provincial People's Committee.*
- (3) *The Provincial Boards for Land and Property Valuation should be authorized to make decisions on land and property valuation, initial decisions on land and property price disputes and decisions on issuing a registration certificate to newly registered valuers.*
- (4) *The National Board for Land and Property Valuation should be authorized to make final decisions on land and property price disputes and decisions on issuing registration certificates to highly qualified valuers.*
- (5) *Prior to the revision of the Land Law, the Provincial Boards for Land and Property Valuation should be established as an Advisory Board to the Provincial People's Committee (PPC), which will still have the authority to decide the land price. The Central Government should promulgate a decree on the operating procedures between the Provincial Boards for Land and Property Valuation and the Provincial People's Committee to ensure that the conclusions reached by the Board are given sufficient weight in deliberations on land valuation made by the Provincial People's Committees. This relationship should be based on seeking clarification of the decisions of the People's Committees when they are different from the advisory opinions of the Board.*

c. To supplement the regulations on the procedures for land valuation and decisions on determination of land prices for calculating compensation, support and resettlement:

- (1) *To regulate application of the mandatory requirement to assign a land valuation service provider to determine land prices for compensation, support and resettlement. The land valuation service company should be selected on the basis of consensus between the affected people and the organization in charge of the implementation of compensation, support and resettlement.*
- (2) *There is a need to supplement people's consultations measures by undertaking meetings and group discussions on the price of land and the plan for compensation, support and resettlement between the people subject to land recovery and the organization in charge of implementing compensation, support and resettlement. Affected people not only have the right to legal services, but also the right to hire a lawyer to act on their behalf throughout the whole process.*
- (3) *Currently, administrative bodies authorize decisions on land price determination for compensation, support and resettlement. This needs to be amended so that the Provincial Board for Land and Property Valuation authorizes decisions on land prices. The National Board for Land and Property Valuation should be responsible to resolve complaints concerning land prices that were initially decided upon by the Provincial Board for Land and Property Valuation.*
- (4) *The current land legislation assigns the work of compensation, support and resettlement to the Provincial Land development organization or District Board of Compensation, Support and Resettlement. This work needs to be assigned only to the Provincial Land development organization.*
- (5) *The settlement of complaints on land prices by people subject to land recovery, decisions on land allocation, lease and recovery and compensation, support and resettlement plans should be separated into two areas:*
 - *All complaints on land prices (decided by the Provincial Board for Land and Property Valuation should be resolved by the National Board for Land and Property Valuation;*

- All complaints on land allocation, lease and recovery and compensation, support and resettlement plans should be resolved utilizing Administrative Complaints system.

d. To further develop existing legal documents on the procedures for land allocation, lease and recovery, land valuation and compensation, support and resettlement.

There is a need to prepare a legal document regulating the procedures on compulsory land acquisition. This should include the process of land valuation and implementation of compensation, support and resettlement. The document should focus on three main following points:

- (1) Collecting the views of people subject to land recovery:*
- (2) Implementing land valuation and preparing compensation, support and resettlement plans.*
- (3) Deciding the land prices for calculation of compensation, support and resettlement.*

Conclusions

The report has shown that the definition of the value of compensation, support and resettlement on the basis of a land price aligned with the market is necessary to produce optimum economic and social effects. This can only be carried out on the basis of developing land valuation services and modifying the current legal regulations on the supply of land valuation services.

On basis of the research undertaken on foreign experience in market-oriented land valuation and the sociological survey of the views of people subject to land recovery, the report proposes necessary changes to complete and implement market-oriented land valuation regulations for the calculation of compensation, support and resettlement when the State carries out land recovery.

In the report, a preliminary draft of the main articles of legal documents stipulating the land valuation mechanism to be used for compensation, support and resettlement, has been recommended. In addition, the report is attached with an annex of technical guidance regarding the valuation of land and property attached to it.

1. INTRODUCTION

In period of 2008 - 2009, the World Bank in Vietnam conducted a study entitled “Policy Note on Improving Land Acquisition and Voluntary Land Conversion in Vietnam” to assist in the process of improving Vietnam’s land legislation. The results of this study have pointed to several issues worthy of further study to generate specific recommendations to improve the mechanism of the State’s recovery of land that is in current use and to allocate it to investors to implement investment projects. Two of the most urgent issues are the land valuation mechanism for compensation, support and resettlement and the grievance redress mechanism of associated complaints. Obtaining a solution for the former issue is the main objective of this study. Determining land prices to calculate compensation, support and resettlement is a very complicated issue and depends not only on the economic value of land but also on the social, human and cultural characteristics of the country, the nation and its people. This is one of the most important links in the chain in the land conversion process during the period of national industrialization.

This study mainly aims to support the land management agencies in Vietnam to improve the legislation system on land valuation for determination of compensation, support and resettlement when land is recovered by the State. The scope of the study is Vietnam’s system of legislation on land valuation mechanisms for compensation, support and resettlement for people whose land is recovered by the State. The field survey undertaken was concentrated in urban areas in which land is highly priced, together with areas with many groups of ethnic minority people that are currently in the process of developing public infrastructure. The study was carried out using three main methods:

- Analysis of Vietnam’s current legislation system to establish any legal gaps or overlaps as well as inappropriate regulations;
- Analysis of the field survey data on the views of people subject to land recovery and their experience in dealing with land valuation and compensation, support and resettlement;
- Analysis of international experience in dealing with land valuation from some other countries that may be applicable to Vietnam.

Based on these analyses, the study recommends some ways of improving the land valuation mechanisms for determination of compensation, support and resettlement in Vietnam.

The Vietnamese renovation process ‘DOI MOI’ that began in 1986 was based on the principle of a market economy managed by the State. The National Assembly adopted the first Land Law at the end of 1987 and up to the present two new land laws have been adopted and the land law has been amended or supplemented on a further two occasions. In the period since 1988 land conversion, the right of land-users to take part in the market for land, the management system on land pricing and the mechanism for settling compensation for people subject to land recovery by the State, have been gradually adjusted to align with the market mechanism. The table below describes in outline the renovation process in land financial policy since the first Land Law came into effect.

Period	Land conversion measures	Rights of land-users in the land market	Principles of land price determination	Method of land valuation	Compensation for people subject to land recovery
01 st Jan., 1988 to 14 th Oct., 1993	The State allocates land to persons in need and recovers land from people who are not using it.	There are no rights to participate in the land market	Land has no value and no price in the market.		People whose land is recovered by the State are allocated alternative land if they need it.
15 th Oct., 1993 to 31 st Dec., 1998	The State allocates land to people in need and recovers land to launch investment projects.	Households/individuals have rights of land exchange, transfer, inheritance, lease and mortgage.	Land has value and land price is regulated by the State (often equal to about 10%-20% of the market-based price of land).	Land price is subjectively determined by the land management agency to serve development investment purposes.	People whose land is recovered by the State are allocated similar land or compensated through land prices stipulated by the State.
01 st Jan., 1999 to 31 st Jun., 2004	The State allocates land to people in need and recovers land to launch investment projects.	Households/individuals have rights of land exchange, transfer, inheritance, lease and mortgage. Land allocated or leased by the State to economic organizations who pay for the whole term of its use have rights of land transfer, lease, mortgage and capital contribution.	Land has value and land prices are regulated by the State (adjusted higher than previously to be more in line with the market price of land).	The price of agricultural land is determined by the income method. The price of non-agricultural land is determined by comparison with market prices.	People whose land is recovered by the State are compensated with similar land or cash on the basis of the land price stipulated by the State multiplied with a coefficient to align it more closely to the market price.
01 st July 2004 to the present	The State allocates land to people in need by administrative decision or based on auction or bidding. The State restricts application of land recovery for some kinds of investment projects. Others must be implemented using the regulations on voluntary land conversion.	Households/individuals are entitled to rights of land exchange, transfer, donation, inheritance, lease, mortgage, guarantee and capital contribution. Land allocated or leased by the State to economic organizations who pay for the whole term of its use are entitled rights of land transfer, lease, sublease in industrial zones, donation as legally stipulated, mortgage, guarantee and capital contribution.	Land has value and the land prices are stipulated by the State but must comply with the market prices. Adjacent land parcels having the same use, the same purpose in land use plans and the same condition of infrastructure have the same price. Professional organizations are allowed to provide land valuation services.	Land value is assessed on the basis of comparison with the market price of land. The income method is applied in all cases that have no market price comparison. Discount methods are applied to land parcels with attached assets. Residual methods are applied to land parcels having investment projects.	People whose land was recovered by the State are compensated by others land or in cash calculated on the basis of the market price of land.

Current legislation on land contains certain regulations that follow international standards of land price management and determination through the use of market prices to calculate compensation for people whose land is recovered by the State. However, in practice, there are some urgent legal enforcement issues in the assessment of market-based prices of land for determination of appropriate compensation for people whose land is recovered by the State.

The main problems are:

- There are no specific regulations on the procedures for land valuation corresponding to land prices in the market. The newly approved Decree No. 69/2009/ND-CP does not regulate the procedures for land valuation based on market prices;
- Legal regulations on land have not been sufficiently enforced in local areas.

They are main causes of prolonged site clearance and land compensation that result in economic loss in the development process, making Vietnam a less attractive investment environment and increasing the number of complaints on land prices.

As specific regulations on the procedures for land price determination are not available, the provincial areas apply differing procedures to decide land prices. The majority are inclined to impose land prices through administrative decisions that are inadequate to meet the economic rules of the market. In most projects whose land prices are based on the currently applied systems of compensation, support and resettlement, there is no agreed consensus with the people whose land is recovered by the State. Therefore, it is very important **to seek an appropriate solution to determine the market-based price of land for compensation, support and resettlement for people subject to land recovery.**

The field survey on the views of people subject to land recovery intended to concentrate on two big cities with high levels of urbanization and a province with many ethnic minorities in which many investment projects are being developed. The study team initially selected Hanoi and Ho Chi Minh city (Vietnam's biggest cities) and Dak Lak (a province with the most developing infrastructure in the Tay Nguyen plateau where many ethnic minority people live). Hanoi declined to take part in the project for reason of inappropriate timing of the study. Instead of Hanoi, the study team decided to select Bac Ninh, a province with many investment projects located on the outskirts of Hanoi.

Apart from this initial introduction, this document comprises four main parts. The first part focuses on analyzing the current system of legislation on land valuation for compensation, support and resettlement of people subject to State recovery of land and legal enforcement of it. The second part provides evidence of international experience on land valuation systems in some countries. The third part primarily includes analysis of the socio-economic effectiveness of land prices for compensation, support and resettlement when they are determined in line with the market price in some typical local areas. The fourth part presents some recommendations on improving the system of legislation and guiding its implementation.

2. ANALYSIS OF THE CURRENT SYSTEM OF LEGISLATION ON LAND VALUATION FOR CALCULATING COMPENSATION, SUPPORT AND RESETTLEMENT IN VIETNAM

2.1. Overview

Vietnam began the course of “DOI MOI” (renovation) in 1986 based on the decision to shift the economy from the State subsidy mechanism to the market mechanism with a socialist orientation. During the transition process, the commodities market was renovated early whilst the resources markets, including land and natural resources, labor and finance were renovated approximately 10 years later (in 1996, the Political Documents of 8th Communist Party Congress for the first time accepted the concept of the real estate market, labor market and financial market). The market in land use rights began to operate in line with market mechanisms only 18 years after the beginning of “DOI MOI” (in 2004 legal regulations on land financing were built on the basis of the principle that the State’s land prices must be in conformity with market prices).

The land financing system has not yet been aligned with market mechanisms in either the current system of land legislation or its implementation. The weakest points are that there is no appropriate mechanism for the assessment of the market-based price of land and no objective standard for the determination of land prices that is acceptable not only to the State but also by the people subject to land recovery. Due to different approaches in land price assessment it is still the case that the work undertaken in recovering land and settling compensation, support and resettlement for affected people always takes long time, especially in the developed cities. In addition, the process of dealing with complaints regarding land prices produces too large a volume of work. This situation causes consequences in both social and economic terms, including:

- The lack of progress in the implementation of investment projects slows economic development and national economic growth, causing losses in income from taxes to the state budget.
- The cost of infrastructure projects becomes too high expenses due to the expense of securing land (compensation costs, in many cases, are as much as four to five times the construction cost in the big cities), and implementation is much delayed, resulting in slower socio-economic development of the country and its local areas.
- Local areas have to face a situation of prolonged and difficult to settle complaints from people subject to land recovery, causing social instability.
- Investors, failing to realize their projects within a reasonable time period, obtain fewer returns on their investment.
- Site clearance work is complicated and prolonged resulting in Vietnam being regarded as a poor investment environment.

In order to solve these problems, there is no alternative but to examine the value-based relationship between people subject to land recovery and land allocation by the State based on a system of the determination of land prices in conformity with market prices. Compensation in cash, in land or by other means are only solved satisfactorily when the land price is fairly defined and includes the additional value produced by the current land users or other investments (the State, community or other investors). This is an essential condition in dealing appropriately with the division of benefits between current land-users subject to land recovery, investors and the State during the process of land conversion for development purposes.

2.2. Current legislation on land valuation for calculating compensation, support and resettlement when the State recovers land; and its implementation in practice

2.2.1. Analysis of the process of building legislation on land prices in Vietnam

a. Since the State of Vietnam initiated the “DOI MOI”, the policy of allocating the land of cooperatives to households and individuals for their long-term and stable use has created a critical element of economic development. This policy led Vietnam from being a country without sufficient food to feed its own population to one of the top three rice exporters in the world. The Gross Domestic Product from agricultural sector realized VND 16,252 billion in 1990, VND 62,219 billion in 1995 and VND 108,356 billion in 2000²⁹. On the other hand, this land policy has also required the building of a system of legislation and administration of land in Vietnam that did not previously exist.

b. The first Land Law of Vietnam adopted by the VIIIth National Assembly was dated 29th December 1987 and came into force on 1st January 1988. This Law did not recognize land value or the right to use land and it did not permit the transfer of land use through market demand. In the Law, the right to transfer land use is only permitted when: (i) households take part in or withdraw from an agricultural cooperative; (ii) lands are exchanged for the restructuring of agricultural production; (iii) land users move or become deceased and there is a need to obtain a permit from the Communal People’s Committee in rural areas or the District People’s Committee in urban areas for this purpose (Article 16); (iv) the State decides to recover whole or partial parcels of land which have been allocated by the State for its own use as in the case of a demand by the State or society for use of the land for other purposes (Article 14).

People who receive an allocation of land from the State must compensate the people subject to land recovery for actual damage, their labor in improving the land and increases in the value of the land brought about by investment by the current land-users (Article 48).

Land users whose land is recovered by the State for use by the State or society are compensated for actual damage and allocated with other land (Article 49).

Current land users are obliged to register land in current use in the cadastral book and are granted with a Land Use Right Certificate after the land has been registered (Article 18).

c. Following three years of implementation, the Land Law of 1987 was found to be unsatisfactory to administer land conversion in conformity with the market mechanism. The Vietnam National Assembly and Government decided to renovate the system of land legislation. A new Land Law was adopted by the IXth National Assembly on 14th July 1993 and came into force on 15th October 1993).

c.1. The Land Law of 1993 included important reforms in land pricing and the rights of land users that were more appropriate to the market mechanism, these included:

- Households and individuals have rights of exchange, transfer, lease, inheritance and mortgage of the land use right (Article 3);

- The State determines the price of all land categories for the calculation of tax and on the transfer of land use rights, fees for land allocation or lease, determining the value of assets when land is allocated, compensating for the loss of land when it is recovered, and; the Government regulates the prices framework of all land categories in every region and for every period (Article 12);
- In necessary cases, the State may decide to recover land in current use by land users that is to be used for the purposes of national defense, security, national benefit or public welfare and the people subject to the recovery of their land will be compensated for the damage (Article 27).

c.2. The Land Law of 1993 brought about important changes in land financing, yet there remained a great deal of inadequacy in satisfying the requirements of economic renovation, including:

- The Law concentrated only on renovating the management of land and the use of agricultural land oriented towards developing the agricultural economy. Land conversion from the agriculture sector to the non-agriculture sector as part of the economic development investment process was not regulated in any detail (the Law did not mention the mechanism of land conversion for the implementation of investment projects).
- The Law recognized that land has a price and this was a very important change in land finance management but it did not yet require land prices defined by the State to be aligned with the market price of land. The result has been to create a gap between the land price decided by the State and the actual land price in the market. This has resulted in speculation in land use rights and corruption in land management.
- The Law paid a great deal of attention to the rights of households and individuals, but did not recognize the land rights of organizations (both domestic and foreign). After the Law was in force for nearly a year, two Ordinances were adopted by the Standing Committee of the National Assembly (dated 14th October 1994), which regulated the rights and obligations of domestic and foreign organizations using land in Vietnam. According to these Ordinances, investors (domestic as well as foreign) are only permitted to lease land from the State and have no right to transfer the allocated land to others.

c.3. In 1994, the State of Vietnam decided to define a specific road map for national industrialization and modernization by 2000³⁰. Subsequently, the course of industrialization and urbanization revealed that the current legal system on land could not satisfy the demand of the development process. In order to deal with the matter of land conversion in the development process the State of Vietnam implemented the following legislation:

- The Government promulgated new policies for adjusting land prices in line with the market price of land. On 17th August 1994, Decree No 87- CP on the price framework for all land categories and Decree No 89-CP on the collection of land use fees and cadastral fees, were issued by the Government. The land use fee to be paid by people who received an allocation of land and the compensation to be paid to people subject to land recovery by the State were both to be calculated on the basis of a price list regulated by the Provincial People's Committee in line with the land price framework of the Government set out in Decree No 87-CP³¹. Generally, the price of land in the land price framework issued by the Government as well as the land price list issued by the Provincial People's Committee was in the range of 10% to 20% of the actual market price of land. In order to reduce the gap between the land price regulated by the State and that of the market, the Government was required to adjust the land price coefficient on a regular basis. On 13th May 1996, the Prime Minister promulgated Decision No 302-TTg on adjusting the coefficient promulgated in the Decree No 87-CP, allowing the coefficient to increase by between 0.5 to 1.8. On 21st March 1998, the Government promulgated Decree No 17/1998/ND-CP amending and supplementing Decree No 87-CP, allowing the floor price to reduce by 50% and the ceiling price to increase by 50%.
- The mechanism of land recovery by the State was regulated in Decree No 90-CP approved by the Government on 17th August, 1994 and included the following: (i) the State has the right to recover

land in current use for use for the purposes of national defense, security, building works to benefit the nation, public welfare and other works regulated by the Government; (ii) households, individuals and enterprises legally using land allocated by the State and paying a land use fee are compensated out of the State budget when the land is recovered by the State; (iii) the land recovered by the State is compensated through allocation of land of the same category. Where land for compensation is not available, compensation will be made in cash calculated based on the land price list regulated by the Provincial People's Committee. The regulations in Decree No 90-CP were merely stated in principal and lacked the necessary detail for implementing this complicated mechanism. On 24th April 1998, the Government promulgated Decree No 22/1998/ND-CP on compensating for damage caused to land recovered by the State for purposes of national defense, security, national benefit and public welfare, which replaced Decree No 90-CP. This Decree had more detailed regulations such as: (i) clearly specifying the type of building works allowed to be undertaken through land recovery by the State including not only land for the purposes of national defense, security, national benefit and public welfare but also for investment projects for commercial purposes and for private profits by domestic or foreign organizations or individuals; (ii) specifying the compensation for land users whose land is recovered by the State; (iii) Where there is no alternative land, compensation in cash is determined based on the land price list issued by the Provincial People's Committee multiplied by the coefficient. The Ministry of Finance then promulgated Circular No 145/1998/TT-BTC of 04th November 1998. This set out the basis for calculation of the coefficient as the actual market land price over the land price regulated by the Provincial People's Committees, in which the market land price is the one calculated according to profitability in the case of agricultural land or by comparing the practical land transfer price in the case of non-agricultural land.

- The two Ordinances passed by the Standing Committee of National Assembly on the rights and obligations of domestic and foreign organizations using land in Vietnam excessively limited investors' rights (both domestic and foreign). Primarily, they had the right to use land based on leasing land from the State and the right to transfer properties attached to the land. These limited rights reduced the attractiveness of investing in Vietnam and created negativities in developing the real estate market. Facing pressures on the development of the land market, the Standing Committee of the National Assembly decided to promulgate an Ordinance to amend and supplement some articles of the Ordinance on the rights and obligations of domestic organizations to use land allocated or leased by the State (dated 27th August 1996). According to this, domestic economic organizations can access land allocated by the State through the payment of a land use fee in two cases: (i) building housing for sales or lease; (ii) investing in infrastructure for the transfer or leasing of land together with the attached infrastructure. In addition, this Ordinance allows investors to transfer, lease, mortgage and use their land use rights as a capital contribution. Following this, on 2nd December 1998 the Xth National Assembly of Vietnam adopted the Law on amending and supplementing some articles of the Land Law which came into force on 1st January 1999. This allowed investors to build infrastructure to exchange it for land allocated by the State with payment of a land use fee (the land use fee is equal to the value of the infrastructure). The amended and supplemented Law of 1998 allows investors leasing land from the State to make a rental payment for the whole term of the lease and have the right to transfer, lease, mortgage, and use the land as a capital contribution.

c.4. The Land Law of 1993 provides detailed regulations on the land registration system, cadastral records, cadastral maps and issuance of land use rights certificates (Articles 33, 34 and 36). The land use planning system at all administrative levels is sufficiently regulated on the content and process of preparation, appraisal, submission, and approval of land valuation processes and on the responsibilities and authority of each management agency (Articles 16, 17 and 18).

The Government assigned the whole of the management of land valuation to the Ministry of Finance, including approval of land price lists of the Provincial People's Committees. The Department of Finance of Provincial People's Committees are responsible for preparing the land price list to submit to the Provincial People's Committee for review before its submission to the Provincial People's Council for adoption. There is no provision for the services of land valuers as the law only recognizes land prices regulated by the State.

c.5. The 10 year period of implementation of the land legislation system constructed on the basis of the Land Law of 1993 and the Law on amending and supplementing the Land Law of 1998 has assisted in the renovation of land policies in a period when the national economy is in transit between the State subsidy system and the market mechanism. Some main conclusions drawn from this process are:

- Land users rights have been widened step by step to be more appropriate to economic relationships within a market mechanism;
- Land prices have been recognized by the law but are still managed under the State subsidy mechanism based on administrative decisions made by the authorities of the Central Government and Provincial People's Committees on land prices;
- The land price applied for the determination of compensation for land users subject to State recovery of land has increased but has not yet met true market prices.

d. In 2002, the State of Vietnam decided to summarize the experience of 10 years of implementation of land policies and legislation in order to construct a new Land Law. On 26th November 2003, the new Land Law was adopted by the XIth National Assembly of Vietnam and was directed towards further renovation to align it with the stage of accelerated industrialization and modernization of the country (the Law came into force on 1st July 2004).

d.1. The Land Law of 2003 generated many important changes which were focused on improving and aligning the four land management tools of legislation, planning, finance and administration with the market mechanism in the context of international economic integration.

The land finance regulations were rebuilt as follows:

- The land financial system is defined as that which includes the land price and land taxation in order to regulate relationships related to land in the market (Articles 54 and 55);
- The land price determined by the State must be aligned with the market price of land (Article 56);
- Domestic investors have the right to choose to either lease land from the State with an annual rental payment or obtain a land allocation from the State with a single fee payment. Foreign investors have the right to choose to lease land from the State with an annual rental payment or to lease land with one rental payment for the whole term of the lease (Article 108). Domestic investors using land allocated by the State with a single fee payment and foreign investors leasing land from the State with one land rental payment for whole term of the lease have the right to transfer, donate (limited), lease, mortgage or use the land as a guarantee (at the credit organizations created under Vietnamese legislation) or as a contribution to capital (Articles 110 and 111);
- Land use rights are transacted in the land use right market, a component of the land and property market (Articles 61, 62 and 63);
- Land recovery by the State for implementing economic development projects for commercial purposes is only applicable in some limited cases. These are investment projects building common infrastructure for use by secondary investors; projects that have large capital investment (in the 'A'

group of investments); and projects whose investment is wholly provided by foreign capital in the form of Official Development Assistance (ODA) or Foreign Direct Investment (FDI).

d.2. During the implementation of the land finance system and although the legal regulations specified that the land price determined by the State must align with the market price of land, these regulations were not fully implemented in local areas. In almost all provinces, and especially in developed urban areas, the land price list approved by the Provincial People's Committees was only 40% to 70% of the market price. Leaders in the local areas all thought that it would take time to fulfill the policy of "one price of land" to avoid a land price shock happening to investment projects. They also wished to keep land prices low to increase the attractiveness of their investment environment. To counter this situation the Central Government promulgated Decree No 17/2006/ND-CP of 27th January 2006 on the amendment and supplementation of some articles of the Decrees on the implementation of the Land Law and Decree No 187/2004/ND-CP on transforming state-owned companies into joint stock companies. In the Decree it was prescribed that the Provincial People's Committee must determine the land price in conformity with the market price in cases: (i) where land allocation is made with a land use fee payment; (ii) of land compensation for people subjected to land recovery; and (iii) land valuation is part of transforming state-owned companies into joint stock ones (Clause 2 Article 4, Clause 1 Articles 5 and Article 6). These regulations are repeated again in Decree No 123/2007/ND-CP issued by the Government on 27th July 2007, on the amendment and supplementation of some articles of Decree No 188/2004/ND-CP of 16th November 2004 on the methods of land valuation and the price framework for all categories of land. The Government also promulgated Decree No 101/2005/ND-CP of 3rd August 2005 on valuation, the main content of which are related to land valuation.

In order to launch the legal framework on land valuation the Ministry of Finance coordinated with the Ministry of Natural Resources and Environment to issue a series of instructional circulars, including:

- Circular No 114/2004/TT-BTC of 26th November 2004 on the implementation of Decree No 188/2004/ND-CP of 16th November 2004 on the methods of land valuation and the price framework for all categories of land;
- Circular No 80/2005/TT-BTC of 15th September 2005 on guidelines for organizing a network of land price statistics, investigations and surveys and statistical reporting of land prices prescribed in Decree No 188/2004/ND-CP above;
- Circular No 17/2006/TT-BTC of 13th March 2006 on the implementation of Decree No 101/2005/ND-CP of 3rd August 2005 on valuation;
- Circular No 145/2007/TT-BTC of 6th December 2007 on providing guidelines for the implementation of Decree 188/2004/ND-CP and Decree No 123/2007/ND-CP of 27th July 2007 on the amendment and supplementation of some articles of Decree No 188/2004/ND-CP;
- Inter-Circular No 02/2010/TTLT-BTNMT-BTC of 8th January 2010 on the establishment, appraisal, issuance and adjustment of the land price list approved under the authority of the Provincial People's Committees.

In addition to constructing the legal framework on land prices and valuation to align with the Land Law, the XIth National Assembly of Vietnam adopted the Law on Real Estate Business on 29th June 2006, in which there are regulations on the activities of supplying land and building property valuation services. The Government also promulgated Decree No 153/2007/ND-CP of 15th October 2007 providing detailed regulations and guidelines on the implementation of the Law on Real Estate Business. In this context, the Ministry of Finance and the Ministry of Construction have independently undertaken the implementation of a land valuation service and buildings property valuation service, as follows:

- Circular No 36/2006/TT-BTC of the Ministry of Finance dated 28th April 2006 establishes the conditions and procedures for licensing or registering land price consultancy activities (in accordance with the Land Law);
- Decision No 29/2007/QĐ-BXD of the Minister of the Ministry of Construction dated 31st December 2007 promulgates the framework program for training and education on property brokerage, valuation and the management of property transaction exchanges. Later some elements of the Decision were corrected by Decision No 1408/QĐ-BXD of 4th December 2008 (in accordance with the Law on Real Estate Business).

d.3. After 2003 part of the system of land management agencies was transformed from administrative organizations into public service ones. This allowed the development of land use rights registration offices at provincial and district levels (to cover cadastral records management and land use changes and updates) and land development organizations at provincial level (to support the land conversion process for investment projects).

The Land Law of 2003 recognizes the market price of land and requires that the land price stipulated by the State must comply with the market price of land. Since 2004 the Government has continued to assign the task of managing land valuation to the Ministry of Finance. This includes the management of the State's land pricing system including the land price framework approved by the Government and the land prices lists promulgated by the Provincial People's Committees, as well as market-based land valuation services. Up to 2007, the Ministry of Construction was assigned with the management of building property valuation by the Government in which land valuation was also covered. Since that time, the task overlap has appeared between the Ministry of Finance and the Ministry of Construction. Up to 2009, the management of land valuation has been divided by the Government into two parts: the first is determination of the State's price of land, which has been assigned to the Ministry of Natural Resources and Environment and the second is the management of market-based land valuation services that was assigned to the Ministry of Finance. From 2005, market-based land valuation services developed rapidly including property transaction exchanges, property valuation companies of commercial banks and commercial property companies.

d.4. The policy on compensation, support and resettlement of people whose land is recovered by the State is of special concern to the Government and is continuously being renovated to conform more and more to the market mechanism. On average, every one to two years, the Government promulgates a decree on regulating aspects related to the calculation of compensation, support and resettlement for affected people. The first Decree in this field was Decree No 197/2004/ND-CP of 3rd December 2004 on compensation, support and resettlement when land is recovered by the State. This was followed by Decree No 17/2006/ND-CP of 27th January 2006, Decree No 84/2007/ND-CP of 25th May 2007 and recently, Decree No 69/2009/ND-CP of 13th August 2009 which provided supplements on land use planning, pricing, recovery, compensation, support and resettlement. When each new decree is promulgated the level of compensation, support and resettlement for affected people is increased. However, there are no specific regulations on market-based land valuation mechanisms to be applied in all local areas.

2.2.2. Analysis of current regulations on the determination of land prices to calculate compensation, support and resettlement for people whose land is recovered

a. The current legal framework

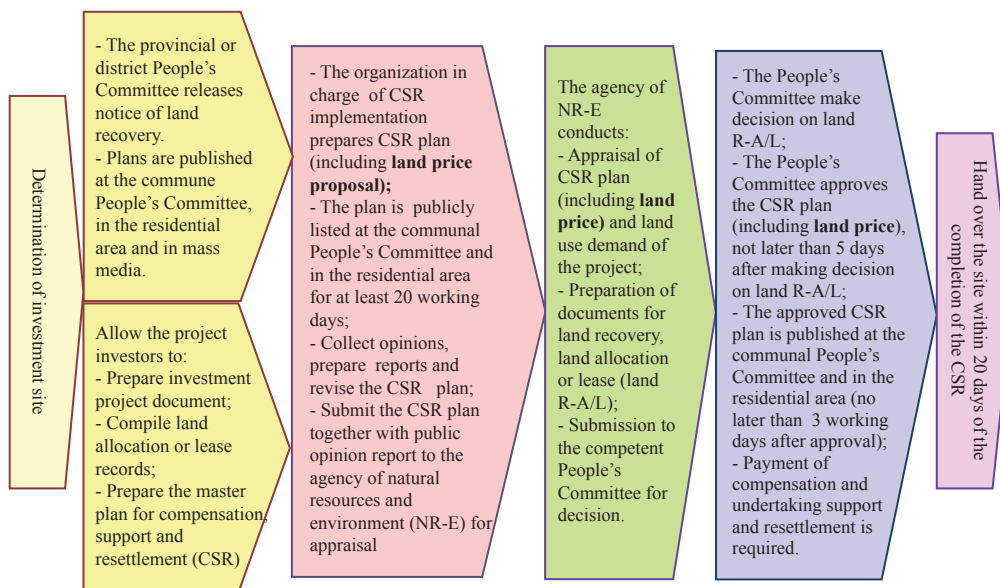
The current procedure for the process of land recovery, allocation, lease, compensation, support and resettlement is as stipulated in Decree No 69/2009/ND-CP of 13th August 2009 on additional stipulations for land use planning, pricing, recovery, allocation, lease, compensation, support and resettlement. The accompanying Circular No 14/2009/TT-BTNMT of 1st October 2009 details regulations for compensation,

support and resettlement and procedures of land recovery, allocation and lease. The specific policies to be applied are regulated in:

- The Land Law (Law No 13/2003/QH11 of 26th November 2003);
- Decree No 197/2004/ND-CP of 3rd December 2004 on compensation, support and resettlement when land is recovered by the State;
- Decree No 17/2006/ND-CP of 27th January 2006 on amendments and supplementation of some articles of the Decrees on the implementation of the Land Law and Decree No 187/2004/ND-CP on transforming state owned companies into joint stock companies;
- Decree No 84/2007/ND-CP of 25th May 2007 on additional stipulations on the issuance of land use rights certificates, land recovery, land use right applications, procedures for settling compensation, support and resettlement when land is recovered by the State and settlement of complaints on land; and
- Decree No 69/2009/ND-CP and Circular No 14/2009/TT-BTNMT mentioned above.

According to the current regulations, procedures on land recovery, allocation, lease, compensation, support and resettlement are conducted in line with the chart at Figure 1 below. Following this chart, land prices for the calculation of compensation, support and resettlement are proposed by the organization in charge its implementation (the District Board for compensation, support and resettlement or the Provincial Land development organization) in compensation, support and resettlement plans appraised by the agency of natural resources and environment and approved by the competent People’s Committee. When a project using land located within the area of a district, the appraiser is the district Division of Natural Resources and Environment and the approver is the District People’s Committee. When the project is using land located in the area of two or more districts, the appraiser is the provincial Department of Natural Resources and Environment and the approver is the Provincial People’s Committee.

Figure 1: Chart of Procedures on land recovery, allocation, lease, compensation, support and resettlement



b. The method of land valuation to calculate compensation, support and resettlement:

b.1. Land price established as stipulated by the Government

- The land price as regulated by the Government is determined on the basis of 3 principles: (i) close to actual price is established by the market price of the transfer of land use rights, under normal conditions; (ii) equal prices for contiguous parcels of land with the same conditions (natural, economic, social, infrastructure, present purpose of land use and planned purpose of land use); (iii) equal prices for neighboring areas of provincial provinces with the same conditions (Clause 1, Article 56 of the Land Law).
- Responsibility to determine the State's prices for land are: (i) the Government stipulates the method of land valuation, the price framework for all categories of land for every region and period and the decisions on adjustment of land price differences on contiguous land between provincial localities; (ii) the Provincial People's Committees establish a specific land prices list for the local area (aligned with the prices framework for all categories of land that has been stipulated by the Government) and submits it to the Provincial People's Council for review before making a decision. The decision must be announced to the public on 1st January every year (Clauses 2, 3 and 4, Article 56 of the Land Law).
- The land price stipulated by the State is applied to calculate the value of assets which comprises the land use right (in fact it is the land value) in all cases involving the relationship between the State and organizations and citizens in terms of land, specifically including: (i) various types of taxes related to land; (ii) registration fees; (iii) land use fees and land rental; (iv) the value of land use rights; (v) compensation when land is recovered by the State or when violations of land legislation causes damage to the State (Clause 4 Article 56 of the Land Law).
- The market price of land is defined as: "The price of transfer of land use rights in the market in normal conditions and at a given time. It is an amount in Vietnamese currency per unit of land area with a legal land use purpose that was formed from the results of completed and common transactions between transferors and transferees in normal trading conditions. It takes no account of impacts of sudden price increases or decreases due to speculation, natural disaster, enemy-inflicted destruction, economic or financial crisis, changes in master plans, transfers under forced conditions, with a blood relationship or with preferences and other cases to be stipulated by the Ministry of Finance". (Clause 2, Article 1 of Decree No 123/2007/ND-CP of 17th July 2007).
- The Government stipulates 4 methods of land valuation as follows:³² (i) 'Direct comparison' is the method of determining land prices by analyzing actual land prices of a similar land category, which has been established in land use rights transfers in the market, for comparison to determine the price of the land parcel and land category that needs to be valued (used for the valuation of non-agricultural land); (ii) The 'income method' is the method of determining the land price which is equal to the quotient of annual net income per a unit of land area using an annual average deposit banking interest rate (at the time of determining the land price) in Vietnam currency deposited in a 1 year term account at the State's commercial banks and having the highest deposit banking interest rate in the local area (used for agricultural land valuation); (iii) The 'discount method' is the method of determining the land price of parcels of land with attached assets by excluding the value of the attached assets from the total value of the property and determining the land price as though it was a parcel of vacant land. In cases where there is insufficient data on the market price of similar parcels of vacant land to apply the direct comparison method, it is possible to collect data on the market price of parcels of land with attached assets similar to the parcel of land that needs to be valued; (iv) The 'residual method' is the method of determining the land price of parcels of vacant land which has potential to be developed according to development plans or has been permitted to change the purpose of the land use by excluding the estimated costs of development from the total value of the assumed development. When there is insufficient data

on the market prices of similar parcels of land to apply the direct comparison method, the price of the parcel of land is determined as the price of a vacant parcel of land with a potential to be developed due to revised planning or due to a change in land use purpose.

- When the annual land prices list of the Provincial People's Committees is not close to actual land prices established in land use right transfers in the market and under normal conditions, the Provincial People's Committee has to re-determine land prices on the basis of actual land use right transfers in the market in 4 cases: (i) the Government allocates land with a land use fee payment neither by land use right auction nor by tendering investment projects with the use of land; (ii) the Government leases land; (iii) approving compensation, support and resettlement plans when land is recovered by the State; (iv) a state-owned company is changed to a joint stock company with land which has been allocated by the State (Article 11 of Decree No 69/2009/ND-CP of 13/08/2009; Clause 12, Article 1 of Decree No 123/2007/ND-CP of 17/07/2007; Clause 2 of Article 4, Clause 1 of Article 5 and Article 6 of Decree No 17/2006/ND-CP of 27/01/2006).
- Provinces implement surveys of market land prices including land use right transfers, winning land prices in land use rights auctions and land prices re-determined by the Provincial People's Committees when the State allocates leases, recovers land or State-owned companies are changed to joint stock companies. Communes who are selected to survey land prices should account for at least 50% of total communes in the whole province and the points selected for the land prices survey in each commune must represent the category of land that needs to be surveyed and must be distributed equally in the area of the district. At each survey point the number of parcels of land that need to be surveyed for each category of land must be at least 50% of the total land parcels in the same category of land that has been successfully transferred in the survey year, but no less than three parcels of land. (In cases where there are not even three parcels of land, it is necessary to investigate other information on income from land use to determine at least 3 parcels of land). The survey of market land prices in communes is carried out from 1st July to 10th August every year. The provincial Department of Natural Resources and Environment collects the survey data from the district divisions of Natural Resources and Environment to prepare the annual land price list and send it to the Department of Finance for appraisal before 5th October each year. It is then submitted to the Provincial People's Committee for consideration and submission to the Provincial People's Council for approval (Joint Circular No 02/2010/TTLT-BTNMT-BTC of 8th January 2010).

b.2. Land prices established by a market-based land valuation service

- A market-based land valuation service is implemented on the principles of: (i) an eligible, qualified and licensed organization is permitted to supply services on market-based land valuation; (ii) determining land prices in market-based land valuation services must conform to the principles and methods of land valuation stipulated by the legislation (as in section 2.1 above); (iii) land prices determined by market-based land valuation services are used on an advisory basis in land finance management and land use rights transaction activities (Article 57 of the Land Law).
- The Government specifically stipulates that the land prices supplied by valuation service suppliers are to be used in following cases: (i) It is one of the bases for competent authorities of the State to consider and approve expenditure from the State's budget; to calculate tax; to determine the value of assets mortgaged at the banks to borrow capital; to buy insurance; to lease, transfer or sell assets; to contribute assets as capital; to transform State-owned companies to joint stock companies; to dissolve enterprises; and to use for other purposes as stated in valuation contracts. (ii) It is for giving advice to competent authorities of the State to determine the price of land use rights. (iii) It is used as a basis for organizations and individuals to calculate a valuation according to the purpose stated in a valuation contract. (Article 6 of Decree No 101/2005/ND-CP of 03/08/2005).

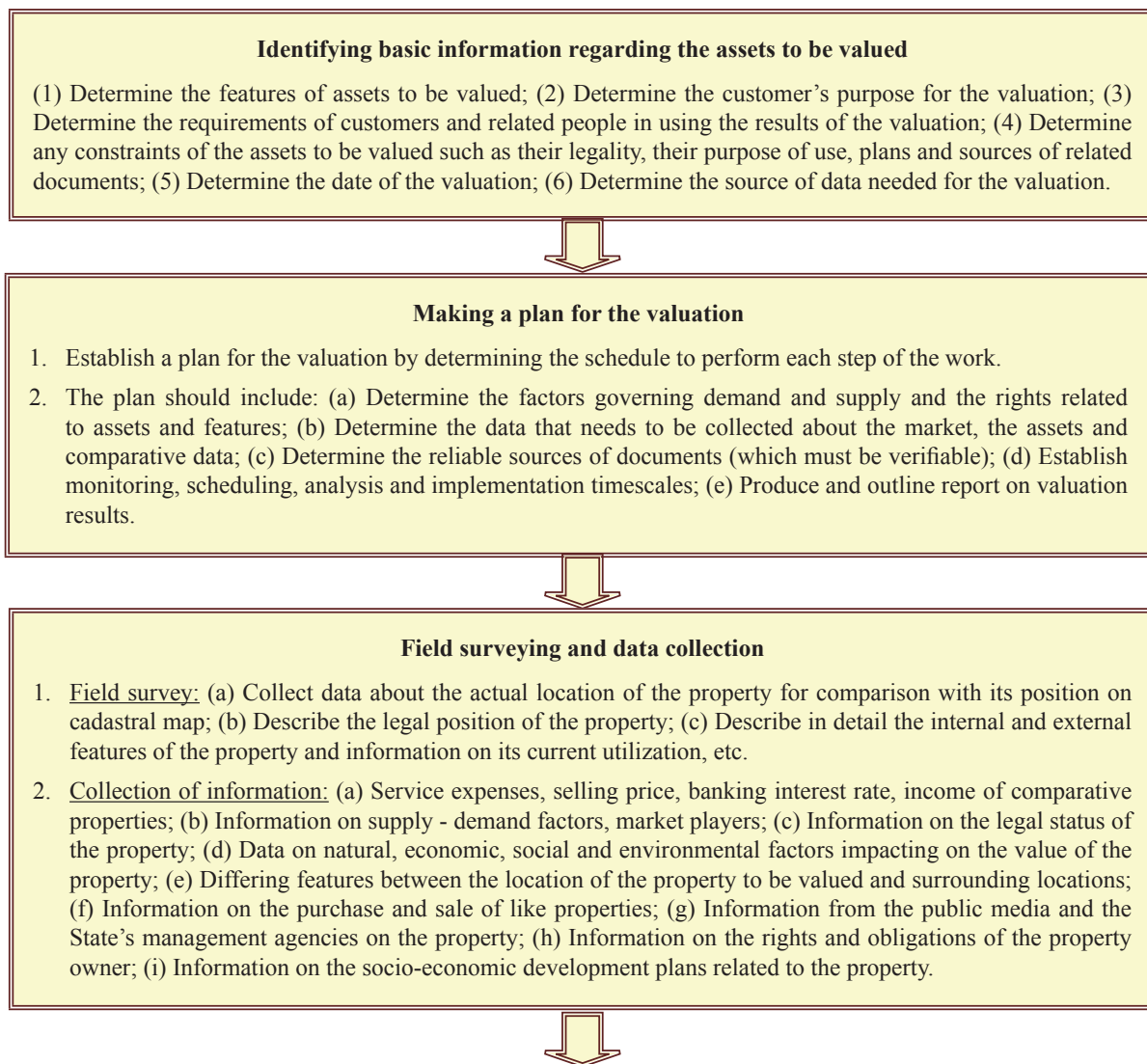
- An enterprise supplying valuation services is established and operated according to the Enterprise Law. It comprises of at least 3 valuers (the owner of the private enterprise and representatives of other types of enterprises must be valuers). It is responsible in law to its customers for the valuation result and must compensate them for any losses, as stipulated by the law, when the valuation result is incorrect and causes losses for the State, organizations or individuals. It must buy occupational risk insurance to cover its valuation activities or make provision in a fund for occupational risks. It must manage valuers operating in the enterprise, prepare a report on the results of a valuation and issue a certificate of valuation (Articles 8, 9, 11 and 14 of Decree No 101/2005/ND-CP of 03/08/2005).
- A valuer is the person having a domestic or foreign university degree in a specialism related to the valuation profession. They must also possess a certificate of professional training in valuation issued by a university, college or training establishment accredited to train valuers. They must have worked continuously in valuation for at least 3 years and possess a certificate to this effect issued by the Ministry of Finance (a foreigner may have a professional valuation certificate issued by competent foreign organizations). They must not belong to a group prohibited from registering for practice as valuers. They must have registered to practice as valuers and be recognized by Ministry of Finance as such. They must be prepared to take responsibility in law and to the director of the valuation enterprise for the result of the valuation and his/her comments in the valuation report. (Article 17 of Decree No 170/2003/ND-CP of 25th December 2003, Articles 16, 17 and 19 of Decree No 101/2005/ND-CP of 3rd August 2005 and Article V of the Circular No 17/2006/TT-BTC of 13th March 2006 on the implementation of Decree No 101/2005/ND-CP).
- On 29th June 2006, the Vietnamese National Assembly adopted the Law on Real Estate Business. According to the Law, market-based land valuation activities are regulated by the land and buildings property business legislation. Enterprises or cooperatives having at least two persons with a property valuation certificate may be permitted to register as property valuation services. At their request, individuals can be issued with a certificate of property valuation if they have completed a college level education; possess a certificate of training in property valuation (as stipulated by Ministry of Construction); are not working for State sector; have full citizenship rights; and are not subject to the group prohibited from providing property valuation services.

