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Land Law Reforms in Vietnam – Past & Present

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LAND LAW REFORMS IN VIETNAM – PAST AND PRESENT

NGUYEN QUANG TUYEN¹

ABSTRACT:

This paper examines land law reforms in Vietnam during three post-war periods: the period between 1945 and 1980, the period between 1980 and 2003, and the period since 2003. It concludes by evaluating the various reforms and assessing their impact .

I. PAST REFORMS OF LAND LAW IN VIETNAM

A. The Period from 1945 to 1980

In the early years after assuming power (August 1945), the State of the Democratic Republic of Vietnam was still in its infancy and was confronted by numerous challenges, including “internal hostility and external enemies”, an extremely weak financial base, illiteracy and food shortages, etc. In order to solve these issues as a matter of urgency, the revolutionary administration had to continue to implement the laws and rules of the previous regime regarding farms and land, so long as they were not contrary to the policies and approaches adopted by the Party. (This was seen as a situational adjustment pending the adoption of new legal instruments).

The system of land management during this period was governed by two constitutions: the Constitutions of 1946 and 1959. Under these two Constitutions, the State recognized the existence of different types of land ownership: State ownership, collective ownership and private ownership. The Law on Farm Land Reforms of 1953 did not get rid of private ownership but only led to changes for private land owners by confiscating the farms of colonial and feudal owners, landlords and capitalists and giving them to farmers, under the slogan of “farms to the cultivators”. Provisions adopted at this point were mainly aimed at protecting the private ownership of farmers in land. Afterwards, in the 1960s, Vietnam implemented collaboration projects in the North, mobilizing farmers voluntarily to contribute their land, cows, buffaloes and other resources to farming cooperatives and production collectivities. The objective was gradually to establish a socialist base for agricultural production. Private ownership in land decreased, paving the way for development of State and collective ownership. At the time, all legal instruments with respect to land reflected the leading aims of establishing and strengthening the management and use of land owned by the State and collectives in the form of farming cooperatives. Land law during this period was not well codified. Legal instruments mainly consisted of normative documents issued under the existing law, in the form of decisions and decrees of the government, decisions and directives of the Prime Minister, orders and

¹ Department of Land Law, Hanoi Law University. The author serves as an expert for the SEMILA Project, jointly operated by the Swedish Government and the Vietnamese Ministry of Resources and Environment, to strengthen the capacity for resource and environmental management, and is a senior expert at the Research Institute for Law and Policy. Note that this paper was originally written in Vietnamese. The translation which appears here is unofficial, and its accuracy cannot be guaranteed. It is based on a translation which was carried out for the CSCL Conference in Phnom Penh on 6th and 7th March 2010.

decisions of the Ministries or equivalent agencies, etc, seeking to regulate one or more issues in land use and management. After the national unification (April 1975), the most remarkable normative document on land law was decision no.201/CP, issued by the Government on August 1, 1980, on the strengthening of the nationwide management of farmland. This document was comprehensive, and it systematically set out provisions on the management and use of land. Many of its provisions were later succeeded and developed by the Land Law of 1987.

B. The Period from 1980 to 2003

The process of land law reform in this period was led by a series of events. On December 18, 1980, the Sixth Legislature of the Socialist Republic of Vietnam adopted the new Constitution at its 7th session. The 1980 Constitution, which contained the provision that “Land belongs to the State – all under the ownership of the whole people” (Article 19) – left a very deep imprint on the system of land law in Vietnam. A land regime under the ownership of the whole people became the basic legal ground for establishing provisions on land use and management. No longer did any form of collective or private ownership in land exist in Vietnam.

During this period, the law on land was codified, as a series of statutes were enacted to respond to the demands for land management in the process of national development. These included the Land Law of 1987, the Land Law of 1993, and the 1998 and the 2001 Laws which amended and supplemented a number of provisions of the 1987 and 1993 Statutes. The most important features of the 1987 Land Law included the establishment of a legal ground for the State to unify its management of all land capital in the country; the gradual establishment of a legal ground to enable the State to protect the legitimate rights and interests of land users; and the determination of legal rules for use of different types of land in order to regulate land management and land use. However, since the 1987 Land Law was enacted in the early years of Doi Moi (innovation) – a time when highly centralized bureaucratic control had not been eradicated and the market economy was just beginning to start – a number of its provisions retained the ideas of the previous regime. The most serious limitation in the 1987 Land Law was its inability to go beyond the outdated “subsidizing nature” of the ‘land relationship’. It did not shift the land relationship from one based on a barter system to one operated on a value system. It took no account of the notion that land could be priced. The State just gave out land to organizations and individuals for free use and did not allow transactions with respect to land (or the right to use land). This posed an obstacle to the process of introducing Doi Noi into the field of land use and management, and constituted the main reason for a new land law to be adopted in 1993.

