

To: - H.E. Mr. Nguyen Phu Trong - Party General Secretary
- H.E. Mr. Nguyen Xuan Phuc - State President
- H.E. Mr. Pham Minh Chinh - Prime Minister
- H.E. Mr. Vuong Dinh Hue - Chairman of National Assembly

Logical and Transparent Institutionalization of **the Ownership and the Owner's representativeness in the land related legislation** under the comprehensive, thorough and unified leadership of the Communist Party of Vietnam in the revision of the 2013 Land Law and discussion at the 15th tenure National Assembly session in May 2022

Key words

“The National Assembly is the highest representative body of the People, the highest organ of State power of the Socialist Republic of Vietnam”- Representative of the Land Ownership, Article 69 and Article 53 of the 2013 Constitution

SUMMARY

This submission proposes to clarify the rights and responsibilities of the State with respect to land to ensure compliance with the 2013 Constitution. The latter stipulates that land and land resources are owned by the entire people and managed by the State on behalf of the owners. Therefore, in order to comply with the Constitution, the state agency representing land owners must be the highest representative state agency, i.e., the National Assembly, not the Government. Also, as land is a ‘special’ natural resource, it must have a ‘special’ legal provision. The current legislation must therefore be amended to express the special nature of land and shift the State agency representing land owners from the Government to the National Assembly.

Land law 2013 should be amended to overcome contradictions, firstly, between the entire people’s ownership of the land and the ‘private’ ownership of particular land plots, and secondly, between the value of land use rights and the use value of each land plot. The present ambiguity in the law, and the cancellation of Article 25 of Land Law No. 13/2003/QH11 on Communal Land Planning is resulting in corruption and land speculation. Productive village land is being bought up cheaply by outsiders and held for speculative gain from improvements paid for by the People. This is robbing the nation of productive land and the benefits of improvement, and stealing the livelihood of farmers. To prevent this, Land Law 2013 must be amended to restore Article 25 of Land Law 2003.

Article 27 of the Land Law No.45/QH13/2013 concerning the responsibility of the State for agricultural land of ethnic minorities must also be amended. The current provision is too general and is resulting in ethnic minority land is being acquired by the Kinh majority and mining and hydropower companies. As a result, ethnic minorities are losing their living space. Policies for the protection of ethnic minority land must be worked out in accordance with their own customs and practices, cultural identity, and the actual conditions of each region. Community ownership of land must be preserved. Also, to ensure spiritual interest of ethnic minorities, Article 160 of the 2013 Land Law should be redefined to synchronize with Forest law 2017 on religious forests, streams, waterfalls, and mountain peaks, etc.

OVERVIEW

Following the analysis and evaluation of the achieved results as well as shortcomings that need to be overcome and amended in the implementation of the 2013 Land Law, the Development Consulting Institute continues to work out recommendations with a number of orientations for revision of the 2013 Land Law as follows:

1. It is proposed to clarify the rights and responsibilities of the State with respect to land to ensure compliance with provisions of the 2013 Constitution

The entire Chapter II on the rights and responsibilities of the State over land under the 2013 Land Law is very general and not specific because our State consists of three organs: legislative, executive and judicial. Therefore, the Law must clearly stipulate in Chapter II which State agency is responsible for this, not the State in general.

We know that land is a product of nature, existed before human beings. People can only turn bad land into good land, or turn unused land into usable land, but they cannot create new land. Therefore, the determination of land under the ownership of the entire people and unified management by the State is completely consistent with the point of view of Marxism - Uncle Ho's thought. Individuals only have the right to own and determine the increased value of land in the process of using it, but absolutely not to decide and own private land.

The 2013 Constitution of our country stipulates that "Land, water resources, mineral resources, resources in sea and airspace, other natural resources and properties invested and managed by the State are assets of the public, owned by the entire people and unifiedly managed by the State on behalf of the owners".

Therefore, the State agency representing land ownership must be the highest representative State agency of the people, elected by the people, operating under the principle of democratic centralism according to the collective mechanism, which must be the National Assembly of the Socialist Republic of Vietnam. **Only the National Assembly** *"as the highest representative body of the People, the highest organ of State power of the Socialist Republic of Vietnam"* is, on behalf of the people, the representative of ownership and unified management of land in **the right, sufficient, disciplined and complied practice as regulated by laws.**

According to provisions of the Constitution, "The Government is the highest State administrative organ of the Socialist Republic of Vietnam, exercising executive power and is the law-executing agency of the National Assembly". The government operates under the ONE - HEAD regime, *so the assignment of the Government to represent the land ownership is not suitable for a special type of property owned by the entire people.*

Only the National Assembly, as the highest representative body of the people, the highest and *most powerful organ, from every citizen (Commune People's Council) to the entire people across the country (the National Assembly), has the capacity to represent the land ownership and the right to decide on land use planning, land use plan; decide on land*

use purposes; prescribe land use quotas and land use durations; decide on land acquisition and land requisition; decide on land prices; decide to grant land use rights to land users; decide on financial policies on land; stipulate the rights and obligations of land users.