The result of a property valuation is the issuance of a certificate of land and buildings valuation which includes the address, location, designation, type and current status of the property, the date of the valuation and the price the property is valued at.

(Articles 8 and 52 of the Law on Property Business No 63/2006/QH11 of 29/06/2006, Article 15 of Decree No 153/2007/ND-CP of 15/10/2007 detailing, stipulating and instructing upon the implementation of the Law on Real estate Business).
- The Vietnam Valuation Association (VVA) was established on 24/05/2006. The Vietnam Valuation Association is a member of the World Association of Valuation Organizations (WAVO), the International Valuation Standards Committee (IVSC) and the Asean Valuation Association (AVA). The association is permitted by the Ministry of Finance to organize training courses for valuers and to issue training certificates. Persons having a training certificate may register for the valuer practice examination held by Ministry of Finance. Currently, every valuation management activity in Vietnam is performed by the Price Management Department of the Ministry of Finance.
- During the period from April 2005 to December 2008, the Ministry of Finance issued 12 national standards on valuation, as follows:
 - > Standard No. 01: The market price as the basis for assets valuation;
 - > Standard No. 02: The non-market price as the basis for assets valuation;
 - > Standard No. 03: Codes of ethics in assets valuation;

- > Standard No. 04: Report on results, documents and certificates of assets valuation;
 - > Standard No. 05: The process of assets valuation;
 - > Standard No. 06: Economic principles governing assets valuation;
 - > Standard No. 07: The Comparison method;
 - > Standard No. 08: The Expenditure method;
 - > Standard No. 09: The Income method;
 - > Standard No. 10: The Residual method;
 - > Standard No. 11: The Profit method;
 - > Standard No. 12: Classification of assets.
- The process of valuation should be carried out systematically according to the valuation standards approved by Ministry of Finance as in the chart below at figure 2.

Figure 2: Description of the valuation process



Analyzing the information

1. Analyze information from the field survey on the property.
2. Analyze the market features of the property to be valued, including: (a) the characteristics of current market stakeholders and quantity of potential buyers; (b) the demand and supply trend of the market and its impact on the price of property.
3. Analyze the customers, including: (a) the characteristics of potential customers; (b) the pastimes of customers; (c) their demand for and purchasing power to acquire properties.
4. Analyze the optimal use of the property, including: (a) the use which will attract the highest value for the property in the current natural, legal and financial context; (b) evaluating the current and future use of the property; the usefulness of the property and any disadvantages in using the property; the capacity for creating income from using the property, the risks, the capitalized value and any additional expenses that will arise when the property is used for the most valuable purpose.



Determining the value of the property

1. The valuer will suggest methods that could be applied to determine the value of the property to be valued; analyze the suggested methods and select the most suitable method for valuation.
2. The valuer must specify in the valuation report which valuation method was used as the primary basis for the valuation and which methods were used for checking and finally deciding upon the value of the property.



Preparing the Valuation Report and Certificate of Valuation

1. The report on the results of the valuation must include valid information, be descriptive and be based on specific evidence to decide upon the price of the valued assets. It must also clearly explain all the factors affecting value of the assets.
2. The Certificate of Valuation is a document designed by the valuation company to inform customers or third parties of the basic result of the valuation of the assets.

- Currently, the Valuation Centers of the Ministry of Finance and the Department of Finance of provinces are the main suppliers of land and property valuation services and are trusted by state agencies as well as by the people requiring valuations in the market. According to the Director of the Southern Valuation Center of the Ministry of Finance, the most pressing problem at present is that there is no data on the prices of land use right transfers in the market. This makes it impossible to establish a database of land prices. The Center has established own database of land prices by archiving the results of land valuation that have been carried out by the valuers of the Center and collecting the offer prices of properties on estate transaction floors (and deducting 5%-10%).

The professional competence of the valuers meets market demand. About 70% of the work undertaken by the Center is property valuation for the calculation of compensation when land is recovered by the State in Ho Chi Minh City. About 70%-80% of the valuation results are accepted during the appraisal process made by the Department of Finance of Ho Chi Minh City. The other 30% of the work of the Center is concerned with:

- > property valuation undertaken at the request of banks (valuation for the mortgage of properties) and by customers in the process of purchase, sale or merger of enterprises;
- > for transforming state-owned companies into joint stock companies;

- > for the courts in the process of investigation, trial and sentencing;
- > for the process of liquidizing State's assets;
- > by the land management agencies for deciding upon requests for a change of land use purpose or changing from the land allocation by the State to land lease by the State; or
- > by people who require demonstration of financial capacity; etc.

2.2.3. Comments on the current legal regulations on property valuation for compensation, support and resettlement when land is recovered by the State

- Prior to 2009, the Government assigned the Ministry of Finance with all duties related to the management of land valuation including developing the State's system of land pricing as well as land valuation services for market needs. Since 2009, the Ministry of Natural Resources and Environment has been assigned with the duty of managing the State's system of land pricing and Ministry of Finance with managing land valuation services for market needs.
- The current legislation has relatively specific instructions on investigating and surveying the market price of land to produce the annual land pricing list that is approved and published by Provincial People's Committees. If these regulations are implemented fully, correctly and objectively, the land prices stipulated by the State will be in line with the market prices of land under normal conditions. If a difference in land prices is approved by Provincial People's Committees and is established in the market, the main reasons are that the investigation and survey of the market price of land was not carried out properly or that it was due to subjective decision making by provincial leaders.
- The legal framework on market-based land valuation services has been established but there is still overlap between the regulations of the Ordinance on Prices (managed by Ministry of Finance) and property valuation services (including land valuation) of the Law on Real Estate Business (managed by Ministry of Construction). This difference is in the regulations on the conditions for by which companies supply land valuation services and the conditions for individuals to receive the certificate of land valuation practice.
- There are no regulations compelling local areas to use land valuation services to decide reasonable land prices for the calculation of compensation, support and resettlement when land is recovered by the State. In the current process the land price is suggested by the organization in charge of implementing compensation, support and resettlement. The appraisal of the land price is also undertaken by the agency of natural resources and environment in cooperation with other agencies of People's Committee. The current legislation has no specific regulations compelling local areas to establish a valuation board with competent members with a high level of professional expertise from different fields (e.g. scientific academics, member of the valuers association, valuation service enterprises, etc.).
- The current legal system also has no regulations on the technical standards for assessing the quality of land valuation services; no mechanism for deciding cases where there are disputes about the result of the valuation process; and no room for contributions from the land valuers association.
- The Government stipulates 4 methods of land valuation under Decree No 188/2004/ND-CP and Decree No 123/2007/ND-CP, namely the direct comparison, income, discount and residual methods, but valuation standards suggest 5 methods, excluding the discount method but including an expenditure method and a profit method. This shows that the method of valuation is a dynamic factor depending on the development of science and technologies and on market demand as well. It would therefore be more appropriate if the Vietnam Valuation Association was assigned with the task of preparing the valuation standards and accepting applicable methods of valuation.
- Determining land prices to calculate compensation, support and resettlement is a very complicated issue and depends not only on the economic value of land but also on the social, human and cultural characteristics of the country, the nation and its people. Some values not belonging to the economic value of land have been mentioned in the previous study on "Improving land acquisition and voluntary

land conversion in Vietnam”. In Vietnam, as well as in other Asian countries, there are cultural customs relating to land which are not for economic purposes. In Vietnam, these include “each person should have his/her own land as the biggest asset left for the next generation of the family”, or “land for establishing a temple for the forefathers of the family or a branch of the family is spiritual and considered to be invaluable”. The cultural and human values of land are not mentioned in the land legislation system concerning compensation, support and resettlement when land is recovered by the State. In order to improve the current land legislation system separate studies on the social, human and cultural values of land are necessary.

- In the land legislation of Vietnam the calculation of compensation and support for people subject to agricultural land recovery by the State is made on the basis of a very complicated mechanism in which the value of support is much higher than the value of compensation. This problem is more complicated when the agricultural lands to be recovered are located in rural residential areas, urban areas, or land recovery is to implement housing development projects and urban peripheral area development projects. The problem arises from the difference between current value and expected value in the future and the mechanism of sharing this difference in value. This problem can be solved by using valuation techniques, the mechanism of sharing interests and the publication of transparent information about the investment projects which brought about the land conversion.
- A summary of the development of the legislative system for land valuation for calculating compensation, support and resettlement is presented below:

Period	Scope of the mechanism of land recovery by the State	Principle of land valuation	Method of land valuation	Practical implementation of land legislation
1988 - 1993	<ul style="list-style-type: none"> • All investment projects including those for commercial purposes when state agencies deem them a reasonable purpose for the use of the land 	<ul style="list-style-type: none"> • Land has no value and no price 		<ul style="list-style-type: none"> • Investment projects focused mainly on buildings for State use.
1993 - 2004	<ul style="list-style-type: none"> • All investment projects including those for commercial purposes • Land Law stipulates that land recovery by the State only applies to projects for national and public interest, national defense and security, but the Government extends it to economic development projects arguing that economic development is also in the national interest. In addition, the Land Law states that investors have no right to receive land transferred from households and individuals, so it is only possible to apply compulsory land recovery by the State for land conversion. 	<ul style="list-style-type: none"> • Land has a price determined by the State. • The Government determines the land prices framework. Provincial People’s Committees stipulate the land price list within the ceiling and floor prices stipulated by the Government. • Based on the market price of land, the Government stipulates the coefficient by which land prices are multiplied to provide a more suitable price of land. 	<ul style="list-style-type: none"> • Before 1998, the legal system did not stipulate methods of land valuation. • Since April 1998, the Ministry of Finance has stipulated 2 methods of land valuation for the calculation of compensation, support and resettlement. The income method is applied to valuation of agriculture land and the comparison method to valuation of non-agriculture land. 	<ul style="list-style-type: none"> • Land prices determined by the State are normally 10%-20% of the market price of land. • Although Government stipulated adjustment of the price framework by the coefficient to align with the market price of land, market prices of land experience 2 “price bubbles” during 1992-1993 and 2002-2003. Each “bubble” increased land prices by nearly 10 times in big cities so that the land price determined by the Government was always much lower than the market price.

Period	Scope of the mechanism of land recovery by the State	Principle of land valuation	Method of land valuation	Practical implementation of land legislation
2004 - present	<ul style="list-style-type: none"> Land Law stipulates there are 2 measures for land conversion: (1) land recovery by the State; (2) direct agreement between the investors and the current land users through land transfer, lease or contribution as capital (since law permits domestic investors to receive land through land user right transfer from households and individuals). The land recovery mechanism is applied to investment projects for national and public interest, national defense and security and economic development projects in following cases: (1) investment projects for infrastructure development for common use; (2) 100% foreign investment projects (ODA and FDI); (3) investment projects with big capital (group A). The mechanism of agreement between investors and the current land users is applied in cases where it is not permitted to apply the land recovery by the State, or land recovery is permitted but the investors voluntarily request to apply the mutual agreement mechanism. 	<ul style="list-style-type: none"> Land prices determined by the State must align with market prices of land under normal conditions. Land price is the same for neighboring land parcels with similar natural, economic, social, infrastructure conditions, current purpose of use and planned purpose of use. Lands located between provinces and have similar conditions have the same price. Before 2009, all tasks of land valuation management are assigned to the Ministry of Finance. After 2009, the Ministry of Natural Resources and Environment is assigned to manage land valuation to establish the State's prices of land and the Ministry of Finance is assigned to manage land valuation services in the market. After 2006, the Ministry of Construction is assigned to manage property valuation (including land valuation). 	<ul style="list-style-type: none"> Before 2007, the Government stipulated 2 methods of land valuation: comparison and income methods After 2007, the Government stipulates 2 further methods of land valuation supplementing the comparison method with the discount and residual methods. Land prices applied to compensation, support and resettlement have to be aligned market prices, but legal system has not stipulated the specific process or procedure to do it. 	<ul style="list-style-type: none"> Land prices stipulated by the Government (including the land price framework of the Government and land price list stipulated by Provincial People's Committees) are still lower than market prices - normally 40%-70%. This gap is much bigger for residential land in big cities. Each province has its own process for determining land prices for the calculation of compensation, support and resettlement. Most are based on administrative decision-making. In Ho Chi Minh city there is a regulation requiring the use of land valuation services provided by valuation service enterprises before the competent authorities of the State appraise and decide. Compensation for agricultural land is increasingly improved but many people whose land is recovered are still not satisfied with the compensation for agricultural land in residential areas and for non-agricultural land.

3. ANALYSIS OF INTERNATIONAL EXPERIENCE IN LAND VALUATION

Land valuation has a relatively long worldwide history and has developed over time in theory, practice, legal frameworks and in the scale of its implementation in organizations. In most developed and industrialized countries, the demand for land valuation through market pricing is well established in all financial relationships related to land between the State and land users and in all transactions among land users themselves. In these countries, property valuation services are established by law and comprise of highly competent valuers who bring efficiency to land management and the development of property market. To study the complete system of policies and laws on determining land prices for compensation, support and resettlement, it is necessary gather the experience of land valuation in some typical countries.

3.1. Land valuation applicable to compensation in the case of compulsory land acquisition in Australia³³

Main legal regulations on compulsory land acquisition to implement projects in the public interest. Unlike many British Commonwealth countries and the UK itself, the Federal and State Governments control 72% of the land in Australia, aboriginals 13% and only 15% is held in private freehold (full ownership). Many areas of land are held under leasehold arrangements from the Federal or State Governments and the terms of these leases are sometimes for 999 years, allowing the land holder to basically enjoy rights similar to full ownership. These special characteristics of land ownership in Australia are therefore similar to the land system in Vietnam.

In Australia, the legal framework for compulsory land acquisition for public purposes is established in law and applies to all the Commonwealth States of Australia. It is enacted into law in each state and government organizations implement its detailed procedures. The general principle is firstly to negotiate and agree on a price. Only if no agreement can be reached between the competent organization and the landowner is compulsory land acquisition or ‘compulsory purchase’ considered.

The Federal Land Acquisition Law specifically stipulates the cases in which land can be classified as being used for public purposes and where the system of compulsory land acquisition and calculation of compensation for people losing land can be used. Main provisions of the law include: (i) it is necessary to compensate fully and properly for assets that are compulsorily acquired; (ii) in cases of disagreement which need to be decided by the competent authority (mainly where the two parties fail to agree on the level of compensation) the use of an independent arbitrator is preferable rather than using the court system; (iii) the agency making the decision must be objective and not biased towards the interests of any party; (iv) the rights of the claims of both parties is equal before a decision is made by the competent authority. In fact, the person losing land is always dissatisfied with the compensation, which is calculated simply according to the current land market price. Other claims may be considered such as losses due to unemployment, loss of business profit, loss of business opportunity and travel costs.

In legislation on land in the Australian States, the term ‘Recovery of land by the State’ is used instead of the term ‘Compulsory land acquisition’. When the State Government decides to apply the mechanism of compulsory land acquisition, it may be understood as the recovery of previous ownership of the State. The States also have specific regulations on the cases that do not attract compensation when the Government recovers land. For example, in Western Australia the Public Works Act stipulates that there is no compensation if the land has not been presented, given or leased by the State. The States have specific regulations on the mechanism of land recovery by the State and compensation for the person whose land is compulsorily recovered. This again is similar to the Vietnamese situation. The procedures for implementing the compulsory land acquisition are:

- The responsible Minister sends an official letter to invite the land owner to discuss the selling of their land to the Government.
- When the discussion does not result in agreement, the compulsory land acquisition system is brought into operation by announcing in the official gazette of the State Government that the Government will use the land for a public purpose.
- The land then belongs to the government organization competent to use the land and the former land owner starts to implement the procedures for claiming compensation.
- The procedures of valuing the land at market prices and calculating other damages for the former landowner are carried out;
- If the former land owner does not agree to the suggested compensation, it is possible to refer the case to an arbitrator or the courts to solve.

Therefore, in the legal system of Australia, the land acquisition to use for public purposes is determined by the Government. The former landowner must transfer the right to the land immediately after the decision is announced. The problem that needs to be solved and may result in many disputes is the compensation for every possible loss of former landowner. It is not easy to solve disputes for compensation but it is also impossible to extend the handing over of the land since the time period is determined by law and on a final decision by the courts. In fact, the objectivity in determining the compensation and the authenticity in the decision of the court play a very important role in ensuring that the law is enforced.

Australia has a highly developed market economy and industry and services account for large proportion of GDP. Agriculture and farming are primarily large-scale farms with a very high level of mechanization. The economy of Australia became integrated to a high degree during the globalization process and its products account for a high proportion of exports. Australian people have a high educational standard and a good awareness of the law. In terms of land management and land valuation, Australia is amongst the highest levels in the world. Land valuation in Australia has is well developed in theory and practice as is the development and organization of it system of management. The theory of land valuation applied in Australia is established in a perfect land market including all the factors affecting land prices such as the supply and demand relationship, level of infrastructure and the psychology of land users. Information on land prices for all areas is regularly updated and published in the market. Land prices and property prices are determined by valuers against the market price and are acceptable to everyone.

Each State of Australia has a Land Management Department and a Valuation Department. Five years ago, these Departments were administrative agencies of the State. Then they were gradually converted into public service agencies carrying out land registration services and land valuation services as required by the Government as well as the market.

From the experience in land valuation to act as a basis for compensation and resettlement in Australia, some conclusions can be drawn to apply to Vietnam:

- The participation of the land valuation services in the process of calculating compensation, support and resettlement is very necessary in order to increase objectivity in determining the land price.
- The assignment of the final decision on the land price to an organization that is not under administrative system to ensure objectivity in determining land prices is very necessary.
- In parallel with the process of completing the legal framework and the operating procedures, it is necessary to improve the quality of land valuation services and public awareness of land valuation.

3.2. Land valuation in Taiwan, China^{34,35}

Taiwan (China) has produced great achievements in implementing land reform and building a land management system. In land ownership, the approach of Taiwan is similar to Vietnam but with different ways of expressing them. Article 143 of the Constitution of Taiwan declares that “All land within the territory of the Republic of China (Taiwan) shall belong to the whole body of citizens. Private ownership of land, acquired by the people in accordance with law, shall be protected and restricted by law. Privately-owned land shall be subject to taxation according to its value, and the Government may buy such land according to its value”. Therefore, private ownership of land in Taiwan is a special form of ownership, specifically stipulated by law but under the ownership of the people. The value of land is accurately determined to decide tax which the landowner must pay to the Government, as well as to determine the land price when the Government wants to purchase the land.

The Land Acquisition Act in Taiwan (effective from 2000) stipulates that “land and buildings are separately valued and compensated. Land that is compulsorily taken shall be compensated by its announced current land value at the time when taking is exercised (Article 30). Compensation for buildings is based on their replacement cost, and the cost shall be stipulated by the local authority where the properties are located (Article 31). Moreover, compensation amounts are pre-determined prior to expropriation.

According to the Land Right Equalization Act, the local authority has the responsibility to undertake regular surveys to determine land prices and display these in a map of land price zones. The Office of Land Valuation has the responsibility to assist the local authority to collect information on land prices, recommend land prices and produce the map of land price zones for local authority consideration. The results of the survey and recommendations on land prices are submitted to a land valuation committee for approval. The land values approved or revised by this committee are announced annually on 1st January. The land valuation committee is established by the local authority (city or county) and is responsible “to review, approve and arbitrate upon the results of valuation undertaken by the local authority associated with valuation zones, land readjustment and zone expropriation, expropriation compensation and other relevant valuation matters”. The Act stipulates that the land valuation committee should consist of 17 members headed by the city (county) mayor or deputy-mayor and other members selected from amongst local politicians, academics, real estate professionals (appraisers, architects, agents, developers etc.), banking industry representatives, and officials from department of land administration, public finance, public works, urban planning, agriculture and revenue service, etc. The term of the committee’s membership is 3 years.

In general, land prices annually announced by above mentioned committees are lower than the market price of the land; on average equal to 71.36%, to 87.2%, according to the results of an assessment in 2006. When reviewing specific compensation cases, the local authority recommends a rate of increase in the land price announced annually which is compliant with the market price for the land valuation committee to decide.

Legal regulations on the system of land acquisition for public purposes, annual land valuation and adjustment of increases in land prices to calculate compensation have similarities to the Land Law in Vietnam. The most important difference is that the authority competent to decide on land prices and compensation is a

land valuation committee which includes many members; not an administrative agency. It should also be noted that local areas at city or county level have an Office of Land Valuation that is specialized in land pricing to assist local leaders and is independent of the financial and land management agencies. Vietnam may consider the experiences of Taiwan to apply the system of assigning responsibility to decide market land prices and compensation to a land valuation committee.

3.3. Land valuation in the transitional countries in Eastern Europe^{36,37}

The transitional countries of Eastern Europe (the former socialist countries in Eastern Europe) have relatively similar conditions. Not only are they transiting from a planned economy to a market economy, but they are also transiting from socialist to capitalist political institutions. All of these countries have developed and adopted new Constitutions, which include private ownership of land. The Russian Federation adopted its Constitution in 1993 (affirming the State must protect the private ownership of assets) and adopted a Civil Code in 1994 (Chapter 17 of which includes the system of compulsory land acquisition). However, a Land Code has not been adopted by the Duma (the issue of land is only regulated according to Decrees and Orders of the President). Rumania adopted its new Constitution in 1992 (affirming that the State accepts the private ownership of assets) and Law on Compulsory Land Sales in 1994; The Civil Code was adopted in 2005. Poland adopted its Constitution in 1997, which stipulates the systems of compulsory land acquisition for public purpose and compensation for these losing their land. European countries have also adopted the European Convention on Human Rights, which includes the principle of the protection of ownership.

All the transitional countries of Eastern Europe accept the private ownership of land on the basis of proper compliance with the law and protection by the constitution. The process of privatizing land from public ownership to private ownership by payment to the State takes place in parallel with the process of compulsory land acquisition with compensation by the State. The process of compulsory land acquisition by the State must be implemented fairly, legitimately, transparently, accountably and with the participation of the community. These principles are compliant with the European Convention of Human Rights.

The right to compulsory land acquisition is only implemented when the authorities at all levels (from central level to commune level) agree that they need to use the land for public purposes. It is prohibited to use this right to acquire land for commercial purposes. Compensation may be calculated in cash or in kind with equivalent value. Things in kind is normally property acceptable to the party receiving compensation. Compensation is reviewed not only for the landowner and land user but also for people with other relationships to the land. Land prices for compensation are determined by the valuer according to comparative prices when purchasing or selling other similar land. The person whose land is acquired by the State has a right to give his/her opinions as well as having the right not to accept the conditions and compensation given by the authority. If no agreement is reached, the person whose land is to be acquired has the right to start proceedings in the courts. The landowner has the right to submit evidence for determining the land price and the valuer's request to the Experts Commission of the Valuation Association to make a decision based upon it.

The Valuation Association has the responsibility to guarantee the information infrastructure, the methods used and the basis supporting valuation practice. They also train professional valuers in accordance with the International Valuation Standards. Valuation Associations play a very important role in the process of valuing property to calculate compensation. Most of the countries had established Valuation Associations by 1991 or 1992. In Rumania, the Valuation Association ANEVAR was established in 1992 with 6,500 members (including 2,800 property valuers and over 150 companies supplying valuation services). In Hungary, the Property Association was established in 1991 with 550 members, including 110 individuals and 330 valuation companies. The Valuation Association of the Russian Federation was established in 1991 with members who are valuers and companies supplying valuation services. All these valuation

associations were established with the objective of guaranteeing professional valuation compliant with International Valuation Standards.

In the transitional countries in Eastern Europe, the most discussed valuation issues are:

- Compensation is the equivalent or reasonable value, especially if it is impossible to determine the market price of the land;
- Valuation lacks an information infrastructure, it is not compliant with the International Valuation Standards and lacks comparative prices in the market, the qualification of valuers still has shortcomings;
- In settling people's complaints on compensation through the courts, neutrality is not guaranteed between the State and individual interests and is regularly biased towards the State's interests.

Some countries, such as Poland, have focused on solving the system of compensation valuation when it is impossible to determine prices in line with market prices. In this case, people normally check the buying price with its equivalent. Implementation costs are therefore certainly bigger than when having sufficient bases of comparison for determination of the market price. Vietnam and Eastern European countries have transitional economies with similar conditions in the process of transiting from a planned to a market economy. Vietnam can learn from their experiences to build a system of valuation services compliant with a market economy and aligned to International Valuation Standards. During this process, the valuation association of each country plays a very important role in assisting the competent authorities to determine the price of land and settle disputes over land prices for compensation. On the other hand, the association also plays a key role in developing the profession, developing an information infrastructure to serve valuation and training and developing professional competence in valuation to International Valuation Standards.

3.4. Land valuation in Thailand³⁸

Thailand is a member of the Association of Southeast Asian Countries (ASEAN) and has a developed economy according to its investment grouping in the region. Property valuation services in Thailand have been provided for a long time and its history is closely connected with the development of the property market, but lacking professional standards. In Thailand, the current property valuers all believe that property valuation strongly develops after each economic crisis. In the final years of the 1980s, the financial crisis reduced property prices about six times. The results of a wrong valuation caused many property valuers to be arrested. The needs are to standardize the valuation process, complete a valuation database and undertake advanced training for valuers. In 1997, when a new financial crisis began in Southeast Asia, Thailand was the most seriously affected. Once again, the financial crisis compelled the Thai valuers to improve their professional standards and abilities.

The Valuers Association of Thailand (VAT) was established in 1993. It immediately published professional guidance and valuation standards on the basis of guidance from the International Valuation Standards Committee (IVSC) and the experience of some countries' valuation associations. At first, the valuation standards concentrated on nine key problems: (i) Valuers; (ii) Classification of property; (iii) Principles of preparation for the process of property valuation; (iv) Property valuation standards; (v) Standard format of valuation summary; (vi) Minimum information required for preparing property valuations; (vii) Definitions and guidance notes for open market value and other bases of market valuation; (viii) Conditions of engagement; (ix) Code of professional ethics.

In 1997, the Valuers Association of Thailand further developed its organizational structure and released some new standards and improved some old ones: (i) Standard professional practice must follow internationally-accepted standards; (ii) Confidentiality, integrity, neutrality and contribution to the development of the

profession are amongst the codes of professional ethics of valuers; (iii) The Sub-committee on Valuation Standards and Ethics was established in order to strictly enforce this issue; (iv) The guilty members will be put on warning, temporarily lose membership or permanently lose membership; (v) Appeals can be submitted to the Executive Committee of the Valuers Association of Thailand.

The ASEAN Valuers Association (AVA) was established in 1981 by five countries namely, Singapore, Malaysia, Thailand, Indonesia and the Philippines and then further admitted Vietnam and Brunei. The Association also issues the common valuation standard for ASEAN countries. In 2002, the Thailand Valuers Association decided to apply the ASEAN valuation standards in Thailand. From the valuation development process of Thailand, we can draw three important elements that need to be guaranteed: (i) the qualification and ethics of valuers; (ii) the necessary data for valuation; (iii) a reasonable legal framework for valuation.

The Valuers of Thailand have recommended four necessities for the development of valuation in Vietnam:

- It is necessary to encourage individual valuers because they are the nucleus of valuation service suppliers and they need to be qualified and have professional ethics;
- It is necessary to establish some valuation associations and other related organizations in Vietnam such as an association of independent appraisers (a professional association); an association of valuation firms (a trade association); some associations of specialized valuers (tangible assets, review appraisers); a unified labour union of appraisers in valuation firms; and some foundations for the development of valuation profession. It is also necessary to develop a reasonable legal framework for the operation of the associations;
- It is necessary to establish a National Valuation Council, or Local Valuation Councils, that include representatives of the government agencies in charge of managing the valuation (Ministry of Finance, State's Bank, etc.), representatives of organizations operating in the public area, representatives of academicians and senior valuers, representatives of firms supplying valuation services and representatives of other related associations such as developers, contractors, financiers, etc.
- It is necessary to establish a property information centre that must be computerized on a nationwide basis and be provided on line for valuers' use. The verification of land title certificates at the office of the related department must be facilitated and road proposals of different authorities incorporated.

The above recommendations can be considered as the experience that Vietnam has gained from the process of developing valuation in Thailand as well as in other ASEAN countries.

4. RESULTS OF THE CASE STUDY ON THE SOCIO-ECONOMIC EFFECTIVENESS OF COMPENSATION CALCULATED ON MARKET PRICES

4.1. Introduction to the case study

In the period from March to May 2010, the Institute of Sociology of the Vietnam Academy of Social Science carried out a case study on the socio-economic effectiveness of compensation calculated on the market price of land in three local areas at provincial level. Hanoi, Ho Chi Minh City (HCMC) and Dak Lak were originally selected for the study. However, Hanoi City requested the study be postponed to the end of the year. Bac Ninh was therefore selected in its place as this is a neighboring province of Hanoi and has a relatively high degree of urbanization.

The number of projects funded by the government where compensation was paid at market price in the surveyed provinces was not many to be selected for the survey. Amongst the six selected projects, only Binh Loi-Tan Son Nhat project in HCMC and Buon Me Thuot Market project in Dak Lak had applied the market price for compensation (these projects were the first in these provinces where market prices were applied to compensation). Additionally, the Binh Loi-Tan Son Nhat project had the largest number of affected people but at the time of survey only 2 out of 4 districts had completed their compensation payments. This limits the validity of the results of the survey.

In each province, 1 or 2 districts were selected and in each selected district, 1 to 4 communes were selected for the study. The actual areas selected for the case study are set out in Table 1. The objective of the study was to obtain comments from people involved with or affected by land recovery undertaken for the

Table 1: Surveyed areas and the number of surveys undertaken

Province/City	District	Communes/Wards	Frequency	%
Dak Lak	Buon Me Thuot city	Hoa Thuan	54	9
		Tan Tien	11	1.8
		Thong Nhat	72	12
		Tu An	34	5.7
Ho Chi Minh City	Binh Thanh	Ward 11	86	14.3
		Ward 13	75	12.5
	Thu Duc	Hiep Binh Chanh	49	8.2
Bac Ninh	Que Vo	Bong Lai	86	14.3
		Bac Ninh city	Vu Ninh	74
		Linh Dong	2	0.3
		Van An	57	9.5
Total			600	100

implementation of public works construction projects. The people interviewed included officials from the administration at all levels, enterprises who implemented the project and people subject to land recovery who received compensation, support and resettlement.

The study was implemented in two ways. The first was to use a sociological survey by questionnaire. The second was to undertake in-depth interviews to collect comments by theme. The survey questionnaire was administered to 600 people. Amongst the six selected projects, HCMC had the largest number of affected households, but at the time of the survey many of them had moved out of the project area without leaving a forwarding address, so they could not be included in the survey sample. This resulted in a limitation in the satisfactory assessment of different groups in the study results.

These 600 respondents were structured in terms of sex, age, education level and profession as follows:

- Sex: male – 283 respondents (47.2%), female – 317 respondents (52.8%).
- Age: under 35 – 61 respondents (10.2%), between 36 and 45 – 151 respondents (25.2%), between 46 and 60 – 316 respondents (52.6%) and over 60 – 72 respondents (12.0%).
- Education level: primary school – 126 respondents (21.0%), lower secondary school – 265 respondents (44.2%), upper secondary school – 143 respondents (23.8%), vocational training – 49 respondents (8.2%) and tertiary education – 17 respondents (2.9%).
- Profession: waged employee – 106 respondents (17.7%), agricultural workers – 275 respondents (45.8%), service and business – 152 respondents (25.3%) and not working – 66 respondents (11.2%).

The in-depth interview was implemented in two ways: group discussions with people subject to land recovery and individual interviews with officials from the administration. The study group carried out group discussions with 8 groups of people affected by land recovery and interviewed 32 officials in different jobs. The groups of officials who participated in the interviews are detailed in Table 2.

In the surveyed areas, there were 294 cases subject to the recovery of agriculture land, 315 cases subject to the recovery of residential land and 8 cases subject to the recovery of non-agriculture and non-residential land amongst the total of 600 cases subject to land recovery. There were 17 cases subject to recovery of different categories of land. Out of 294 cases subject to recovery of agriculture land, 167 cases had to demolish their orchards and their crops. Out of 315 cases subject to the recovery of residential land, 78 cases were subject to partial demolition of their houses and 255 cases were subject to total demolition of

Table 2: List of officials participating in the interviews on land recovery, compensation, support and resettlement

No.	Position	Quantity
1	Officials of Provincial People’s Committee	1
2	Leaders of the provincial Department of Natural Resources and Environment	3
3	Officials of the provincial Department of Natural Resources and Environment	5
4	Leaders of the district Division of Natural Resources and Environment	2
5	Experts of the provincial Department of Finance	1
6	Experts of the Provincial Committee for compensation, support and resettlement	3
7	Experts of the District Committee for compensation, support and resettlement	3
8	Leaders of Communal People’s Committees	6
9	Cadastral Officials of the Commune	8
Total		32

their houses. Of these, 240 cases were subject to resettlement. Among those people subject to the recovery of residential land and non-agriculture land, 40 cases had to demolish their non-agriculture trading and production premises and 9 cases had to remove tombs. The number of cases who lost their jobs both in agriculture and non-agriculture sectors was 66.

The survey related to: (1) assessment of the level of satisfaction of the land price in the calculation of compensation, support and resettlement; (2) assessment of the level of satisfaction towards the manner of implementing the land recovery, compensation, support and resettlement; (3) assessment of the actual mechanism for land price determination in the local area; (4) assessment of the socio-economic effectiveness of an adequate land valuation to the market price.

4.2. Study results

4.2.1. The level of understanding of land pricing and the level of satisfaction of the land price applied for compensation for people subject to land recovery

In Vietnam, people subject to land recovery always feel that they receive lower compensation than that of the market. This arises from a lack of understanding of how the land value is calculated and a lack of information on current local land prices. Therefore, the survey on the awareness of people subject to land recovery is indispensable. When we know the awareness level, it is possible to propose measures to reduce complaints on land prices by explaining the scientific, legal and practical basis of the valuation techniques used and their relationship to market prices. The results of the survey on the level of awareness of land prices of people subject to land recovery are presented in table 3 below.

Table 3: Comments on the understanding of land prices

<i>Possible selling price of the recovered parcel of residential land before the project</i>		
	Number of comments	%
Know the price	168	53.3
Don't know the price	147	46.7
Total	315	100.0
<i>Possible selling price of the recovered parcel of agriculture land before the project</i>		
	Number of comments	%
Know the price	67	22.8
Don't know the price	227	77.2
Total	294	100.0
<i>Possible selling price of the recovered parcel of residential land after the recovery</i>		
	Number of comments	%
Know the price	127	40.3
Don't know the price	188	59.7
Total	315	100.0
<i>Possible selling price of the recovered parcel of agriculture land after the recovery</i>		
	Number of comments	%
Know the price	108	36.7
Don't know the price	186	63.3
Total	294	100.0

From the results in the Table 3, we can see that from 23% to 37% of those subject to recovery of agriculture land said that they knew the price of agriculture land. In terms of residential land, the number of people who knew about the land price is much higher, 40% to 53%.

The survey on the awareness of land prices concentrates on comments that assess the adequate level of land prices to calculate the compensation in comparison with the market price of land. The assessment covers the following answers: close to the market price, acceptable, a little bit lower than the market price, much lower than the market price, no idea about the market price. For residential land, of the total of 315 surveyed, only 216 people (69%) commented on the adequacy level of the price of the land, the remaining 99 people said that they didn't know. For agriculture land, 235 people answered the same question (accounting for 80%), 59 people said they didn't know. The results of the survey on the adequacy level of land prices applied to calculate the compensation, support and resettlement are set out in Tables 4 and 5.

Table 4: Comments that assess the adequacy level of land prices to define compensation in comparison with the market price of land

Residential land	Close to the market price	Acceptable	A bit lower than the market price	Much lower than the market price	Total of comments responded	Responding that they did not know	Total
Number of comments	5	13	23	175	216	99	315
% of total responses	2.3	6.0	10.6	81.0	100.0		
% of total surveyed	1.59	4.13	7.30	55.56	68.57	31.43	100.00

Agriculture land	Close to the market price	Acceptable	A bit lower than the market price	Much lower than the market price	Total of comments responded	Responding that they did not know	Total
Number of comments	3	11	22	199	235	59	294
% of total responses	1.3	4.7	9.4	84.7	100.0		
% of total surveyed	1.02	3.74	7.48	67.69	79.93	20.07	100.00

Table 5: Comments of people subject to land recovery on their satisfaction level on the land price for compensation

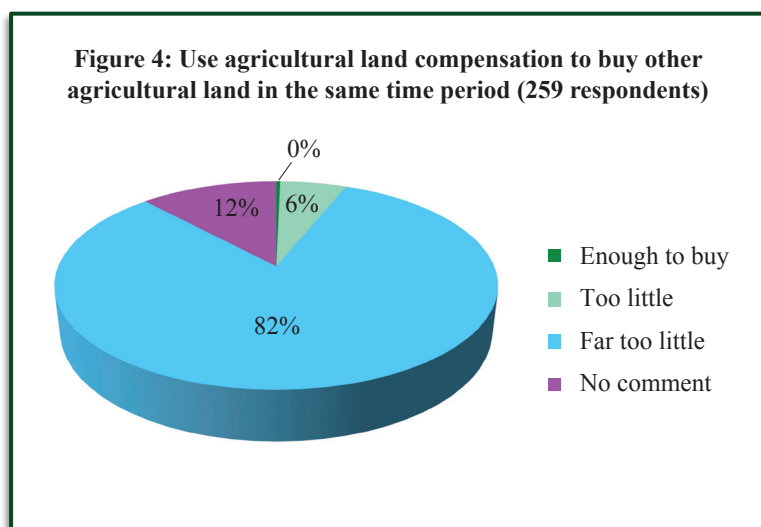
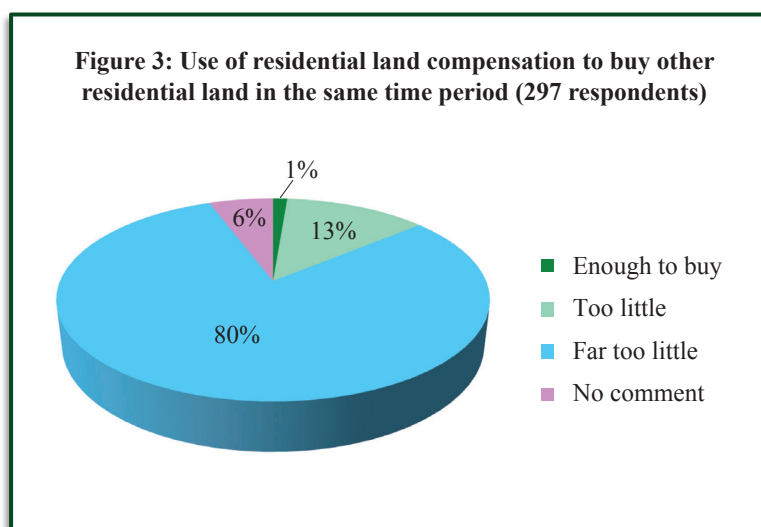
	Very satisfied	Satisfied	Acceptable	Dissatisfied	Very dissatisfied	Total comments	Responding that they did not know	Total
Number of comments	3	14	86	310	175	588	12	600
% of total responses	0.5	2.4	14.6	52.7	29.8	100.0		
% of total surveyed	0.5	2.3	14.3	51.7	29.2	98.0	2.0	100.0

As can be seen from the results in Table 3 and Table 4, the number of people saying that they knew the land price only makes up around 23% to 53% of the total number of people surveyed. However, the number of people giving their answers on whether the land price applied for compensation was adequate or not accounts for 70% to 80% of those surveyed. It is clear that a feeling of lack of compensation is always present even though they did not know about the land price in the market. Moreover, the number of

comments expressing the view that the land price which was applied was lower than the market price was from 81% to 85% of the total of comments received and from 56% to 68% of people surveyed.

Results in Table 5 show that almost all of the 600 people surveyed (only 12 people did not reply), 50% said that they were dissatisfied and nearly 30% said they felt very dissatisfied. Thus, over 80% people surveyed had some degree of dissatisfaction with the land price applied for compensation, support and resettlement. It may safely be concluded that **the land price level applied to calculate compensation, support and resettlement does not satisfy people subject to land recovery**. Maybe people subject to land recovery do not have knowledge of the land price in the market but their satisfaction level is self-evaluated through their use of the compensation received when they cannot receive an equivalent parcel of land at other location. The survey group also collected the comments of people subject to land recovery about this issue, the results of which are shown in Figure 3 and Figure 4.

According to the survey data shown in Figure 3 and Figure 4, over 80% of comments show that the compensation received was inadequate to be able to purchase a parcel of land similar to the recovered land.



4.2.2. Assessment of the level of satisfaction on the implementation of land recovery, compensation, support and resettlement

Apart from the dissatisfaction with the price of land used for calculating compensation, those surveyed were also dissatisfied with the administrative process. Answers to survey questions assessing the overall process of compensation, support and resettlement are shown in Table 6. Of the 600 people surveyed only two did not respond to these questions.

The survey group also asked the people who had been subject to land recovery about their level of satisfaction on each aspect of the process of land recovery, including: the amounts of compensation for their house and other property attached to the land; rehabilitation support; the procedure for payment of compensation and support; the place for resettlement; the support for livelihood restoration; the coordination work among institutions related to the compensation, support and resettlement; the monitoring compensation process; the amount of information available and consultation undertaken with affected people; and the inventory of property for compensation. The results of these questions are presented in Figures 5-13.