The 1993 Land Law absorbed ideas relating to Doi Moi in several of its provisions. It recognized a price-frame for land (Article 12). It permitted the State to transfer and lease out land to organizations, households and individuals for long-term stable use, and allowed land users to pass on the right to use land to another user within the duration of the lease (Article 1). It also contained detailed provisions on the use of different types of land. However, the 1993 Land Law did not contain concrete provisions on the process and procedures for transacting land use rights. Nor did it distinguish in detail land transfers with land use payment from those without land use payment. In addition, the 1993 Law only paid attention to the issues of the rights and responsibilities of households and individuals, but did not include concrete provisions on the rights and responsibilities of

other land use entities. Neither did it provide for the establishment of a market for land use rights. This explains why amendments and supplementary provisions were adopted in 1998 and 2001. More details were provided regarding which entities were to be given land use without payment and which entities were to be given land use with payment. The amendments also distinguished entities which had to pay annual rents for leases from those which made only one payment for the whole period of lease. They further specified the entities which had to advance a lump sum in rent for a period of several years, with the period of the lease for which the rent had already been advanced being not less than five years. They also determined the rights and responsibilities of land users in a way which corresponded with the different forms of land use. Notwithstanding all these changes, the 1998 and 2001 amendments only removed some of the most serious problems. They did not solve the many other demands arising from the process of Doi Moi.

II. CURRENT LAND LAW REFORM IN VIETNAM

The 2003 Land Law has been adopted primarily as a result of the process of Doi Moi and integration. Its provisions strongly reflect the ideas of Doi Moi. They help to achieve the following:

First, openness and transparency has been strengthened by provisions on the establishment, review and proclamation of plans regarding land use. This is particularly so in provisions on administrative procedure regarding land. Second, the notion of administrative procedural reforms to simplify and ease the burdens of land users has been put into practice by including provisions regarding the establishment of public service organizations for land issues and private consultant firms for land pricing. There are also clear provisions on administrative procedures, the mechanism for receiving petitions and claims on land and resolution of land disputes. Third, equal treatment has been emphasized by adopting a separate chapter on the rights and obligations of land users (without discrimination based on whether they belong to domestic organizations, households, individuals, or foreign organizations and individuals, or whether they are Vietnamese permanent residents overseas). There are provisions regarding equality between husband and wife in land use certification to designate the land use right as common property between them, and provisions that allow Vietnamese permanent residents abroad to buy houses in connection with their land use rights in Vietnam. Fourth, the law clearly distinguishes the role of the State in representing land ownership from that of the State in its capacity as the entity in charge of land management. At the same time, the law also approaches the concept of comprehensive management of land resources in close connection with environmental protection by incorporating provisions on the capacity of the Ministry of Resources and the Ministry of the Environment in the State's management of land, resources and the environment. Fifth, the law establishes the initial legal basis for the emergence of a market for land use rights in Vietnam, by setting out provisions on land use rights in the market for immovable property, land pricing and financial issues related to land, etc.

III. EVALUATION OF THE PROCESS OF LAND LAW REFORM IN VIETNAM AND SOME CONCLUSIONS

The process of land law reform in Vietnam has been very significant, as is apparent in the following respects:

- First, Vietnam's land law systemizes in concrete terms, in a timely and consistent

manner, the policies of the Vietnamese Communist Party in land issues, to respond to each of the revolutionary stages;

- Second, Vietnam's land law has continuously been revised, supplemented and improved in order to respond to the needs of development and integration, while retaining the concept of consistency in land ownership by the whole people;
- Third, Vietnam's land law has institutionalized the idea of innovation in terms of the way in which ownership by the Party and the State ought to be perceived in building the market economy;
- Fourth, Vietnam's land law has been revised, supplemented and improved unceasingly, to create a pattern of land management which is as effective as possible in the prevailing conditions;
- Vietnam's land law is the main tool for the State to exercise its function of land management: "The State manages all land in a consistent manner according to national plans and laws, to ensure an effective land use that serves the right objectives" (Article 18, the Constitution of 1992).
- Fifth, Vietnam's land law is consistent with the true values of integration and development. These values include openness, transparency, justice, equality and sustainable development.