The National Assembly operates under a collective mechanism, so there will be no phenomenon of taking advantage of the one-head regime to violate the land law like a series of officials have from central to local levels recently.

Therefore, we recommend changing relevant legal provisions to transfer the function of representativeness of land ownership from the Government to the National Assembly, especially when the country has officially announced the transition to a socialist-oriented market mechanism.

2. It is proposed to revise the 2013 Land Law to reflect the spirit of the Constitution's provisions that "Land is the special national resource, the important resource for national development, and it is managed according to regulations by laws".

We know that land is always associated with water resources, forest resources, mineral resources, etc., and it is a special kind of national resource, because humans do not create new land, *the total area of territory is a constant. The land position is fixed and attached to the ground rent created by each land plot.* This type of resource is both the foundation that determines all creative and non-creative activities, feeds or destroys, and destroys under need and power directly or indirectly for each person, each household, each village, each commune, each province and the whole country, not to mention the impact on the whole planet according to the logic of motion based in the universe. Therefore, there must be "*specific*" legal provisions for this "*special*" resource that is owned by the entire people, and where no one but the National Assembly at all levels is the body representing the land ownership in order to unify the management, monitor and control all acts of damage or maintenance of this resource, especially in the market mechanism where using land exploitation as the fulcrum of GDP serves individual needs, as seen in Capitalism.

It is inappropriate that the Government, as regulated by laws, is currently functioned to represent the ownership and unified management of natural resources and land assets, like any other assets owned by the entire people. Land property shares the characteristics of being owned by the entire people, but it is completely different from other assets owned by the entire people, which are man-made, could be generated with new things and renewable such as transportation systems, architectural structures, airports, ports, etc.

Therefore, we propose to amend a number of current legislative provisions, such as the Law on Organization of the National Assembly, the Law on Organization of the People's Council, and the Law on Government Organization, at the same time as revising the 2013 Land Law to express the special nature of land.

The amendments should be in the direction of shifting the State agency representing land ownership from the Government to the National Assembly with the following urgent and strategic priorities:

1) Establishing a Land Committee of the National Assembly as the highest representative body of the People;

2) Accordingly, the Land Committees of the Provincial People's Council, the District People's Council, and especially the Commune People's Council should be established for possible approaches to every land plot;

3) Establishing an inter-provincial land fund which specializes in updating, monitoring and auditing the value of over 75 million land plots and every land plot of different land users;

4) Establishing an independent land bank;

5) Establishing an Independent Land Court.

The above five strategies must be supervised and controlled by the highest representative body, the National Assembly at all levels in order to keep the three roots: the people's State, the people's land, and the National Assembly as the highest representative of the ownership. The market mechanism involves the privatization of land and labor resources. When land is in the hands of corporations and companies, it will be exploited to the maximum in order to increase corporate profits. Farmers will be transformed into wage workers on large-scale industrial farms through which local social structures and cultural form will be distorted. The community's cultural basis, national consciousness and social solidarity will also be manipulated according to the "principle values of individual freedom and financialization". In this case, land resources are a decisive foundation which completely depends on the land institutions under the trio of roots: People are owners of Land Resources, the people are the masters of the State, and the National Assembly is the representative body of the owners. Therefore, land resources cannot be in the hands of the owner represented by the government with the 'head' regime! If the Socialist Republic of Vietnam continues to maintain the 'head' regime as the representative owner of land resources, the socialist orientation of the market principle will be difficult because the manifesto of socialist-oriented market mechanism is incompatible with market principles which will continue to be manipulated in order to maximize super profits from exploiting the land and labor power of farmers and wage-workers as have for over a century in the market economy!

3. Amendment of the 2013 Land Law must overcome the contradiction between, the entire people's ownership of land, and the "private" ownership on each land plot when it is provided by the State for land users in the form of "value of land use rights".

Land is owned by the entire people, and the Government acts as the representative of the ownership and assigns the land use rights to individuals and organizations for utilization. This also means that individuals and organizations, whose land areas are provided or leased, have only the rights to use land in accordance with the regulations on land use purposes, as assigned and provided by the State. Individuals and organizations have absolutely no rights to possess and decide on land use.

¹ Soil health, biological succession in terms of diversity, specificity, interaction, adaptation, sustainability as well as the ability to accumulate carbon and microbial society in the soil in each land plot and in a total of 75 million land plots in the whole country.