Table 6: Comments on the level of satisfaction of people subject to land recovery on the overall administrative process of compensation, support and resettlement

	Very satisfied	Satisfied	Acceptable	Dissatisfied	Very dissatisfied	Total responses	Responding that they do not know	Total
Number of comments	2	32	160	302	102	598	2	600
% of total responses	0.3	5.4	26.8	50.5	17.1	100.0		
% of total surveyed	0.3	5.3	26.7	50.3	17.0	99.7	0.3	100.0

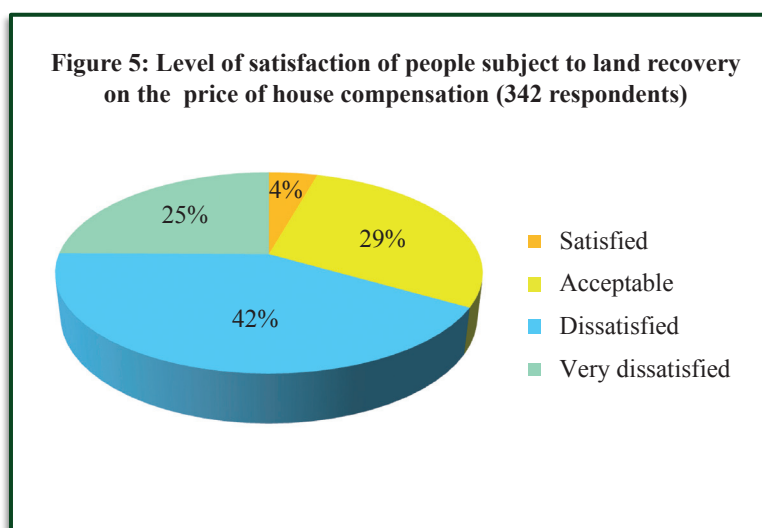


Figure 6: Level of satisfaction of people subject to land recovery on the level of support for rehabilitation (220 respondents)

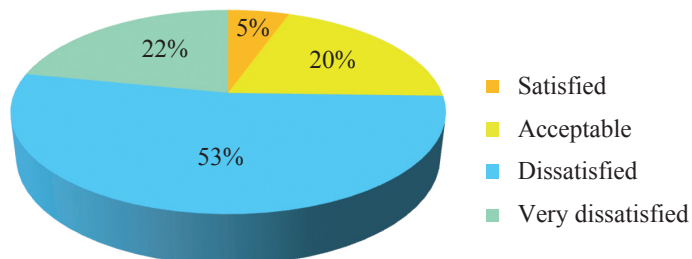


Figure 7: Level of satisfaction of people subject to land recovery on procedures for compensation and support payment (512 respondents)

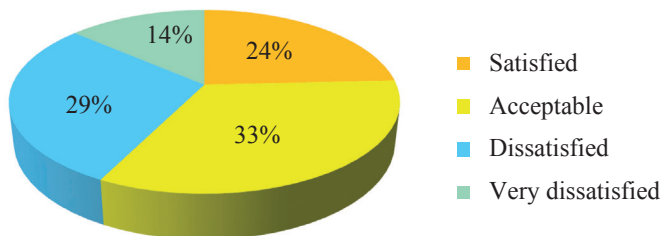


Figure 8: Level of satisfaction of people subject to land recovery on place of resettlement (183 respondents)

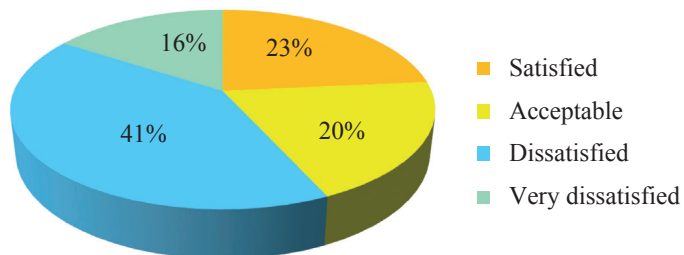


Figure 9: Level of satisfaction of people subject to land recovery on livelihoods restoration (214 respondents)

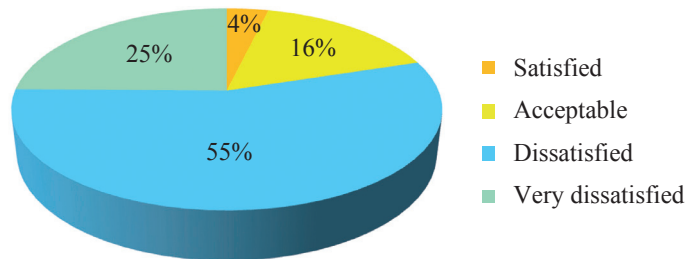


Figure 10: Level of satisfaction of people subject to land recovery on the coordination and implementation of compensation (307 respondents)

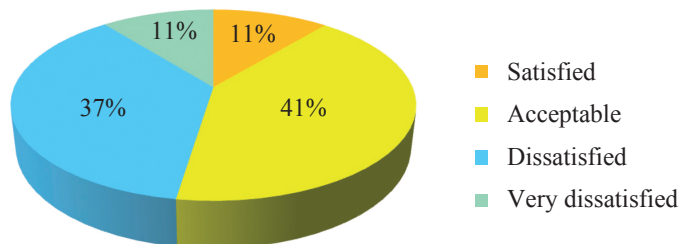
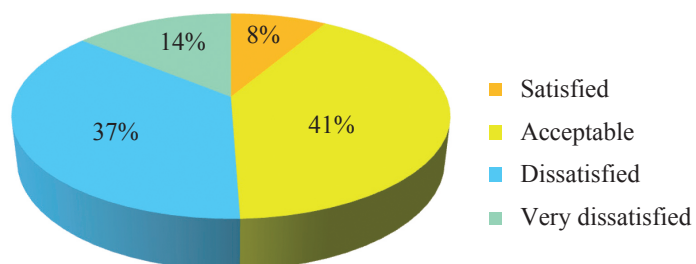
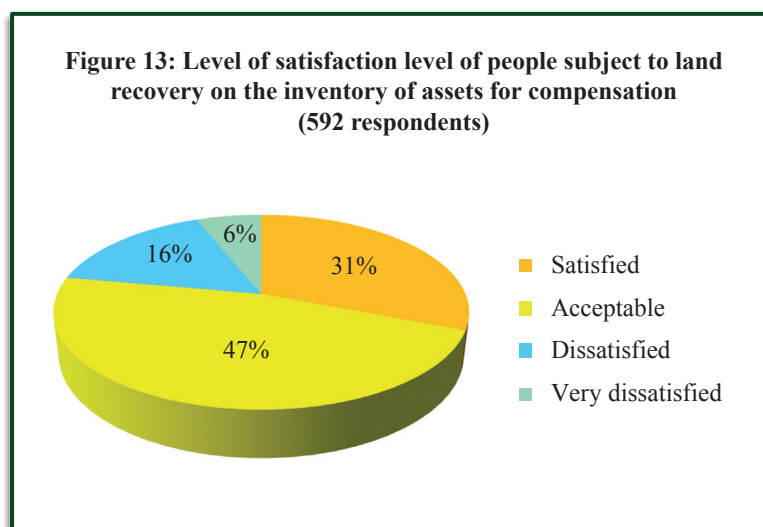
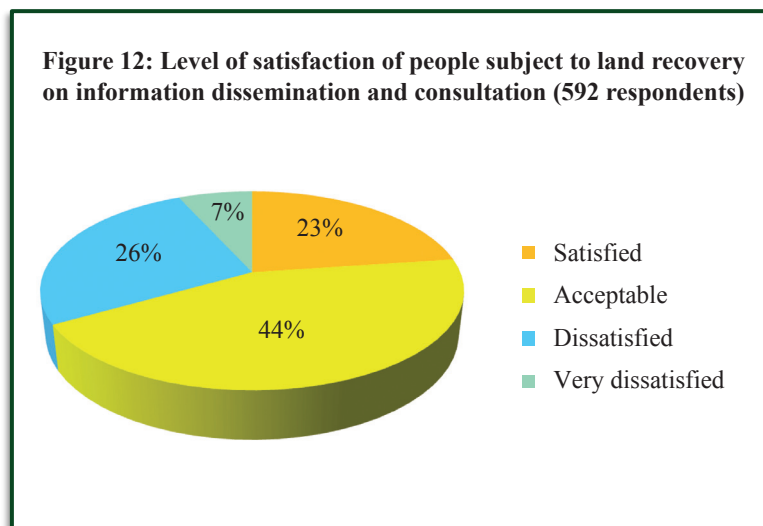


Figure 11: Level of satisfaction of people subject to land recovery on the monitoring of the implementation of their compensation (271 respondents)





Comments showing dissatisfaction (including those very dissatisfied) are relatively high: 43% on the procedure for payment of compensation and support; 48% on the coordination work among institutions related to the compensation, support and resettlement; 51% for the monitoring of the implementation of compensation, support and resettlement; 57% for the place of resettlement; 67% for the compensation price for property attached to the land; 75% for rehabilitation support and the highest percentage of 80% for the support for livelihoods restoration.

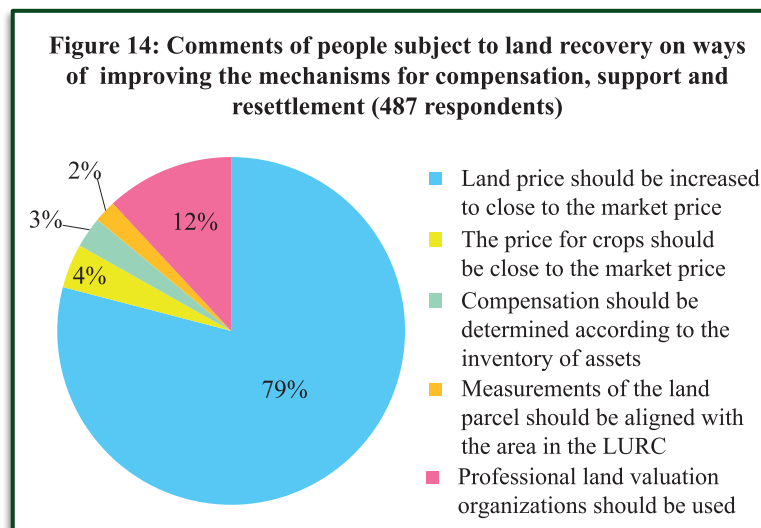
People in the local areas where the survey was carried out are dissatisfied more with the value of compensation, support received and place for resettlement, rehabilitation support and livelihoods restoration (60% to 80%) than they are with the process of implementation, coordination, supervision, information and consultation (22% to 51%).

4.2.3. Assessment of the current measure for land price determination at the local level

The survey clearly shows that the land price used to calculate compensation is still the most pressing problem in local areas. Over 80% of respondents showed dissatisfaction with the land price used to calculate

compensation. The issue is therefore to find an acceptable means to determine an adequate land price. The survey group collected the views of people subject to land recovery about their ideas to improve land recovery and compensation, support and resettlement. The ideas were concentrated on: (i) the land price should increase to be close to the market price; (ii) there should be professional land valuation organizations; (iii) the price for cultivated plants should be close to the market price; (iv) compensate should be according to the inventoried property; (v) the land survey should align with the area in the land rights certificate.

Detailed results of the ideas collected are shown in Figure 14.



As can be seen from the data in Figure 14, 79% of total respondents want an increase in the land price to market levels. Having professional organizations to value land represented 12% of total comments. Basically, these two solutions are identical as most people do not have knowledge of land valuation. Careful study on comments made in the interview phase of the survey show these views of administrators and the people affected more clearly. They mainly concentrated on the following points:

- Lower than market land prices to calculate compensation were more popular in Dak Lak and Bac Ninh, which mainly concentrated on the argument that compensation was not sufficient to buy a similar parcel of land in another place.
- A situation that frequently occurs is that people who receive compensation for residential land cannot afford to buy a parcel of land for resettlement. To take one specific example in Buon Me Thuot City, there was a family who were compensated with VND 800 million but has to pay up to VND 2.8 billion to secure a parcel of land, a difference of VND 2 billion. People often resolved the problem by selling their resettled land to buy other land that was more suitable to their needs. There are two reasons for this. Firstly, land in the resettlement area is often larger than the recovered land so its value is higher. Secondly, the land price in the resettlement area is often higher due to better infrastructure. In many cases in Buon Me Thuot city, households had 50m² of land recovered, but they have to buy as much as 70m² of land in the resettlement area. Along the Le Hong Phong road in the city, the land price in the resettlement area was valued at 36 million VND/1m², however, the households confirmed that the land price for transfer in the market was only 28 million VND/1m².
- Many interviewees mentioned that low compensation for agriculture land was received because it was difficult to determine the market price for transfer. However, the inventory of assets and surveying of the parcel of land and its valuation was not adequately undertaken causing damage to local people.

- Comments received in Ho Chi Minh City (HCMC) rarely mention the inadequacy of the land price compared to the market price. Many comments show that the land price for compensation defined by the People's Committee was acceptable (since HCMC hires independent land appraisers to identify the land market price before approving the land compensation price). The issues in HCMC are threefold:
 - > The land price was defined at the time of land recovery, however the compensation payment may be delayed from 6 months to one or two years. By this time, the market land price has risen appreciably, causing losses to the people concerned.
 - > There are many cases where the people concerned have lived in the property for a long time, but they are not fully compensated for the land, or only to 30% of the land value as the land had previously been encroached upon.
 - > A phenomenon exists that similar cases have different compensation and support values, i.e. there is inequity in deciding the level of compensation and support.
- Generally speaking, people had few ideas for improvement of the system. However, the system in which the State decides both to recover land and then decides the price of the land suggests a football match where the State is simultaneously a player on one team kicking off and a referee blowing the whistle. In most people's opinion, there should be an intermediary agent between the State and the people to define the land price objectively. It is also necessary to have an organization to closely supervise the survey, the inventory of assets and resolve complaints from people.
- Some administrators commented that a too rapid renovation of policies for compensation, support and resettlement would cause difficulties in implementation at the local levels, in explaining the change to the people and would cause inequity for people who received compensation before the change of policy. Many administrators proposed the use of a third party mechanism to resolve difficulties between state organizations and the people concerned.
- Some experts commented that the reason that land prices identified for calculation of compensation, support and resettlement are often lower than market prices is that the property market in Vietnam is not yet developed, lacks professionalism and land price evaluation activities are at an early stage, so experience is limited.

4.2.4. Assessment of the socio-economic effectiveness of land valuation in the local areas

According to legal regulations, the recovery of land and settlement of compensation, support and resettlement must be completed within a year of the intention to recover land is published to the people concerned. In reality, hardly ever any projects complete the recovery of land, compensation and site clearance in such a time period (excluding priority projects in which the Central Government directly implements and issues timely decisions). According to the comments of the majority of provincial administrators the time taken for implementing the recovery of land, compensation and site clearance is from 2 to 4 years from the issuance of the decision on land recovery. Normally in areas where there is only agricultural land, the implementation time may be about 2 years; however, for areas with non-agricultural land, the time taken may be 4 or even 5 years. The reason why the timescale is so prolonged is that the people do not agree with the land price applied to calculate the compensation, support and resettlement. Once they disagree, they find all sorts of ways to delay implementation, including ways to detect shortcomings in the planning and land recovery decisions and in the documents related to the project. Of course, all problems have to be resolved satisfactorily before implementation can proceed. Therefore, the main reason that leads to a prolonged process of compensation and site clearance is the inadequate determination of the land price that the affected people consider unacceptable. The current criteria are that the land price applied for compensation should align with the market price of land. More simply, affected people should be able to buy a parcel of land with the same area in a similar position. According to the survey data for urban areas, development projects increase land prices to a great extent. Survey data on the increase of land prices

following project completion is shown in Table 7. In Ho Chi Minh City, when the construction of urban infrastructure projects is completed, on average the land price doubles.

Table 7: The increase in land prices following the completion of a project

Area	Average price of land before the project (VND/m ²)	Average price of land following completion of the project (VND/m ²)	Land price difference (VND)	Increase level
Binh Thanh District	17,000,000	33,500,000	16,500,000	197%
Thu Duc District	13,200,000	24,800,000	11,600,000	188%

From the figures in Table 7, it is easy to calculate economic losses due to delay in implementing a project. In urban areas, a project to widen a road a length of 1,000 metres and a width of 20 meters can double the land price for the area of 20,000m² of the road face. Therefore, if the compensation is delayed in implementation for 2 years, the value compensated for the area 20,000m² of road face in Binh Thanh district would be increased by VND 102 billion.

This is just a simple calculation for 1 kilometre of widened road in an urban area in order to prove that if compensation follows the market price and this accelerates the progress of project development, it will bring about real economic benefits from not having to pay higher land compensation prices. The new infrastructure of the urban area not only generates profits from the increase of land value in the two roadsides, but also brings considerable economic savings in the development of the urban economy. Avoidance of traffic jams in urban areas can save many working hours for its citizens. For instance, in a city with one million working people, if each person wastes 10 minutes a day in a traffic jam, one million people will waste some 20,800 working days or some 868 working months (at 24 working days per month). With an average salary of VND 3 million per month per head, the traffic jam will cause a loss of up to VND 2.6 billion per day. This is also a simple calculation on the probable effects due to the delay of implementing urban infrastructure projects.

If site clearance is completed sooner, the economic effectiveness of a project brings benefits to its investors. Suppose that an investor wants to build a 10 kilometre-road in a big city with investment capital of VND 1,000 billion, of which VND 200 billion is dedicated to build the road and VND 800 billion is for compensation, support and resettlement. Suppose that the investor has spent half of the total funds to carry out one half of the project and the remaining work is delayed as the site clearance cannot be undertaken. Then the VND 500 billion spent will be frozen awaiting the completion of compensation and site clearance. Therefore, for each delayed year waiting for the completion of compensation and site clearance, the investor will lose at least 10% of their spent value (based on bank interest rates). In other words, the investor will suffer a loss of VND 50 billion each year. If they have to wait for 2 years, the loss will increase to VND 100 billion. This situation worsens if the investment expenditure reaches 80% of the total cost of the project and the work is delayed until the compensation and site clearance are completed. The investor will lose VND 80 billion per year, bringing the total loss in 2 years to VND 160 billion.

In this case, the investor also faces other damages once the work is halted. The investor will suffer the contract penalties of the contractors and supervisors. These penalties can be very high if the investor hires a foreign company to supervise the works.

An investor whose investment capital gets stuck in a project will suffer opportunity costs by losing the opportunity to invest in other businesses or other forms of construction.

Compensation that does not follow the market price is the major reason for long-lasting complaints from people subject to land recovery. The great number of complaints requires increases in the personnel of institutions who have to deal with the complaints and denunciations. A large project may face hundreds of administrative complaints on land recovery, compensation, support and resettlement. The larger the number of people's complaints petitions the larger the expenses from the government budget to settle the complaints.

As well as the economic losses mentioned above, the long-lasting complaints of the people subject to land recovery can cause much more serious consequences for society as a whole. According to the survey on citizen opinions, many affected people expressed the view that they lost confidence in the local authorities. The image of many people queuing in front of the organizations competent to resolve complaints shows how a bad relationship between citizen and authorities develops. Once citizens lose trust in officials, the governance of the local area becomes more complicated.

Many people surveyed whose land was subject to recovery said that even though they received money for compensation and support, they remained worried because the monetary compensation would not allow them to buy other land for use. Then, as their means of livelihood was already lost, they can waste the money on other things, even engaging in social evils such as gambling, alcohol and drug addiction, etc. until they become penniless. Many people said that they recognise the consequence early on but are not sure how to avoid it.

Many comments of people subject to land recovery showed their worries when their job is already lost, the house is already recovered but they do not have enough money to buy a new house in the resettlement area. Then all the activities of the family are compromised; the adults do not go to work and the children cannot go to school. This situation greatly affects the lives of almost all people subject to land recovery. When a whole community is stuck in this situation, the issue of the life of the total residential area becomes the common concern of society.

Effectiveness of market-price land compensation in some projects in Ho Chi Minh City

Evidences of some other projects in HCMC have shown that land compensation prices based on market prices when provided by independent land appraisers are acceptable to most affected people. This approach to compensation has accelerated the handling of a lot of compensation and resettlement cases as well as substantially reducing the number of complaints and assisted people to rapidly restore their affected assets and livelihoods.

Independent monitoring of the compensation and resettlement process of a component of the Urban Upgrading project in HCMC has shown that the actual compensation price for the lost land was three to five times higher than the price established by the City People's Committee at the beginning of 2011. It was also reported that 71% of the surveyed affected people were satisfied with the land compensation price, which has helped them to buy new houses and stabilize their lives more quickly.

The head of the compensation board of Binh Thanh district of HCMC also confirmed at the workshop on May 12-13, 2011 on good land governance, that since compensation was undertaken on the basis of land market prices, most affected people have accepted the compensation offered very quickly and chosen to relocate themselves since they can freely buy houses in the market. This is why there are almost no substantial complaints on compensation and the compensation and resettlement process is much quicker and more effective.

5. RECOMMENDATIONS ON IMPROVING THE LEGAL REGULATIONS ON LAND PRICES APPLIED TO COMPENSATION, SUPPORT AND RESETTLEMENT

Based on the analysis of the current system of legislation of land valuation in Vietnam, international experiences on land valuation in some countries and the results from study in Ho Chi Minh City, Dak Lak and Bac Ninh, it is possible to make some recommendations on amendments and supplementations to current legislation. The recommendations concern:

- Necessary amendments and supplementations to current legal documents.
- The main contents of a proposed Government Decree to guide the procedures of the land valuation process aligned with the market to allow calculation of compensation, support and resettlement when the State carries out recovery of land.
- The main contents of a proposed legal document guiding the technical procedures of land valuation aligned with the market in accordance with Vietnamese and International valuation standards.

5.1. Recommendations on necessary amendments and supplementations to current legal documents regarding land valuation for the calculation of compensation, support and resettlement when the State carries out land recovery

Arising from the analysis of the current system of legislation, the following are some specific proposals for amendments and supplementations to better meet requirements.

5.1.1. Regulations on the method of land valuation to align it with market prices

According to the current Land Law, the principle of land valuation should be aligned with the land price on the market and the Government shall stipulate the method of land valuation.

Currently, the Government has regulated four methods of land valuation: income method, comparative method, residual method and discount method. The Ministry of Finance has issued national valuation standards including further two valuation methods, those of cost and profit. In fact, the income method now applied to value agricultural land devalues it below the level of transferred agricultural land on the market in residential areas or in the areas where it is planned to convert the agricultural land into non-agricultural land. The Government has already regulated further support (bigger than compensation) for the farmers of recovered land. However, agricultural land recovery is still not satisfactory. In addition, there are many new valuation methods (in the form of improvement of the current valuation methods), which might be difficult to be allowed to apply in practice. In almost all countries, as regulated by the law, the Valuation Associations are assigned to propose standard valuation regulations including the method of valuation to align with international or regional standards.

Thus, in order to change the current regulations on the competent authority that issues the regulations on valuation methods (currently the Government), it is necessary to further amend the Land Law. In this case, the recommendation is as follows:

- (1) Prior to the amendment and supplementation of the Land Law the decision regarding the method of land valuation still belongs to the Government. However, the Government can decide to execute its authority by entrusting the Valuation Association to research and propose valuation methods in accordance with international valuation standards and the Ministry of Finance may be entrusted to appraise and submit them to the Government for approval.*
- (2) When further amendment and supplementations of the Land Law is considered, the Valuation Association may be entrusted to regulate valuation standards including valuation methods.*

Vietnam is unfamiliar with the mechanism of authorizing competent professional associations to make decisions on professional standards. The authority remains with the state administrative bodies only because the professional associations are considered under-qualified. Therefore, it is necessary to renovate the way of thinking to accord with the current way of managing throughout the world.

5.1.2. Completion of the legal framework for the supply of land valuation services

Currently in Vietnam, all the services of land and property valuation are provided by the valuation centers directly accountable to the Ministry of Finance, Departments of Finance and licensed enterprises. An enterprise can be allowed to practice valuation when it has enough valuers with valid certificates of practice (it is necessary to have three valuers or two valuers as regulated respectively by the Minister of Finance or the Law on Real Estate Business). Some valuation service enterprises operate under the legal framework of the Law on Real Estate Business and the specific regulations of the Ministry of Construction, while others operate under the legal framework of the Ordinance on Prices and the specific regulations of the Ministry of Finance. The authority in charge of issuing certificates of land and property practice to the valuers is the Ministry of Finance or provincial Departments of Construction. Currently, the authority in charge of issuing the final decision on land prices used to calculate compensation, support and resettlement is the Provincial People's Committee. They also decide upon disputes or complaints concerning land prices. This is not a mechanism which creates an appropriate degree of neutrality during the process of valuation because the administrative bodies usually pay more attention to the state interests than those of people subject to land recovery. The proposed solution is as follows:

- (1) The Government decides to establish a National Board for Land and Property Valuation and Provincial People's Committees decide to establish Provincial Board for Land and Property Valuation .*
- (2) The Board consists of a Chairman, some Vice Chairmen, a General Secretary and Members who are selected amongst highly qualified managers, scientists, valuers, investors, etc. The Chairman of the National Land and Property Valuation Council is a Vice Minister in charge of managing land and property valuation; the Chairman of the Provincial Land and Property Valuation Council is a Vice Chairman of the Provincial People's Committee.*
- (3) The Provincial Land and Property Valuation Council has the authority to issue decisions on land and property prices and the decision on the initial settlement of disputes relevant to land and property prices, and to decide to issue registration certificate of land and property practice to newly registered valuers.*
- (4) The National Land and Property Valuation Council has the authority to issue decisions on the final settlement of disputes on land and property prices and to decide to issue certificates of land and property practice to highly qualified valuers.*
- (5) Prior to the amendment and supplementation of the Land Law, the Provincial Boards for Land and Property Valuation are established to act as a Advisory Board to the Provincial People's Committee. The Government issues a Decree stipulating the working relationship between the Provincial Board for Land and Property Valuation and the Provincial People's Committees to allow the opinions of the Board to be placed before the Provincial People's Committee for them to decide land prices. The Decree stipulates that any disagreement between the Board and the Provincial People's Committee should be clearly recorded with appropriate arguments.*

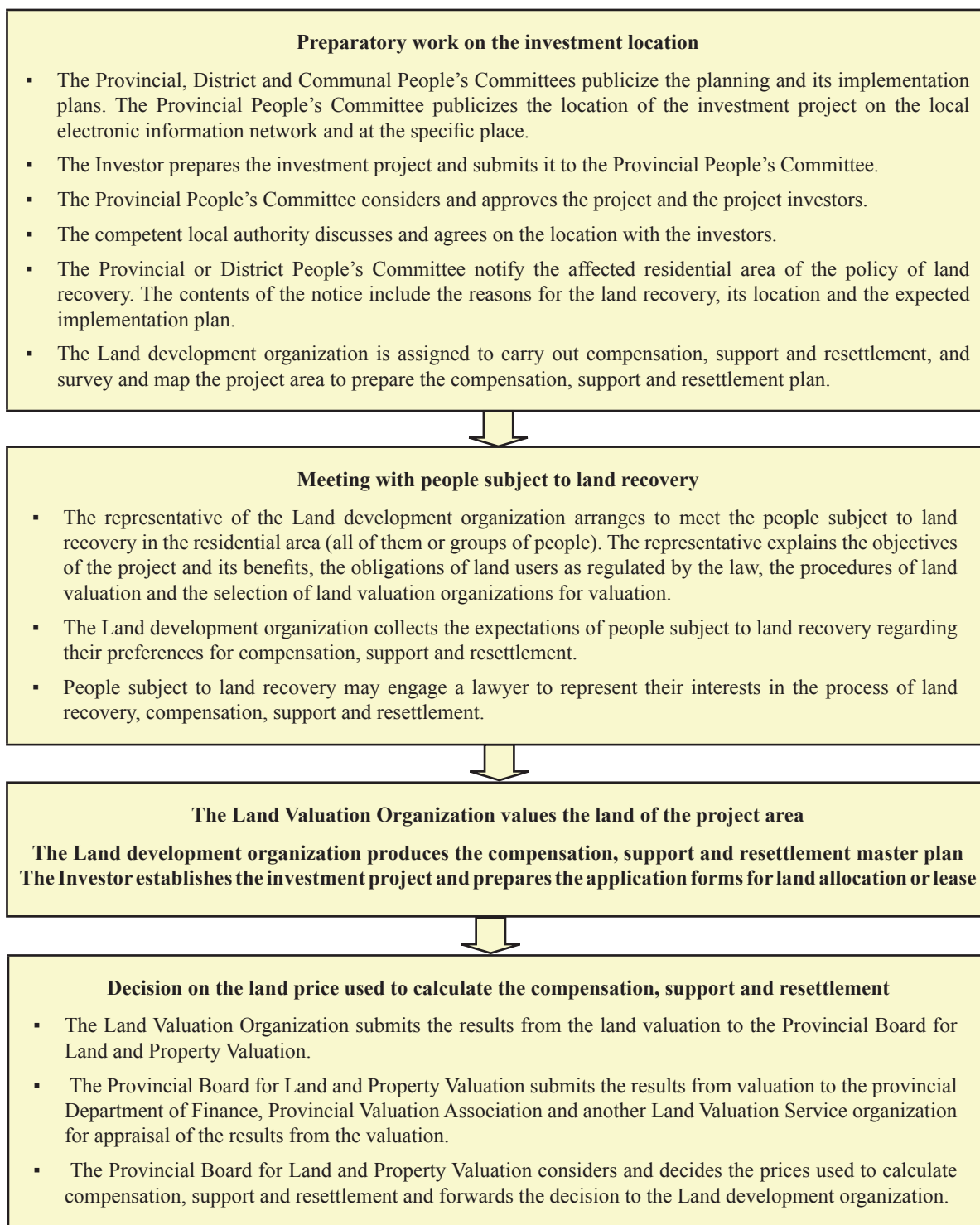
5.1.3. Additional regulations on the procedures of land valuation, decisions on land prices applied to calculate the compensation, support and resettlement

Currently, almost all local areas assign the District Board for compensation, support and resettlement to propose land prices for calculation of compensation, support and resettlement and the decision-making authorities are the District (if the prices are not different from the ones established annually by the Provincial People's Committee) or Provincial People's Committee. As for Ho Chi Minh City, the City People's Council has decided to entrust a land valuation organization with the duty of valuation and the provincial Department of Finance carries out the appraisal to submit reports to the City People's Committee for decision. Regarding the procedures of gaining consensus on the land price, the amendment and supplementation should concentrate on the following:

- It is necessary to regulate that the valuation of land needed to calculate compensation, support and resettlement must be assigned to a land valuation services organization, which is selected on basis of consensus between people subject to land recovery and the organization administering compensation, support and resettlement.
- Currently, the public dissemination and collection of opinions on land prices and plan for compensation, support and resettlement is by posting notices in residential areas in which the land recovery is taking place and received written opinions. These need to be supplemented by meetings to discuss the land price and the plan for compensation, support and resettlement between the people subject to land recovery and the organization assigned to undertake compensation, support and resettlement. Affected people are able to use legal support and are entitled to hire a lawyer to represent their interests.
- The decision on the land price used to calculate the value of compensation, support and resettlement now lies with administrative bodies of government. This needs to be amended so that the Provincial Board for Land and Property Valuation makes the decision on land prices. When there is any complaint on the land price decided by the Provincial Board for Land and Property Valuation, the National Board for Land and Property Valuation is responsible for resolving the issue (the decision on the approval of the plan for compensation, support and resettlement still lies with the administrative body but the land price is decided by the Provincial Board for Land and Property Valuation).
- Currently, the provincial Department of Natural Resources and Environment has the authority to approve plan for compensation, support and resettlement where the land area covers two or more district-level areas (for other cases, approval is made by the District People's Committee). It is necessary to amend that the Provincial People's Committees only have the authority to approve the plan for compensation, support and resettlement in all cases to be suitable to the measure of decisions on the land price made by the Provincial Board for Land and Property Valuation.
- As regulated by the current law, it is possible to entrust the Provincial Land development organization or District Board of compensation, support and resettlement to execute cases of compensation, support and resettlement. Local People's Committees always entrust the district-level Board and use the district-level administrative machinery to undertake the task, which is less appropriate with the market mechanism. It is necessary to regulate that the Land development organizations are entrusted with all cases of compensation, support and resettlement³⁹.
- The settlement of complaints on land prices, land allocation or lease and recovery and plan for compensation, support and resettlement needs to be separated into two streams. All complaints on land prices decided by the Provincial Board for Land and Property Valuation should be settled by the National Board for Land and Property Valuation; and all other complaints on decisions on land allocation, lease, recovery and plan for compensation, support and resettlement should be settled as regulated by the Law on Complaints (The Law on Complaints and Denouncements is currently considered to be separated into two laws: the Law on Complaints and the Law on Denouncements).

The procedures of land allocation, lease, recovery and land price determination as well as compensation, support and resettlement needs to be amended and supplemented on the basis shown in Figure 3.

Figure 3: The proposed procedures of land allocation, lease, recovery and land price determination, and compensation, support and resettlement





Preparation of compensation, support and resettlement plan, collection of affected people's opinions on the land price and the plan for compensation, support and resettlement

- The Land development organization prepares the plan for compensation, support and resettlement.
- A representative of the Land development organization organizes a meeting with the people subject to land recovery (all or groups of people) to present the results from the valuation and the plan for compensation, support and resettlement.
- People subject to land recovery present their opinions or send their views in writing to the Land development organization.
- The Land development organization makes a report on the views of people subject to land recovery; amends and submit the plan for compensation, support and resettlement as an attachment with the decision on the land price of the Provincial Board for Land and Property Valuation and reports the views of the people concerned to the Provincial People's Committee for consideration and decision.
- The Provincial People's Committee sends the plan of compensation, support and resettlement to related departments for appraisal.



Decision on land recovery, allocation or lease and approval of the plan for compensation, support and resettlement

- The Provincial Department of Natural Resources and Environment/District Division of Natural Resources and Environment submits to the People's Committee of the same level the decision on land recovery. The provincial Department of Natural Resources and Environment submits to the Provincial People's Committee the decision on land allocation or lease and the decision on the approval of the plan for compensation, support and resettlement.
- The District People's Committee considers and issues the decision on land recovery and the Provincial People's Committee considers and issues the decision on land recovery, allocation or lease and the decision on the approval of the plan for compensation, support and resettlement.
- The Land development organization coordinates with the Communal People's Committees to disseminate and publicly post the plan for compensation, support and resettlement in each residential area and forward the decision on compensation, support and resettlement to people subject to land recovery.



Implementation of compensation, support and resettlement and handover of the land

- The Land development organization organizes the implementation of compensation, support and resettlement.
- People subject to land recovery, who have received compensation, support and resettlement, hand over the land to the Land development organization.



Settlement of complaints of people subject to land recovery

- People subject to land recovery who complain about land price concerning compensation, support and resettlement submit their complaints to the National Board for Land and Property Valuation for consideration and resolution. The National Board for Land and Property Valuation is responsible for reviewing the results from valuation and organizes a revaluation when necessary to make a final decision on the land price applied to the complainants.
- People subject to land recovery who complain about the administrative decision on land recovery, allocation and lease and the approval of the plan for compensation, support and resettlement, are entitled to use the system for resolving complaints in accordance with the legal regulations on complaints.
- While waiting for the resolution of complaints, people subject to land recovery must still hand over the land to the Land development organization.

5.2. Construction of the legal documents stipulating the procedures of land allocation, lease, recovery and land price determination as well as implementation of compensation, support and resettlement

In the past, the procedures of land allocation, lease, recovery and land price determination as well as implementation of compensation, support and resettlement were stipulated in Decree No. 197/2004/ND-CP and Decree No 84/2007/ND-CP and are now stipulated in Decree No. 69/2009/ND-CP. Some new articles are proposed as follows, based on the Articles 29, 30 and 31 of the current Decree No 69; the proposed amendments stipulating the procedures of land allocation, lease, recovery; price determination and implementation of compensation, support and resettlement as in Figure 3.

Article X1. Preparatory work concerning the location introduction and notice of land recovery

1. People's Committees at the provincial, district and communal levels are responsible for organizing publicity of planning and implementing those plans. The Provincial People's Committee is responsible for disseminating the location of investment projects in accordance with the approved planning.
The publicity of planning and its implementation plan and the locations of investment projects are disseminated on the local electronic information network and in one location specifically regulated by the People's Committee.
2. The investors requesting the investment project are required to submit application forms for the establishment of an investment location to the competent authority as regulated by the Provincial People's Committee. The competent authority organizes to collect views from other authorities relevant to the investment project and reports them to the Provincial People's Committee for approval of the investment project and the project investors. Following approval by the Provincial People's Committee, the competent authority discusses with the investors to agree on the location of the project.
3. The Provincial People's Committee publishes or authorizes the District People's Committee to publish the policy on land recovery in each residential area affected including reason of land recovery, the location of the land to be recovered and the expected implementation plan. The notice will be published in the local mass media and posted at the office of the local Communal People's Committee and public place of residential areas where the land is to be recovered.
4. The Provincial People's Committee assigns the Land development organization to perform the compensation, support and resettlement. In addition, it surveys and maps the project area to prepare the plans for compensation, support and resettlement.

Article X2. Collection of opinions of people subject to land recovery

1. The Land development organization organizes a meeting with the people subject to land recovery in the residential area (all of them or groups of people). At the meeting the objectives of the investment project, its benefits, the obligations of land users as regulated by the law, the procedures of land valuation and the selection of land valuation organizations to undertake the valuation, are explained.
2. The Land development organization collects the expectations of the people subject to land recovery on the form of compensation, support and resettlement they would prefer.
3. People subject to land recovery have the right to engage a lawyer to act for them during the process of land recovery, compensation, support and resettlement.

Article X3. Land valuation and preparation of a master plan for compensation, support and resettlement

1. The Land Valuation Organization values the land of the project area.
2. The Land development organization prepare the master plan for compensation, support and resettlement.
3. The investor plans the investment project and prepares application documents for land allocation or lease.

Article X4. Decision on the land price used to calculate compensation, support and resettlement

1. The Land Valuation Organization submits the results from the land valuation as an attachment with the valuation report and certificate to the Provincial Board for Land and Property Valuation.
2. The Provincial Board for Land and Property Valuation sends the valuation results to the provincial Department of Finance, the Provincial Valuation Association and another valuation service organization for appraisal of the valuation results.
The Provincial Board for Land and Property Valuation considers and decides the land prices to be used to calculate compensation, support and resettlement and forwards the decision to the Land development organization.

Article X5. Preparation and appraisal of the plan for compensation, support and resettlement

1. Following the approval or acceptance of the Provincial People's Committee, the Land development organization prepares the plan for compensation, support and resettlement. It includes: (a) names and addresses of people subject to land recovery; (b) area, land category, location and origin of the land to be recovered and the quantity, volume and

percentage condition of affected property and equipment; (c) the basis for calculation of the award including land compensation, housing and other land-attached assets compensation, the number of residents, the number of working people, the number of social welfare recipients; (d) compensation and support costs; (e) arrangements for resettlement; (f) displacement of state, organizations, religious and residential community infrastructure; and (g) displacement of graves.

2. The Land development organization arranges meetings with people subject to land recovery in the residential area (all or by group) to present the results from the land valuation and plan for compensation, support and resettlement. The people subject to land recovery may give oral opinions at the meeting or written views to the Land development organization. The points raised at the meetings are recorded as minutes of the meeting and are confirmed by representatives of the Communal People's Committee and Communal Fatherland Front, and representatives of people subject to land recovery.

Following the meeting the results from land valuation and the plan for compensation, support and resettlement are publicly posted at the office of the Communal People's Committee and in the residential area of land recovered so that people subject to land recovery and other relevant people can continue to contribute their views. The notice will be in writing with the confirmation of the Representatives of the Communal People's Committee, Communal Fatherland Front Committee, and representatives of people subject to land recovery.

3. The time for receiving the views of people subject to land recovery is at least twenty (20) days from the date of the meeting with people subject to land recovery. The Land development organization prepares a report on the views of people subject to land recovery, revises the plan for compensation, support and resettlement and submits them as attachments with the decision on land price of Provincial Board for Land and Property Valuation to the Provincial People's Committee for consideration and decision.

The Provincial People's Committee forwards the plan for compensation, support and resettlement and the attached documents to the relevant Departments for appraisal.

Article X6. Decision on land acquisition, delivery or lease and approval of compensation, support and resettlement

1. The provincial Department of Natural Resources and Environment prepares the documents of land acquisition, delivery and lease and submits them to the Provincial Board for Land and Property Valuation for decision on land acquisition for organizations, religious purposes, Vietnamese residing in foreign countries, foreign organizations and individuals.

The district Division of Natural Resources and Environment prepares the documents on land acquisition and submits them to the District People's Committee for decision on land acquisition of households, individuals and the residential community.

2. Within five (05) working days from the issue date of the decision on land recovery, allocation or lease, the Provincial People's Committee decides on approval of the plan for compensation, support and resettlement.
3. Within three (03) working days from the receipt date of the approved plan for compensation, support and resettlement, the Land development organization coordinates with the Communal People's Committees to publicize and post the decision on approval of the plan for compensation, support and resettlement at the office of the Communal People's Committee and in the residential areas where land is to be recovered. It also forwards the decision to the affected people, clearly pointing out the level of compensation and support, the provision of houses and lands for resettlement (if any), the time and location of payment of compensation, support and the date of recovered land handover to the Land development organization.

Article X7. Compensation, support, resettlement implementation and land handover

1. The Land development organization organizes the payment of compensation and support costs and arrangements for resettlement.
2. Within twenty (20) days from the completion date of compensation, support and resettlement by the Land development organization according to the approval, people subject to land recovery hand over their land to the Land development organization.

Article X8. Settlement of affected people's complaints

1. Affected people, who wish to complain about land price for compensation, support and resettlement, submit their complaint to the National Board for Land and Property Valuation for consideration and resolution. The National Board for Land and Property Valuation is responsible for reviewing the results from the valuation and organizing a revaluation when necessary to make a final decision on the land price for the complainants.
2. Affected people, who wish to complain about the administrative decision on land recovery, allocation or lease and the approval of plan for compensation, support and resettlement, are entitled to use the system for resolving complaints in accordance with the legal regulations on complaints.
3. While waiting for the resolution of complaints, people subject to land recovery must still hand over the land to the Land development organization.

In order to construct a new Land Law and submit it to the National Assembly for approval (by 2013 at the latest), some concepts need to be defined more exactly to accord with the technical standards of international valuation. These are land price, market land price, value of compensation for people subject to land recovery, land price given by land valuation services, responsibilities of valuers, etc. Essentially the content of Article 56 of the 2003 Land Law needs to be revised.

It is also necessary to introduce a comprehensive program on the construction of Vietnam's technical standards of valuation, a training system for valuers and a quality evaluation mechanism for the results of valuation. This is necessary to ensure that the legal regulations on valuation are feasible when put into practice.

This report also recommends a technical guidance on land valuation based on Vietnamese Valuation Standards issued by the Minister of Finance and aligned with International and ASEAN Valuation Standards. As well as providing technical guidance on land valuation, it also includes guidance on how to assess the properties attached to land where it is necessary to separate the value of buildings and equipment which are closely connected to the land so as to be able to define a price for the land alone.

6. CONCLUSIONS

The report has shown that the definition of the value of compensation, support and resettlement on the basis of a land price aligned with the market is necessary to produce optimum economic and social effects. This can only be carried out on the basis of developing land valuation services and modifying the current legal regulations on the supply of land valuation services.

On the basis of the research undertaken on foreign experience in market-oriented land valuation and the sociological survey of the views of people subject to land recovery, the report proposes necessary changes to complete and implement market-oriented land valuation regulations for the calculation of compensation, support and resettlement when the State carries out land recovery.

The proposals of this study are based on three main principles as follows:

- Encouragement of participation of the valuation community in the establishment and guidance of technical standards for providing services on land and property attached to land valuation.
- The land and property valuation system should be independent of the administrative system and should have the functions of deciding land prices in line with the market price of land, settling disputes and complaints on land prices and issuing licenses on land and property valuation practice to valuers.
- The decision on the land price for calculation of the value of compensation, support and resettlement should be made on the basis of solid procedures regulated by legal provisions.

The recommendations of this study include the following points:

- To develop the valuation services of licenced valuers on land and property attached to land under the management of valuation service providers. The results of valuation are the basis for land price determination by the competent organizations for compensation, support and resettlement.
- To apply a mechanism to grant to the Valuation Association the task of establishing National Valuation Standards for land and property valuation and guiding the implementation of these standards in land and property valuation practice.
- To establish Boards for Land and Property Valuation at national and provincial level that are independent from the administrative system. The Provincial Boards are authorized to decide the land prices applied to calculate the value of compensation, support and resettlement, to settle land price disputes in the market and to issue initial licenses of valuation practice to new valuers. The National Board is authorized to settle complaints on land prices which have already been decided by the Provincial Boards, and to issue licenses of valuation practice to qualify as senior valuers.
- A draft of legal regulations on the procedure for land and property valuation to calculate the value of compensation, support and resettlement has been prepared based on ensuring the publicity and transparency in implementation, the participation of the community to improve people's consensus,

the independence of the valuation authority, framework of personal responsibilities and enable control of decision making powers.

- A technical guideline on the valuation of land and property attached to land has been prepared for the use of valuers providing land and property valuation services.

The above recommendations, formed in further detail in the report, can be considered as tangible contributions to the process of preparation of the new land law (the part on the market based valuation of land); a new decree of the Government on land valuation for compensation, support and resettlement; and new technical guidelines on land and property valuation. They may also be considered as a practical contribution of this study, supported by the World Bank, on the legislation on land for the process of improvement of the legal system of the State of Vietnam.

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ANNEX: TECHNICAL GUIDELINES ON LAND AND PROPERTY VALUATION FOR CALCULATING COMPENSATION, SUPPORT AND RESETTLEMENT

Appendix 1: Technical guidelines on land and property valuation

1. General information

This document formulates a technical guideline on the land valuation process. In practice, where several land parcels have properties attached to them the valuation of these land parcels needs to evaluate the properties as well as the land. Therefore, this technical guideline is created for the purpose of valuing land and constructed property attached to land.

During the last 3 years, the Vietnam Ministry of Finance has issued Technical Standards of Valuation based on the International Standards of Valuation. This technical guideline of land and property valuation has been established on the basis of the Vietnam Technical Standards of Valuation.

2. Steps for valuation

Land valuation organizations and the valuer must adhere to the six following steps of valuation:

Step 1: Determining land and other property (here called real estate) that needs to be valued and determining the market price as a basis for real estate valuation.

Step 2: Establishing a valuation plan.

Step 3: Field surveying and collecting information.

Step 4: Analyzing information

Step 5: Determining the value of real estate.

Step 6: Reporting and drawing up the certificate of results of the valuation.

Step 1. Determine real estate that needs to be valued and determining the market price as a basis for real estate valuation.

Valuers must undertake the follow scheme of work:

1. Recording legal, economic and technical characteristics of the real estate to be valued.
2. Be clearly aware of that the objective of the valuation of the real estate is to calculate the value of compensation, support and resettlement for people whose land is to be recovered. The direct customer for this work is the land development organization, and the indirect customers are people whose land is to be recovered.

3. There are often binding conditions and restrictions in real estate valuation. Valuers must indicate the restrictions which occur in the valuation process that are consistent with the market price in the specific regional context. They should also indicate binding factors that have influenced the value of the real estate; legal restrictions on the use of properties, data restrictions and restrictions on the use of the results.
4. These binding conditions and restrictions must be based on analysis of their consistency with legal and other regulations; must be confirmed in official documents by the customer (the land development organization) based on their awareness on the impact of the conditions to third parties. When valuers recognize any loosening of binding conditions and restrictions, they should immediately reconsider the timescale of the valuation and inform all stakeholders.
5. Determine the necessary data sources for valuation.
6. Determine that the market price is a basis for real estate valuation.

Step 2: Establishing a valuation plan

1. The purpose of a valuation plan is to determine the activities to be undertaken and their duration.
2. The valuation plan consists of five basic activities:
 - Determining supply and demand in the market and the characteristics of the real estate market.
 - Determining which documents on the real estate market and any other documents that need to be collected.
 - Analyzing these documents to ensure the reliability of the data sources. All data must be verified.
 - Detail the steps in the valuation process, including the order in which data is collected and analyzed and the permitted duration of its usefulness for the purpose.
 - Outline the report on the results of the valuation.

Step 3: Field surveying and collecting information

1. Field surveying.

Valuers must directly survey the land. This includes the following activities.

- Study and collect information on:
 - (1) the position of comparable property on the cadastral map and the legal description of the property;
 - (2) the external and internal characteristics of the property consisting of: the area of the land; building and other constructions on the land; the surrounding environment; water supply infrastructure; telecommunications, electricity, etc; the type of architecture; the current use, age, state of maintenance and repair, etc.
 - (3) For unfinished construction, valuers must combine the field survey with reports of the investors and contractors in charge of the construction.
- The results of the field study including photographs of the property taken from different directions are evidence for valuation.

2. Collecting information:

Besides the information collected from studying the market, valuers need to have other information relating to the properties:

- Information on the cost, interest rate and income of comparable properties.
- Information on supply and demand, stakeholders, buyers moves and potential sellers.

- Information on the legality of the property.
- Information on land use plans and spatial plans of the property.
- Information on the natural, economic, social and other factors that have impact on the value and characteristics of the real estate market in order to distinguish the area of valued properties from nearby areas.
- The collection of information on prices is taken from various sources, such as: previous transaction prices of the property including the offering price, bargaining price and final price; the price at property transaction centers; through interviewing property, construction, contractors, banks and other credit companies and organizations; advertisements in newspapers, information on prices archived by state administrative agencies and information on socio-economic development plans of the region. All of the information used in the valuation report must be clearly referenced and checked.

Step 4: Analyzing information

This step assesses the impact of various factors on the property and should include the following analyses.

1. Analyze the information collected from the field survey of the property.
2. Analyse the characteristics of the real estate market:
 - The nature and behavior of stakeholders in the property market such as their ages, family background, income level of the supply and demand groups, affect of expansion of the property market on potential buyers;
 - Trends of supply and demand in the real estate market, such as the trend in the increase or decrease in supply and the trend in increase or decrease in demand for similar property in the market and its impact on the value of the subject valuation.
3. Analyse the optimum utilization of property, including:
 - Taking into account the optimum utilization of the property in its natural context, in current law and regulation and the finance available.
 - Assess the utilization of the property in detail in terms of:
 - (1) feasibility of using the real estate taking into account the relationship between the current use and future use;
 - (2) the appropriateness of material and technical aspects for utilization of the real estate, determining and describing the economic and technical features and their usefulness to the real estate;
 - (3) the legality of utilization of the real estate including specific restrictions on using the real estate in accordance with law and regulations;
 - (4) take into account the financial feasibility in using the real estate, such as income creation, market price, future use purposes, costs of dismantling and the remaining value of the real estate, interest rates, risks and capitalized value of the real estate;
 - (5) consider the effects on the utilization of the real estate, its maintenance costs and other costs arising that point to the best utilization of the property.

Step 5: Determining the value of the real estate.

1. Valuers have to clearly state their valuation methods and show that they can be applied to determine the price of the real estate. These valuation methods are set out in the next part of this report.
2. Valuers have to analyse the applicability of one or more valuation methods that can be applied and are suitable to the real estate and to the economic and technical features of the real estate.

3. Valuers should clearly indicate in the valuation report the valuation method used as the basis for valuation and the valuation method used in cross checking and coming to a final conclusion on the value of the real estate.

Step 6: Reporting and drawing up the certificate of results of the valuation

1. Terms used in the Valuation Report and Valuation Certificate:

- a. *Valuation Report:* is a document prepared by the valuers on the process of the valuation, the price (expressed in financial or equivalent terms) of the real estate subject to valuation.
- b. *Valuation Dossier:* is a file of documents related to the work of undertaking the real estate valuation, which have been collected, classified, stored and used during the valuation process. Documents in the Valuation Dossier can be on paper, film or other information bearing media according to current regulations.
- c. *Valuation Certificate:* is a document written by the valuation organization to certify for customers and other stakeholders the basic results of the real estate valuation.

2. Valuation Report:

- a. The Valuation Report reflects the actual, descriptive information, based on specific evidence that explains the price of the real estate subject to valuation. This information must be presented in a logical order from the description of the real estate to the factors influencing the market value of the real estate. It should include analyses of the collected data on prices in the market through which the valuation result was obtained. The Valuation Report must reflect the arguments, ways and methods that were applied during the evaluation process and clearly explain all matters affecting the value of the real estate.
- b. The detailed content of the Valuation Report is as follows.
 - The basic data consists of:
 - (1) the name and type of the real estate;
 - (2) the location of the real estate including the land, houses and other constructions attached to the land;
 - (3) the date of the valuation;
 - (4) the name, address, telephone number, fax number and e-mail addresses of the valuation organization
 - (5) the full name of the valuer who undertook the Valuation Report;
 - (6) the full name and signature of the director or head of the valuation organization.
 - The legal basis consists of the legal documents and relevant standards promulgated by authorized state agencies.
 - A description of the real estate specification:
 - (1) the geographical location and name of the administrative unit where the real estate is located;
 - (2) an extract of the cadastral record including the parcel of land;
 - (3) the meteorological, terrain, transportation and hydrological features;
 - (4) the status of assets attached to the land including the type and orderliness of houses, other construction areas and other usable areas; the quality of houses (number and year of building, likely remaining time in use); the usage of the property; the structure of houses, number and area of each room; electricity systems, water supply and sewage systems; types and grades of other assets such as roads, bridges, etc.

- (5) the location of the real estate in relation to the nearest regional center; natural conditions and surroundings; shape of the land parcel; distance from the property to public transport stops, shops, schools, parks, hospitals and main roads;
 - (6) the impact of planning and zoning on the value of the real estate;
 - (7) whether the current use of the real estate is according to land plans and whether this brings about the optimal worth of the real estate or not.
- Description of legal aspects of the real estate:
 - (1) whether the Certificate of land use rights and the ownership of houses and other assets attached to the land has been issued for the real estate or not. The main contents of the certificate, such as the number of land parcels, the name of administrative units, assets attached to the land, the purpose of land use, the category of land use, the date and registration number of the Certificate;
 - (2) the status of change in land use and real estate transfer;
 - (3) the status of land disputes with neighboring owners;
 - (4) the economic benefits gained from use of the real estate, such as renting the property (rent price, lease term, rental contract, monthly income from property used by tenants to open shops, service activities, offices, etc.
 - (5) other characteristics related to the value of the real estate subject to valuation as well as other equivalent properties.
 - Assumptions and restrictions of the real estate subject to valuation: (1) Comments on the reasonableness of the assumptions and restrictions related to the characteristics of the real estate market, the factors affecting market value of the real estate, (2) analysis of the impacts of the assumptions and restrictions on the result of the valuation.
 - Results of the field surveys:
 - (1) stating the purpose, time and people who conducted the field surveys;
 - (2) the results obtained from field surveys;
 - (3) the difference (if any) between the results of the field surveys and cadastral records and analysis of these differences.
 - Discussion on the final price, including:
 - (1) analysis of the location, impact factors, trend of the real estate market in the region, the behavior of buyers or sellers in the market, the advantages or disadvantages of the real estate subject to valuation;
 - (2) the efficiency of the use of the real estate and the worth gained from the use of the real estate to judge whether the optimum use of the property is different from current use. Comment on the potential for use of the real estate and whether legal and natural conditions will be affected if the real estate is used for the most effective purpose.
 - Real estate valuation methods:
 - (1) present the results of the valuation using the *comparison method*, the *income method* and other valuation methods;
 - (2) make comparisons, analyses and adjustments to the assumed conditions and the table of calculations of the price obtained using the above valuation methods to arrive at a final price that expresses the market value of the real estate. In cases where only one or two of the above valuation methods were used the reasons should be stated;

- (3) comment on the relevance and disparity between the price of land in the Valuation Report and the land price which was approved by the State.
- Managing any complex issues or issues lacking clarity during the valuation process, including:
 - (1) lack of clarity about the legal status of the real estate;
 - (2) lack of information and data on the use of the real estate;
 - (3) difficulties in classifying or ranking the real estate;
 - (4) difficulties in quantifying factors affecting the price of the real estate;
 - (5) how the above mentioned matters were managed in the process of valuation and the level of impact of these matters on the price of the real estate subject to valuation.
 - Conflicts of interest (if any) of the valuer concerning the real estate subject to valuation.
 - Name and signature of valuer conducting the valuation of the real estate.
 - Enclosed appendices of the Valuation Report.
 - Appendices contain additional information and explanations on the Valuation Report such as:
 - (1) copies of the permanent residence certificate individual owner of the real estate or a copy of the business license organizational owner of the real estate;
 - (2) extract of the general land planning map and the detailed land planning map;
 - (3) a copy of the Certificate (or one of the other allowable documents in cases where the certificate is not yet issued) of land use rights as stipulated in Article 50 of the Land Law;
 - (4) a copy of the house building permit, construction design drawing, cadastral map with location of the real estate and other drawings;
 - (5) a copy of the detailed land plan approved by the local authorized bodies;
 - (6) copies of transfer contracts and/or leasing contracts of the real estate;
 - (7) panoramic photographs of the real estate;
 - (8) other supporting documents for the Valuation Report.
- c. Valuation Dossier:
- The Valuer is responsible for collecting and recording the necessary documents and information on the process of the real estate valuation in the Valuation Dossier:
 - (1) to create a basis for forming his own judgment on the price that reflects the proper price of the real estate;
 - (2) to prove that the pricing process was undertaken according to the Vietnam Standards of Valuation.
 - The Valuation Dossier must be fully prepared so that readers can understand the entire content of the valuation process.
 - The Valuation Dossier is used to:
 - (1) store the evidence collected during the implementation of the evaluation;
 - (2) act as a support in the steps of the valuation;
 - (3) help to quality assure the valuation;
 - (4) act as support for settling disputes and complaints that may arise during or after the pricing process between the parties concerned.
 - The contents of the Valuation Dossier include:
 - (1) the name and code number, date of establishment and date of storage;
 - (2) information on the customer requests for valuation;

- (3) the letter requesting the valuation;
 - (4) the contract signed between the valuation organization and the organizations of land development;
 - (5) The valuers analyses and assessment on matters related to the valuation;
 - (6) advisory opinions on the technical and legal aspects related to the real estate subject to valuation (if any);
 - (7) the Valuation Report and its annexes;
 - (8) The Valuation Certificate;
 - (9) the minute recording the satisfactory completion of the valuation between the valuation organization and the land development organisations.
- The Valuation Dossier is stored in the valuation organization where the Certificate is issued. The Dossier is valid for ten years.
- d. Valuation Certificate:
- The Valuation Certificate is a document created by valuation organization to inform the customer of the valuation about the results of the real estate valuation.
 - The form and content of the Valuation Certificate is in Appendix 1.
 - Three copies of the Valuation Certificate are made which have equal validity; two copies are delivered to the customer and one copy is stored in the valuation organization.

3. Comparison method of valuation

The Comparison method is presented on the basis of the Standard No. 7 of the Vietnam Valuation Standard approved by the Vietnam Ministry of Finance.

3.1. Terms

1. The *Comparison method* is a valuation method based on analysis of the price of similar real estate, which has been successfully transacted or are transacting in the market under normal commercial conditions at the same time or at a time close to the time of valuation, in order to estimate and determine the market price of the real estate.
2. *Popular transaction in the market* are the activities of purchasing real estate that is publicly conducted in the market. Real estate is considered as a popular transaction if at least 3 similar properties in the area of the real estate subject to valuation have successfully been transacted in the market.
3. *Similar real estate* are properties that have the same basic features such as purpose of use, legal status, economic and technical characteristics, shape, size, location, etc in comparison with the real estate subject to valuation.
4. *Comparable real estate* are similar properties which have been successfully transacted or are transacting in the market under normal commercial conditions at the same time or at a time close to the time of valuation.
5. *Comparative factors* are major economic or technical characteristics, legal status, transaction costs, time, transaction conditions or other relevant parameters that have influence on the value of the real estate.
6. *Comparative standard unit* is a basic measure of real estate that is used to compare real estate of the same category such as unit of distance, unit of area unit, etc.
7. *Total value of net adjustment* is the total adjustment based on comparative factors that include negatives, indicating a decreasing adjustment, and positives, indicating increasing adjustment without the need to calculate the absolute value of each adjustment.

8. *Total value of gross adjustment* is total adjustment based on comparative factors in terms of absolute value.
9. *Reference price* is the successful transaction price of real estate after adjustment based on the comparative factors relating comparable properties and the real estate subject to valuation. The reference price is the final basis for calculating the price of the real estate subject to valuation.
10. *Successful transaction in the market* is the completed transaction of real estate where the real estate including the right of land use and ownership of houses and other attached assets has been transferred to the buyer, and the seller has received payment.

3.2. Scope of application

1. The comparison method is to be used to value popular transaction of real estate in the real estate market.
2. Based on differences of comparative factors between comparable real estate and the real estate subject to valuation, the valuer determines the reference prices of the comparable real estate after making increase or decrease adjustments on the successful transaction prices of the comparable real estate.

3.3. Steps in property valuation based on the comparison method

Step 1: Study the market to gain information on transaction prices, listed prices or offer for sale prices and comparative factors of similar real estate that has been successfully transacted or is transacting in the market.

Step 2: Collect and examine the information and data of the comparative factors of comparable real estate.

Step 3: Select comparative standard units and develop an analysis and comparison tables for each comparative standard unit.

Step 4: Analyze and determine differences between comparable real estate and the real estate subject to valuation, then adjust the price of comparable real estate according to the differences of the comparative factors to establish the reference price for each comparable real estate.

Step 5: Fully analyze the reference prices of the comparable real estate, indicating the most representative one for calculating and determining the price of the real estate subject to valuation.

The basic comparative factors that need to be collected for real estate valuation are presented in Appendix 3.

3.4. Timing of and conditions for collecting information

1. Timing of information collection:

Information on comparable properties is collected from completed successful transactions or transactions being undertaken in the market at the same time or at a time close to the time of the valuation and in the nearest locations to the real estate subject to valuation. The information on comparable real estate should not be older than 1 year prior to the date of valuation.

The variable price index of real estate is determined by the valuer based on statistical data analyses to suit the shift in the market price index during the period of valuation.

2. Conditions for collecting information:

Information must be collected through successful real estate transactions in the market, in which the buyer and the seller have the same opportunity to access the real estate database and purchase negotiations are not legally violated and are voluntary and not subject to any external pressure.

Information collection must be objective and based on accurate actual property transactions with detailed evidence to prove the price of the successfully transacted real estate in the market. The origin and date of collected information should be noted in the Valuation Report. Depending on the actual situation of the real estate, the valuer may collect market evidence from contracts, successful real estate transactions at real estate transaction centers, public media, valuers' market survey results and other evidence stated in documents of the state agencies and businesses.

With information on prices of successful transactions of real estate gained through interview by telephone or directly, from public media, real estate transaction centers, the Internet, etc, the valuer should carefully appraise, review, evaluate and verify the data to ensure that the information is credible.

For properties that are being offered for sale, the valuer has to collect the information and compare the offered selling price and the buying price with the market price. The offered selling price is usually higher than the market price, whereas the offered buying price is usually lower than the market price. The valuer then makes suitable adjustments to establish a rational price before using it as a comparative price.

The valuer has to store all information collected with detailed data on prices in the Valuation Dossier to serve, when necessary, the needs of inspection by the state administrative agencies for valuation and to provide favorable conditions for settling real estate valuation disputes in the future.

3.5. Analysis of information:

Analyses and comparisons of information are needed to indicate similarities and differences and advantages and disadvantages between the real estate subject to valuation and other comparable properties. The analysis and comparisons are conducted in two ways:

- Qualitative analyses, including pairs analysis, statistical analysis, regression analysis, cost analysis, etc. to establish needed adjustments in monetary or percentage terms.
- Quantitative analyses, including correlative comparative analysis, classification analysis and interviewing stakeholders. Quantitative analysis shows adjustments which are a larger number (marked as a negative adjustment) or a smaller number (marked as a positive adjustment).

3.6. Price adjustment of comparable real estate based on differences in the comparative factors

Analyses and comparisons of information are made to indicate similarities and differences, advantages and disadvantages between the real estate subject to valuation and other comparable real estate. The analyses and comparisons are firstly made using qualitative analysis and then the quantitative analysis.

The subject of adjustment is the selling price or converted price to the level of the comparative standard unit (successful transaction price or offering selling price, offering buying price in the market after adjusting to the popular purchasing price in the market). For land and farms, the price per comparative standard units can be price per m², price per meter in front width or price per Vietnamese acre; for apartments and villas these prices can be price per apartment, price per m², etc.

Adjustments are determined on the basis of differences in comparative factors between comparable real estate and the property subject to valuation, such as profitability, legal status, infrastructure, natural characteristics of the land parcel, the direction the house is facing, the landscape, environment, interior and exterior design, the ratio of land use or the height of buildings.

The principles of adjustment consist of:

- (1) proved by evidence that is collected through market survey;

- (2) adjust price based on difference of one comparative factor while the other ones remain fixed;
- (3) the real estate subject to valuation is considered as the goal of the adjustment process.

The means of adjustment include:

- (1) adjustment based on absolute cost applied to the difference between comparative factors that can be quantified in monetary terms;
- (2) adjustment based on a percentage applied to the difference between comparative factors that cannot be quantified in monetary terms;
- (3) based on market survey data, the valuer has to find evidence of price differences between each comparative factor to be used for adjustment. The adjustment is firstly made based on absolute cost in monetary terms and then is based on percentage.

The following table presents an example of adjustment according to comparative factors that can be quantified in monetary terms.

Comparative factors (unit: million VND)	Real estate subject to valuation	Comparable real estate A	Comparable real estate B	Comparable real estate C	Comparable real estate D	Comparable real estate E
Selling price		670	750	565	700	532
1. Legal status	Ownership	Ownership	Ownership	Ownership	Ownership	Ownership
2. Financial condition	Market	Preferential	Preferential	Market	Market	Market
Adjustment value		- 50	- 50			
Adjusted price		620	700	565	700	532
3. Selling condition	Objective	Objective	Objective	Objective	Objective	Objective
Adjustment value						
4. Market date		- 3 weeks	- 1 month	- 1 year	- 1 year	- 1 year
Adjustment ratio				+ 10%	+ 10%	+ 10%
Adjustment value				+ 56.5		
Adjusted price		620	700	621.5	770	585,2
5. Real estate features						
a. Location		Similar	Similar	Similar	Similar	Similar
Adjustment value						
b. Area (m ²)	930	930	1,110	930	1,110	930
Adjustment value			- 80		- 80	
c. Garage	No	for 2 cars	for 2 cars	for 2 cars	for 2 cars	No
Adjustment value		- 36	- 36	- 36	- 36	
d. Basement	Yes	No	No	No	Yes	No
Adjustment value		+ 70	+ 70	+ 70		+ 70
Final adjusted price		654	654	655.5	654.0	655.2

In the above table:

- The comparable real estate A has 2 adjustments, the net adjustment value is VND 16 millions, the gross adjustment value is VND 156 millions;
- The comparable real estate B has 4 adjustments, the net adjustment value is VND 96 millions, the gross adjustment value is VND 236 millions;

- The comparable real estate C has 3 adjustments, the net adjustment value is VND 90.5 millions, the gross adjustment value is VND 162.5 millions;
- The comparable real estate D has 3 adjustments, the net adjustment value is VND 46 millions, the gross adjustment value is VND 186 millions;
- The comparable real estate E has 2 adjustments, the net adjustment value is VND 123.2 millions, the gross adjustment value is VND 123.2 millions.

The following table presents an example of adjustment according to the qualitative comparative factors that cannot be quantified in monetary terms.

Comparative factors (unit: million VND)	Real estate subject to valuation	Comparable real estate AA	Comparable real estate BB	Comparable real estate CC	Comparable real estate DD	Comparable real estate EE
Selling price		29,300	21,200	24,600	21,600	24,700
Area		349 m ²	276 m ²	300 m ²	248 m ²	314 m ²
Unit selling price per 1m ²		84.0	76.8	82.0	87.0	78.6
1. Location	Average	Better	Less	Average	Better	Less
Adjustment level		-	+	0	-	+
2. Average rental	135.63	137.78	127.01	135.63	139.93	123.40
Adjustment level			+			+
3. The ratio of the leased area on total building area	88%	94%	93%	92%	89%	89%
Adjustment level		-	-	-		
4. The ratio of leasing	90%	87%	85%	90%	95%	90%
Adjustment level		+	+		-	
5. The ratio of cost	Market	market	market	Higher	market	market
Adjustment level				-		
6. Car parking	Good	Good	Good	Good	Lower	Good
Adjustment level					+	
Total net adjustment		Negative (-)	Positive (+)	Negative (-)	Negative (-)	Positive (+)

In the above table:

- The comparable real estate DD has a unit price VND 87.0 million per m² with negative adjustment (-);
- The comparable real estate AA has a unit price VND 84.0 million per m² with negative adjustment (-);
- The comparable real estate CC has a unit price VND 82.0 million per m² with negative adjustment (-);
- The comparable real estate EE has a unit price VND 78.6 million per m² with positive adjustment (+);
- The comparable real estate BB has a unit price VND 76.8 million per m² with positive adjustment (+).

The price level of the real estate subject to valuation is located between the negative adjustment and positive one, from the price level of the comparable real estate CC (VND 82.0 million per m²) to the price level of the comparable real estate EE (VND 78.6 million per m²). Finally, the price level of the real estate subject to valuation is estimated at about VND 80.5 million per m².

3.7. Determining the value of the real estate subject to valuation

The value of the real estate subject to valuation is determined by selecting the reference price which best represents all comparable real estate. Differences between the selected reference price and other reference prices should not exceed 10%.

The valuer can make further analyses using the following criteria to decide the final reference price for the real estate subject to valuation. These criteria are:

- Absolute value of total adjustments (difference between initial selling price and final adjusted price) is minimal.
- Adjustment frequency (times of adjustments, number of comparative factors adjusted for one comparable real estate) is as little as possible.
- Adjustment amplitude (value or percentage) of one comparative factor is as small as possible.

3.8. Example of applying the comparison method to real estate valuation

Real estate subject to valuation is a residential land parcel with total area of 56m² at “A” commune in “X” city. According to data collected one year before the date of the valuation in the area (at “A” commune and other neighboring communes), there are 3 residential land parcels which were successfully transferred and have comparative factors similar to the residential land parcel subject to valuation. The collected data is presented in the following table:

No	Comparative factors (unit: VND million)	Subject residential parcel	Comparable land parcel no. 1	Comparable land parcel no. 2	Comparable land parcel no. 3
1	Selling price	To be defined	1,100	980	1,350
2	Total area	56m ²	50m ²	49 m ²	60m ²
3	Unit selling price per m ²	To be defined	22	20	22.5
4	Legal status	Certificate already issued	Certificate not yet issued	Certificate already issued	Certificate already issued
5	Business advantage	Front side is at 10m wide street	Front side is at 10m wide street	Front side is at 8m wide street	Two sides are at 8m wide streets
6	Infrastructure	Good electricity Good water supply Bad sewage	Good electricity Good water supply Good sewage	Good electricity Good water supply Good sewage	Good electricity Good water supply Good sewage
7	Direction	West	East	South-east	North
8	Landscape	View to a populated area	View to a populated area	View to a populated area	View to a park
9	Payment condition	cash payment only once when buying	cash payment twice, 60% when buying, and 40% after 1 year	cash payment only once when buying	cash payment only once when buying

The valuer has also collected some additional data from a market survey as follows:

- The cost for land registration the first time and receiving Certificate of land use rights for a comparable land parcel is VND 1 million per m².
- The price of the land parcel having a front side at a 10m wide street is 10% higher than one having a front side at an 8m wide street and 5% lower than one having 2 sides at an 8m wide streets.
- The price of the land parcel having a view to a park is 5% higher than one having a view to a populated area.

- The price of a land parcel with a good sewage system is 10% higher than one with a bad sewage system.
- The price of land parcels facing West and North are equal but 5% lower than one facing East and 10% lower than one facing in an East-South direction.
- The banking interest rate with a 1 year term is 20% per year.

Valuation process:

1. Analyzing the collected data:

- Based on the data, the price of the land parcel facing the 10m wide street is 10% higher than the one facing the 8m wide street and 5% lower than the one facing two 8m wide streets. If the value of the land parcel facing the 10m wide street is 100%, the value of the land parcel facing the 8m wide street would be 90%, and the value of the land parcel facing the two 8m wide streets would be 105%. The land parcel subject to valuation faces a 10m wide street. Its price calculated by using the adjustments for the comparable land parcels is as follows.

For the comparable land parcel facing the 8m width street: $(100\% - 90\%) / 90\% = + 11.11\%$

For the comparable land parcel facing two 8m width streets: $(100\% - 105\%) / 105\% = - 4.76\%$

- Based on the data that the price of the land parcel having a view to a park is 5% higher than the one having a view to a populated area, if the value of the land parcel having view to a populated area is 100%, the value of the land parcel having a view to a park would be 105%. The land parcel subject to valuation has a view to a populated area. The adjustment for comparable land parcels having a view to a park is $(100\% - 105\%) / 105\% = - 4.76\%$.
- Based on the data that the price of a land parcel having a good sewage system is 10% higher than the price of a land parcel having a bad sewage system, if the value of the land parcel having a bad sewage system is 100%, the value of the land parcel having a good sewage system would be 110%. The land parcel subject to valuation has a bad sewage system. The adjustment for the comparable land parcels having a good sewage system is $(100\% - 110\%) / 110\% = 9.09\%$.
- Based on the data that the price of the land parcel facing West and North is equal, but 5% lower than one facing East and 10% lower than one facing East-South, if the value of the land parcel facing East-South is 100%, the value of the land parcel facing West or North would be 90% and facing East would be 95%. The land parcel subject to valuation faces West. The adjustment for the comparable land parcels is as follows:

For the comparable land parcel facing East: $(90\% - 95\%) / 95\% = - 5.26\%$;

For the comparable land parcel facing East-South: $(90\% - 100\%) / 100\% = - 10\%$.

- In addition to infrastructure conditions, value adjustments can be made based on payment conditions, land use right certificate fee.

2. Table of data comparison and adjustment: Based on the above data, the land price adjustment for each comparable land parcel is set out in the following table.

Based on the comparison table, the comparable land parcel 2 and 3 have the least number of adjustments. For land parcel 2, the net adjustment is VND 1.60 million and the gross adjustment is VND 6.04 million. For land parcel 3, the net adjustment and the gross adjustment are VND 4.19 million, which is lower than the comparable land parcel 2. The valuer has to select comparable parcel 3 as the final reference price for the land price subject to valuation.

The unit price of the land parcel subject to valuation is VND 18.31 million/m² and market price (56m²) is VND 1,025.45 million.

No	Comparative factors (unit: VND million)	Land parcel subject to valuation	Comparable land parcel no.1	Comparable land parcel no.2	Comparable land parcel no. 3
A	Selling price		1,100	980	1,350
B	Total area	56m ²	50m ²	49 m ²	60 m ²
C	Selling price/m ²		22	20	22.5
D	Adjustment for comparable factors				
D1	<i>Payment condition</i>	Immediate payment	two payment periods	Immediate payment	Immediate payment
	<i>Adjustment rate</i>		- 0.07		
	<i>Adjustment value</i>		- 1.47		
	<i>Adjusted price</i>		20.53		
D2	<i>Legal status</i>	Certificate Issued	No Certificate		Certificate Issued
	<i>Adjustment value</i>		+ 1		
	<i>Adjusted price</i>		21.53		
D3	<i>Location</i>	Facing 10m wide street	Facing 10m wide street	Facing 8m wide street	Facing 2x8m wide streets.
	<i>Adjustment rate</i>				- 4.76%
	<i>Adjustment value</i>				- 1.07
D4	<i>Infrastructure</i>	Bad sewage	Good sewage	Good sewage	Good sewage
	<i>Adjustment rate</i>		- 9.09%	- 9.09%	- 9.09%
	<i>Adjustment value</i>		- 1.92	- 1.92	- 1.92
D5	<i>Direction</i>	West	East	East-south	North
	<i>Adjustment rate</i>		- 5.26%	- 10.0%	
	<i>Adjustment value</i>		-1.08	-2.0	
D6	<i>Landscape</i>	View to a populated area	View to a populated area	View to a populated area	View to a park
	<i>Adjustment rate</i>				- 4.76%
	<i>Adjustment level</i>				- 1.07
E	Referencing price per m ²		17.50	18.4	18.31
	Number of adjustment		4	3	3
	Net adjustment		4.40	1.60	4.19
	Gross adjustment		5.50	6.04	4.19

4. Income method of valuation

The Income method is presented on the basis of the Standard No. 9 of the Vietnam Valuation Standard approved by the Vietnam Ministry of Finance.

4.1. Terms

1. The *Income method* is a method of valuation based on conversion of net income flows in the future that may be received from the exploitation of real estate, into the present value of the real estate, (this conversion process is also called the income capitalization process) to estimate the market value of real estate subject to valuation.

2. *Capitalization rate* is a fraction used to describe the relationship between income and the value of real estate. It is the expected rate of profit in one year of operation over the total value of real estate. It is also used to convert net income into real estate value.
3. *Capitalization coefficient* is the reciprocal of the capitalization rate.
4. *Discount rate* is a fraction used to convert the estimated income flow in the future into present value of the real estate. The discount rate may be the capitalization rate, the banking interest rate over an investment term or a capital return rate (internal rate of capital return).
5. *Capital return rate* (internal rate of capital return) is the discount rate when it is discounted and the future value of income will be equal to the initial investment cost (NPV = 0, NPV is Net Present Value).
6. *Real rate of return* is the market value of the real estate minus a percentage for taxes on the real estate.
7. *The Value of recovered assets* (value of liquidated assets, value of assets at the end of the investment period) is the total amount that the investor receives at the end of the investment period. The value of the recovered assets is estimated by using the appropriate capitalization rate to convert expected prices of buying/selling real estate (at the end of investment period) into the value of the real estate at the time of valuation.

When valuing, the valuer may or may not calculate the value of recovered assets, depending on the purpose of the valuation, the features of the real estate and the availability of information.

4.2. Contents of the income method

The income method is based on the hypothesis that real estate has value because it generates income for its owners. If other factors remain constant, if the owner receives a higher income from the real estate, the real estate would have a higher value.

The market value of real estate is equal to the present value (value at the time of valuation) of net income that can be collected from the real estate in the future.

The income method is applicable mainly to real estate valuation where the valuer may predict the income from real estate in the future and may calculate a suitable rate of discount.

The income method comprises two methodologies:

- (1) the direct capitalization method is applicable to cases where the income from invested real estate is unchanging over the years of investment and the investment period is infinite;
- (2) the discounted cash flow method is applicable to cases where the income from invested real estate changes year by year.

The income method is strongly related to the estimation of the capitalization rate and discount rate. The estimation of the capitalization and discount rates are conducted in accordance with the specific characteristics of the real estate and collected data from the market. Examples of the estimation of a capitalization rate and a discount rate are set out below.

1. Determination of net income from leasing a real estate:

An apartment block has 10 units with 1 bedroom, which are able to be leased at a rental cost of VND 3.2 million per unit-month; and 10 units with 2 bedrooms, which are able to be leased at a rental cost of VND 4.8 million per unit-month.

- The total expected income from the apartment block is:
Units with 1 bedroom: $10 \times \text{VND } 3,200,000 \times 12 \text{ month} = \text{VND } 384,000,000$;
Units with 2 bedroom: $10 \times \text{VND } 4,800,000 \times 12 \text{ month} = \text{VND } 576,000,000$;
Total expected income from apartment block rental: $\text{VND } 960,000,000$.
- Determination of rate of loss due to vacant apartments and/or late payment.
Following fieldwork and undertaking a market survey, the data on vacant apartments and/or late payment is as follows:
There are 3 similar apartment blocks: the first has 28 units, in which 2 units are vacant (7.1%); the second has 44 units, in which 3 units are vacant (6.8%); the third has 22 units, in which 2 units are vacant (9.1%). Based on this data, the percentage of vacant apartments is approximately 9%.
The rate of loss due to the situation of late payment is 1.0%.

Therefore, the total income from the apartment block subject to valuation is:

$$\text{VND } 960,000,000 - (\text{VND } 960,000,000 \times 10\%) = \text{VND } 864,000,000$$

- Determination of maintenance cost.

After fieldwork and undertaking a market survey, there are 3 similar apartment blocks that have maintenance costs. Block A spends VND 319 million on maintenance for VND 912 million of income (35%); Block B spends VND 412 million on maintenance for VND 1,190 million of income (34.6%); Block C spends VND 336 million on maintenance for VND 933.3 million of income (36%). Based on this data, the percentage of maintenance costs are approximately 35%.

Maintenance cost for the apartment block subject to valuation is:

$$\text{VND } 864,000,000 \times 35\% = \text{VND } 302,000,000$$

The net income from leasing all apartments in the block is:

$$\text{VND } 864,000,000 - \text{VND } 302,000,000 = \text{VND } 562,000,000$$

2. Determination of the discount rate.

Example 1: Suppose we need to invest in real estate with a total value of VND 1,000 million, of which 66% is a bank loan with the return rate of 5% per year. The balance of 34% is investor's capital who expect a return of 8% per year. The valuer needs to calculate the discount rate by year.

Determination of the discount rate is as follows.

- Cost of the bank loan: $\text{VND } 660,000,000 \times 5\%/\text{year} = \text{VND } 33,000,000$ per year.
- Cost of investor capital: $\text{VND } 340,000,000 \times 8\%/\text{year} = \text{VND } 27,200,000$ per year.

Therefore, the per annum cost of the capital of VND 1,000,000,000 to invest in the real estate is:

$$\text{VND } 33,000,000 + \text{VND } 27,200,000 = \text{VND } 60,200,000$$

- The discount rate by year is $\text{VND } 60,200,000 / 1,000,000,000 = 6.02\%$

Example 2: A business needs to invest in real estate worth VND 10,000 million. Suppose that the first mortgage is 50% of the value of the real estate with an interest rate of 4.5% per year; the second mortgage is 25% of the value of the real estate with an interest rate of 7% per year. The remaining 25% of the value

of the real estate is provided by the business, which expects a return rate on its capital of 10% per year. The valuer needs to calculate the discount rate by year.

- The first mortgage is VND 5,000 million. The discount rate per year is: $50\% \times 4.5\% = 2.25\%$;
- The second mortgage is VND 2,500 million. The discount rate per year is: $25\% \times 7\% = 1.75\%$;
- The business own capital is VND 2,500 million. The discount rate per year is: $25\% \times 10\% = 2.50\%$

The total discount rate by year is: $2.25\% + 1.75\% + 2.50\% = 6.5\%$

3. Determination of internal rate of return (IRR)

The internal rate of return (IRR) is a discount rate that is the present value of all future cash flows of the investment. In other words, the discount rate is when the net present value is equal to zero (Net Present Value NPV = 0).

- Calculating IRR by the test method.

Let us randomly select r_1 so that $NPV_1 > 0$ and r_2 so that $NPV_2 < 0$, in which NPR is calculated by the following formula: $NPV = \frac{R_t}{(1+r)^t}$,

Where t is the time of the cash flow (count by year); r is discount rate; R is the net cash flow (the amount of cash, inflow minus outflow) at the time t.

The closer the value of NPV_1 and NPV_2 is to 0, the more accurate is the IRR

By another method, the IRR can be found by the following formula: $IRR = r_1 + \frac{NPV_1(r_2 - r_1)}{|NPV_1| + |NPV_2|}$

The internal return rate is used to find the capitalization rate of similar real estate in the market.

Example: A commercial shop is bought for VND 196,476,273. In the first 3 years it produces revenue of VND 50 million, VND 52 million and VND 51 million and expected revenues in next 2 years of VND 53 million and VND 54 million. The internal capital return rate is calculated as follows.

In the current year of investment, the revenue is VND 196,476,273. During from the 1st year to the 5th year, the revenues are VND 50 million, VND 52 million, VND 51 million, VND 53 million, and VND 54 million.

Selecting $r_1 = 9\%$, then $NPV_1 = +7.186836$; selecting $r_2 = 11\%$, then $NPV_2 = -4.977.009$. Applying the above formula, the value of r is approximately 10%.

4. Determination of the capital return rate

The capital return rate is that part of income from investment during the economic life of the properties attached to the land. The capital return rate is calculated as a percentage of capital to be recovered over the number of remaining years.

Example: The total capital to be recovered is 100%. The remaining economic duration of the building is 50 years.

The capital return rate is $(100/100)/50 = 2\%/year$.

4.3. Direct capitalization method

1. Definition:

Direct capitalization is a method using income to estimate the value of real estate by the conversion of the interest per year. The conversion is made simply by dividing the income by the appropriate rate of capitalization or by multiplying with a coefficient of income.

The direct capitalization formula is presented as:

$$V = \frac{I}{R} \text{ or } V = I \times GI$$

Where, V is value of property; I is net income per year; R is the capitalization rate; and GI is the coefficient of income (GI = 1/R).

2. Calculation Steps.

Step 1: Estimate the income from the real estate. Each kind of income is correlated to each appropriate kind of capitalization rate.

Step 2: Establish the capitalization rate or coefficient of the income for each kind of income.

Step 3: Applying the direct capitalization formula to calculate the value of the real estate.

- The estimation of income from real estate.

Direct capitalization is based on the estimated income of the real estate for a single year. The estimated income may be potential gross income, the total gross income, net operating income, etc.

Define the net income from (rental) real estate by the following formula.

$$\text{Net operating income} = \text{Potential gross income} - \text{Loss of income where the property is not rented to 100\% of capacity and payment is late} - \text{Costs of operation and maintenance of the properties (operating costs)}$$

Potential gross income is the total income from real estate with a rental of 100% of capacity. The valuer determines whether the potential gross income from rental of the real estate is subject to valuation via market survey to establish some rented real estate similar to the real estate subject to valuation. The factors that determine the similarity of comparable real estate are similar purpose of use, similar land use, similar remaining economic life of the property and similar cost of maintenance.

Loss of income arising from the situation where the property is not rented to 100% of capacity and payment late is determined by multiplying the vacancy rate (not tenants) and the total potential gross income from rental of the real estate. The valuer determines the vacancy rate and the late payment based on market survey at similar rented real estate.

Costs of operation and maintenance include direct and indirect costs, which are:

- (1) direct costs are fixed costs that the property owner has to pay regardless of whether there are tenants or not (such as real estate tax and building insurance);
- (2) indirect costs are those costs paid proportionally to the number of tenants (such as management fees, electricity, water, gas and cleaning);

- (3) the cost of heating and air conditioning;
- (4) the cost for cleaning and maintenance;
- (5) the cost of renewal.

The valuer determines the percentage of costs of operation and maintenance of the property through survey of the similar properties.

- Determination of capitalization rate and income coefficient.

The income capitalization rate and the income coefficient reflect the relationship between income and value that is derived from market data. The fundamental point is that the real estate must be similar in risk, income, costs, characteristics and location to the subject real estate.

There are two main methods of determining capitalization rates as follows.

Method 1 - Total profit rate.

The capitalization rate is determined by the following formula:

Capitalization rate = Profit rate of investment without risk + Risk additions.

In which:

The profit rate of investment without risk is equal to the interest of government bonds over a 10 year term.

Risk additions include business risks, financial risks and liquidity risks. When determining the expected risks the valuer has to study the characteristics of each region and each local economic zone, features of the real estate and stability of tenants.

Method 2 – Investment.

The capitalization rate is defined as the weighted average rate of capital return and expected rate of investor return of the real estate through the following formula:

$$M \times R_m + (1-M) \times R_e = R_o$$

In which:

R_o is the capitalization rate;

M is the ratio of bank loans to the total capital invested in the real estate;

(1-M) is the ratio of capital raised from shareholders of the total capital invested in the real estate;

R_m is the capital return rate;,

R_e is the expected return rate to investors.

4.4. The Discounted Cash Flow Method (DCF)

a. Definition:

The discounted cash flow method is a method based on estimation of the value of the real estate by discounting all revenues and expenses of estimated cash flows arising in the future to the current value, taking into account inflation and potential instability of income.

b. Formula:

- In the case of uneven cash flows: $V = \sum_{t=1}^n \frac{CF_t}{(1+r)^t} + \frac{V_n}{(1+r)^n}$

In which:

V is the market value of the real estate;

CF_t is the income of the year t;

V_n is the recovered value of real estate in the last year (year n);

n is total of years;

r is the discount rate;

- In the case of even cash flow: $V = DF \sum_{t=1}^n \frac{1}{(1+r)^t} + \frac{V_n}{(1+r)^n}$

c. Calculation steps:

Step 1: Estimating revenue from exploitation of the real estate.

Step 2: Estimating expenditure related to exploitation of the real estate.

Step 3: Estimating net income or cash flow from revenues and expenses.

Step 4: Estimating the recovered value of real estate in the last year of the exploitation period.

Step 5: Estimating an appropriate capitalization rate.

Step 6: Determination of the real estate value (by the above formulas).

4.5. Example of the direct capitalization method and the discount cash flow method

1. Direct capitalization method

Example: To determine the market value of a house facing street X. At present, the owner is renting the house for VND 360 million per year. The cost for annual maintenance is VND 10 million, tax is VND 98 million annually. The market survey of capitalization rates shows that the expected interest rate of house rental is 12% per year.

Annual net income from rental of the house is:

VND 360 million - VND 10 million - VND 98 million = VND 252 million

Market price of this house is $V = \frac{252}{12\%} = 2,100$ (VND 2,100 million)

2. Discount cash flow method (DCF)

Example: To value a commercial shop which has a gross floor area of 2,000m². The rental area is 80% of the gross floor area. The rent is VND 1.1 million/m²/month (tax included). The cost for depreciation and maintenance is VND 3,000 million/year and management and operational costs are VND 1,000 million/year. VAT is 10% and business income tax 20% of pre-tax income. The remaining rental term is 4 years and the new price for renting will be an increase of 15%. The cost for depreciation and maintenance will

increase by 5% and management and operation cost increases will be 10%. The taxation rate will remain unchanged. The capitalization rate is 12%. Accounts are to be rendered at the end of each year.

- Present net income:

Present revenue is:

VND 1.1 million/m²/months × 2,000 m² × 80% × 12 months = VND 21,120 million

$$\text{VAT is } \frac{21.12 \times 10\%}{1.1} = 1.92 \text{ (VND 1,920 million)}$$

Annual pre-tax income:

VND 21,120 million - VND 3,000 million - VND 1,000 million - VND 1,920 million = VND 15,200 million

Present annual net income: VND 15,200 million × (1 - 28%) = VND 10,944 million

- Estimation of net income at the expiry date of the current rental contract:

Estimation of revenue: VND 21,120 million × (1-15%) = VND 17,952 million

Estimation of cost: (VND 3,000 million × 1.05) - (VND 1,000 million × 1.1) = VND 2,250 million

$$\text{Estimation of VAT: } \frac{17,952 \times 10\%}{1.1} = 1,632 \text{ (VND 1,632 million)}$$

Estimation of pre-tax income:

VND 17,952 million - VND 2,250 million - VND 1,632 million = VND 14,070 million

Estimation of net income: VND 14,070 million × (1 - 28%) = VND 10,130.4 million

- The estimated value of the commercial shop at the expiry date of the current rental contract (at the end of fourth year):

$$\frac{10,130.4 \times 10\%}{12\%} = 84,420 \text{ (VND 84,420 million)}$$

- The value of the commercial shop is:

$$V = 10,944 \times \sum_{r=1}^5 \frac{1}{(1.12)^r} - \frac{84,420}{(1.12)^4} =$$

= VND 10,944 million × (3.037) - VND 55,817.9296 million

= VND 33,240.2118 million + VND 55,817.9296 million = VND 89,058.1414 million

5. Residual method of valuation

The Residual method is presented on the basis of the Standard No. 10 of the Vietnam Valuation Standard approved by the Vietnam Ministry of Finance.

5.1. Terms

1. The *Residual method* is a method of valuation where the market value of the real estate subject to valuation is defined based on the value of existing capital, by taking the estimated value of the assumptive development of real estate (total revenue) minus all needed expenses in order to generate the development.
2. The *total revenue of the project* is the expected revenue after completing a real estate investment project that is in accordance with legal regulations, appropriate land use plans, construction plans and the trend of supply and demand and market prices.
3. The *total project investment cost* is the necessary total cost that is planned to be invested in a potential real estate investment project, which is in accordance with technical standards and cost norms and meets the optimal effectiveness objectives of the project.
4. The *land price of the project* is the difference between the total revenue of the project and the investment costs of project implementation.

5.2. Calculation of the residual method

The residual method is applicable to the valuation of real estate that has the potential for development; particularly in cases where the valuation is of vacant land or land with buildings that need to be renovated or demolished to make way for new constructions.

The residual method is based on the assumption that the buyer can pay for the residual of real estate after subtracting the total cost of investment from total expected revenue.

The formula for valuation is: $V = DT - CP$

In which:

V is the value of the real estate subject to valuation;

DT is the total revenue of the project;

CP are the total project costs of the investment project.

5.3. Steps in the valuation process by the residual method

Step 1: Identifying business objectives and how to realize optimum project effectiveness in accordance with legal provisions, appropriate plans, the feasibility of financial conditions and attaining the optimal value for the project.

Step 2: Estimating the total revenue generated by the project and converting it into the price at the time of valuation.

Step 3: Estimating the investment cost required to generate revenue and converting it into the price at the time of valuation.

Step 4: Determination of the land price in line with differences between the methods of calculation resulting from steps 2 and 3.

5.4. Calculating the total revenue of the project

The total revenue of the project is estimated on the basis of the State's regulations on land use planning, construction investment and the trends of supply-demand and market prices.

The calculation is as follows:

Calculate and convert the total development revenue (at year end) of the project into the price at the time of valuation:

$$DT = \sum_{t=1}^n \frac{DT_t}{(1+r)^t}$$

In which:

DT is the total revenue generated by the project;

DT_t is estimated revenue of the project in year t;

n is the total number of years of the investment project or the project's lifespan;

r is the annual discount rate of the project (usually the bank interest rate).

5.5. Total investment costs for generating the revenue of the project.

The total investment cost of the project at the end of each year includes all tentative costs for construction recorded in the written decision on the investment and the tentative investment cost of the project that are the basis for investors to plan and manage the capital implementation of the project. These expenses primarily include:

- (1) costs of construction investment consultancy such as survey work, investment reporting, project document production, construction design, preparation of bidding documents, construction supervision work, supervision of equipment installation, etc;
- (2) project management costs such as costs of project preparation, implementation to completion and acceptance of the works and handing over the project for use;
- (3) cost of compensation, support and resettlement for land clearance such as compensation of land and other assets attached to land, cost of resettlement, cost for organization of compensation, support and resettlement and payment for outdated infrastructure;
- (4) construction costs such as dismantling of redundant infrastructure, leveling of the construction area, the construction cost of temporary structures and cost of construction;
- (5) cost of equipment such as procurement of technological equipment, training and technology transfer, insurance for equipment, taxes and related charges;
- (6) other expenses such as fees for investment verification and construction insurance;
- (7) contingency costs;
- (8) cost of commercial work such as marketing, selling, bank interest, profits of investors, tax, etc.

The valuer has to comply with current regulations of the authorized bodies on the methods of determining the total cost of the investment project, economic and technical norms on materials, fuel, labor, etc in their comparisons with market prices at the time of valuation and other related contents.

Calculating and converting the total investment cost at the end of each year to generate the revenue of the project into the price at the time of valuation:

$$CP = \sum_{t=1}^n \frac{CP_t}{(1+r)^t}$$

In which:

CP is the current cost of the total project investment;

CP_t is tentative cost in year t;

n is the total years of the project lifespan;

r is the annual discount rate of the project (usually the bank interest rate).

5.6. Example of residual method

Example 1: To value a 15,000m² of land at “X” district of a second-grade city. This plot was used for industrial production but now has been permitted to change its land use to residential housing for sale. Currently, there is a factory with an area of 7,000m² (one-storey, brick walls, steel framing, and metal sheet roof and glossy cement floor). It has been expertly assessed that 30% of the quality of the factory remains.

Information on the project.

Based on the Construction Law, the percentage of land used for building houses is no more than 60% of the total area; equivalent to 9000m² of the gross floor area. In which 60% of gross floor area (5,400m²) is for building the 16 floor apartment block and 40% (3,600m²) is for semi-detached houses (36 lots of land with 100m² for each lot).

It is assumed that the project will be finished in 1 year and investors only have to compensate for the value of the factory to the enterprise whose land is recovered.

Based on the detailed design of the project and data provided by the investor; on the investigation and analysis of the real estate market; and the market construction price, the valuation organization has detailed some information as follows:

- The cost norm for construction for a new factory with a similar structure is VND 1 million/m²;
- The average cost of infrastructure investment is VND 1 million/m²;
- The fee for design and project planning is VND 1,000 million;
- The average cost for construction of the apartment block is VND 3.5 million/m²;
- The cost for construction of a fresh water tank, water pumping station and standby electricity generator for the apartment block is VND 1,100 million;
- The cost of demolishing the old factory is VND 120 million. Waste materials are equivalent to 25% of the remaining value of the factory;
- Investors have to lend 55% of the total cost of the project from the bank at an interest rate of 17%/year;
- The cost of advertising and marketing is equivalent to 1.5% of revenue;
- The cost of project management is equivalent to 7% of the project's total cost;
- Investors profit is equivalent to 20% of the total project revenue;
- The average selling price of apartments is VND 8.5 millions/m²; the total area of the apartments occupies 80% of the total gross floor area; the average land price of semi-detached houses is about VND 23 million/m² (VAT is not included).

Applying the residual method to value this site is as follows

Step 1: Confirm that the land use purpose of the site is residential and that the optimal structure is 60% of the land area for construction of an apartment block and 40% for semi-detached houses.

Step 2: Estimate the total revenue.

- Revenue from selling apartments :
 $[(5,400\text{m}^2 \times 16 \text{ floors}) \times 80\%] \times \text{VND } 8.5 \text{ million/m}^2 = \text{VND } 587,520 \text{ million,}$
 - Revenue from selling the lots of land: $3.600\text{m}^2 \times \text{VND } 23 \text{ million/m}^2 = \text{VND } 82,800 \text{ million,}$
- Total expected revenue: VND 587,520 million + VND 82,800 million = VND 670,320 million.

Step 3: Total cost estimation

- Cost of infrastructure: $15,000\text{m}^2 \times \text{VND } 1 \text{ million/m}^2 = \text{VND } 15,000 \text{ million,}$
- Cost for designing and planning the project is VND 1,000 million,
- Average cost for construction of apartment block:
 $(5,400\text{m}^2/\text{floor} \times 16 \text{ floors}) \times \text{VND } 3.5 \text{ million/m}^2 = \text{VND } 302,400 \text{ million,}$
- Cost for the construction of a fresh water tank, water pumping station and standby electricity generator for the apartment block is VND 1,100 million,
- Cost for demolishing the old factory is VND 120 million,
- Cost for compensation for the old factory: $(7,000\text{m}^2 \times \text{VND } 1 \text{ million/m}^2) \times 30\% = \text{VND } 2,100 \text{ million,}$
- Money realized from waste material: VND 2,100 million $\times 25\% = \text{VND } -525 \text{ million;}$
- Cost for marketing and advertising: $1.5\% \times \text{VND } 670,320 \text{ million} = \text{VND } 10,054.8 \text{ million;}$

Total direct cost: VND 331,249.8 million.

- Bank interest: $(55\% \times \text{VND } 331,249.8 \text{ million}) \times 17\% = \text{VND } 3,097.2 \text{ million.}$
- Management costs: $7\% \times \text{VND } 331,249.8 \text{ million} = \text{VND } 23,187.5 \text{ million.}$
- Investor profits: VND 670,320 million $\times 20\% = \text{VND } 134,064 \text{ million.}$

Total cost (including investor profits): VND 491,598.5 million.

Step 4: Determination of land price (total expected revenues - total costs)

VND 670,320 million - VND 491,598.5 million = VND 178,721.5 million.

The value of the site is VND 179 billion or equivalent to VND 20 million/m².

Example 2: In 2008, The People's Committee of City S intends to allocate a land area of 10,000m² for company Y to build an apartment block for sale. Currently, this site has a factory with an area of 2,000m² (one-storey, brick walls, steel framing, metal sheet roof, and cement flooring). 30% of the quality of the factory remains. To value the site requires the following.

The information of the project includes:

According to regulations on construction for this project, the percentage of land used for building houses has a maximum of 60% of the total land area (6,000m²).

This project is permitted to construct a 12 floor apartment block that will be completed within two years. Completion is expected to be in the last month of the 1st year and the 2nd year. The implementation plan is as follows:

1. First year (tentatively 60% of construction completed):
 - 1.1. Total construction cost:
 - The cost norm for construction of the new factory is VND 1 million/m²;

- The fee for design and project planning is VND 2,400 million;
- The cost of construction is VND 0.7 million/m²;
- The cost for construction of the apartment block is VND 5 million/m²;
- The cost for construction of the water tanks, water pumping stations and standby electricity generator, etc. is VND 1,500 million;
- The cost of demolishing the old factory is VND 100 million;
- The revenue from selling waste material is VND -30 millions;
- The cost of advertising for house sales is VND 4,500 millions;
- The cost of project management is 5% of the total cost of the project.

The expenses of demolition and compensation for the old factory; investment in infrastructure; design and project planning, marketing and advertising are all in the first year. The cost of the apartment building; building water tanks and pumping stations, etc. are 60% of their total cost in the first year. Revenue from the sale of waste materials is in the first year.

1.2. Revenue from the sale of apartments:

- From floor 1 to floor 5 the sale price is VND 13 million/m²; from floor 6 to floor 10 the sale price is VND 12 million/m² other floors have a sale price of VND 11 million/m².
- 40% of the apartment value is collected from customers immediately after signing the contract. The contract was signed during the last year by the two sides.

2. Second year to complete the remainder of the project:

- Customers pay the remaining amount on completion;
- Payments are made in the early years; the income from customers is made in last year;
- The total area of apartments accounts for 80% of the total floor area (6,000m² x 80% = 4,800m²);
- All expenses in the first year are paid by bank loans with an interest rate of 10% per year (in the second year, investors use funds collected from customers without bank loans);
- The profit of investors is estimated at 15% of total project revenue;
- The sale price of apartments does not include VAT.

Apply residual method to value the land parcel as follows:

1. Estimating total revenue:

- The first year revenue:

$$[(4,800\text{m}^2 \times 5 \text{ floors} \times \text{VND } 13 \text{ million/m}^2) + (4,800\text{m}^2 \times 5 \text{ floors} \times \text{VND } 12 \text{ million/m}^2) + (4,800\text{m}^2 \times 2 \text{ floors} \times \text{VND } 11 \text{ million/m}^2)] \times 40\% = \text{VND } 282,240 \text{ million.}$$
- The second year revenue:

$$[(4,800\text{m}^2 \times 5 \text{ floors} \times \text{VND } 13 \text{ million/m}^2) + (4,800\text{m}^2 \times 5 \text{ floor} \times \text{VND } 12 \text{ million/m}^2) + (4,800\text{m}^2 \times 2 \text{ floors} \times \text{VND } 11 \text{ million/m}^2)] \times 60\% = \text{VND } 423,360 \text{ million.}$$
- Money received from waste materials is VND 30 million.

Total revenues converted into value at the time of the valuation:

$$282,240 + 30 + \frac{423,360}{(1 + 10\%)^1} = \text{VND } 667,142 \text{ million}$$

2. Estimation of total expenses:

2.1. The first year:

- Cost of infrastructure:
10,000m² x VND 0.7 million/m² = VND 7,000 million;
- Cost of design and planning is VND 2,400 million;
- Cost of building construction:
6,000m² x VND 5 million/m² x 12 floors x 60% = VND 216,000 million;
- Cost for construction of fresh water tank and water pumping station:
VND 1,500 million x 60% = VND 900 million;
- Cost for building compensation: 2,000m² x VND 1 million/m² x 30% = VND 600 million;
- Cost of demolishing the old building is VND 100 million;
- Cost for marketing and sale of houses is VND 4,500 million;
Total direct cost of implementation in the first year: VND 213,500 million.
- Bank interest: VND 213,500 million x 10% = VND 21,350 million;
- Management cost: VND 23,350 million x 5% = VND 10,675 million;
Total cost in the first year: VND 245,525 million.

2.2. The second year:

- Cost of building construction:
6,000m² x VND 5 million/m² x 12 floors x 40% = VND 144,000 million;
- Cost for construction of fresh water tank and water pumping station:
VND 1,500 million x 40% = VND 600 million;
Total direct cost of implementation in the second year: VND 144,600 million.
- Management cost: VND 144,600 million x 5% = VND 7,230 million;
Total cost in the second year: VND 151,830 million.
Total costs converted into value at the time of the valuation:

$$245,240 + \frac{151,830}{(1 + 10\%)^1} = \text{VND } 383,027 \text{ million}$$

Total cost (including profit of investors) converted into value at the time of valuation:

VND 383,027 million + 10% x VND 383,027 million = VND 421,347 million.

3. Determination of the value of the land parcel = (total revenues converted into value at the time of valuation - total cost (including profit of investors) converted into value at the time of valuation):

VND 667,142 million - VND 421,347 million = VND 245,795 million.

The value of land parcel is VND 245,795 million, equivalent to VND 24.57 million/m².

6. Profit method of valuation

The Profit method is presented on the basis of the Standard No. 11 of the Vietnam Valuation Standard approved by the Vietnam Ministry of Finance.

6.1. Terms

1. The *Profit method* is a method of valuation based on the profitability of real estate used to estimate the market value of real estate subject to valuation.
2. *Income from real estate* is the remainder of the total revenue after deducting the total cost, business income tax, interest from investment capital (calculated equal to the bank interest rate) and an amount paid to investors for business operation and the risks they may encounter in the business (calculated by the average profit rate on capital).

The average interest rate by business type is identified by the valuer through market survey of similar types of businesses in the area and is calculated as an average of 3 consecutive years before the time of the valuation.

6.2. Content of profit method

The profit method is based on an assumption of the difference between business investors and property owners, although in fact it may only be one person. Thus, the real estate value is net income capitalization (as rental) from the real estate.

The profit method is applied mainly to real estate valuation where there is difficulty in comparing similar real estate because the value mainly depends on the ability to gain profit from trading based on the particular location of that real estate. The main types of real estate that the profit method can be applied to include cinemas, theaters, hotels, restaurants, gas stations, golf courses, recreation centers, sporting facilities, parks, etc.

6.3. The steps of applying the profit method

Step 1: determine the total sales and services, including all revenues from sales and services by business categories registered under the provisions of the law.

Step 2: determine the total cost, including:

- (1) cost of raw materials, fuel and supplies purchased for the business as raw materials and food and beverages served in restaurants;
- (2) the cost of bank interest;
- (3) operating costs, business management as labor fees, water, electricity, gas and telephone charges, repairs and maintenance, office supplies, equipment depreciation.

Step 3: Define the net income from real estate, which means the remainder after subtracting total costs, taxes, fees and other amounts payable in accordance with the law regulations and money paid to investors from total revenue.

Step 4: Find a property value by the formula:

$$\text{Market value of real estate} = \frac{\text{Annual income}}{\text{Capitalization rate}}$$

The valuer determines the appropriate capitalization rate based on the guidelines for capitalization rate determination and the multiplier as shown in the income method above and also based on real estate leasing activities of similar types of business in the area at the time of valuation.

6.4. Requirements when applying the profit method:

- The valuer should have a thorough knowledge of enterprise accounting to identify business revenue and reasonable expenses by business type arising.
- The valuer has to review and analyze the financial statements of the enterprise over 3 consecutive years before the time of the valuation.
- The valuer has to conduct a comparison of the profit and the rental of the business location and ordinary rental in the market of similar businesses (the same type of business, similar lines of business, similar places, etc.).

6.5. Example of the profit method:

Example 1 - Hotel valuation: To value a three star hotel with 150 rooms.

Research the hotel's financial report for 3 recent years as follows:

- Monthly income (average) from 150 rooms is VND 1,200 million.
- Revenue from food, beer and beverage sales at hotel restaurant is VND 10 million/day.
- Cost of raw materials for food, beer and beverages is VND 5 million/day.
- Cost for electricity, fresh water and telephone is VND 250 million/month.
- Wages for cleaning staff is VND 150 million/month.
- Insurance is VND 10 million/month.
- Salary for other hotel staff is VND 400 million/month, in which the salary for administrative staff is VND 240 million/month.
- Other business activities: on the first floor of the hotel, there are 6 rooms for lease with rental of VND 250 million/month. The hotel spends 20% of total revenue from this rental for maintenance and cleaning.
- The common interest rate for hotel service is 15.0%.

Detailed calculation for hotel valuation:

1. Income from leasing 6 rooms:

- Revenue from leasing: VND 250 million/month x 12 months = VND 3,000 million,
- Deduction of 20% for maintenance and cleaning: VND 3,000 million x 20% = VND 600 million.
- Net income from lease of 6 rooms is VND 2,400 million.

2. Income from hotel services:

- Revenue from guest room rental: VND 1,200 million × 12 months = VND 14,400 million.
- Revenue from beer, food, etc. served to hotel guests: VND 10 million/day or VND 3,650 million/year.
- Total revenue from the two above items: VND 18,050 million.
- Cost of buying beer, food, raw materials, etc: VND 5 million/day or VND 1,825 million/year.
- Net income from hotel services is VND 16,225 million.

3. Running cost for hotel (by year):

- Wages for cleaning staff : VND 150 million x 12 months = VND 1,800 million,
- Electricity, fresh water and telephone expenses: VND 250 million x 12 months = VND 3,000 million,

- Insurance fees: VND 10 million x 12 months = VND 120 million.
 - Salary for service staff: VND 400 million x 12 months = VND 4,800 million,
 - Salary for administrative staff: VND 240 million x 12 months = VND 2,880 million.
- Total costs for the hotel operation is VND 13,700 million.

4. Net interest from the hotel operation: VND 2,126 million.

- Payment for hotel owner's salary (20%): VND 2,126 million x 20% = VND 425 million.
- Payment for bank interest is VND 200 million.

Net interest from hotel operation (after deduction of salary of hotel owner and bank interest)

VND 2,126 million - VND 425 million - VND 200 million = VND 1,500 million.

Net interest from commercial activities in the hotel:

VND 2,400 million + VND 1,500 million = VND 3,900 million.

Common interest rate of hotel services: 15.0%/year.

Value of hotel = VND 3,900 million x $\frac{1}{15\%}$ = VND 26,000 million

Example 2 - petrol station valuation: To value a petrol station.

Information from petrol station operations:

1. Profit from selling petrol/oil:

- Petrol: 18,000 liters/day x VND 160/liter = VND 2.86 million/day.
- Diesel oil: 8,000 liters/day x VND 150/liter = VND 1.20 million/day.
- Paraffin: 5,000 liters/day x VND 160/liter = VND 0.80 million/day.

Net profit from selling petrol/oil is VND 5.06 million/day or VND 1,774 million/year.

2. Profit from car/motorcycle washing:

- Revenue from car/motorcycle washing:
20 units/day x VND 50,000 = VND 1 million/day or VND 365 million/year
- Expenses for washing services are VND 30 million/year.
Net profit from car/motorcycle washing is VND 335 million/year

3. Profit from convenience store at the petrol station:

- Total revenue: VND 800 million/year,
- Total expenses: VND 500 million/year,

Net profit from convenient store: VND 300 million/year,

Total net profit of the three kinds of business at the petrol station: VND 2,409 million/year.

Running cost in the petrol station: VND -1,500 million.

(including: management cost - VND 255 million; electricity and fresh water - VND 260 million; salaries - VND 250 million; maintenance costs - VND 250 million; cost of licenses - VND 40 million; land rental - VND 60 million; insurance fees - VND 100 million; telephone - VND 130 million; stationary costs - VND 20 million; auditing costs - VND 35 million; bank interest - VND 100 million)

Total profits after deducting running cost is VND 910 million/year.

Expenses for petrol station owner that need to be deducted:

- Bank interest: VND 500 million x 10% = VND 50 million/year;
- Salary of petrol station owner: VND 860 million x 25% = VND 215 million/year;

Pre-tax profits: VND 910 million - VND 50 million - VND 215 million = VND 645 million/year.

Business income tax (28%): VND 645 million x 28% = VND 108 million/year.

Net profits after tax: VND 645 million - VND 108 million = VND 537 million/year

The value of petrol station is VND 537 million x $\frac{1}{15\%}$ = VND 5,370 million.

Appendix 2: Certificate of valuation form

The Certificate of valuation form is presented on the basis of the Standard No. 4 of the Vietnam Valuation Standard approved by the Vietnam Ministry of Finance.

Number/TĐG-CT
(name of valuation
company, organizations)

THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness
....., date monthyear

Certificate of Valuation

To:

1. Based on the requirement of... at official document number... date... for valuation of ...
2. Date of valuation: Date Month.... Year.....
3. Date of inspection: Date Month.... Year.....
4. Purpose of valuation:
5. Scope of valuation (Describe the basic elements to value)
 - Based on records and legal documents of attached with required letter of valuation number....., date.....
 - Detailed contents of Property Ownership and Land Use Rights Certificate: number of certificate....; date of issuance; issuance by people’s committee of district....; name of owner and land user on certificate
 - Building permission letter (if any)
 - Building architectural document (if any)
 - Finished work drawings (if any)
 - Balance of documents of works (if any)
 - Other legal documents.
6. Current of property
 - 6.1. Land:
 - Location : Administrative boundary, Grade of street and topography, terrain, direction, Neighborhood potential, etc.
 - Land area : total area, part area (if any), dimensions of each side of plot.
 - Current legal situation, etc.
 - 6.2. Building:
 - Building description: type of building, class of building, area of building, area of use, number of floors and number of rooms.

- Building composition: overall composition of building and composition of each part (fundament, wall, roof, etc.)

- Current situation: Detailed description of each component part of the building (fundament, walls, roofs, doors, ancillary buildings, balconies, etc.), type of material, current situation of equipment.

6.3. Other properties attached to the land :

- Technical parameters, current situation of properties, etc.

- The legal position of the properties, etc.

7. Valuation methods :

(List of valuation methods used for valuation).

8. Result of valuation:

Based on document supplied by; data and figures collected from field work; the valuation methods for calculating (write in the valuation methods to be used), we (write in the name of valuation company/ organization) announce the result valuation of ... property as follows:

The price of the land:

The price of the building(s):

Total price (including land and buildings):

Rounded total price:

(In words:.....)

Our valuation company (or organization) responds to your organization in accordance with the law.

Valuer

(Signature)

Director of valuation company

(Signature/stamp)

Appendix 3: The basic comparative factors needed to collect and adjust prices

1. The current legalization: The title of the comparable property has to be equal to the subject property. If not, the valuer has to make an adjustment.

Example 1: Ownership valuation of a shop (which has a building ownership certificate). The comparable property is another shop which is leased over a 7 year period of which 4 years remain. The leasing price by contract is VND 40 millions/year, the current market leasing price is VND 50 millions/year. The discounted rate is 10%.

The key: The adjustment rate is difference between the ownership and the leasing rights of the comparable property (calculating unit is VND millions)

The value of ownership: $50 / 10\% = 500$.

The value of leasing right.

Total monetary amount for a leasing contract for the remaining 4 years :

$$40 \times \sum (1+10\%)^{-4} = 40 \times 3,1698 = 126.79.$$

The value of ownership after finishing the leasing contract:

$$(50 / 10\%) \times (1+10\%)^{-4} = 500 \times 0,6830 = 341.50.$$

The total value of leasing right : $126,79 + 341,50 = 468.29$.

The adjustment rate for ownership factor : $500 - 468.29 = 31.71$

Example 2: A comparable property (is an area on the same land parcel containing residential housing situated in a residential zone) has a total area of 50m² and has sold for VND 500 millions. This parcel has been in stable use from 1994 and the land tenure certificate has not yet been issued for the parcel. At the time of valuation, the residential land price stipulated by the provincial people’s committee of neighboring parcels is VND 20 millions per square metre.

The key (calculating unit is VND millions):

According to the legal regulations, the land use fee is:

$$50\text{m}^2 \times 20 \times 50\% = \text{VND } 500 \text{ million}$$

(the land user paid 50% of the land use fee to the State to convert it from a garden or pond on the same parcel containing residential housing situated in a residential zone on residential land)

Therefore, this comparable property will have to be adjusted more than VND 500 million due to the law in force prior to conducting the comparison.

2. The financial term of transactions are similar, if not they need adjustment.

Regular adjustment cases:

- *Many payments*

Example: A comparable property has sold with a payment condition as follows: the first payment is VND 1,000 million; the buyer will have to pay VND 65,736,850 by 15 year in annual instalments. The annual instalment is paid at the end of the year. Let us assume that the banking interest rate is 10% per year.

Coefficient of annual payment:

$$1 - \frac{1}{(1.1)^{15}} \\ \frac{\quad}{0.1} = 7,606$$

The current value of instalments is: $M = \text{VND } 65.736.850 \times 7.606 = \text{VND } 500 \text{ million.}$

Therefore, the price of comparable real estate has to be adjusted according to the increased payment of VND 500 million. Therefore, the real value of the real estate is:

$$\text{VND } 500 \text{ million} + \text{VND } 1,000 \text{ million} = \text{VND } 1,500 \text{ million.}$$

- Interest rate support for loans by real estate mortgaging

Example: A comparable property has sold for VND 800 million, in which the financial support of the seller for buying (in the form of loan) is VND 640 million with a special banking interest rate of 8% per year (while the normal interest rate is 10% per year). The period of the loan is 15 years.

Total money to be paid annually with an interest rate of 8%:

$$\text{VND } 640 \text{ million} \times 0.1168295 = \text{VND } 74,770,880$$

If the interest rate was 10% per year for 15 years with annual payment, the total amount of financial support would be: $\text{VND } 74,770,880 \times 7.606 = \text{VND } 568,713,590$

Therefore, the actual value of this real estate is:

$$(\text{VND } 800 \text{ million} - \text{VND } 640 \text{ million}) + \text{VND } 568,713,590 = \text{VND } 728,713,590.$$

3. Price adjustment according to the land allocation term

Example: The term of the land allocation of a selected comparable land parcel is 50 years. At the time of valuation, the general transaction price is VND 20 millions/m². To find the comparison price:

According to the legal regulations, if a project has a land allocation term below 70 years then the land use fee is reduced to 1.2% per year of each year of non-use. The formula to calculate this is:

$$\text{Land price} = \text{standard land price} - [\text{standard land price} \times (70 - n) \times 1.2\%]$$

In which:

n is the number of years in the land allocation term.

Therefore, the land price needs to be adjusted according to the land use fee of land allocation with the term of 50 years, before making the comparison.

Applying this formula, the land use fee for the term of 50 years is:

$$\text{Land use fee} = \text{VND } 20 \text{ million} - [\text{VND } 20 \text{ million} \times (70 - 50) \times 1.2\%] = \text{VND } 15.2 \text{ million.}$$

Conclusion: The price of the land use fee for the land allocation term of 50 years is VND 15.2 million.

4. Market situation at the time of the transaction.

The market situation at the time of the transaction of the real estate subject to valuation and other comparable property should be similar. If there is any fluctuation of prices, then the valuer has to carry out an adjustment. The rate of price adjustment should be based on data from a field survey.

Example: Transaction number 1: buying in March 2007 at a price of VND 1,500 million; re-sold in July 2007 at a price of VND 1,620 million. This means that there was an increase of 10.8% in the value or about 0.68% per month.

Transaction number 2: buying in April 2007 at a price of VND 1,535 million; re-sold in Feb 2008 at a price of VND 1,642 millions. This means that there was an increase of 7 % in value or about 0.7% per month.

Transaction number 3: buying in Oct 2007 at a price of VND 1,480 million; re-sold in Feb 2008 at a price of VND 1,520 million. This means that there was an increase of 2.7 % in value or about 0.67% per month.

Conclusion: monthly increase rate is 0.68%.

5. Location, land potential, distance to markets, supermarkets, schools, hospitals, parks, bus stops, etc.

The adjustment according to the differences of land location should be converted into the one identified by differences of time or other additional costs, based on evidences collected from the market.

6. The physical characteristics of land parcel such as shape, frontage width, length, direction.

The adjustment according to differences of the physical characteristics of the property should be converted into market price differences of property transactions or additional costs to overcome disadvantages, based on evidences collected from the market.

7. Land use plan and construction plan

In the price comparison of the property to be valued with the comparative properties, consideration on the similarity of land use plan/construction plan should be taken into account.

8. Characteristics of constructed works attached to land such as the main house and other utility works

The constructed works on land are an important part of the real property and form the cost of building, the usefulness, the aesthetics of the property. Therefore, in comparing the value of properties one should take care of examining the characteristics of constructed works attached to land. Adjustments according to these characteristics are calculated in absolute amount.

**Study on
Improving the System for
Resolving Complaints on
Compensation, Support and
Resettlement in Vietnam**



EXECUTIVE SUMMARY

Introduction

In Vietnam, administrative land disputes, complaints and denunciations account for 70% of the total number of appeals from the community. Of these, 70% consist of complaints about land prices (2005 data). The total number of appeals are increasing rather than decreasing. At the beginning of 2010, many local areas revealed that the number of administrative appeals on land prices for compensation, support, and resettlement comprises about 90% of the total of complaints arising from the public. This situation shows that the mechanism for handling administrative complaints in general, and administrative complaints on land acquisition, compensation, support and resettlement in particular, suffers from various weaknesses and fails to satisfy the demanding requirements of the land conversion process.

Furthermore, the international economic integration process in the trend towards globalization requires all countries to have similar legal systems in handling administrative complaints. This is to ensure equality in the investment environment and to protect the rights of foreign investors. The improvement of the legal system and the resolution of administrative complaints has been mentioned in the Vietnam-USA Trade Agreement and in the regulations of the World Trade Organization (WTO).

Vietnam's Law on Complaints and Denunciations, which was passed in 1998 by the National Assembly, details the implementation process, the number of procedures, the time requirement and the substance of their resolution. The Land Law of 2003 also contains specific regulations on the resolution of land disputes and management of complaints on administrative decisions and the behavior of officials in land management. The resolution mechanism of the Land Law of 2003 differs from the regulations of the Law on Complaints and Denunciations. Following six years of implementation, Vietnam's National Assembly decided to amend and supplement the Law on Complaints and Denunciations in 2004 and 2005. Despite these amendments and supplementations being undertaken twice within two years and a third time in adopting a new Land Law, there is still a lack of coherence between the two pieces of legislation. Indeed, there is significant difficulty in implementing the laws in reality. The failure to resolve complaints or late resolution of complaints is common in most places. Existing complaints have not been processed and the number of new complaints is increasing dramatically.

This study is urgently needed to identify a workable mechanism to effectively implement the resolution of administrative complaints on administrative decisions issued by the competent bodies of the State, the behavior of State officials in recovering land and approval of compensation, support and resettlement plans. This study may apply to the resolution of complaints arising in investment projects in Vietnam and contribute to the development of legislation on administrative complaints and amendment to Vietnam's Land Law.

This report on a *Study on improving the system for resolving complaints for compensation, support and resettlement in Vietnam* consists of the following sections: (1) The development of the legal system, the

current legal system and the enforcement of law on administrative complaints on land in Vietnam; (2) Analysis of international experience on the resolution of administrative complaints; (3) Examination of the study's results on weaknesses in the resolution of administrative complaints on compensation, support, resettlement; (4) Proposal to enhance effectiveness in dealing with grievances and complaints on land acquisition, compensation, support and resettlement. These proposals consist of two components: (i) a draft document designed to create an independent mechanism for resolving administrative complaints on land acquisition and implementing compensation, support, resettlement, that would apply to investment projects. The pilot application would be carried out on World Bank (WB) funded projects; and (ii) legal amendments and supplementations required and their enforcement for the resolution of administrative complaints on land management.

The development and enforcement of the law on administrative complaints in Vietnam

The development of law on administrative complaints in Vietnam is summarized in the following table:

Period	Name of legal document	Main contents
1946 - 1959	The 1946 Constitution	Did not establish a right of citizens to register administrative complaints.
1959 - 1981	The 1959 Constitution	Citizens were entitled to register complaints and denunciations to any state agency against legal violations committed by its officials. The complaints and denunciations had to be rapidly reviewed and resolved. The people affected by violations carried out by state officials had the right to request compensation.
1981 - 1991	Ordinance stipulating the review and resolution of Complaints and Denunciations by citizens	Procedure for making and resolving administrative complaints was regulated on the basis of an administrative system established as part of the State subsidy system.
1991 - 1998	Ordinance on Complaints and Denunciations by citizens	This Ordinance defined the procedures for submission of an administrative complaint by citizens and their resolution by competent State organizations during the initial period of the renovation process (Doi Moi). It was seen as part of the economic reforms pursued by the State.
1998 - 2004	Law on Complaints and Denunciations	<p>Normally an administrative complaint was registered twice followed by the following appeal mechanism:</p> <p>In the first instance a complaint was made directly to the agency that issued the administrative decision or in the case of improper behavior of officials to the agency employing the officials against whom the complaint was lodged.</p> <p>In the second instance, an appeal was submitted to higher administrative agencies or to the courts for prosecution.</p> <ul style="list-style-type: none"> ▪ The responsibility to deal with administrative complaints rested with the Head of the state administrative agency concerned. ▪ Once a complaint was resolved by the Chairman of the Provincial People's Committee, the responsible Ministers or the Heads of governmental agencies at ministerial level or the General State Inspector discovering the legal violation in the final resolution of the complaint were entitled to request the decision maker to review and alter their decision. This step allowed the government entities to elaborate their concerns and request a revision of the decision.

		Where the Chairman of the Provincial People’s Committee does not revise his/her decision, the relevant authority (the General State Inspectorate, the Ministers and the Heads of governmental agencies at ministerial level) must consider and submit a report to the Prime Minister for final decision.
2004 – up to now	The Land Law	<ul style="list-style-type: none"> ▪ The People’s Committee (PC) at Provincial and District levels are responsible for implementing the first resolution of complaints received on administrative decisions and behaviors by that level (e.g., the Provincial People’s Committee will review administrative decisions/behaviors by provincial government units and so on). ▪ If the claimants disagree with the first resolution by the District People’s Committee, they have a right to appeal to the Provincial People’s Committee or to take the case to the administrative court for resolution. If the claimants disagree with the first resolution by the Provincial People’s Committee, they can only take the case to the administrative court.
2004 - 2005	Amendments and Supplementations to some Articles of the Law on Complaints and Denunciations.	This set of amendments/supplementations clarified and explained the responsibility of the Chairman of Provincial People's Committees, Ministers, the General Inspectorate and Prime Minister, primarily where: (1) the final resolution of complaint that was issued by the Chairman of Provincial People's Committee has been discovered to be illegal; and (2) the complaints are considered to be complicated, related to several local areas, ministries, and/or economic sectors.
2005 – up to now	Additional Amendments and Supplementations to some Articles of the Law on Complaints and Denunciations.	<ul style="list-style-type: none"> ▪ The term ‘decision on final resolution of complaint’ made by administrative agencies that must be legally implemented was replaced with the term ‘decision on second resolution of complaint’, and complainants had the right to take the case to the administrative court. ▪ Stipulated “service standards” by clarifying the responsibilities of the officials managing complaints, including a reference to the resolution of complaints within a stipulated time-schedule. ▪ Clarified the resolution process in detail and placed minimum subjects to be covered in a decision of resolution. ▪ Access to legal support for a claimant was allowed (e.g., use of a lawyer in preparing documentation or arguing a case with an official).

The current legal system on *administrative complaints and their resolution* in the land management sector can be assessed as follows:

- The legal regulations suffer from gaps and overlap and fail to ensure that the system is workable.
- The resolution of administrative complaints is handicapped at one or two official levels. The first level is the official level at which the complained about administrative decision has been issued or the complained about administrative behavior has appeared. In practice, the first resolution can not be objective. Where the first resolution is made at the provincial level, there can be no administrative appeal and the only way to seek better resolution is through the administrative court. Where the main resolution is carried out by the administrative courts, the judges’ workforce is limited in both quantity and quality. The courts cannot meet the increasing demand to deal with complaints whose number is always directly proportional to the area of recovered land for investment projects.

To evaluate the results of resolution of complaints and denunciations by citizens, the National Assembly passed Resolution No. 30/2004/QH11 (15th June 2004) on ‘the evaluation of outcomes of the management of complaints and denouncement in administrative work’. The Resolution points to the reasons causing complications in the resolution of complaints and denunciations as follows:

- Some sectors and local areas do not pay adequate attention to the resolution of complaints and denunciations;
- The policy and law in some sectors are neither sufficient or cohesive;
- Many State officials and civil servants are unaware of their responsibilities and of the legal regulations on the deadlines, procedures and processes of resolving complaints and denunciations;
- The competent agencies and their officials issued improper decisions or committed violations to the legal rights and benefits of the citizens;
- The responsible agencies do not pay adequate attention to what the complainants are telling them. The people in charge of the first complaint resolution are unwilling to fulfil their administrative responsibilities to correct their wrong decisions and their own behaviors. At the next level of appeal officials defend the earlier bad decisions.
- There are some cases where State officials are corrupt in resolving complaints and denunciations.
- Some agencies, officials, civil servants and claimants do not comply with the legal decision, resulting in more difficulties.

According to the data from 1998–2004, the results from resolution of complaints and denunciations were positive. However, the quality of resolution was not always high.

A more in-depth analysis of Vietnam’s legal structure and the actual effectiveness of its performance show the specific weaknesses of the legal system on administrative complaints and land laws including:

- Currently laws on complaints and complaint resolution in Vietnam have not permitted complaints against a legal document. Therefore, it is not clear whether an administrative decision or an administrative complaint resolution decision made on the basis of a legal document which is not in accordance with the legal framework is or is not to be considered as a legally proper decision.
- Complainants are not permitted to send their complaints on land issues to the central agencies. If complainants disagree with the resolution decisions by Provincial People’s Committees they can only take the case to the administrative court. This regulation reduces the rights of people in the complaints process, especially when there is such a low quality of complaint resolution at the local level.
- Even though the current law enables complaints concerning administrative behaviors taken by administrative agencies or State officials working in the administrative bodies, the law does not actually contain any specific regulations identifying adverse administrative behaviors and this makes it difficult for people to complain about such behaviors.
- The current law clearly defines the competent agencies responsible to manage complaints. However, the problem is that people do not know which agencies their complaints should be sent to. If they send it to the wrong address, the complaints will not be dealt with.
- The law stipulates that it is required to publicize decisions on complaint resolution. In reality, the local areas do not implement this regulation well and details are not well-disseminated.
- At present, the Law does not permit group or community complaints. However, in reality, issues such as land recovery and the implementation of compensation, support and resettlement all have impacts on a group of households or a community. Therefore, it is essential to permit submission of complaints

(or denunciations) by a group of households or a community. This will help improve the efficiency of the system and gain acceptability among citizens.

- If the claimants disagree with the resolution decision of the administrative system, they can take the case to the administrative court. In reality, the resolution procedure in the courts on land issues is relatively complicated and the courts do not have the capacity to process these issues adequately. As a result, people who wish to appeal against resolution decisions prefer to send their petitions to the central administrative agencies rather than to the courts.

Analysis of international experience on the resolution of administrative complaints

The report analyzes the experience of developed industrial countries in resolving administrative complaints through Administrative Appeals Tribunals. The experience of operating Administrative Appeals Tribunals in the United States, Australia, Singapore, etc. exhibit the following strengths:

- Ensures high professionalism to be able to handle issues related to specialized legal sectors such as land.
- Ensures flexibility so that procedures are simpler than in the court system; ensures effectiveness due to the superior ability of competent officials in charge of processing complaints; ensures fairness due to the independence of the Administrative Appeals Tribunals from the administrative system; encourages mediation between the parties participating in an administrative dispute.
- Ensures time for the administrative system to focus on their administrative work; ensures that administrative officials are not needed to personally participate in administrative disputes.
- Reduces expenses for the State and claimants.
- The documents prepared for submission to seek resolution by the Administrative Appeals Tribunal are a highly professional initial important basis for resolving a case if the complainants decide to take the case to the administrative court.

This study introduces some of the latest results from studies made by some international development organizations in handling grievances and complaints from people affected by investment projects. The World Bank Group pays a great deal of attention to the studies to recommend proper mechanisms for resolution of complaints. Currently in Vietnam, there are no legal regulations on the responsibilities of investment projects in the resolution of grievances or complaints by people affected by the project. Complaints related to investment projects are resolved in accordance with the Law on Complaints and Denunciations under the authority of the District or Provincial People's Committees and the administrative court. To draw lessons from the World Bank studies on mechanisms of handling grievances/complaints of people affected by projects, the following table summarizes the compatibility of the current mechanism of processing land administrative complaints in Vietnam compared with the procedures proposed by the World Bank Group.

No.	Procedures of WB/IFC	Current situation in Vietnam
1	Organizational Commitment	In accordance with the law, People's Committees of all levels are responsible for resolving administrative complaints about land and must commit to implement the best possible resolution of complaints from people affected by investment projects by the receipt of petitions, resolution, disclosure of results, etc. However, this suffers from weaknesses in implementation at the local level.
2	Principles	
2.1	<i>Fairness</i>	As complaints are reviewed and decided by the administrative authorities, fairness cannot be ensured.
2.2	<i>Objectiveness and independence</i>	As complaints are directly settled by the administrative authorities, objectiveness and independence cannot be assured.
2.3	<i>Simplicity and accessibility</i>	The procedure of complaints and resolution of administrative complaints have become simpler and more accessible. However, claimants still face difficulties due to poor legal enforcement at local levels.
2.4	<i>Responsiveness and Efficiency</i>	The law stipulates procedures for receiving and resolving complaints to ensure timeliness and effectiveness. However, the actual receiving procedure is impractical as it is difficult for claimants to send their complaints to the right agencies. The responsible agencies do not educate claimants about the law or show them how to initiate the complaints process.
2.5	<i>Speed and Proportionality</i>	The law stipulates the length of time for the resolution of a complaint to ensure the time period is reasonable. However, resolution normally takes longer than the stipulated period.
2.6	<i>Participatory and Social Inclusion</i>	There are no legal regulations on encouraging community participation in the resolution of administrative complaints.
3	Staff	State agencies responsible for resolving administrative complaints are provided with sufficient human resources to carry out the effective processing of complaints. However, the number of complaints is too high, resulting in a shortage of human resources and a lack of quality. Additionally, financial resources are not sufficient to increase the speed of complaints processing.
4	Processes	
4.1	<i>Uptake</i>	The receipt of complaint petitions is not well undertaken. Claimants face difficulties in sending the complaints to the right responsible agencies.
4.2	<i>Sorting and processing</i>	Due to a lack of human resources both in terms of quantity and quality, the classification and timely processing of complaints is always slower than the stipulated period.
4.3	<i>Acknowledgement and follow-up</i>	The law stipulates that claimants be notified. However, this task is insufficiently implemented.
4.4	<i>Verification, investigation and action</i>	The consideration and resolution of complaints is normally slower than the period stipulated by the legal regulation.
4.5	<i>Monitoring and evaluation</i>	The monitoring and evaluation of the resolution of administrative complaints has not been stipulated by law and is not implemented in practice.
4.6	<i>Feedback</i>	The announcement of the resolution of complaints is stipulated by the law and is not well implemented in most provinces.
5	Analysis	The local areas implement an annual and five-year analyses on the effectiveness of the procedures for resolving administrative complaints and draw from them lessons for improvement.

The implementation of a case study on identifying weaknesses in the legal system and enforcement in administrative complaints resolution related to land acquisition and compensation, support and resettlement.

Between March and May 2010, the Institute of Sociology (part of the Vietnam Academy of Social Sciences) carried out a case study on the socioeconomic effectiveness of land compensation based on market prices and complaint handling system and its effectiveness in the three provinces of Bac Ninh, Ho Chi Minh City and Dak Lak. In each province, one or two districts were selected, in which one to four communes were studied. The study was conducted in two forms including a sociological survey with ready-made questionnaires and in-depth thematic interviews to collect opinions. The sociological survey was carried out with 600 respondents following the questionnaires (it is noted that among the six selected government-funded projects, HCMC had the largest number of affected households, but at the time of the survey only 2 out of 4 districts had completed their compensation payments. In addition, many of the affected households had moved out of the project area without leaving a forwarding address, so they were not included in the survey sample. This limits the validity of the results of the survey). The in-depth interviews were implemented in two forms including a group discussion with people whose land was acquired and a personal interview with the State's officials working for the land management system. The group discussion was conducted with eight groups of people affected by land recovery and in-depth interviews were conducted with 32 officials in various positions. Although this was a multi-purpose survey, this report only examined data related to (a) the assessment of affected people towards procedures related to the plan for compensation, support and resettlement, and (b) views of complainants on the current system of complaints and their resolution, including: (i) their level of satisfaction and difficulties arising during the complaints process and resolution of complaints; (ii) views on for the submission of the first complaint and the responses of the institution receiving complaints; (iii) suggestions by those who had complaints on improving the system for complaints and their resolution.

In the survey area in Dak Lak province, Ho Chi Minh City and Bac Ninh province, the field survey group used the evaluations of 600 people whose land was acquired, among which there were 372 cases of complaints on different aspects of compensation, support and resettlement (227 in Dak Lak, 128 in Ho Chi Minh City and 17 in Bac Ninh). General data on dissatisfaction about different aspects of compensation, support and resettlement and the corresponding complaints indicated that about two-thirds of dissatisfied people did not register a complaint. Therefore, a very high percentage of people were dissatisfied about the legal regulations.

In general, the people subject to land recovery were satisfied with the dissemination of information related to land recovery, compensation, support and resettlement.

The reception of people's comments on the plan for compensation, support and resettlement plays an important role in implementation. Government Decree No. 69/2009/ND-CP stipulates procedures for the disclosure of compensation, support and resettlement plans in order to collect the views of people subject to land recovery and for the preparation of a report on those views that are accepted and not accepted. Good implementation of this mechanism would help to reduce the number of complaints. Amongst the 600 views from people whose land was recovered, 40.8% said that they were able to give their input to the compensation, support and resettlement plan; 34.5% said that they were only informed of the plan; and 24.7% said that they had no idea about the plan.

On views on land prices, 16% stated that their comments were accepted and adjustments made; 31% stated that their comments were accepted for reference only; 51% did not have their comments accepted; and 2% did not want to contribute their comments.

On the comments contributed on property compensation, 3% stated that their comments were accepted and adjustments made; 45% stated that their comments were accepted for reference only; 34% of comments were not accepted; and 18% did not want to contribute comments.

In term of contributions to the selection of resettlement locations, 9% stated that their comments were accepted and adjustments made; 32% stated that their comments were accepted for reference only; 41% of comments were not accepted; and 18% did not want to make any comment.

On the satisfaction of the 196 respondents about the current mechanism of complaint and complaint resolution, only 1% was satisfied; 7.7% found it acceptable; and 91.4% were dissatisfied or very dissatisfied.

Amongst the people asked about difficulties faced in the complaints process, 12.3% said that the procedure was too complicated; 26.2% said that the cost of travel was high; 12.0% claimed that they did not receive any instructions; 37.5% said there was too much time spent in waiting; 4.9% said there were other difficulties; and 7.1% suggested no difficulties. Based on the survey responses about the results of first complaints resolution, 2.8% satisfied; 52.3% dissatisfied and 44.9% had not yet been settled. These figures indicate the low level of effectiveness in processing administrative complaints, resulting in the demand for further reform of the system of complaint resolution to improve its effectiveness.

Recommendations on enhancing the effectiveness of resolving grievances and complaints about land recovery, compensation, support and resettlement in Vietnam

As Vietnam gains momentum in its efforts in economic development and industrialization, the current legal system on administrative complaints and their resolution, especially the implementation of the State system of land acquisition for investment projects, is not able to meet the various demands placed on it to maintain social and economic stability. The weaknesses experienced included: (i) a significant emphasis on State subsidy mechanism thinking which is not appropriate for a market economy; (ii) it does not align with international standards on the resolution of administrative disputes between administrative agencies and the people affected by the administrative decisions or behaviors; (iii) administrative complaints on land acquisition and compensation, support and resettlement tend to increase mainly resulting from failures in the legal system and poor enforcement.

In this study, the proposed solutions focus on two main points:

a. An independent mechanism on the resolution of complaints about compensation, support and resettlement is proposed for investment projects (a pilot application can be implemented in World Bank projects). This mechanism is proposed based on the studies and experience of the World Bank Group. The aim is to create a process to reduce the pressure of administrative complaints in investment projects. Grievances and complaints related to investment projects should be processed as follows:

- Complaints about land price should be resolved by an independent Board for Land and Property Valuation (introduced in the Report on study of land valuation for compensation, support and resettlement in Vietnam);
- Complaints against decisions on land recovery and approval of the plan for compensation, support and resettlement are resolved through the system of administrative complaint resolution (grievances and complaints are supported, analyzed and mediated on through the grievance redress system of the investment projects before they become administrative complaints);
- Grievances and complaints about the implementation of the plan for compensation, support and resettlement and other factors in project deployment are managed through a mechanism of project support which is based on the following principles:

- > Alignment with current legal regulations of Vietnam;
- > Ensuring of communication, transparency, objectiveness, fairness, independence, responsibility and proportionality as in the experience drawn from international projects;
- > The process of receipt of grievances must be simple, accessible, protected, responsive, and culturally compatible for people subject to grievances. This principle should be embedded in a regulation for people of vulnerable groups such as ethnic minorities and women who are complainants;
- > During the resolution process, it is necessary to make the best use of the participation of the community, social organizations and views of prestigious people in the ethnic minority or religious community;
- > The grievance is considered and decided upon at a Board established for resolving the grievances of people affected by the project. Participants should include leaders at district and communal level, representatives of community and local social organizations, representatives of land valuation organizations and experts in the relevant sectors;
- > The project organizes a functional unit to support the resolution of grievances and complaints from people affected by the project. The requirements applied for this unit should include sufficient human resources trained in the profession and selected on the basis of their ethical standards. The unit should be equipped with modern technical equipment and sufficient information about the whole project;
- > The unit is responsible for disseminating information on regulations and mechanisms of grievance redress and procedures related to the resolution of grievances and complaints of people affected by the project. This information is shared with the affected residential community affected by the project in the form of community meetings, leaflets and through the mass media. For ethnic minorities, materials need to be issued in the ethnic language as needed;
- > The project must establish a monitoring and evaluation system for the resolution of grievances and complaints of people affected by the project. The system must be operated regularly to gradually complete the procedure of resolving grievances and complaints related to the project;
- > The project must allocate funds in accordance with the requirements of the resolution of grievances and complaints from people affected by the project.

To activate this mechanism, the Ministry of Natural Resources and Environment should issue a Circular that details the implementation of the grievance and complaint resolution system at the project level. This would apply to investment projects with pilot applications for World Bank projects. This report also recommends a sample draft circular for immediate reference by the authorities.

b. Necessary amendments and supplementations to the legal regulations on enforcement of administrative complaints on land management should be proposed. This is a major proposal related to the system of resolving administrative complaints on land management and includes the establishment of an administrative arbitration system, administrative appeals tribunals and an administrative court. This would also include some necessary amendments and supplementations to the current legal system on administrative complaints and complaint resolution.

The Administrative Appeals Tribunals must be established as an agency under the management of the central government at two levels: national and regional level (including many provinces). This system's only function would be to settle administrative complaints completely independent of the administrative system. The application of administrative complaint resolution through Administrative Appeals Tribunals in Vietnam has the following advantages:

- ensures independence from agencies which issued the administrative decision or undertook behaviors which are the basis for the complaint;

- ensures that the administrative complaints are settled professionally and responsibly;
- ensures equality between the complainant and the complained about person;
- the steps in the resolution process at the Administrative Appeals Tribunals result in good preparation for the next step of resolution at the administrative courts;
- implements the system that all administrative complaints are able to be settled at two levels, i.e. the regional Administrative Appeals Tribunal and national Administrative Appeals Tribunal;
- reduces the pressure of work on the Government Inspectorate related to the resolution of administrative complaints, so that they can focus on the inspection of the administrative system at all levels.

In addition, the mechanism for resolving administrative complaints by Administrative Appeals Tribunals in Vietnam suffers from the following weaknesses:

- the administrative system would require a considerable number of personnel to work in the Administrative Appeals Tribunals;
- it is difficult to meet the demand for highly qualified people to work in the Administrative Appeals Tribunals;
- with the administrative culture influenced by various relationships, it is difficult to ensure the independence of the Administrative Appeals Tribunals from the administrative agencies.

An administrative arbitration system in the form of independent boards to resolve administrative complaints at district, provincial and national levels would be responsible for reviewing and issuing decisions on the resolution of administrative complaints and ensuring independence from the administrative agencies that received the initial complaint. The membership of the Board at one level includes the heads of the administrative agencies and representatives of professional agencies from the higher level and senior experts and locally-based non-governmental organizations (e.g., The Fatherland Front, Farmers Union, Women Union, the Lawyers Association, journalists association, business association, and so on). The Boards would operate on the principle of agreeing a resolution through a secret ballot with the agreement of two-thirds of the members. The method of using an arbitration Board to settle administrative complaints has the following advantages:

- it would not increase the administrative staff exclusively in charge of the resolution of administrative complaints;
- it is possible to make the best use of qualified personnel for the resolution of administrative complaints;
- it is possible to ensure the relative independence of the arbitration Boards from the administrative agencies that had been complained against. This would ensure relative objectivity in the issuing a resolution decision;
- it would be able to implement a mechanism that would ensure that all administrative complaints are processed by only two levels of arbitration Boards. This would include the district and provincial level for complaints from domestic individuals and the provincial and national level for complaints from organizations, religious establishments and foreign individuals;
- it is possible to reduce the pressure of work on the Government Inspectorate related to the resolution of administrative complaints.

In addition, the method of utilizing arbitration Boards still shows some weaknesses:

- it has no personal accountability in its decision making; and
- the procedures and orders are more complex than those implemented by a permanent agency.

In the short term, the selection of arbitration Boards to resolve administrative complaints is workable in Vietnam. However, if possible, in the longer term, administrative complaints should be resolved by a system of Administrative Appeals Tribunals. Currently, it is important to improve the human resources and the legal framework of the administrative court system.

This report also introduces other issues in the current legal system on complaints and resolution of complaints that need to be improved, including:

- the need to formulate specific legal regulations to align legal documents that are legally violated;
- ensure citizens' receipt and multiple ways to receive citizens' petitions of complaint and denunciation;
- establish regulations defining the administrative behaviors of State officials that can lead to complaints and the resolution of complaints on these behaviors;
- The complete process of resolving administrative complaints must be publicized at a public location in the residential area and on the internet which would include details of the complaints system from registration to resolution;
- it is necessary to enable the submission of group complaints in the form of a complaint by a community of common loss.

Conclusions

Currently, the Vietnam National Assembly is considering issuing a Law on Complaints and a Law on Denunciations to replace the existing Law on Complaints and Denunciations. The intent is to assist in resolving grievances and comply with Vietnam's commitment in the Vietnam-USA Trade Agreement and the commitments in the framework of the World Trade Organization (WTO). The amendment and supplementation of the Land Law is expected to be passed by the National Assembly in 2013. One of the key changes focuses on the reforms in resolving land administrative complaints.

This study is regarded as a contribution to the development of the legal system on administrative complaints and resolution of administrative complaints in Vietnam. The study aims to develop a viable mechanism to resolve the grievances of people affected by investment projects at the project level, to deal with people's complaints before they become administrative complaints and create the conditions for project implementation that would allow for progress.

1. GENERAL INTRODUCTION

In 2008-2009, the World Bank in Vietnam conducted a study entitled “Policy note on improving land acquisition and voluntary land conversion in Vietnam” to assist in the improvement of the legal system on land in Vietnam. The results of this study highlighted many issues that need further study to generate specific recommendations to improve the system of State recovery of land from its current users to allocate it to investors to implement investment projects. One of these was the grievance redress system. In fact, in 2005, disputes, administrative complaints and denunciations on land represented 70% of the total number of appeals. Of these administrative complaints on land prices comprised a further 70% of appeals. The total number of appeals are increasing rather than decreasing. By the beginning of 2010, many local areas stated that administrative complaints on land prices for compensation, support and resettlement occupied about 90% of total complaints from the population. This situation showed that the system to deal with administrative complaints in general and administrative complaints on land price for compensation, support and resolution in particular, suffer from various weaknesses and fail to satisfy the requirements of the land conversion process.

Additionally, international economic integration as part of the trend towards globalization requires all countries to have a similar legal system on administrative complaints. This requirement was established to ensure that there is equality in the investment environment and that the legal rights of foreign investors are protected. The requirement for completing the legal system on administrative complaints and their resolution has been mentioned in the Vietnam-USA Trade Agreement and in the regulations of the World Trade Organization (WTO).

Mr. Le Quang Binh, Chairman of the Committee on National Defense and Security of the National Assembly (the former chairman of the People’s Aspirations Committee of the National Assembly) said that people want to be peaceful rather than having to complain. However, they have to complain. According to Mr. Binh, complaints result from the fact that “the policy on land pricing for compensation when the State recovers land is inadequate. The result is that people have to complain. Furthermore, the quality of administrative decisions is low and suffers from mistakes leading to complaints”.⁴⁰

Vietnam’s Law on Complaints and Denunciations was passed in 1998 by the National Assembly which specified the order and timetable for its implementation, the number of procedures to be undertaken and the contents of the resolution. The Land Law of 2003 also contains specific regulations on the resolution of land disputes, complaints on administrative decisions and behaviors in land management. However, the resolution mechanism in that law is different from the regulations in the Law on Complaints and Denunciations. Following six years of implementation, the Vietnam National Assembly decided to amend and supplement this law in 2004 and again in 2005. Despite these amendments and supplementations twice within two years together with the Land Law which was passed three times by the National Assembly, the laws are not compatible with each other. Indeed, there is significant difficulty in implementing these laws

in reality. The failure to settle complaints or late resolution of complaints is evident in most localities. Old complaints do not go away whilst more and more new complaints are registered.

As mentioned above, in 2005, the Ministry of Natural Resources and Environment (MoNRE) inspected the enforcement of the Law on Land throughout the country. The inspection team received all the disputes, complaints and denouncement petitions of people and analyzed the reasons for them. Their report showed that 70% of petitions were administrative complaints on compensation, support and resettlement when land has been recovered by the State; 10% were denunciations concerning legal violations by land management agencies and officials; 9% were complaints about the administrative decision resolutions on land disputes; 7% were claiming land currently in use by other people and the remaining 4% concerned other complaints and denunciations.

Amongst the administrative complaints on land compensation, support and resettlement when land has been recovered by the state, 70% were about the land price for calculation of compensation, support and resettlement being lower than the market price; 20% had received compensation, support and resettlement in accordance with old legal regulations and required additional compensation in accordance with current regulations; 6% requested compensation for land recovered in the economic subsidy period (that was not compensated for at that time); 3% were not yet resettled and 1% were about inequality in resolving compensation, support and resettlement. Administrative complaints on land pricing for compensation, support and resettlement therefore represents half of all petitions on land disputes, complaints and denunciations. In response to this situation, the National Assembly and Government of Vietnam have made various attempts to improve the legal system and its implementation and to guide the Provincial People's Committees to focus on the resolution of compensation, support and resettlement for people subject to land recovery and their disputes, complaints and denunciations. However, complaints and denunciations on the land price calculated for compensation, support, resettlement is still a big social concern that needs improvement.

Since 2005, MONRE proposed a study on the establishment of a system of Administrative Appeals Tribunals on land to make needed changes in resolving administrative complaints. This proposal was accepted by the Government of Vietnam and incorporated into the administrative reform program of the Government in the period of 2006 - 2010. The Vietnam National Assembly added the issue of the preparation of a law on complaints and their resolution and a law on denunciations and their resolution (instead of the current single Law on Complaints and Denunciations) into their Legislative Program in 2010. In these laws the establishment of a system of administrative appeals tribunals was an important consideration. The consideration of the laws is currently ongoing. Most comments made suggest that the resolution of administrative complaints should be separated from the administrative system. The current consideration of the laws includes the maintenance of an independent system of administrative appeals tribunals to address these issues, or transferring them wholly to the administrative courts. Many of the proposals have reasoned that an administrative appeals tribunals system must belong to the executive system but should ensure that there is clear separation between the administrative appeals tribunals and the administrative system.

Against the above background, it was reasoned that a study to explore an **appropriate mechanism to effect the resolution of administrative complaints against administrative decisions/behaviors by State agencies or officials in deciding land recovery and approving plan for compensation, support and resettlement brought by people subject to land recovery by the State**, was needed. On the one hand a study of this nature would contribute to the practical resolution of grievances arising in investment projects in Vietnam. On the other hand, the study would also make a direct contribution to legal development on administrative complaints and amendments to the Land Law in Vietnam.

Recognizing the importance of the subject for its work the World Bank in Hanoi further funded two study that were carried out in 2009-2011, which are titled “Study on land valuation mechanisms for compensation, support and resettlement in Vietnam” and “Improving the system for resolving complaints on compensation, support and resettlement in Vietnam”. This report presents findings and recommendations of the later study, focused on exploring and developing better and fairer solutions to address the resolution of administrative complaints from people affected by State recovery of land to ensure their rights and benefits.

The study utilizes the following methodologies:

- An analysis of the legislative system on land and on the resolution of complaints and denunciations to identify the areas that need amendment or supplementation;
- An analysis of international experience to learn relevant lessons for Vietnam;
- A sociological survey conducted with the participation of people affected by land recovery and those who have made complaints or denunciations as well as the local authorities, to analyze the situation in some local areas.

The report of the study on “improving the mechanism for resolving complaints on compensation, support and resettlement” is divided into following sections (excluding the Introduction and Conclusion):

1. The process of development of the legislative system, the current legislative system and the enforcement of the law on administrative complaints concerning land in Vietnam;
2. Analysis of international experience on the resolution of citizens’ administrative complaints;
3. The results of the case study on finding weaknesses in the resolution of administrative complaints on compensation, support and resettlement;
4. Recommendations to increase the effectiveness of the system of resolving grievances and complaints on land recovery and compensation, support and resettlement. These include:
 - i. A draft legal document establishing an independent mechanism for the resolution of administrative complaints on land recovery by the State for investment projects and the compensation, support and resettlement to be applied; and
 - ii. The amendments and supplementations required to strengthen existing legal regulations and enforcement of the resolution of administrative complaints on land management.

2. THE DEVELOPMENT AND ENFORCEMENT OF LAW ON ADMINISTRATIVE COMPLAINTS IN VIETNAM

2.1. Development of law on administrative complaints

Following the declaration of independence in Vietnam (02/09/1945), President Ho Chi Minh signed Fiat No. 64/SL of 23rd November 1945 to establish the Special Inspection Committee. It was assigned with many important tasks including the receipt and resolution of people's complaints against administrative agencies and their staff. The first Constitution of Vietnam in 1946 did not establish a right to register administrative complaints. The second Constitution in 1959 stipulated that "The citizens of the Democratic Republic of Vietnam have the right to lodge complaints and denunciations to any state agency against legal violations committed by its officials. The complaints and denunciations have to be processed rapidly. The people affected by legal violations by state officials have the right to receive compensation" (Article 29). The Vietnam Council of State (the former name of the Standing Committee of the National Assembly) issued an Ordinance in 1981 stipulating the consideration and resolution of complaints and denunciations and the Ordinance of 1991 on Complaints and Denunciations of People (replacing the Ordinance of 1981).

In 1998, the Vietnam National Assembly passed the Law on Complaints and Denunciations (Law No. 09/1998/QH10 of 2nd December, 1998) to meet the requirement of the RENOVATION (DOI MOI) process. The Government issued Decree No. 67/1999/ND-CP of 7th August 1999 stipulating and instructing the implementation of the Law on Complaints and Denunciations. The Government continued by promulgating Decree No. 62/2002/ND-CP of 14th June 2002 on amending and supplementing some articles of Decree No. 67/1999/ND-CP. According to the legal regulations of the time, the resolution of citizens' complaints was undertaken based on following principles:

- In most cases, administrative complaints are lodged twice. The first complaint is made directly to the agency that issued the administrative decision or in which the administrative misbehavior of officials is alleged. If the complainants disagree with the first resolution of their complaint they can choose one of two ways to lodge an appeal. The first is to the specific administrative agency at a higher level. The second is to take the case to the administrative court. If the second resolution is made by the head of an administrative organization at ministerial level or the Chairman of a local People's Committee, it is deemed to be the final resolution decision. This means that the complainants are not permitted to continue their administrative complaint beyond this point.
- The responsibility for resolving an administrative complaint are the heads of administrative agencies of the State and the heads of subordinate agencies belonging to administrative agencies of the State; from the lowest level - the Commune People's Committees (CPCs) to the higher levels - Central Government.
- When it is detected that a decision is incorrect, the officials who made the final decision on the resolution of the complaint in the first instance must review and resolve the complaint again in accordance with legal regulations.

- If Ministers, the Heads of administrative agencies at ministerial level, the Heads of governmental agencies or the General State Inspector (so called ‘central competent leaders’) discover that the decision on the final resolution of an administrative complaint by the Chairman of a Provincial People’s Committee violates legality, they have right to request the Chairman to review their decision within 15 days. If there is no response to the request the central competent leaders will issue their decision or submit it to the Prime Minister for further consideration and decision.
- The procedures for administrative complaints and their resolution are clearly stipulated. People in receipt of administrative decisions or subject to administrative misbehavior are entitled to lodge administrative complaints within 90 days from the date of issuance of the administrative decision or when the administrative misbehavior occurred. The agency responsible for resolving the first complaint must begin processing the complaint within 10 days from its receipt and resolve the case within 30 days from the date of initial processing of the complaint (complicated cases can take longer but must not exceed 45 days. In remote areas the corresponding deadline for resolution of the complaint is 45 days for normal cases and 60 days for complicated cases). If the complainants disagree with the first resolution of their complaint, they can lodge an appeal to the administrative agency at a higher level or take the case to the court within 30 days of the receipt of the decision on the first resolution. (This procedure is 45 days for remote areas). The agency responsible for resolving the appeal must begin processing the case within 10 days of its receipt and resolve the case within 45 days of the date of the beginning of processing the appeal. (Complicated cases can take longer but are not to exceed 60 days. In remote areas the corresponding deadline for resolution is 60 days for normal cases and 70 days for complicated cases).

Experience has shown that the investment and development process produces several complaints from land users and other stakeholders that relate to (i) administrative decisions on land recovery by the State; and (ii) inadequate value of compensation, support and resettlement approved by administrative agencies. Administrative complaints are increasing in quantity and complexity. In reality, there are several complaints that concern the whole residential community. Due to the difficulties and deficiencies in the management of the administrative complaints at the local level, they are being made to central bodies such as to Party organizations; the National Assembly and the central Government. Resolution No. 26-NQ/TW of 12th March 2003 made by the seventh Session of the Central Committee of the Party, Term IX on ‘continuous renovation of policy and legislation on land in the acceleration of national industrialization and modernization’ attempted to reduce the number of administrative complaints and denunciations in the following directions:

- Assign the responsibility for resolving disputes, complaints and denunciations on land to People’s Committees at all levels. There is no mechanism to appeal to the central levels;
- Gradual transfer of the resolution of disputes, complaints and denunciations on land to the court system.

The Land Law of 2003 and Decree No. 181/2004/ND-CP of 29th October 2004 on implementation of the Land Law created a legal framework to settle disputes, complaints and denunciations on land. It proposed a different procedure from that on complaints and denunciations. Administrative decisions or administrative misbehaviors relating to land allocation and land leases; change of purpose of land use and land recovery; compensation, support and resettlement when land is recovered by the State; land requisition and extension of land use terms; and the first issuance of Land Use Rights Certificates (LURCs) which have been complained about are to be resolved as follows:

- If the administrative decisions or administrative misbehaviors that are being complained about were issued by the District People’s Committees (DPC) or were made by State officials working for DPCs, then the relevant (DPC) is responsible for concluding the first resolution of the complaint.

- If the complainants disagree with the first resolution decision by the DPC, then they are entitled to lodge an appeal with the administrative court or with the Provincial People's Committee (PPC) for further review and resolution.
- If the complaint concerns administrative decisions issued by the PPCs or the administrative misbehaviors are by State officials working for PPCs, then the PPC is responsible for concluding the first resolution.
- If the complainants disagree with the first resolution decision by PPC, they are entitled to lodge an appeal with the administrative court (there is no right to continue the appeal to the central agencies).

The Law on Complaints and Denunciations was amended and supplemented by the National Assembly in 2004 (Law No. 26/2004/QH11 of 15th June 2004). These amendments and supplementations are focused on the responsibility of PPC Chairmen, Ministers, the General Inspector and the Prime Minister for resolving administrative complaints, mostly of which are: (1) a PPC's decision on the final resolution of an administrative complaint is considered as violating the law; and (2) the administrative complaint is complicated and related to several provinces, ministries or economic branches. To guide the implementation of this Law the Government issued Decree No. 53/2005/ND-CP of 19th April 2005.

In 2005 Vietnam signed a Trade Agreement with the United States of America and became an official member of the WTO. As a condition of its participation in international trade Vietnam had to commit to amend the Law on Complaints and Denunciations to align it with international standards. The Vietnam National Assembly passed the Law on amendment and supplementation of some articles of the Law on Complaints and Denunciations in 2005 (Law No. 58/2005/QH11 of 29th November 2005). This law includes some important amendments and supplementations including:

- The term "the decision on final resolution" (the decision is compulsorily implemented) is not used but instead says "the decision on second resolution" and complainants have the right to take the case to the administrative court for final decision;
- The specific stipulation regarding the discipline imposed on officials responsible for processing complaints who do not undertake them or process the resolution later than the stipulated time is supplemented;
- Some of the content of the resolution process and decision on resolution are made more specific;
- Claimants are entitled to use legal support from a lawyer.

The Government issued Decree No. 136/2006/ND-CP of 14th November 2006 stipulating the implementation of the Law on Complaints and Denunciations and the Law on Amendment and Supplementation of some articles of the Law on Complaints and Denunciations.

2.2. The current system of legislation on administrative complaints

The resolution of administrative complaints and denunciations by citizens is a complicated and sensitive issue. Vietnamese Law has implemented many amendments and supplementations to it; however, a viable mechanism has not yet been determined. The regulations of the Law on Complaints and Denunciations (1998) and the Land Law (2003) have basic differences. This is a difficulty in the legal application of the resolution of administrative complaints at local levels. Currently, people are still dissatisfied with the resolution decisions. One of the stated reasons for this dissatisfaction is attributed to inconsistent law and its very poor enforcement. In this section, this report focuses on the analysis of the legislative system on complaints and denunciations in general first and then go to the specific analysis of legislation on land complaints and denunciations.

In the last 10 years, there have been a number of legal documents on complaints and denunciations issued by the National Assembly and the Government:

- Law No. 09/1998/QH10 of 02nd December 1998 on Complaints and Denunciations.
- Law No. 26/2004/QH11 of 15th June 2004 on Amendment and Supplementation of some articles of the Law on Complaints and Denunciations.
- Law No. 58/2005/QH11 of 29th November 2005 on Amendment and Supplementation of some articles of the Law on Complaints and Denunciations.
- Decree No. 136/2006/ND-CP of 14th November 2006 on detailed stipulations and Instructions on the implementation of some articles of the Law on Complaints and Denunciations and the Laws on Amendment and Supplementation of some articles of the Law on Complaints and Denunciations.

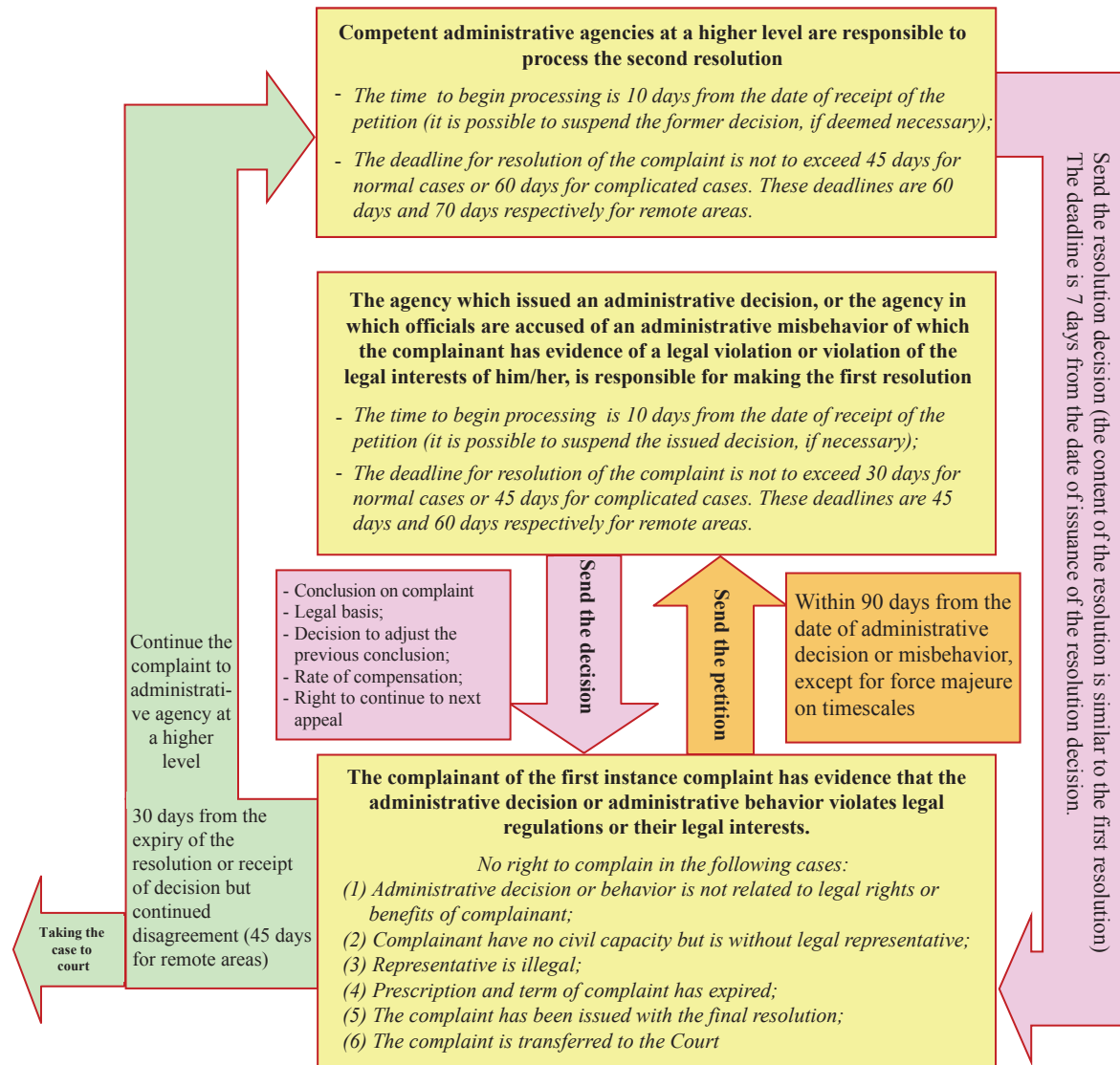
Taken together, it can be concluded that the current legislative system on complaints and denunciations and their resolution continues to be based on the Law on Complaints and Denunciations of 1998. This Law was amended and supplemented twice, i.e., in 2004 and 2005, and strengthened with Decree No. 136/2006/ND-CP. The current legislation on administrative complaints and their resolution clearly stipulates the rights and obligations of the complainants, the people complained about, the agency competent to resolve administrative complaints; and the procedure for complaining and resolving complaints. Since the scope of this report only focuses on people's complaints against administrative decisions and behaviors related to land recovery, compensation, support and resettlement, the study on the legislation on administrative complaints is limited within the scope of administrative decisions and administrative misbehavior of People's Committees at both district and provincial level.

The current legislation on complaints against administrative decisions and behaviors of DPCs and PPCs with regard to their resolution has been developed based on the following principles:

- The first resolution of administrative complaints is delegated to the administrative agency which issued the administrative decision or in which officials are alleged to have misbehaved. It is based on the principle that the administrative agencies themselves should carry out reviews based on "self-criticism" methodology. However, there are suggestions that it is not necessary to apply this principle since few administrative agencies would be willing to admit their mistakes and even engage in covering up errors made by them.
- At the second level, if the complainants disagree with the decision on the "first resolution" they are entitled to lodge an appeal with the administrative agency at a higher level for their resolution.
- People are entitled to select the method of resolution of their administrative complaint by taking the case to the administrative court or to the competent administrative agency for resolution. In addition, in cases where complainants disagree with the decision on the second resolution of the administrative complaint, they have right to continue to lodge an appeal to the administrative court.
- The instructions for resolving complaints, the deadline for resolving complaints, the procedure for complaining and resolving complaints and the request for disclosure of the resolution decision were clearly stipulated in the Law on Complaints and Denunciations of 1998 and its amendment and supplementation in 2004 and 2005.

A diagram of the procedure for administrative complaints and their resolution related to administrative decisions and administrative misbehavior of People's Committees at the district and provincial levels is described in Figure 1 below.

Figure 1: Diagram on the procedure for administrative complaints and their resolution related to administrative decisions and administrative misbehavior of People’s Committees at district and provincial level



Administrative complaints on land and their resolution are implemented in accordance with the legislation on complaints and denunciations as well as the legislation on land. As mentioned above, due to many complaints that were made directly to the central agencies, the Land Law of 2003 passed by the National Assembly produced the principle of restricting the resolution of administrative complaints on land to the People’s Committees at district and provincial level. The second resolution by the respective PPC was the final decision which must be adhered to and the complainant had no right to take the case to the administrative court for resolution. Following the passage by the National Assembly of the Law on the Amendment and Supplementation of some articles of the Law on Complaints and Denunciations in 2005, the Government revised the instructions on implementing administrative complaints on land and their resolution in Decree No. 84/2007/ND-CP to align with the legislation on complaints and denunciations. The specific regulations included:

- Administrative decisions and behaviors in land management not related to land allocation, land lease and changes in land use purpose; land recovery, compensation, support and resettlement when land is recovered by the State; land requisition, extension of the term of land use and first issuance of the Land Use Rights Certificate that have been complained about are to be settled in compliance with the common legal regulations based on the Law on Complaints and Denunciations.
- Administrative decisions and administrative behaviors in land management made by DPCs related to land allocation, land lease, changes in land use purpose; land recovery, compensation, support and resettlement when land is recovered by the State; land requisition, extension of the term of land use and first issuance of the Land Use Rights Certificate on which complaints have been made are to be settled in compliance with the land legislation as follows:
 - > Within the term not exceeding 90 days from the date of the issue of the administrative decision or occurrence of administrative misbehavior made by the DPC or its officials, people with related benefits and obligations are entitled to complain to the DPC if they have disagreed with the administrative decision or the administrative behavior.
 - > The chairman of DPC is responsible for resolving complaints in accordance with the required time limit regulated by the Law on Complaints and Denunciations. The resolution decision of the DPC must be publicized and sent to the complainants, as well as to other people with related benefits and obligations.
 - > Within the term not exceeding 45 days from the date of receipt of the DPC's resolution decision, complainants are entitled to complain to the Provincial People's Committee or to take the case to administrative court, if they disagree with DPC's resolution decision.
 - > In the case where a complaint is lodged to the PPC, the PPC is responsible for resolving the complaint within the required time limit regulated by the Law on Complaints and Denunciations. The PPC's resolution of the complaint is the second one and must be publicized and sent to the complainants and to other people with related benefits and obligations. If the complainants have disagreed with the PPC's resolution decision, they are entitled to take the case to the administrative court (in accordance with the Law on Complaints and Denunciations).
- An administrative decision or administrative behavior of PPC's in land management within the scope of land allocation, land lease, changes in land use purpose; land recovery, compensation, support and resettlement when land is recovered by the State; land requisition and expansion of the term of land use; and first issuance of Land Use Rights Certificate on which complaints have been made are resolved in accordance with the land legislation as follows:
 - > Within the term not exceeding 30 days from the date of the issuance of the administrative decision or administrative behavior made by the PPC or its officials, people with related benefits and obligations are entitled to complain to the PPC if they disagree with the administrative decision or administrative behavior.
 - > The Chairman of the PPC is responsible for resolving complaints in accordance with the required time limit regulated by the Law on Complaints and Denunciations. The resolution decision of the PPC must be publicized and sent to the complainant as well as to other people with related benefits and obligations.
 - > Within the term not exceeding 45 days from the date of receipt of the PPC's resolution decision, complainants are entitled to take the case to the administrative court, if they disagree with the PPC's resolution decision.

The diagrams on procedures of administrative complaints on land management and their resolution are described in Figures 2 and 3 below.

Figure 2: Diagram on procedure of administrative complaints on land management and their resolution for households, individuals and communities

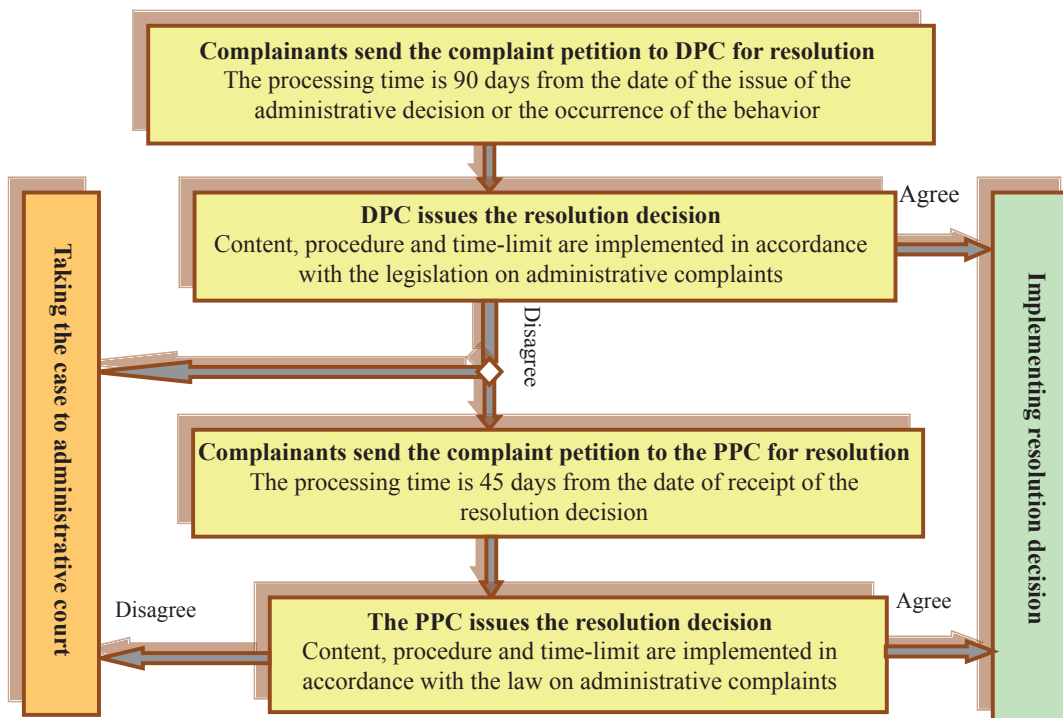
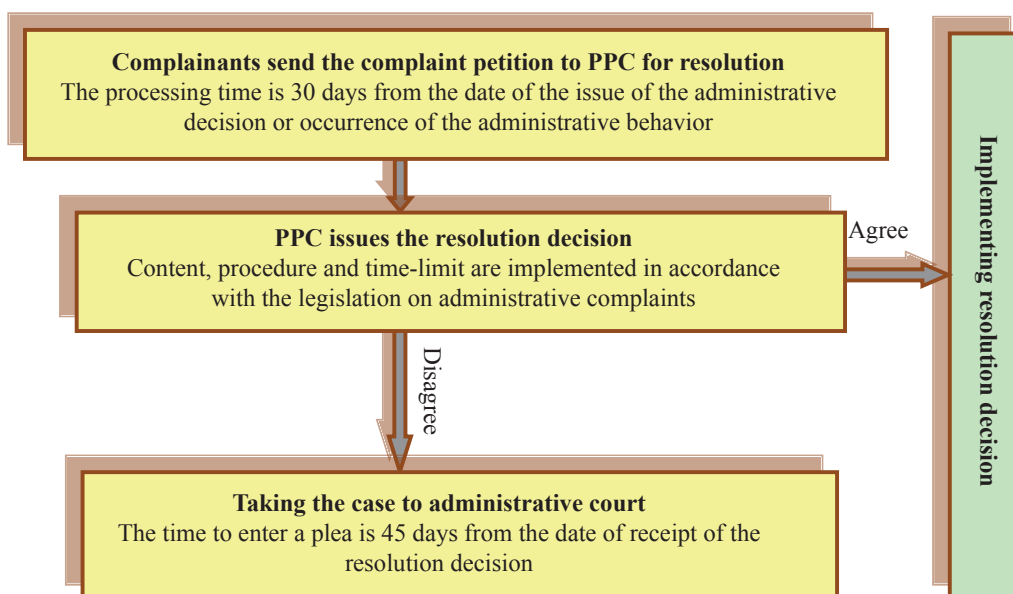


Figure 3: Diagram on procedure of administrative complaints on land management and their resolution for organizations, religious establishments, overseas Vietnamese investors, foreign individuals and organizations



The resolution of administrative complaints on land still contains considerable differences between the general legislation on resolution of administrative complaints and the law on land. Specifically,

- The complainants against an administrative decision or administrative behavior made by PPCs in land management are only entitled to complain once to the PPC. If they disagree with the PPC's resolution, they can only take the case to the administrative court. They do not have the right to make a further complaint to the Ministry of Natural Resources and Environment;
- The instructions for implementing administrative complaints on land is shorter than that regulated in the Law on Complaints and Denunciations. There are no specific instructions issued for complicated cases and for remote areas.

The current legislation on administrative complaints on land management and their resolution can be evaluated as follows:

- The legal regulations suffer from gaps and overlap and fail to ensure that the system is workable. This situation exists in the same legal sector in various documents (Laws, ordinances, decrees, circulars, etc) or between the documents of two different legal sectors (the Law on Complaints and Denunciations; the Land Law; the Ordinance on Resolution of Administrative Cases, etc.).
- The resolution of administrative complaints based on the decision of the administrative agencies is limited to two levels in which the first level is the administrative agency which has issued the administrative decision or made the administrative misbehavior. From a practical point of view, households and individuals theoretically have the right to make a complaint twice, but practically the right is only once. Organizations are theoretically able to make a complaint once, but practically there is no right to complain. The primary avenue for resolution is the authority of the administrative court, in which the judicial workforce is weak both in terms of quantity and quality. The existing complaint resolution procedures show that the process does not meet the increasing demand for complaint resolution in direct proportion with the area of recovered land for investment projects.
- At present, the Law does not permit multiple complainants (groups or communities). However, in reality, issues such as land recovery and the implementation of compensation, support and resettlement all have impacts on groups of households or communities. Therefore, it is essential to permit the submission of complaints (or denunciations) by a group of households or a community. This will help to improve the efficiency of the system and gain acceptability amongst citizens.

2.3. The practical enforcement of legislation on administrative complaints and people's grievances

Firstly, it is necessary to confirm that the people's right to lodge an administrative complaint in Vietnam is respected without any hindrance. Such complaints and the complainants should also be received and processed by both the central and local administrative agencies in a fair manner.

Since the launch of the implementation of industrialization and modernization of the country (1994), the State's recovery of land for conversion of a considerable area into investment projects has had a huge impact on the lives and livelihoods of people who have had their land taken from them. Available data and evidence suggests that since 1998 the discontent of these people is seen in the increasing number of complaints submitted to the central agencies that raise critical issues. In order to address such issues, the government had taken several successive measures. During 1998-2003, the Government decided to establish a Special Team to directly review and resolve long pending and complex complaints and denunciations. In 2000 and 2001, the Government established 17 interdisciplinary mission teams led by one Minister to travel to the location of many complaints and denunciations to directly resolve or direct

the Provincial People's Committees to improve the treatment of people who had complained and resolve their complaints. In addition, the Government focused on direct resolution of cases at the local level and the Prime Minister assigned the Government Inspectorate to focus on the resolution of long-lasting and complicated complaints and denunciations. This mechanism had a positive impact and at least the local leaders concentrated more and more on the resolution of people's grievances. However, this mechanism has shown some basic weakness as follows:

- The mechanism of direct resolution of complaints by the central authorities was not a regular one in accordance with the legal regulations, but was considered as additional activities required by the central agencies to resolve complicated complaints. It was noticed that after Special Team leaves, the provinces did not follow up to resolve the complaints but transferred these cases to central agencies for continuous resolution. It was also pointed out that the legal authority and responsibility of the central Special Team in the resolution of complaints was unclear. Of course, such activities did not bring about any practical increases in effectiveness and efficiency.
- The resolution of complaints requires a high level of professional knowledge and capacity. Therefore, the on-site direct resolution by Ministers could not ensure strict legal compliance in the specific conditions of the localities.
- The main function of the Government Inspectorate is to organize the inspection of activities of the administrative agencies and identify any legal violation of the administrative system. In addition, mandating the Government Inspectorate to review people's administrative complaints is a poor use of administrative inspection. Conceptually, the Government Inspectorate is responsible for inspecting the resolution of complaints by competent administrative agencies which seem to be in violation of the law.

Since 2003, the Government has not used the mechanism of sending Special Teams or similar delegations to the provinces to implement direct resolution of people's complaints and denunciations, but has allocated the power of resolution on the local People's Committees at all levels. The Ministry of Natural Resources and Environment (MoNRE) has been assigned to support and monitor the work of People's Committees in their treatment of citizens' and resolution of their complaints and denunciations on land management. For this purpose, MoNRE assigned several teams to visit the provinces to support the resolution of people's complaints as well as to monitor the implementation of land legislation at the local levels. Between 2003 and 2005, 39 teams travelled to the provinces to monitor land legislation enforcement and assist in resolving complex complaints and denunciations.

In the period after 2003, the Government Inspectorate, Ministerial Inspectorate and Provincial Inspectorate focused on monitoring the resolution of complaints and denunciations in local areas. In 2003 and 2004, the Inspectorate at all levels undertook 2,500 inspections at administrative agencies on the resolution of complaints and denunciations. In this period, the National Assembly had special concerns on the resolution of complaints and petitions by citizens. The National Assembly passed the Resolution No. 30/2004/QH11 of 15th June 2004 on the management of complaints and denunciations by the administrative system. This resolution pointed out the reasons that caused the complicated situation in the resolution of complaints and denunciations. Specifically they are:

- Some sectors and local areas do not pay adequate attention to the resolution of complaints and denunciations;
- The policy and law in some sectors is not sufficient and comprehensive;
- Many State officials and civil servants are unaware of their responsibilities and of the legal regulations on the deadlines, procedures and process of resolution of complaints and denunciations;

- The competent agencies and officials issued improper decisions or committed violations of the legal rights and benefits of the citizens;
- The responsible agencies did not pay adequate attention to what the complainants were telling them. The people in charge of the first resolution of complaint were unwilling to fulfil their administrative responsibilities, to correct wrong decisions and their own behaviors. At the next level of appeal, officials defended the earlier bad decisions.
- There are some cases where State officials resort to corruption in resolving people's complaints and denunciations.
- Some agencies, officials, civil servants and claimants do not comply with the legal decision, resulting in more difficulties.

The Standing Committee of the National Assembly passed Resolution No. 715/2004/NQ-UBTVQH11 of 18th June 2004 and Resolution No. 694/2008/NQ-UBTVQH12 of 15th October 2008 on the receipt, classification and resolution of complaints and denunciations and petitions of citizens to the National Assembly. The concern of the National Assembly has had a positive impact on how administrative agencies have dealt with people in the resolution of their complaints and denunciations.

According to the summarized data in the period 1998-2004, the competent agencies at all levels handled 614,717 administrative complaints and settled 513,409 (83.5%)⁴¹; in 2006, administrative agencies at all levels received 46,555 complaints, of which there were 38,790 petitions sent to the correct address of the competent agencies and resolved 28,403 (73.2%)⁴². Therefore, the competent administrative agencies annually resolved 70%-80% of citizens' complaints.

The above data demonstrates the efforts of the competent agencies in the resolution of administrative complaints in terms of quantity. It is also necessary to pay attention to the quality of the resolutions. The quality of a resolution is demonstrated by whether the resolution decision complies with the law; whether the resolution is fair and proper; whether the complainants agree with the resolution decision or continue the complaint process to a higher level; and whether the information on the complaints resolution process is transparent or not.

The resolution decisions are not of high quality. In the period 2002-2004, there were more than 4,666 complaints sent to the Government and the Government Inspectorate which disagreed with the final resolution decisions by the Ministries, Branches, and Provincial People's Committees. The Government Inspectorate reviewed 64 final resolution decisions of which 34 had to be changed (53.1%)⁴¹. In 2005, the Government Inspectorate reviewed 103 final resolution decisions and at least part of the contents had to be changed in 47 of those decisions (45.6%)⁴³. In 2006, amongst 256 resolution decisions by Provincial People's Committees, 47.2% complied with the law; 20.8% were subject to changes; 10.2% were subject to cancellation and 21.9% were subject to review for further resolution (31.0% of decisions were legally improper)⁴². This data indicates the low quality of resolutions, which is the reason for the increasing in people's complaints in terms of quantity and speed of resolution.

The poor qualifications of officials in charge of resolutions is one reason for the poor quality of resolution decisions. But in reality, this is only a small part of the cause. Other reasons have been pointed out in Resolution No. 30/2004/QH11 as mentioned above, specifically:

- The responsibility for resolving administrative complaints is not of sufficient concern to the local authorities and the administrative apparatus does not aim to serve the people.
- Policy and legislation still contains gaps and overlaps, so decision makers face difficulties in issuing decisions that are in compliance with the law. Some officials have taken advantage of this complexity and passed decisions that favored them personally.

- The enforcement of the legislation contains various weaknesses including with administrative agencies, State officials and citizens. Those not complying with the law and procedures were not held responsible for the lapses and reprimanded. Furthermore, the oversight system to identify breaches in procedure were not effective. The mechanism whereby an administrative agency conducts the monitoring and evaluation and the inspection of administrative agencies at lower levels are not operating effectively.
- Several officials did not maintain a high level of responsibility and ethical standards and consequently several decisions were not seen as objective and fair.
- The administrative agencies have not paid attention to how people are treated and have not ensured that there is dialogue.
- The mechanism that identifies the administrative decision makers as the people responsible for arriving at the first resolution of administrative complaints makes it difficult to have an objective and fair resolution since these people are reluctant to admit their mistakes. The people responsible for the next resolution also face difficulties in making a decision that is contrary to the first decision because their inclination is to protect the status quo.
- In some locations, there are signs of corruption in the consideration and resolution of complaints, causing trouble and difficulty for people who lodge the complaints.

A deeper analysis of the structure of the legal system of Vietnam and its effective implementation in reality may point out the specific weaknesses of the legal system on administrative complaints and legislation on land which are making the complaints process and resolution of administrative complaints on land difficult. The pressing issues may be analyzed as follows⁴⁰:

- Currently, laws on complaints and complaint resolution in Vietnam have not permitted complaints against a legal document. Therefore, it is unclear whether an administrative decision or an administrative complaint resolution decision made on the basis of a legal document which is not in accordance with the legal framework is to be considered as a legally proper decision or not.
- Complainants are not permitted to send their complaints on land issues to the central agencies. Following resolution decisions by Provincial People's Committees that they disagree with, complainants can only take the case to the administrative court. This regulation reduces the rights of people in the complaints process, especially because there is such a low quality of complaint resolution at the local level.
- Even though the current law enables complaints on administrative behaviors taken by administrative agencies or State's officials working in the administrative bodies, the law actually does not contain any specific regulations on administrative behaviors that make it difficult for people to complain about such behaviors.
- The current law clearly defines competent agencies responsible to process complaints. However, the impediment is that people do not know which agencies their complaints should be sent to. If they send them to the wrong address, the complaints will not be dealt with.
- The law stipulates that the publication of decisions on complaint resolution is required. In reality, the local areas do not implement very well this regulation and details of the whole process, from complaint uptake to the resolution, are not well-disseminated.
- At present, the Law does not permit group or community complainants (multiple complaints). However, in reality, issues such as land recovery and implementation of compensation, support and resettlement all have impacts on a group of households or a community. Therefore, it is essential to permit submission of complaints (or denunciations) by a group of households or a community. This will help to improve the efficiency of the system and gain acceptability among the citizens.
- If the claimants disagree with the resolution decision of the administrative system, they can take the case to the administrative court. In reality, the resolution procedure in the courts on land issues is

relatively complicated and the courts do not have adequate capacity to pursue these issues. As a result, people with appeal claims prefer to send their petitions to the central administrative agencies rather than to the courts.

The above analyses of the legislative system on complaints and their resolution and their current implementation at all administrative levels and in the courts, point to the necessity to comprehensively review and innovative new processes in the Law on Complaints and Denunciations. The Vietnam National Assembly is preparing to revise the Law in the following manner:

- The Law on Complaints and their Resolution and the Law on Denunciations and their Resolution will be separated unlike the current Law on Complaints and Denunciations;
- Reviewing the establishment of administrative appeals tribunals to resolve administrative complaints. In addition, many other aspects of the mechanism on complaint resolution are earmarked for improvement to ensure the rights of citizens.

Therefore, two aspects of the improvement of the mechanism of resolving people's complaints on land recovery and the plan for compensation, support and resettlement should be reviewed:

- The supplemental procedure may be included in the current legal framework on complaints and denunciations to improve the processing of complaints of this type. This could first be applied to World Bank funded projects and then be more commonly applied to other projects in the country.
- The need to renovate the current legal system on complaints against the decision on the plan for compensation, support, and resettlement and their resolution from people subject to land recovery. This is aimed at contributing to the process of revising the Land Law and the Law on Complaints and Denunciations which are currently in the legislative process.

3. ANALYSIS OF INTERNATIONAL EXPERIENCE IN ADMINISTRATIVE COMPLAINTS RESOLUTION MECHANISMS

3.1. Experience in using administrative appeals tribunals to resolve administrative complaints

In almost all countries, administrative agencies at all levels face complaints by people against administrative decisions. The specific situation of the country and the point of view of the nation's leadership and the people determine the seriousness of such complaints and the resolution of them. Most developing nations have also experienced a higher number and complexity of complaints than that of developed countries.

Currently, most countries permit people to lodge complaints against administrative decisions made by the executive mechanism. However the systems vary. Some countries delegate their administrative agencies to manage administrative complaints (Vietnam, for instance); some countries utilize an administrative agency system with the specialized function of resolving administrative complaints, called as administrative appeals tribunals (such as the United States, United Kingdom, Australia, Canada and Singapore), prior to the final appeal to an administrative court; most countries delegate the power to implement the final resolution of administrative complaints to an administrative court.

According to the recent study, people claimed that the existence of an administrative court is essential since it is an independent agency with an administrative mechanism that will ensure objectiveness, equality, transparency and publicity in the resolution of complaints. On the other hand, if the administrative court is delegated to resolve all administrative complaints, the agency can become overloaded with work. Therefore there is a need to firstly resolve the complaints inside the administrative system before the complainants go to court if they are not satisfied with the first step of the complaints system. Based on the experience of many developed countries⁴⁴, administrative complaints lodged by people must be settled objectively and independently from the administrative system; fairness must be ensured between the people receiving the complaints (who has issued the administrative decision) and the claimants. This process should be well publicized and carried out in a transparent manner so that public confidence in the system is enhanced. For this purpose, the establishment of an administrative appeals tribunal system is necessary. For example, in the United States the administrative appeals tribunal system is part of the judicial administration but functions independently from it in resolving complaints. The administrative appeals tribunal system in Australia is organized as a council including a chairman and members with a high level of qualifications and experience. People with administrative complaints are entitled to appeal to the State Inspector or sue through an administrative court against a decision of an administrative appeals tribunal. This way of organizing a system of administrative appeals tribunals has the following advantages:

- It ensures high qualifications and experience in those involved in determining the resolution and enables the resolution of issues related to specific legal sectors (land, for instance).
- It ensures flexibility and less formal and more people friendly procedures than the formal court system. It also ensures high effectiveness as the staff in charge has good professional capacity and fairness

as the administrative appeals tribunals system is independent of the administrative system. It also encourages mediation between the parties in an administrative dispute.

- It ensures that there is enough time for the administrative system to focus on administrative work. This helps avoid the situation where administrative officials have to deal directly with individual administrative disputes.
- It ensures a high level of economic effectiveness for the government and the people involved in processing and resolving administrative complaints.
- The specialized documents prepared during the processing of the complaint by the administrative appeals tribunals are important documents that facilitate the processing of the case by the administrative court should the claimants decide to take the proceedings further.

During the resolution of administrative complaints in administrative appeals tribunals in developed countries, absolute equality is ensured between the claimants and the people receiving the complaints. This allows for equal opportunities between the two parties in the presentation of their evidence and views. The decisions delivered by the tribunals have implementation effectiveness and its enforcement is guaranteed by agencies responsible for carrying out the decisions. If the claimants are not satisfied with the tribunal's decision they can appeal to the administrative court which is completely independent from the administrative system.

In developed countries, the system of resolving administrative complaints encourages mediation between the parties in a dispute. Experience has proven that successful mediation will lower the number of administrative disputes that need to be resolved. Effective mediation requires the following conditions:

- People must be well aware of the law and procedures and be able to determine whether their administrative complaints comply with the law;
- The legal support system must work effectively;
- Consulting with the residential community must be well implemented. In developed countries, the legal support system can play the role of moderator to mediate in administrative disputes.

3.2. Experience in resolving complaints of people affected by the implementation of investment projects

The above section introduced the experiences of countries utilizing administrative appeals tribunal systems, followed by appeals to administrative courts to resolve administrative complaints. This is a big issue in seeking to comprehensively revamp the system of laws on administrative complaints and their resolution.

Most administrative complaints in Vietnam and other countries arise directly from people who suffer damages due to the implementation of investment projects. If investment projects could adequately resolve the complaints of people who have surrendered their land use rights at the project level, then it would help to reduce the number of administrative complaints that have to be resolved in accordance with the law. The mechanism of resolving complaints against investment projects can be expanded to apply to some steps in the procedure and order of resolving administrative complaints in accordance with the law.

The World Bank and some regional development banks have conducted various studies on a suitable mechanism for resolving complaints of people affected by investment projects when these complaints have not been submitted as an administrative complaint. It is possible to consider it as a Grievance Redress Mechanism (GRM) for people who have grievances or complaints against projects. The following sections

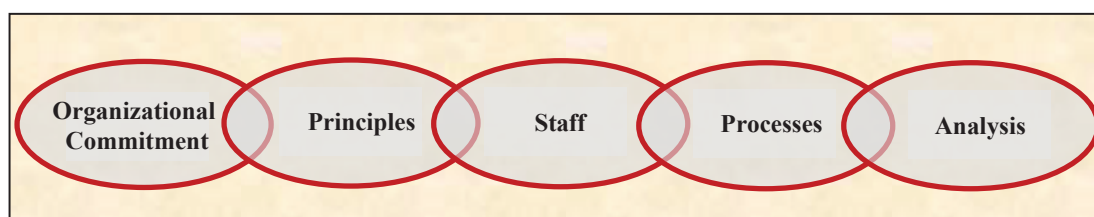
introduce some of the latest study results of some international development organizations in GRM. This issue has been studied carefully by the World Bank Group (WB), the International Finance Corporation, (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Resolution of Investment Disputes, (ICSID) in order to recommend a suitable resolution mechanism.

Recent studies conducted by the World Bank⁴⁵ and the IFC⁴⁶ have focused on grievance redress mechanisms on land matters. The WB's report on "Designing Effective Grievance Redress Mechanism" (by Social Development Department) emphasized three groups of issues that must be solved in order to develop an effective mechanism of resolving grievances for people who have suffered losses from projects.

3.2.1. The first group of issues are the building blocks of an effective mechanism for resolving grievances-GRM

The main components to be dealt with are expressed in the diagram in figure 4 below:

Figure 4: A diagram of the building blocks of an effective grievance redress mechanism (GRM)



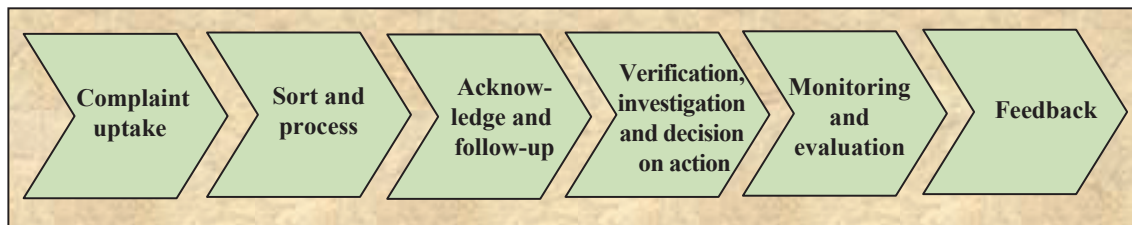
- (1) **Organizational Commitment:** Project Management Units (PMU) must consider the resolution of complaints as a means to enhance public administration, improve public and community relationships and ensure responsibility and transparency.
- (2) **Principles:** An effective GRM system must satisfy six key principles:
 - Fairness* - The claimants must be protected, treated equally and the case settled in a transparent manner;
 - Objectiveness and Independence* - the GRM system operates independently from relevant parties and acts objectively;
 - Simplicity and Accessibility* - procedures to receive complaints and resolve them must be so simple that the claimants can easily understand the procedure;
 - Responsiveness and Efficiency* - the GRM system must, in a timely fashion, meet the demands of all the claimants;
 - Speed and Proportionality* - all complaints, regardless of whether they are simple or complicated, should be treated in the same way and settled as rapidly as possible;
 - Participation and Social Inclusion* - the GRM system must meet the demands of wide use. This includes residential communities, vulnerable groups, project implementers, social organizations and the mass media who are encouraged to be used as channels to disseminate information and receive feedback from the people and communicate it to the project implementers.
- (3) **Staff in charge:** Staff responsible for implementing the GRM system must be trained carefully, diligently and professionally. There should be a Code of Ethics for these personnel.

- (4) **Processes:** The resolution of the grievances of affected people plays an important role in project implementation. Six operational steps include: complaint uptake; complaint sorting and processing; acknowledgement and follow-up; complaint verification, investigation and action; complaint monitoring and evaluation; and feedback.
- (5) **Performance analysis:** The Project Management Unit (PMU) must carry out regular analysis of complaints and the data of the monitoring and evaluation process.

3.2.2. The second group of issues is the entire resolution process to be implemented for GRM

The implementation is carried out through an effective GRM described in the diagram in figure 5.

Figure 5: Diagram of the implementation process in an effective GRM



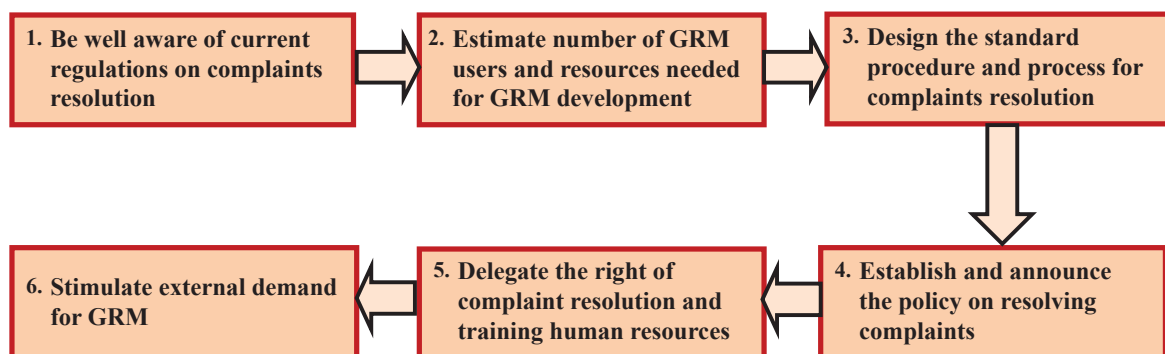
- (1) **Complaint uptake:** The method to receive complaints of affected people is announced. The project needs to receive complaints in many venues including communities, hamlets, villages, communes, districts, PMU, etc and by many means including from post offices, email, letter, telephone, fax, electronic information pages of the project, project officers, complaint mail boxes, etc.
- (2) **Sorting and Processing:** All complaints received and found to be in order will be categorized according to their characteristics and entered into a database maintained for this purpose by the authorities responsible for follow up. Each type of complaint should be settled in accordance with a designated process.
- (3) **Acknowledgement and Follow-up:** Claimants are notified on receipt of the complaint and told the procedures for processing it. They are given a summary of the necessary documentation and processes, the designation of people responsible for resolving their complaint and the time required to complete the process. A specific schedule should be created that specifies when claimants should be notified and the timetable of the further steps in the process.
- (4) **Verification, Investigation and Action:** The details of the complaint must be reviewed. All information related to the determination of the soundness of the complaint should be received. The soundness and rationale of complaints should be reviewed objectively in accordance with the established standards. Simple complaints including questions or requests for further explanation should be processed through direct contact with the claimants in a timely manner. Complicated complaints are those that cannot be settled at a management level and must be moved to a higher level without time delays. Project officers working in GRM must ensure that the people responsible for collecting information remain neutral and do not make any subjective impact on the survey results.
- (5) **Monitoring and Evaluation:** This is an important activity affecting the success of the resolution of the complaint. Monitoring is the tracking of the complaint resolution process and evaluation of the manner used to handle the complaints. The project should utilize the monitoring and evaluation system of the project to serve the purpose of monitoring and evaluation of the resolution of complaints in the project.
- (6) **Feedback:** This step is intended to notify all the parties related to a complaint and the community at large of the results of the investigation and resolution of the complaint. The result of the complaints resolution process is sent in the form of a response document on how the complaint is to be resolved and

explains the next steps. This is an important activity that helps people build trust in the GRM system of the project. The response document may be sent directly to the claimants, posted in a fixed place, announced on the project website, through radio or other mass media. The project is also required to let the claimants know that they have the right to appeal if they disagree with the results of the complaints process and disseminate the instructions along with procedures for submitting an appeal.

3.2.3. The third group of issues relates to the design of activities to be implemented to establish an effective GRM.

The design of an effective GRM is described in the diagram in Figure 6 as follows.

Figure 6: A diagram on designing an effective GRM



- (1) **Be aware of current regulations on complaints resolution:** Each country has an official complaints resolution system that is established through legal regulations. In addition, there are also local traditions and customs in resolving people’s grievances, especially in ethnic minority areas. The project should acknowledge the legal system on complaints resolution and these traditions and evaluate and transfer these factors into the project’s GRM system.
- (2) **Estimate the number of GRM users and the human resources needed to develop and manage the GRM:** During the development of the GRM system, the project needs to estimate the number of people that may want to use the GRM system of the project and evaluate the human resources as well as the financial and technical resources that would be used. The project should have an in-built mechanism to identify deficiencies in the resources and address them in time.
- (3) **Develop a standard process and procedure to settle complaints and ensure proper processing of grievances:** At the start of the project the Project Management Unit (PMU) should establish specific procedures and tools for the GRM to function efficiently and effectively. It should include a monitoring and reporting system.
- (4) **Establish and announce the policy and procedures for resolution of a complaint within the project area:** The PMU will have to prepare and announce the applicable policy to the public for its access and use. The publicized policy should: (1) specify the principles and criteria for a complaint to be “eligible” for processing; (2) should define the scope and type of complaints to be settled; (3) point out the advantages of the process as being friendly towards claimants so as to create favorable conditions for sending grievances to the resolution agency; (4) describe the overall structure of the GRM; (5) explain the standards for implementation; (6) explain the mechanism for reviewing complaints inside or outside the project areas and scope.

- (5) **Delegate the tasks of complaint resolution and HR training:** The project personnel in charge of grievance and complaint resolution should be trained to be professionally competent and ensure the professionalism of the system. The Project Management Unit is required to develop competent personnel at all levels and assign specific tasks for each level in the resolution of complaints process. The project should carry out a training program on complaint resolution to improve the knowledge of those working on the issue and to inform them as to why successfully resolving complaints is important to the success of the project. The training program needs to expand the coverage of the training to include everyone related to the project at all administrative levels and aim for participation of the local community in complaint resolution.
- (6) **Stimulate external demand for GRM:** A good GRM cannot ensure good operation purely from within the project. The project should publicly announce its current GRM system, the resolution procedures, types of complaints to be resolved and standard activities in the resolution process, etc as a part of the common promotion strategy for the project. Information on the project's GRM system may be promoted in various ways. The documents need to be translated into ethnic languages in the project area. Important information should be conveyed daily to participating stakeholders by the project, including (1) the types of complaints to be sent to the project for resolution; (2) the way to send a complaint letter or grievance to the project and where to find the complaint form; (3) the standards of the resolution process and the timescales of the complaint and grievance resolution process; (4) the options of the claimants if they disagree with the resolution process and its results.

The IFC report's "Addressing Grievances from Project-affected communities" proposed three recommendations: (1) Lay down clear principles to design a good GRM; (2) Determine the steps in a GRM system; and (3) estimate the necessary resources required for the implementation of GRM. As an example, all of the procedures for addressing grievances from communities affected by IFC projects were provided and these are described in the diagram in Figure 7 below.

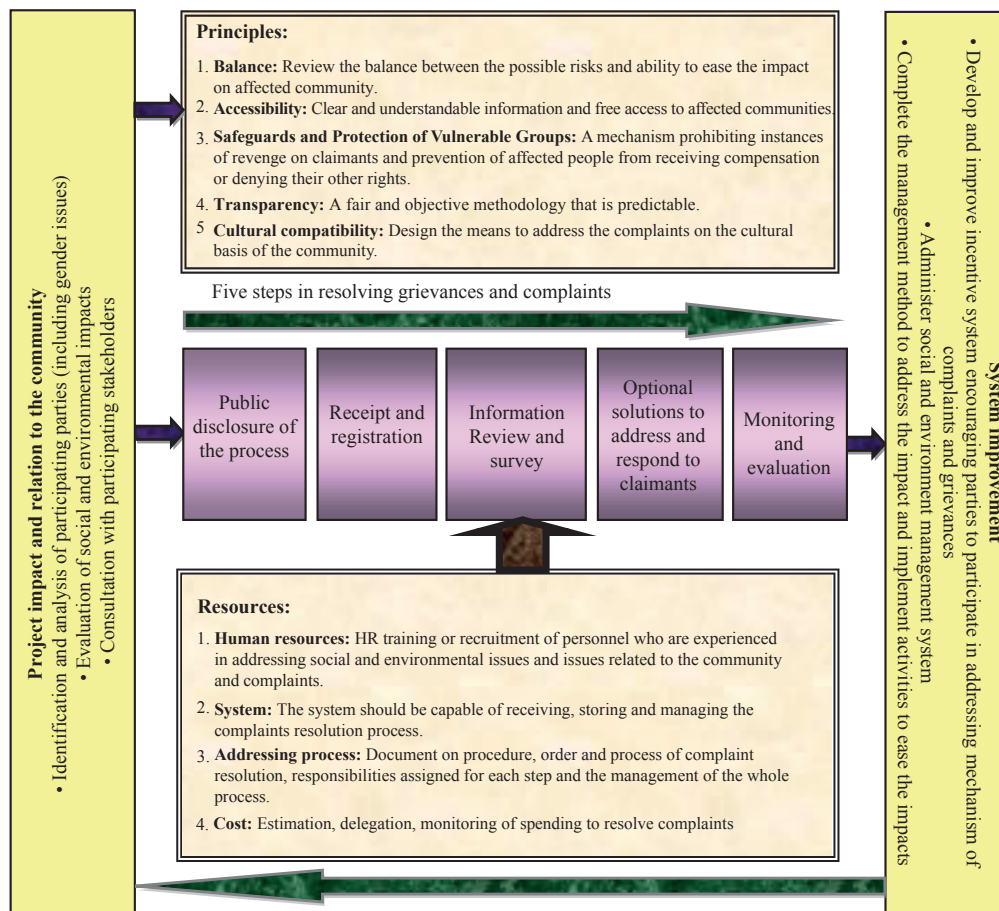
The two reports summarized above, though similar in objectives and scope, introduce different sets of recommendations to prepare a functioning GRM.

It is possible to see that basic principles such as public disclosure, easy access and user-friendly procedures, fair and objective methodologies, transparency, and cultural compatibility should be included.

International Standards Organization (ISO) presented new standards in social responsibility (ISO 26000). These are common standards for all processes related to the rights of the community other than for a specific sector. This standard system includes: (i) respect for human rights ; (ii) transparency; (iii) accountability; (iv) moral behavior; (v) lawful rights of the contesting parties to a dispute; (vi) respect for the law; (vii) compliance with international standards of behavior. The principles presented by the World Bank and IFC reflect compliance with the draft ISO 26000. Certainly, after ISO 26000 is officially recognized, addressing the principles of GRM needs to be based on the specific principles of ISO 26000.

The process of addressing the grievances of people affected by projects involves some basic steps. These include: dissemination of information on the right to register grievances or complaints and relevant mechanisms to address them; methods for submission of comments; receipt of recommendations and complaints; classification of complaints; processing; steps in processing a complaint to verify its eligibility, details submitted etc; defining the grounds for a case and how the case is likely to be examined further for resolution; delivery of a final decision on the resolution and its publication. It will also specify the monitoring and evaluation system needed for the mechanism; actually, this system covers all the steps in the processing, putting it in as a step is just a formality. For the remaining steps, order of the processing must be followed.

Figure 7: IFC’s Solution to establish a system to address grievances of people affected by investment projects



Besides defining the principles and steps for processing as described above, the studies on complaints resolution also focus on development of resources for complaints settlement such as regulations, procedures for complaints processing, personnel in charge, staff with high qualification and moral standard to carry out the task, and financial resource to cover the activities.

3.2.4. Comments on the process of administrative complaint resolution in Vietnam compared with WB/ IFC recommendations

Currently in Vietnam, there are no legal regulations on the participation of investment projects in the resolution of grievances and complaints of people affected by projects. The complaints related to investment projects are addressed in accordance with the Law on Complaints and Denunciations under the authority of the District People’s Committee, Provincial People’s Committee and the administrative court. Table 1 below summarizes the current situation in complaint resolution in Vietnam against the standard procedures proposed by the World Bank Group.

Table 1: Analysis of the comparability of the mechanism of land administrative complaint resolution in Vietnam and the process of GRM proposed by the World Bank/IFC

No.	Procedures of WB/IFC	Current situation in Vietnam
1	Organizational Commitment	In accordance with the law, People's Committees of all levels are responsible for resolving administrative complaints about land and must commit to implement the best possible resolution of complaints from people affected by investment projects by the receipt of petitions, resolution, disclosure of results, etc. However, this suffers from weaknesses in implementation at the local level.
2	Principles	
2.1	<i>Fairness</i>	As complaints are reviewed and decided by the administrative authorities, fairness cannot be ensured.
2.2	<i>Objectiveness and independence</i>	As complaints are directly settled by the administrative authorities, objectiveness and independence cannot be assured.
2.3	<i>Simplicity and accessibility</i>	The procedure of complaints and resolution of administrative complaints have become simpler and more accessible. However, claimants still face difficulties due to poor legal enforcement at local levels.
2.4	<i>Responsiveness and Efficiency</i>	The law stipulates procedures for receiving and resolving complaints to ensure timeliness and effectiveness. However, the actual receiving procedure is impractical as it is difficult for claimants to send their complaints to the right agencies. The responsible agencies do not educate claimants about the law or show them how to initiate the complaints process.
2.5	<i>Speed and Proportionality</i>	The law stipulates the length of time for the resolution of a complaint to ensure the time period is reasonable. However, resolution normally takes longer than the stipulated period.
2.6	<i>Participatory and Social Inclusion</i>	There are no legal regulations on encouraging community participation in the resolution of administrative complaints.
3	Staff	State agencies responsible for resolving administrative complaints are provided with sufficient human resources to carry out the effective processing of complaints. However, the number of complaints is too high, resulting in a shortage of human resources and a lack of quality. Additionally, financial resources are not sufficient to increase the speed of complaints processing.
4	Processes	
4.1	<i>Uptake</i>	The receipt of complaint petitions is not well undertaken. Claimants face difficulties in sending the complaints to the responsible agencies.
4.2	<i>Sorting and processing</i>	Due to a lack of human resources both in terms of quantity and quality, the classification and timely processing of complaints is always slower than the stipulated period.
4.3	<i>Acknowledgement and follow-up</i>	The law stipulates that claimants be notified. However, this task is insufficiently implemented.
4.4	<i>Verification, investigation and action</i>	The consideration and resolution of complaints is normally slower than the period stipulated by the legal regulation.
4.5	<i>Monitoring and evaluation</i>	The monitoring and evaluation of the resolution of administrative complaints has not been stipulated by law and is not implemented in practice.
4.6	<i>Feedback</i>	The announcement of the resolution of complaints is stipulated by the law and is not well implemented in most provinces.
5	Analysis	The local areas implement an annual and five-year analyses on the effectiveness of the procedures for resolving administrative complaints and draw from them lessons for improvement.

4. ORGANIZATION AND IMPLEMENTATION OF A CASE STUDY TO ESTABLISH WEAKNESSES IN THE LEGISLATIVE SYSTEM AND ITS ENFORCEMENT IN THE RESOLUTION OF ADMINISTRATIVE COMPLAINTS ON LAND RECOVERY, COMPENSATION, SUPPORT AND RESETTLEMENT

4.1. Introduction to the case study

From March to May 2010, the Institute of Sociology (a part of the Vietnam Academy of Social Sciences) undertook a case study on the socio-economic effectiveness of compensation calculated on the market price of land and the effectiveness of the grievance redress system in three local areas at provincial level. The three selected local areas were Hanoi, Ho Chi Minh City and Dak Lak. However, the Hanoi People's Committee requested that the survey be postponed. As a result, Bac Ninh was selected instead as this is a neighboring province to Hanoi and has a relatively high level of urbanization.

Few projects funded by the government where compensation was paid at market prices could be selected for the survey in the chosen provinces. Amongst the six selected projects, only the Binh Loi-Tan Son Nhat project in HCMC and the Buon Me Thuot Market project in Dak Lak had applied market prices for compensation (these projects were the first in these provinces where market prices were applied to compensation). The Binh Loi-Tan Son Nhat project had the largest number of affected people but at the time of survey only 2 out of 4 districts had completed their compensation payments. These factors limited the validity of the survey results.

In each province, one or two districts and one to four communes in each district were selected for the study. The specific local areas selected for the case study are described in Table 2 below. The focus of the study was gaining the views of people on land recovery in the implementation of public works construction projects. The stakeholders of the project included officials from the administration at all levels, enterprises implementing the project and people subject to land recovery who received compensation, support and resettlement when the State recovered their land.

The study was implemented in two ways. The first was to use a sociological survey administered by questionnaire. The second was to undertake in-depth interviews to collect comments by theme. The survey questionnaire was administered to 600 people. Amongst the six selected projects, HCMC had the largest number of affected households, but at the time of the survey many of them had moved out of the project area without leaving a forwarding address, so they could not be included in the survey sample. This resulted in a limitation in the satisfactory assessment of different groups in the study results.

The characteristics of people selected to be respondents in the study are presented below.

The 600 participants in the survey were structured by gender, age, educational and training level and occupation as follows:

- Gender: male – 283 respondents (47.2%) and female – 317 respondents (52.8%);
- Age: under 35 years old – 61 respondents (10.2%); from 36 to 45 – 151 respondents (25.2%); from 46 to 60 – 316 respondents (52.6%); and above 60 – 72 respondents (12.0%).

- Educational and training level: primary school – 126 respondents (21.0%); lower secondary school – 265 respondents (44.2%); upper secondary school – 143 respondents (23.8%); vocational training – 49 respondents (8.2%); graduates - 17 respondents (2.9%).
- Occupation: waged employee – 106 respondents (17.7%); farmer – 275 respondents (45.8%); service worker – 152 respondents (25.3%); not working – 66 respondents (11.2%).

The in-depth interviews were carried out using two methodologies: (a) a group discussion with people subject to land recovery; and (b) personal interviews with officials from the administrative agencies. The study conducted a group discussion with eight groups of people affected by land recovery projects and interviewed 32 officials holding different positions within the government. A summary of officials participating in the in-depth interviews is presented in Table 3.

Table 2: Survey areas and the number of surveys undertaken

Province/City	District	Communes/Wards	Frequency	%
Dak Lak	Buon Me Thuot city	Hoa Thuan	54	9
		Tan Tien	11	1.8
		Thong Nhat	72	12
		Tu An	34	5.7
Ho Chi Minh City	Binh Thanh	Ward 11	86	14.3
		Ward 13	75	12.5
	Thu Duc	Hiep Binh Chanh	49	8.2
Bac Ninh	Que Vo	Bong Lai	86	14.3
	Bac Ninh City	Vu Ninh	74	12.3
		Linh Dong	2	0.3
		Van An	57	9.5
Total			600	100

Table 3: List of officials participating in in-depth interviews on land recovery, compensation, support and resettlement

No.	Position	Quantity
1	Officials of Provincial People's Committees	1
2	Leaders of Departments of Natural Resources and Environment	3
3	Officials of Departments of Natural Resources and Environment	5
4	Leaders of the district division of Natural Resources and Environment	2
5	Experts of Departments of Finance	1
6	Experts of the Provincial Board of Compensation, support and resettlement	3
7	Experts of the District Board of Compensation, support and resettlement	3
8	Leaders of Communal People's Committees	6
9	Cadastral Officials of the Communes	8
	Total	32

As mentioned above, in the survey areas a total of 600 cases was examined. The distribution of cases was (i) 294 cases that were subject to recovery of agriculture land, (ii) 315 cases subject to the recovery of residential land, (iii) eight cases subject to the recovery of non-agriculture land which was not for habitation. Therefore, there are about 17 cases subject to recovery of different types of land. The reported findings were that of the 294 cases subject to recovery of agriculture land, there were 167 instances in which people's orchards and farming areas were demolished. Of the 315 cases of people subject to the recovery of residential land, (i) 78 cases were subject to partial demolition of their houses; and (ii) 255 cases were subject to total demolition of their houses; and of these, 240 cases were subject to resettlement.

Amongst those people subject to recovery of their residential land and non-agriculture land, there were 40 cases where they had to demolish their non-agriculture trading and production establishments; 9 cases had to remove tombs. 66 people lost their jobs in the agricultural and non-agricultural sectors.

Although the survey was undertaken for a number of different purposes, for the purpose of this report we only examine data related to:

- The assessment of affected people towards procedures related to the plan for compensation, support and resettlement, including: (i) assessment of the dissemination of information on land recovery, compensation, support and resettlement; (ii) assessment of the responses to comments of people subject to land recovery on the plan for compensation, support and resettlement; (iii) views of people subject to land recovery on the consequences of compensation that is not close to the land price in the market;
- Views of complainants on the current system of complaints and their resolution, including: (i) their level of satisfaction and difficulties arising during the complaints process and resolution of complaints; (ii) views on for the submission of the first complaint and the responses of the institution receiving complaints; (iii) suggestions by those who had complaints on improving the system for complaints and their resolution.

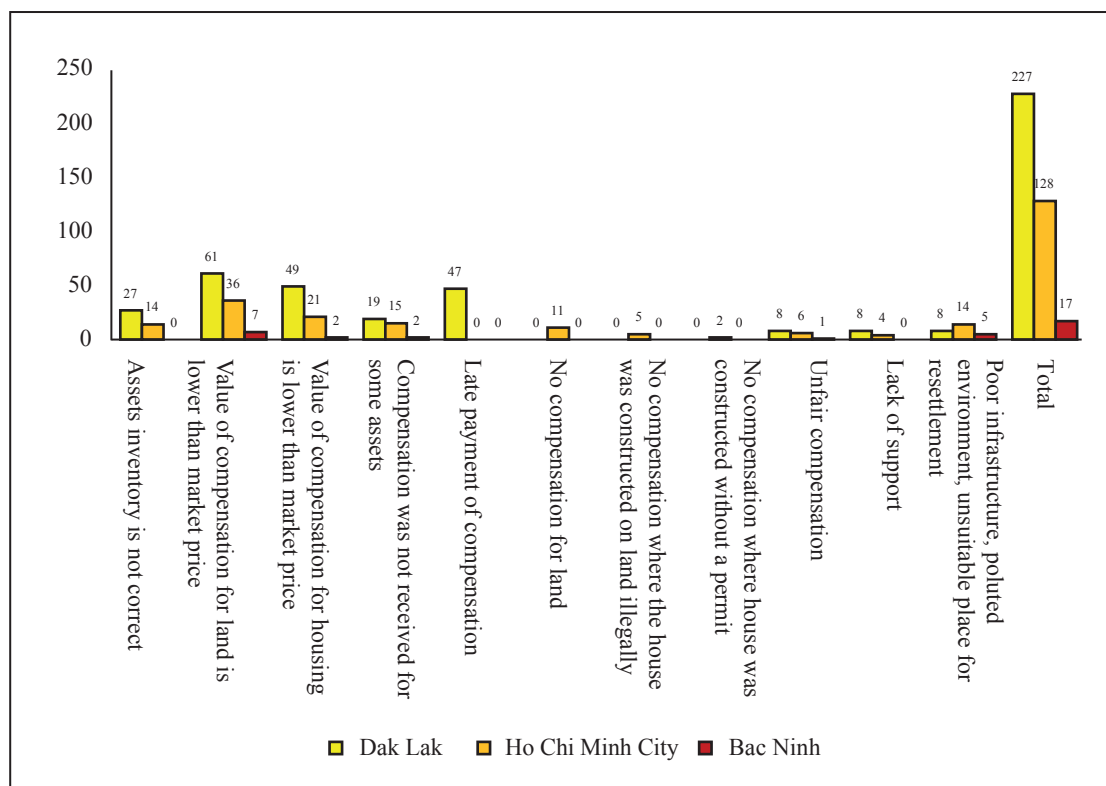
The purpose of the case study was to assess the implementation of the complaints process and the resolution of complaints. For this purpose, information was collected on the opinion of people affected by investment projects. In discussions all government officials demonstrated their understanding and familiarity with the problems confronted by people when they lose (or surrender) their land. Officials were also aware of their role in resolving a complaint received from affected people. When information gathered from the people affected and the officials is analyzed together it becomes evident that the current challenges in resolving people's complaints have really developed from a lack of adequate measures stipulated in the legislation. They also stem from a lack of well qualified staff, financial resources for implementation and a functioning support system.

In the survey areas of Dak Lak province, Ho Chi Minh City and Bac Ninh province, information was gathered from 600 cases who were subject to land recovery. Of these there were 372 complaints on different aspects of compensation, support and resettlement. In the following section, an analysis is presented on the current methods and procedures for the implementation of compensation, support and resettlement based on the views of all the people subject to land recovery. This is complemented by an analysis of complaints and their resolution based on the views only from those who registered complaints.

The nature of the complaints on compensation, support and resettlement from the people in the surveyed areas is presented in Figure 8 below.

As can be seen from the data in Figure 8, the number of complaints in Bac Ninh is quite small. In the entire town of Bac Ninh and Que Vo district, there are only 17 cases where complaints were made. In the three wards of Ho Chi Minh City there were 128 complaints cases and in the four wards of Buon Me Thuot

Figure 8: The nature of people’s complaints relating to compensation, support and resettlement in the area of the case study



City there were 227. People’s complaints concentrated on the low price of land and housing, inappropriate inventory of assets, incorrect classification of the lost assets and slow compensation.

Table 4 presents a comparison between the number of respondents, who were not satisfied with different aspects of compensation, support and resettlement and the number of complaints received accordingly.

Table 4: Comparison of the number of people dissatisfied with the number of complaints on different aspects of compensation, support and resettlement

Items	The number of dissatisfied people	The number of complaints	Percentage of people dissatisfied that resulted in a complaint
Land price for determination of compensation	485	115	24%
House price for determination of compensation	229	79	34%
Value of support	165	12	7%
Assets inventory	130	41	32%
Place of Resettlement	104	27	26%
Implementation procedure	220	47	21%

The data gathered indicates that between 20 and 30% of people who were dissatisfied with the government system lodged a complaint but only 7% of those who were not satisfied with the value of the support lodged a complaint. This situation shows that the current methods of calculating the value of compensation, support and resettlement is unsuitable in practice. In fact, more than 70% of respondents expressed dissatisfaction but were unable to pursue their complaint beyond a certain point because the value of compensation and resettlement was calculated in accordance with Provincial People’s Committees regulations leaving few options to make a challenge on other factors. In the case of the “value of support”, more than 93% of affected people were dissatisfied but did not lodge a complaint on the issue. In practice, support for the restoration of livelihoods, change of residence, new job training and job introductions for affected people did not achieve their expected effectiveness.

4.2. Study results

4.2.1. Views of people subject to land recovery on the procedures of the plan for compensation, support and resettlement

The main procedures related to a plan for compensation, support and resettlement are for the dissemination of information and mechanisms to receive feedback from people living in the affected areas. The most important part of a plan that affected people are interested in is the land price applied to calculate the value of compensation, support and resettlement. For this reason the last part of this section considers the views of people subject to land recovery when the level of compensation was not close to the land price in the market.

a. Views of people subject to land recovery on the dissemination of information on compensation, support and resettlement, including grievance redress mechanisms.

Complete disclosure and dissemination of information is an important function of all agencies and institutions responsible for determining the compensation, support and resettlement of those subject to land recovery. This includes information on (i) the purpose of the recovery of the land; (ii) implementation plans; (iii) land prices; (iv) benefits; and (v) the right to lodge complaints and appeals. If information is well disseminated the number of complaints would be significantly reduced. Views from a survey on the dissemination of information to people subject to land recovery are presented in Table 5.

Table 5: Views on the dissemination of information on compensation, support and resettlement to people subject to land recovery.

Level of understanding of the information	Number of comments	%
Very easy to understand	13	2.2
Easy to understand	187	31.2
Able to understand	297	49.5
Difficult to understand	86	14.3
Very difficult to understand	17	2.8
Total	600	100.0

The survey on views of people subject to land recovery was carried out for each item of detailed information. The results of the views of people subject to land recovery are presented in the charts in Figure 9 - 14.

Figure 9: Level of understanding of information on the right to complain and complaint resolution (210 respondents)

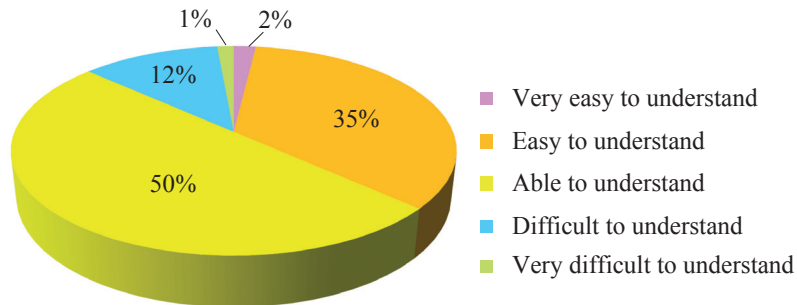


Figure 10: Level of understanding of information on resettlement plans (258 respondents)

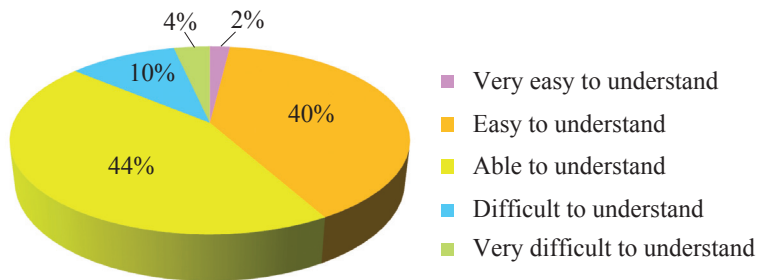


Figure 11: Level of understanding of information on the value of compensation of land and properties attached to the land (520 respondents)

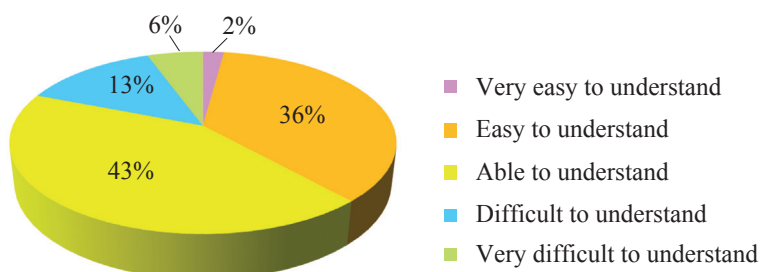


Figure 12: Level of understanding of information on the right to receive compensation, support and resettlement (493 respondents)

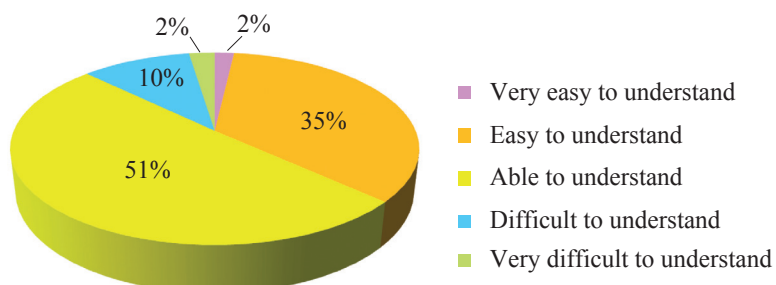


Figure 13: Level of understanding of information on the impact of the project (443 respondents)

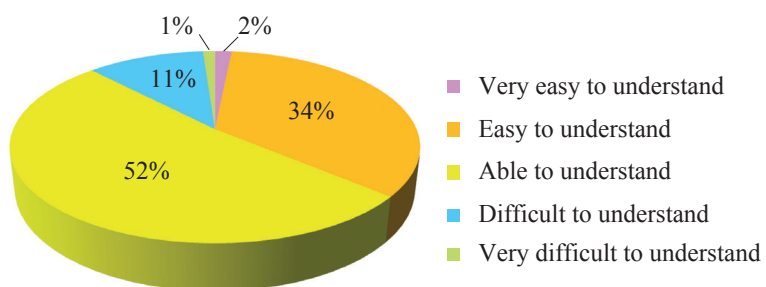
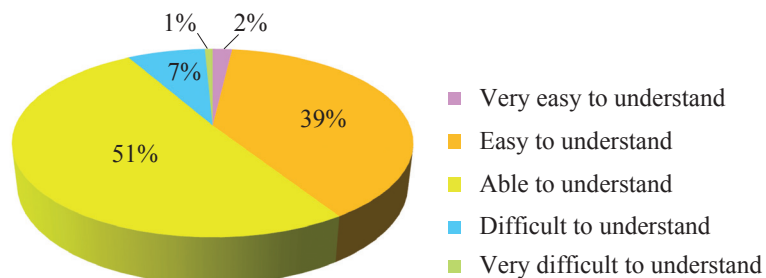


Figure 14: Level of understanding of information on project objectives and implementation plan (533 respondents)



The above analyses clearly show that the majority of people subject to land recovery state that the information on compensation, support and resettlement which was disseminated was not difficult to understand. Only between 12-19% said that it was difficult or very difficult to understand. These results show that the sense of responsibility as well as the attention of administrators have been considerably improved.

b. Assessment of the receipt of views from people subject to land recovery on the plan for compensation, support and resettlement.

The receipt of comments from people subject to land recovery on the plan for compensation, support and resettlement is an important activity in the implementation process. Decree No. 69/2009/ND-CP of the Government has clear regulations on the public announcement of the plan for compensation, support and resettlement; the receipt of the views of people subject to land recovery and the preparation of a specific report on the content of the comments received; and a statement of those comments which have and have not been addressed in the new revised plan for compensation, support and resettlement. This step, if done well, could assist in reducing the number of complaints from affected people.

According to the results of the survey of 600 people subject to land recovery, over 40% said that they were able to contribute their views. Over 34% said they had only been informed of the plan and over 24% said that they did not know anything about the plan. Detailed data on the results of the survey are presented in Table 6.

Table 6: Views on the reception of comments from people subject to land recovery on the plan for compensation, support and resettlement.

The reception of comments from people	Number of comments	%
Able to contribute comments	245	40.8
Only informed of the plan	207	34.5
Do not know about the plan	148	24.7
Total	600	100.0

The survey of comments of people subject to land recovery also includes other comments such as their views on land prices for the calculation of compensation; the value of the assets attached to the land on which compensation is to be made; the amount of support; the selection of a place for resettlement; etc. These comments concentrate mainly on the affected people’s contribution and participation in the determination

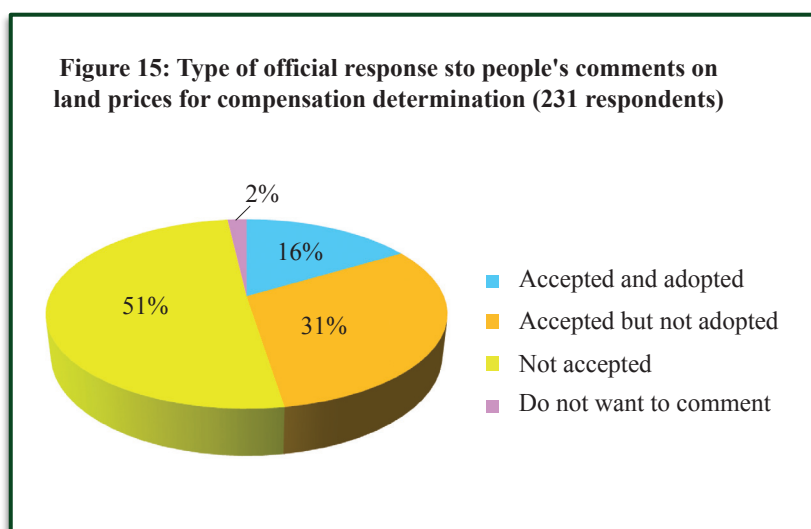


Figure 16: Type of official responses to people's comments on the value of properties attached to land for compensation (93 respondents)

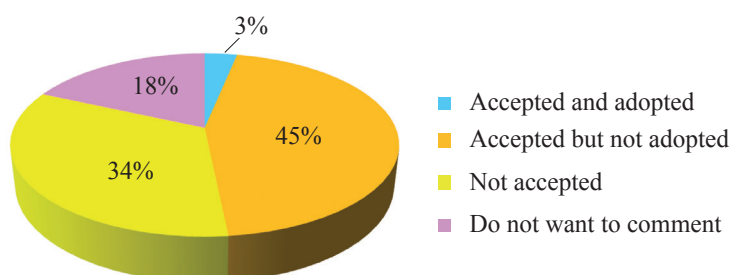
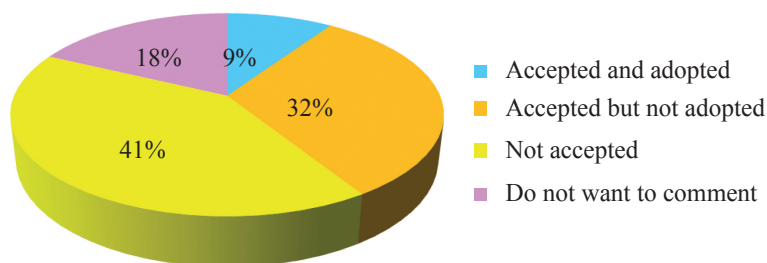


Figure 17: Type of official responses to people's comments on the right to select their place of resettlement (95 respondents)



of the price of the land and assets attached to land and the selection of a resettlement area. The survey results are set out in the following charts in Figure 15-17. Only a negligible number of respondents had views on other aspects of the process.

From the survey results, we can see that : (i) people subject to land recovery pay much more attention to the determination of the “value for compensation” of land and its attached assets than to other aspects of the plan for compensation, support and resettlement; (ii) 16% of comments on the land price are adopted with land price adjustment. For assets attached to land the adjustment is acceptable in only 3% of the total views given. Awareness of land prices between the people in charge of making the plans for compensation, support and resettlement and those subject to land recovery is very different.

c. Comments of people subject to land recovery on the consequences of compensation based on a land price that is not close to the market price.

According to data from the survey on the views of people subject to land recovery (see Table 7 below), up to 38% of responses show that the principal impact of receiving compensation which is not calculated

based at the market price of land is that the affected people cannot buy other parcels of land as replacement. 28.5% felt that the consequence of inappropriate compensation was the reduction or loss of income for the family. 16.3% said that the main impact was the loss of their job. Therefore, the essence of the comments is concentrated on the inadequate determination of the price of the land. The people said that the target that should be achieved is that the money that they receive must be sufficient to be able to buy another similar parcel of land. Their inability to do so means that the land price applied for compensation was inadequate.

Table 7: Views of people subject to land recovery on the consequences of compensation based on a land price that is not close to the market price.

The impact when compensation is not close to the market price of land.	Number of comments	%
Not be able to buy land for residence as a replacement	303	20.0%
Not able to buy land for manufacture as a replacement	285	18.8%
Loss of job and few job opportunities	247	16.3%
Reduction or loss of income	433	28.5%
Limited the accessibility of enterprises	108	7.1%
Loss of social support networks.	93	6.1%
Loss of trust	48	3.2%
Total	1517	100.0%

4.2.2. Views of people with complaints on the current system for submission of complaints and their resolution

In this section, the first thing that is surveyed is the level of satisfaction of people with complaints, about the current system for complaining and resolving complaints. Following that are comments of people who have complaints on the difficulties that they faced during the resolution of their complaints. The survey data then concentrates on the analysis of comments from people who have complaints, on the process of complaining and the resolution of the first instance complaints. Finally, the study group collected views from respondents on the improvement of the complaints and resolution mechanism.

a. Assessment of the level of satisfaction of people who have complaints on the system of complaints and resolving complaints.

There were 196 respondents with general comments on the lack of satisfaction with the current system of complaints and their resolution. The results are presented in Table 8. The data gathered indicates that only 1% of the respondents were satisfied. Another 7.7% considered the mechanism acceptable, whilst the remaining 91% were dissatisfied.

Table 8: Respondents level of satisfaction with the current complaints and resolution system

Satisfaction level	Number of comments	Percentage (%)
Satisfied	2	1.0
Acceptable	15	7.7
Dissatisfied	84	42.9
Very dissatisfied	95	48.5
Total	196	100.0

Next, the survey group collected comments from people who had complaints on the difficulties that they faced during the complaints process and the resolution of their complaints. In total, there were 309 comments. The result of the survey is presented in Table 9:

Table 9: Difficulties during the complaints process and resolution of complaints

Types of difficulty	Number of comments	%
Complicated procedures	38	12.3
Too much travel involved and it is costly	81	26.2
No guidance	37	12.0
Loss of time waiting	116	37.5
Other difficulties	15	4.9
No difficulties	22	7.1
Total	309	100.0

From the data in Table 9, we can see that the main impediments were: (a) loss of time waiting for the resolution of the complaint (37.5%); (b) a situation in which people had to frequently visit the office for which they incurred costs (26.2%); (c) complicated procedures (12.3%); and (d) a lack of instructions and advice (12%). Only 7.1% of the comments or 22 respondents indicated that they were not confronted with any difficulties with the process.

b. Views on the destination of first instance complaints and responses of the agencies mandated to process the complaints

The study group collected views from people with complaints cases detailing data on the implementation process of first instance complaints. The detailed data included the destination for sending first instance complaints and the time it took to receive a response from the organizations which received the complaints. The cases presented included administrative complaints and complaints that only related to the implementation of project activities by the Project Management Unit (these are not administrative complaints). The data gathered allowed an assessment of people’s general awareness of the law and procedures, the time expended in receiving a response from the organizations that received the complaints and feedback on the quality of work and services provided by the agencies. The data gathered is summarized in Table 10.

In addition, the study group surveyed comments from 176 cases of administrative complaints, in which there were only five cases which felt that their complaints were settled appropriately, 92 cases felt that the result was inappropriate and 79 cases are still awaiting a result.

Based on the above data, one can deduce the following:

- People do not have a high level of awareness of regulations in the law on organizations that have competence to resolve first instance complaints. Households and individuals send their complaints to almost all organizations from the Central to the Communal People’s Committee, including the Project Management Unit. In the interviews with administrators and people affected, we can see that the awareness of the administrative organizations is also low. Information on the complaints process given to claimants by administrators differs at each location and at each point in time. Therefore, it is necessary to raise people’s awareness of the law. It is also necessary to introduce regulations on the responsibility of all relevant organizations when receiving complaints, to send the complaints to the responsible organizations for resolution and to inform those who made the complaints. Amongst the

Table 10: The situation of first instance submission of complaints and receipt of responses

Destination of first instance complaints	Number of cases*	Receipt of response under 45 days	Receipt of response over 45 days	Do not remember
Commune People's Committee	51	27	7	17
District People's Committee	83	31	25	27
District Board for compensation, support and resettlement	65	28	16	21
Provincial People's Committee	77	17	24	36
Provincial Board for compensation, support and resettlement	55	13	18	24
Project Management Unit	27	11	4	12
Central organizations	20	3	6	11
District People's Court	2	1	1	
Provincial People's Court	2	1	1	
Other organizations	7	1	3	3
Total	389	133	105	151

* Some people sent the same complaint letter to different organizations

complaints of affected people there are administrative complaints and there are also complaints which are not administrative. Therefore, it is really necessary to establish a system for resolving complaints at the project level. This would serve as a filter to deal with the concerns of affected people before they decide whether or not to make an administrative complaint.

- Organizations that reply to first instance complaints in less than 45 days account for 56% of total cases where people clearly remember the response time (out of 389 cases, 238 clearly remembered the response time and 151 did not). According to current regulations, for first instance complaints the responsible organizations has 10 days to take charge of the case for resolution and in a following period of no more than 30 days they should issue a decision of first instance resolution (following receipt of the complaint, the responsible organization has to issue the decision in no more than 40 days). In interviews with affected people there were many comments that it was normal that one month from the day of submitting the complaint they were informed by the Ward People's Committee to attend a meeting. They said that the administrators talked a lot but could not settle anything and the people with complaints still had to wait for their issue to be settled by any authority at any level.
- The cases which people considered had been dealt with in an appropriate way made up a very low percentage (2.8%) of total cases, whereas the cases where people considered there were inappropriate resolutions account for a very high percentage (52.3%). The number of cases which had not been settled also represented a high percentage (44.9%). These figures show that the effectiveness in resolving administrative complaints is low and it is necessary to continue to update the system for resolving complaints to improve the effectiveness of resolving complaints.

c. Suggestions of people who had complaints on the improvement of the system of complaints and their resolution.

During the survey, the study group collected 502 suggestions from people who had complaints on the improvement of the system of complaint and their resolution.

From the data in Table 11, we can see that suggestions for improving the system are neither concentrated nor specific. Most views indicated the need to reduce the time taken in resolving complaints (22.9%) when actually this is not an improvement but only a regulation on duration. The current law of Vietnam stipulates a very short time period to resolve administrative complaints. However, the competent authorities do not settle complaints in such a short period of time. Among the above proposals, there are two solutions that should be taken into account, namely the necessity to have a mechanism which is independent from the administrative system to deal with complaints and the necessity to have a mechanism to supervise the resolution of complaints. The above proposals should only be considered as references to assess the disquietude of the people who have complaints on the necessity to revamp the current legislation system on complaints and resolution of complaints.

Table 11: Proposals of people who had complaints on improving the complaints system

Proposals for the improvement of the system of complaints	Number of comments	%
Publish the procedures	77	15.3
Simplify the procedures	88	17.5
Introduce an independent resolution mechanism	75	14.9
Introduce a one stop shop mechanism	59	11.8
Reduce the time for resolution of complaints	115	22.9
Introduce a supervisory mechanism	58	11.6
Make officials highly responsible, enthusiastic and attentive	24	4.8
No need for improvement	6	1.2
Total	502	100.0

5. RECOMMENDATIONS ON IMPROVING EFFECTIVENESS IN ADDRESSING GRIEVANCES AND COMPLAINTS ABOUT LAND ACQUISITION, COMPENSATION, SUPPORT AND RESETTLEMENT

The identification of ways to enhance the effectiveness of addressing grievances and administrative complaints of people who have lost their land, property, livelihood, employment, etc. due to the state's recovery of land for investment projects currently plays a special role in Vietnam. The current legal system on administrative complaints and their resolution and especially the implementation of mechanisms on the State's recovery of land for investment projects, fails to meet the demands of economic development and social sustainability in the industrialization and modernization process. The legal system exhibits a number of weaknesses including:

- It reflects the State's subsidy economy mechanism which is unsuitable for a market economy mechanism;
- It is not in line with international standards on the resolution of administrative disputes between administrative agencies and the people affected by administrative decisions or behaviors;
- Administrative complaints on State recovery of land and compensation, support and resettlement tend to increase in terms of their quantity and rate, partially as a result of poorly formed legislation and partly due to poor enforcement.

In the study, solutions are recommended with a focus on the two main elements:

a. An independent mechanism for the resolution of grievances and complaints on compensation, support and resettlement is proposed for investment projects (a pilot application could be implemented in World Bank funded projects). The proposal of this mechanism is based on the studies and experiences of the organizations who make up the World Bank Group to create a good filter to reduce the pressure of administrative complaints related to investment projects. Therefore, grievances and complaints related to investment projects should be managed as follows:

- Complaints on land pricing are settled in accordance with a system of independent Boards for Land and Property Valuation (introduced in the Report on the study of land valuation mechanisms for compensation, support and resettlement in Vietnam);
- Complaints on the decision by the State to recover land and approval of the plan for compensation, support and resettlement are resolved in the legal procedures of administrative complaint resolution (supported by the Grievance Redress Mechanism established by investment project to aid, analyze and mediate with claimants before they decide to register an administrative complaint);
- Grievances and complaints concerning the implementation of the plan for compensation, support and resettlement and other issues in the process of project implementation are managed through the mechanism which will be recommended in 5.1 below.

b. Necessary amendments and supplementations to the legal regulations and legal enforcement of the resolution of administrative complaints in land management are proposed. This is a large-scale proposal related to the mechanism of resolving administrative complaints in land management concerning the analysis of options to apply an administrative arbitration system, an administrative appeals tribunals system or resort to the administrative court. It also includes some necessary amendments and supplementations to the current legislative system on administrative complaints and their resolution.

The recommendations in this report and the report of the study on Land Valuation Mechanisms for Compensation, Support and Resettlement in Vietnam appear to create a more complicated system for addressing grievances and complaints in investment projects, but they can bring about a high level of effectiveness in actual implementation and a reduction of administrative complaints on land.

5.1. Recommendations on a legal document determining an independent mechanism on resolving administrative complaints about land recovery by the State and implementation of compensation, support and resettlement in investment projects (including their application to ethnic minorities)

Based on the analysis of administrative complaints on land recovery, implementation of compensation, support and resettlement in Vietnam and international experiences in addressing these issues, it is possible to propose a legal document detailing a Grievance Redress Mechanism (GRM) for affected people when the State recovers land within the scope of an investment project. It is possible to consider it as the implementation of GRM for affected people before they resort to registering an administrative complaint within the administrative system. Addressing GRM competently within the scope of a project could significantly reduce administrative complaints on land. In the short term, it is possible to carry out a pilot application of GRM in World Bank funded projects before a mass application is made to all investment projects.

a. Identification of principles in addressing the GRM for the project-affected people:

- a. **Consistency:** in line with current legal regulations of Vietnam.
- b. **Basic Principles:** Ensure communication, transparency, objectiveness, independence, fairness, accountability, and proportionality as learnt from the international studies.
- c. **User-friendly procedures:** Ensure simplicity, accessibility, appropriate protection, responsiveness and cultural appropriateness in the process of receiving grievances and complaints from affected people. There should be specific regulations on these procedures for ethnic minorities, women and vulnerable groups.
- d. **Community participation:** Ensure the participation of the community, social organizations and prestigious people in the ethnic minority or religious community during the resolution.
- e. **Independent Resolution:** The resolution must be considered and decided upon at a Board for resolving grievances of people affected by the project with the participation of the leaders of the district and communal level, representatives of the residential community and local social organizations, representatives of the land valuation organization and experts from relevant fields.

b. The specific procedures to address the complaints involve the following steps:

- a. Receive the grievances of project-affected people by all means including telephone, fax, post office, email, electronic information page (web site), etc. of the project. The views and petitions on grievances can be sent to the nearest locations of the residential inhabitants including communal post/cultural house, office of the Communal People's Committee, the project unit in charge of addressing grievances of affected people (Grievance Redress Unit - GRU), the Project Management Unit (PMU). All the agencies and units receiving the views and petitions on grievances of affected people must transfer them to the GRU.
- b. The GRU classifies the views/petitions; starts addressing them; and discloses the list of grievances in the GRU office and on the project's electronic information page.
- c. The GRU is responsible for reviewing each view/petition. Simple grievances that are related to project activities are transferred to the PMU for resolution by way of meeting with the affected people for discussion and explanation and issuing a decision. In complicated cases related to decisions on land recovery and/or approval of compensation, support and resolution, the GRU is responsible for helping the people with the grievance to understand the legal regulations. If they disagree and decide to lodge an official administrative complaint, they should be instructed on the implementation of the procedure on administrative complaints. Views/petitions on land prices will comply with the procedure for complaints on land prices. Views/petitions related to the implementation of the plan for compensation, support and resolution and other problems related to project implementation will be considered and resolved in accordance with the resolution procedure at project level.

- d. Organize community meetings with the people with grievances to comment about their views/petitions. The GRU invites leadership representatives of the Communal People's Committee, leaders of district-level agencies and leadership representatives of social organizations in the locality to participate in the meeting. In terms of the ethnic minorities, the village patriarchs and heads of the villages should be encouraged to present their ideas. The same would be true of leaders of religious establishments.

If the community disagrees with the views/petitions of people with grievances, a good solution would be to encourage them to withdraw their views/petitions. If they refuse to withdraw they will be instructed on the procedure for administrative complaints. In the event that the community agrees with the views/petitions, the resolution is continued in accordance with the procedure presented below. The results from public consultations must be publicly posted on the project electronic information page together with the GRU's evaluation of these results.

The GRU is responsible for preparing options for resolving grievances and submitting them to PMU leaders for resolution in accordance with the steps below.

- e. The leader of the PMU transfers the prepared options of addressing the grievances to the Grievance Redress Council (GRC) for their consideration and decision. The results of the GRC's consideration are sent to the GRU for implementation in accordance with the following procedures.

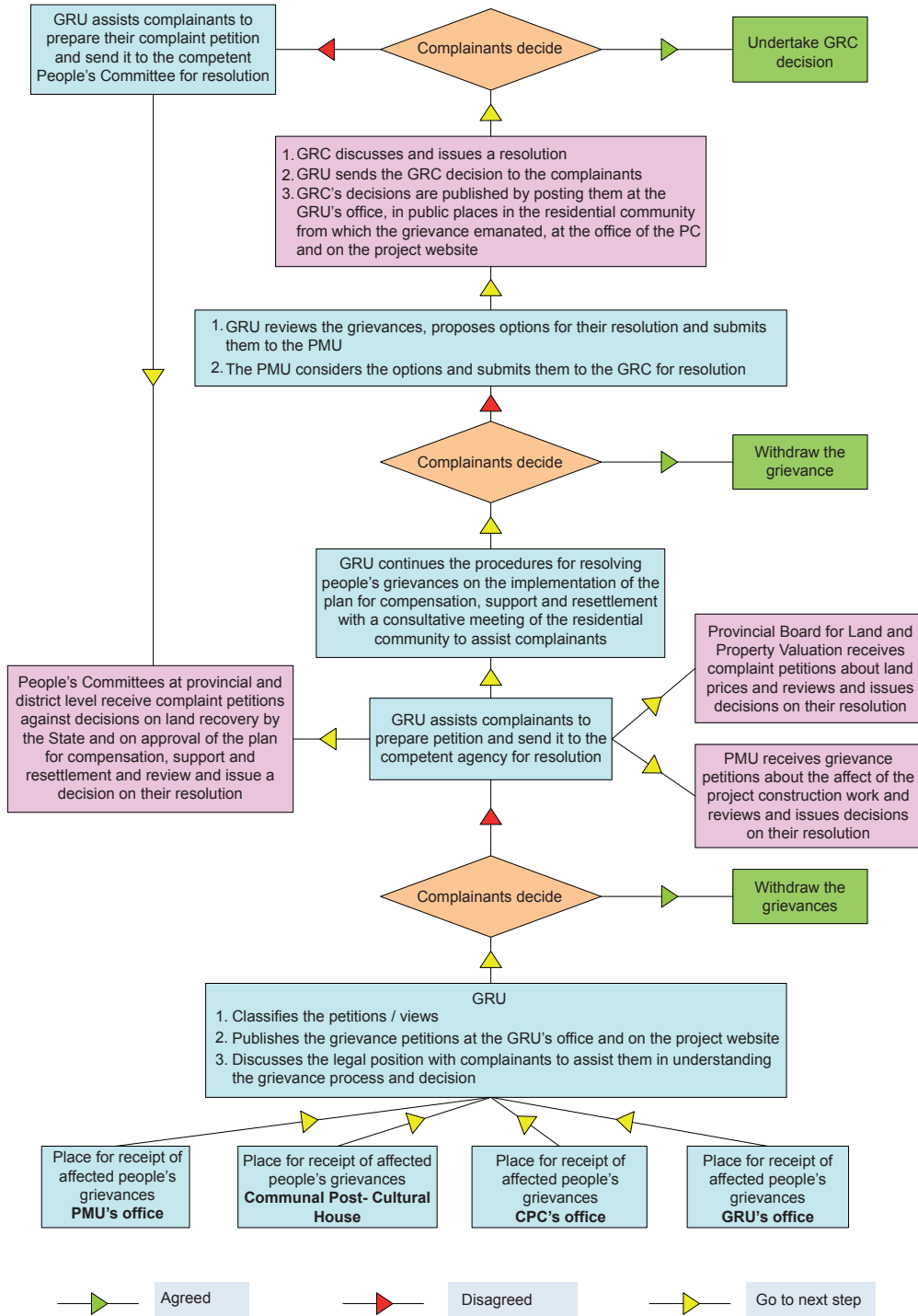
The GRU sends the results from resolution decisions to the people with grievances. In cases where the affected people agree with the GRC's resolution, the related parties are responsible for implementing the GRC's decision. If the affected people do not agree with the GRC's decision, the GRU assists the affected people to implement the legal procedure on administrative complaints.

The GRC's decision on resolution is to be publicized at the GRU's office, public locations in the residential community where there are grievances, the office of the Communal People's Committee and on the project electronic information page.

- f. PMU's leaders should develop a monitoring and evaluation system for addressing the grievances of affected people as a part of the project's monitoring and evaluation system. This system is responsible for monitoring and evaluating the whole implementation process in terms of conformity with the principles and regulations. These evaluations are sent to the GRU for timely adjustment.

The procedures for settling affected people’s grievances at project level are presented by a chart in the figure 18 below.

Figure 18: Chart of the procedures for settling affected people’s grievances at project level



c. The requirements for the project to enhance effectiveness of GRM for people affected by the project

- a. The project establishes a Grievance Redress Unit (GRU) with a sufficient quantity of human resources, trained in the specialty and selected to have high moral standards. The GRU is equipped with sufficient modern working equipment and information about the project.
- b. The GRU is responsible for disseminating the legal regulations, mechanisms and procedures that address the resolution of grievances of people affected by the project to all communities in the project area in the form of a community meeting, a contributory leaflet and by publishing in the mass media. For ethnic minorities, it is necessary to distribute documents in the appropriate ethnic language.
- c. The project must develop a monitoring and evaluation system for addressing the grievances of people affected by the project; this would be operated on a regular basis to gradually complete the process of addressing the grievances that arise.
- d. The projects must allocate the costs in line with the requirements of the grievance resolution process.

d. The main points of the legal document determining the implementation of the Grievance Redress Mechanism (GRM) for people affected by the project.

From the principles, procedures of resolution and the responsibilities of project management staff mentioned above, it is possible to develop the main contents of an instruction circular of MoRNE on implementing the GRM to address the grievances of affected people within the scope of a project.

Article X1. Scope of regulation

The scope of regulation of this Circular includes the land using investment projects affecting the community, land users in the project area and relevant organizations and individuals to address the grievances of the project's affected people prior to lodging an administrative complaint with the State's competent agencies for resolution.

Article X2. Scope of application

The subject of application of this Circular includes the individuals and organizations related to investment projects within the scope of regulation as prescribed in Article X1.

Article X3. Obligations of the Project Management Unit (PMU)

Investment projects within the scope of regulation of this Circular are responsible to:

1. Establish a Grievance Redress Unit (GRU) to assist the PMU to address the grievances of individuals, households, organizations and communities affected by a project. This GRU must have sufficient highly qualified personnel and an established code of ethics for their operations as well as the required resources and equipment and the right information to implement the specified tasks.
2. Establish a monitoring and evaluation system for addressing the grievances of affected people. The monitoring and evaluation system monitors the performance process and provides for performance evaluation. These evaluations are sent to the GRU for timely adjustment.
3. Disseminate the regulations, mechanism and procedures of grievance resolution for the affected people to all affected organizations and communities in the form of community meetings, leaflets and through the mass media.

Regarding ethnic minorities, it is necessary to distribute documents in the relevant ethnic languages, where it is appropriate.

4. Allocate the costs in line with the requirements of the process of managing the grievances of affected people.

Article X4. Principles in addressing the grievances of the affected people within the project area

The grievance resolution procedure must ensure the following principles:

1. Align with the current legal regulations of Vietnam.
2. Ensure communication, transparency, objectiveness, independence, fairness, accountability, and proportionality.
3. People with grievances have the right to access of information and request the managing agencies to answer their questions about the status of their complaint resolution process; be treated in accordance with the culture of their community; and be entitled to engage legal representatives to protect their benefits and themselves from possible risk.

People with grievances who are from an ethnic minority, or are women or handicapped have the right, on request, for special support during the process of addressing the complaint.

4. During the resolution process, the participation of the residential community, social organizations and prestigious experts of the localities is required.

With an ethnic minority, it is necessary to pay attention to consulting prestigious people in the community, including village patriarchs and heads of villages to hear their ideas.

In terms of religious areas, it is necessary to pay attention to consulting the heads of religious establishment.

5. The results are issued by a Board independent from administrative system.

Article X5. The Grievance Redress Council (GRC)

The District People’s Committee (DPC) is responsible for establishing a GRC to address the grievances of the project-affected people. The members of the GRC include leaders of the DPC (be chairman of the GRC), leaders of the relevant professional agencies at district level, leaders of the Communal People’s Committees (CPC), prestigious representatives of the community, leadership representatives of social organizations in the localities (Fatherland Front, Farmer Union, Women Union, Lawyer Association, Journalist Association, etc.), representatives of land valuation organization, qualified experts from relevant fields. The Council makes decisions by using a secret ballot and must be the consent of over 2/3 the members.

Article X6. Receipt of opinions and/or petitions

1. The opinions/petitions about the grievances of affected people are received by all information means such as telephone, fax, post mails, e-mails and project’s electronic information page (website). These opinions/petitions may be sent to the nearest locations in the residential area including a communal post-cultural house, office of CPC, project GRU office, and PMU’s office. The agencies receiving the opinions/petitions about the grievances of project-affected people must send them to the GRU within two working days.
2. The GRU organizes classification of the opinions/petitions to disclose in the GRU’s office and on the project website. The opinions/petitions will be handled for resolution within 10 working days from the day of receipt by the GRU.

Article X7. Handling the resolution of opinions/petitions

1. The GRU is responsible to review each opinion/petition.

For complicated opinions/petitions related to decision on land recovery, approval of the plan for compensation, support and resolution, the GRU is responsible to assist, explain the people with grievance for more understanding the legal regulations. If they still decide to lodge this grievance as a complaint, they will be instructed by the GRU to comply with the procedure on administrative complaints.

For the opinions/petitions related to land price, the people with grievance will be instructed by the GRU to comply with the procedure on land price complaints.

For the opinions/petitions related to the plan of compensation, support and resolution or other problems related to project implementation, the grievance will be handled at the project level in accordance with the regulations promulgated in this Circular.

2. The GRU organizes community meetings in the location where there are people’s grievances to hear the consultative opinions of the community. In addition, the GRU invites leadership representatives of CPCs,

leaders of professional agencies at district level including Division of Natural Resources and Environment, Division of Economics, Division of Agriculture and Rural Development, leadership representatives of local social organizations such as the Fatherland Front, Farmer Union, Women Union, Veteran Union, and representatives of local public media to participate in the meeting.

At the ethnic minority areas, it is necessary to encourage village patriarchs and heads of villages to present their ideas. In the religious community, it is necessary to encourage the heads of religious establishments to present their ideas.

At the community meeting, if the community disagrees with the opinions/petitions, the good solution is to encourage these people with grievance to withdraw their opinions/petitions. If they refuse to withdraw the opinions/petitions, they will be instructed about the procedures for administrative complaints. If the community agrees with the opinions/petitions, the resolution is continued in accordance with the procedures mentioned in this Circular.

Not more than five working days from the consultative meeting with the community, the result from this meetings must be publicized on the project website with the evaluation of the GRU about this results,.

The GRU is responsible to prepare solutions for resolving grievances and submit it to PMU's leaders for resolution in accordance with the next steps.

3. Within five days from the publicity of the consultative meeting with the community, the PMU's leaders are responsible to send prepared solutions on grievance resolution to the Grievance Redress Council (GRC) for consideration and decision. The GRC has the term of 30 days to issue the resolution decision. The resolution result from resolution by GRC is sent to the GRU to continue the implementation in accordance with the procedure.

Article X8. Announcement of the grievance resolution

1. Not more than 5 working days from the day of issuing the resolution decision, the GRU is responsible to send the resolution result to the people who have registered the grievance. If they agree with the resolution by the GRC, relevant parties are to implement the resolution decision, if they disagree with the resolution by the GRC, the GRU instructs the people with grievance to carry out procedures for complaint against administrative decision.
2. The results from the resolution by the GRC must be disclosed in GRU's office, at public location of residential areas, at the CPC's office, and on the project website.

5.2. Recommendation on necessary amendments and supplementations to the legal regulations and its enforcement on administrative complaints resolution in land management

5.2.1. What is a competent agency authorized to resolve an administrative complaint?

Currently Vietnam and many other countries direct the final resolution of an administrative complaint to the administrative court. This has been found to be ineffective in cases of simple administrative complaints or because there is a lack of professional and experienced staff in the administrative court. Even developed countries need agencies belonging to the executive system which are authorized to resolve administrative complaints before the complainants may decide to register a case with the administrative court for final decision and resolution. The staff in such agencies need to be highly qualified and experienced in land legislation in order to review and resolve administrative complaints. The agencies authorized to resolve administrative complaints may be administrative agencies, administrative appeals tribunals or administrative arbitration mechanisms in the form of independent boards.

In the current situation in Vietnam, the administrative culture is strongly impacted upon by personal relationships. Therefore, it is not recommended that the authority on administrative complaint resolution is given to administrative agencies. This authority should be delegated to an administrative appeals tribunal

system or an administrative arbitration board system. The administrative appeals tribunals system can be established as a system of agencies under the Central Government with two levels of national and regional (including many provinces). This system's function is only to resolve administrative complaints. It should be completely independent from the administrative system. The application of an administrative appeals tribunal system for resolving administrative complaints in Vietnam has the following advantages:

- It ensures independence from the agencies which issued the administrative decision or undertook the administrative behaviors that is being complained about;
- It ensures that administrative complaints are settled professionally and responsibly;
- It ensures equality between the complainant and the person or organization being complained about;
- The procedure of resolution at the administrative appeals tribunal results in good preparation for the next step of resolution at the administrative courts;
- It implements the mechanism that all administrative complaints are able to be settled at two levels including the regional administrative appeals tribunal and national administrative appeals tribunal;
- It reduces the pressure of work on the Government Inspectorate related to resolution of administrative complaints, so that they can focus on the inspection of the administrative system at all levels.

The mechanism of resolving administrative complaints by administrative appeals tribunals in Vietnam suffers from the following weaknesses:

- The administrative system will require a considerable number of personnel to work in the administrative appeals tribunals;
- It is difficult to meet the demand for highly qualified people to work in the administrative appeals tribunal system;
- With the administrative culture influenced by various relationships, it is difficult to ensure actual independence between the administrative agencies and administrative appeals tribunals.

These weaknesses are few in quantity but of great concern in the current situation in Vietnam.

The administrative arbitration system in the form of independent boards for resolving administrative complaints can be organized as a system with three levels at district, provincial and national level. This system is responsible for considering and issuing decisions on administrative complaint resolution independently from the administrative system, including the administrative agencies who are subject to complaints about their administrative decisions or behaviors. The board at each level would include a Chairman who would be a leader of an administrative agency at a higher level; members selected from amongst the leadership representatives of professional agencies at a higher level; senior experts; and leadership representatives of local social organizations (e.g., the Fatherland Front, Farmers Union, Womens Union, or lawyers association, business association, journalists association, etc.). The Boards would operate on the principle of agreeing a resolution through a secret ballot with the agreement of two-thirds of the members.

When a complaint is considered by the board, both the complainant and the agency being complained about should be in attendance to present the required evidence requested by the board. The use of the administrative arbitration board has the following advantages:

- It would not increase the number of administrative staff exclusively in charge of administrative complaints resolution;
- It is possible to make the best use of qualified personnel for the resolution of administrative complaints;
- It is possible to ensure the relative independence of the arbitration boards from the administrative agencies that are being complained about and this would ensure relative objectiveness in the issuing of a resolution decision;

- It is able to implement a mechanism that would see all administrative complaints handled by two levels of arbitration board. This would include the district and provincial levels for complaints from domestic individuals, and provincial and national levels for complaints from organizations, religious establishments and foreign individuals;
- It is possible to reduce the pressure of work on the Government Inspectorate related to the resolution of administrative complaints.

The methodology of utilizing arbitration boards still has the following weaknesses:

- It has no personal responsibility in decision making;
- The procedures and orders are more complex than those implemented by a permanent agency.

In the short run the selection of an **arbitration board** to resolve administrative complaints is workable in Vietnam. Then, if possible, in the longer term, administrative complaints could be resolved by a system of **administrative appeals tribunals**. Currently it is important to improve the human resources and the legal framework of the **administrative court system**.

5.2.2. What regulations should be amended in the legislation system on administrative complaints?

In addition to the need to renovate the mechanism on resolution of administrative complaints, the current regulations in resolving administrative complaints must also be amended and supplemented. The paragraphs above have pointed out improper regulations in the current legislative system on administrative complaints and their resolution. These are the urgent aspects of the current legislation that needs to be improved. They are:

- It is necessary to formulate specific regulations on addressing the situation where legal documents detected by the Ministry of Justice, organizations or citizens violate the legal framework. Following detection, these legal documents should be immediately and publicly amended in a timely fashion. As a next step, the legal framework should recognize citizens right to complain against legal regulations.
- It is essential to ensure good conditions to receive citizens and multiple ways for receiving citizens' administrative complaint petitions to protect the human rights of complainants.
- Administrative misbehavior must be specifically regulated and it is necessary to form legal provisions on resolving administrative complaints against administrative behaviors.
- The whole process of administrative complaint resolution must be disclosed at the place nearest to the public venue of the residential community and on the local public electronic information page from the date of receipt of the administrative complaint to the date of issuance of the resolution decision that must be legally implemented.
- It is necessary to recognize collective complaints by a group of affected people or by a community affected by the same decision on land recovery. In this case, the legal representative of the community is the one whose name appears in the complaint to protect the benefits of the community as a whole.

5.3. Capacity building

It is well known that the total number of administrative complaints in land management comprises at least 50% of the total number of people's complaints. This number is increasing more and more over time. The quality of complaints resolution is poor. People's awareness of legislation is low.

In this situation, an additional answer should be to focus on capacity building for State officials in charge of processing administrative complaints and public awareness of people on the regulation of administrative complaints. It is necessary to establish specific grievance redress system capacity building programs for everyone. A complaints resolution training program should be introduced and strengthened in all administrative training institutes in the country.

6. CONCLUSIONS

The Vietnam National Assembly is currently considering replacing the Law on Complaints and Denunciations with two laws: the Law on Complaints and the Law on Denunciations to resolve people's urgent grievances. The aim would also be to revise the existing legislative system to align it with Vietnam's commitment in the Vietnam-USA Trading Agreement and commitments in the framework of the WTO. The amendment and supplementation of the Land Law will be completed in time for it to be submitted to the National Assembly for approval in 2013. Key to that bill will be the reform of the resolution of administrative complaints on land.

At present, administrative complaints from people affected by investment projects comprises a large proportion of the total of number of disputes, complaints and denunciations on land (about 90%). Due to the inadequacy of the current mechanism for settlement of administrative complaints on land, many long-standing complaints are not yet completely resolved. However, new complaints continue to increase as is the area of land recovered by the State. In the current system of legislation on complaints, the types of complaints are not classified on the basis of the authority of organizations in charge of their management and resolution. This causes further complications in people's complaints. The legal regulations are poorly understood by complainants and they are unaware of the way to correctly register their complaints for settlement.

This study has carried out analyses of: (i) current Vietnamese legislation on complaints on land and the practical implementation of the legislation; (ii) international experiences on building legislation on complaints and their resolution and the grievance redress mechanism (GRM) for resolving the grievances of people affected by investment projects; and (iii) the results of the case study on grievances of people affected by some specific projects in Vietnam. Based on these analyses, this study has proposed the following: (i) an improved mechanism for the redress of grievances for people affected by investment projects; (ii) an improved original style of reforming the mechanism for administrative complaint resolution in Vietnam; and (iii) the subject matter that needs to be urgently amended and supplemented in Vietnamese legislation on complaints and their resolution.

The study's recommendations are based on a number of principles as follows:

- The competent organizations in charge of administrative complaints resolution must be independent of the administrative system.
- It is necessary to ensure complainants' right to register their complaints at least twice to the competent organizations for resolution before the complainants may decide to take the case to the administrative court.

- The resolution of people's grievances should align with international standards including: fairness, objectiveness and independence, simplicity and accessibility, responsiveness and efficiency, participation and social inclusion.
- The grievances of people affected by investment projects must be classified by specific type depending on authority of organizations in charge of their resolution, they are:
 - > Grievances about the affect of construction work of a project will be resolved by the project management unit (PMU). These grievances are not administrative complaints.
 - > Grievances about decisions on land recovery and approval of the plan for compensation, support and resettlement, will be resolved by the competent People's Committees. These grievances are administrative complaints.
 - > Grievances about the determination of land prices, will be resolved by the Board of Land and Property Valuation⁴⁷. These grievances are complaints but not administrative complaints.
 - > Grievances about the implementation of the approved plan for compensation, support and resettlement will be resolved by the Grievance Redress Council (at the project level). These grievances may be resolved before they become administrative complaints.

This study has produced a proposal on a Grievance Redress Mechanism (GRM) for people affected by investment projects in Vietnam including a draft of the main articles of a government decree on guiding the implementation of this mechanism. In the GRM, investment projects are responsible to a unit (GRU) in charge of GRM performance with the task of receiving, classifying and assisting people with grievances to prepare a petition and send it to the competent organizations. Grievances about the affects of construction work of a project are sent to the PMU. Grievances about decisions on land recovery and approval of the plan for compensation, support and resettlement are sent to the competent People's Committee. Grievances about land prices are sent to the Board for Land and Property Valuation. The GRU also directly processes grievances about the implementation of the plan for compensation, support and resettlement before it is submitted to the District Grievance Redress Council (GRC) for resolution. If people with grievances disagree with the GRC's decision, the GRU may help them to register their grievance as an administrative complaint. The formulation of a good filter at the project level to reduce the number of complaints becoming administrative complaints is a main result of the study.

Another result from the study is the discussion and recommendation on a road map for reforming the Law on Complaints of Vietnam to gradually approach a system of Administrative Appeal Tribunals. Another recommendation of the study is the analyses showing the main substance of the current legislation on complaints that need to be urgently amended and supplemented for gain greater effectiveness in the resolution of citizens' administrative complaints.

It is hoped that this study will be a contribution to the development of a workable system of law on administrative complaints and their resolution in Vietnam. The study aims to develop a suitable mechanism to manage the grievances of people affected by investment projects at the project level so as to deal with people's grievances before they become administrative complaints and create conditions for project implementation that will be conducive to progress.

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NOTES

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³¹ The land price framework is determined by the Government for all land categories and is then assigned to the Provincial People's Committees to establish a list of land prices. In urban areas, the land price must be not lower than the floor and not higher than ceiling price in the land price framework. The land price is then multiplied by the coefficient with a value between 0.8 and 1.2 as appropriate to the specific location and condition of the infrastructure.

³² Methods 1 and 2 are stipulated in clause 1 and 2 of article 4 of Decree No 188/2004/ND-CP of 16/11/2004. Methods 3 and 4 are stipulated in clause 3 of article 1 of Decree No 123/2007/ND-CP of 17/07/2007.

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