However, the 2013 Land Law does not clearly distinguish between the value of land use rights and the use value of each land plot. Moreover, the 2013 Land Law ignores the issue of planning and land use plan for each land plot at the communal level, as regulated by the Land Law No.13/2003/QH11 in Article 25, Clause 4 and 5. Article 25 realizes the responsibility of ownership of each land plot by every household in the village, and the Commune People's Council (commune-level National Assembly) is the organ that handles the supervision and control of the implementation of master plans and land use plans for each land plot by the commune People's Committee. Realizing the rule-of-law State is to execute the Land Law No.13/2003/QH11, Article Article 25, Clause 4 and 5.

The implication of the 2013 Land Law for land use right value is essentially only the value and use value of each land plot to rent, lend, inherit, contribute to capital, mortgage...

The 2013 Land Law regulates at Article 167. The rights to exchange, transfer, lease, sublease, inherit, donate, mortgage or contribute land use rights as capital allowing ***“land users to exercise the rights to convert, transfer, lease, sublease, inherit, donate, mortgage or contribute land use rights as capital in accordance with this Law.”***

With such a provision, in addition to the land use right for the right purposes as assigned, and benefitting from the value of the investment added during the use process, the land user also has the right to transfer, lease, sub-lease, mortgage, capital contribution, etc.,

In our opinion, ***the intrinsic value of land use rights is priceless and cannot be changed according to market prices.*** The essence of the value of land use rights is an order of the State or a government agency acting on behalf of the people to allocate land (which is the property owned by the entire people) to the users. ***Te value and use value of the land plot has a price which can be changed according to the market price*** only if converted, transferred, leased, sub-leased, inherited or donated, mortgaged, used to guarantee or contributed to capital, *etc.*

*It is because of the ambiguity between the value of land use rights and the use value of the land plot, between the entire people's ownership of land in general and the private use right of each land plot, that, when it is allocated or leased as analyzed above, we have not been able to control and manage the land in the past time. As a result, a series of cadres have committed corruption and land speculation; families and people want to get rich from buying and selling land; money of individuals, organizations, credits and banks is not invested to promote production but is **"buried"** in the land; organizations have taken advantage of loopholes in the laws to occupy land, acquire people's land at a cheap price, then divided the land into plots for sale to gain benefits from the land.*

This is also an ironic paradox that people - the land owners through the State acts as the representative - are allocated land under the latter's right to assigned to individuals and organizations. However, when the State needs to acquire the land for reuse, it must compensate a very large amount, even hundreds of times larger than the previous amount, whereas the nature of this difference is not created by the person to whom the land was allocated.

For example: A piece of land previously allocated by the State was only worth 100 million VND, now because the State has opened a road through it, the value of the land plot has increased to 5 billion VND according to the market price. This difference is not due to the added value of the land created by the land assignee, or the increase in the value of the land use rights, but this is the increased use value of the land plot due to the investment in road construction. ***This investment capital belongs to the total labor value created by the whole society.*** However, the person, to whom the land was allocated, is entitled to all this value and the State has to pay the costs if it wants to acquire such land plot under the so-called land administration by the land valuation agency and the land price appraisal council. In fact, there is no logical and transparent argument even in the land use planning which the 2013 Land Law still leaves open. This also reflects the phenomenon of 'land fever' leading to tricks to gather land, resulting in the phenomenon of the suddenly rich or suddenly empty-handed which is extremely unreasonable in recent times. Do you know this under the Head regime? The State definitely needs to study and clarify this absurdity of the 2013 Land Law and must have practical, scientific and logical examination of this inadequacy to end the inconsistency between the Constitution and the Land Law, between the Land Law from this National Assembly session to another during revision process of the 2013 Land Law at a time when the whole planet is in tension from the concept of 'geopolitics' between countries and factions on the East-West Axis!

Therefore, we propose to amend the 2013 Land Law to overcome the conflict in the 2013 Land law between the entire people's ownership of land and the private use right of each land plot when it is allocated or leased by the State as analyzed above.

II. SOME SPECIFIC RECOMMENDATIONS ON REVISION OF THE 2013 LAND LAW

Firstly, we propose to amend the Article 7 as follows:

Article 7. The National Assembly exercises the right to represent the entire people's ownership of land, the Government performs the State management of land.

1. The National Assembly shall promulgate the laws on land, **decide on land policies**, and decide on national master plans and plans on land use; **decide on land allocation, land lease, change of land use purposes**; exercise supreme supervision over the management and use of land throughout the country.
2. The Government shall decide on land use planning and land use plans of provinces and centrally affiliated cities and master plans and plans on land use for national defense and security purposes; unify the State management of land throughout the country.

The Ministry of Natural Resources and Environment shall be responsible before the Government for the State management of land.

3. **People's Councils at all levels** shall exercise the right to represent land ownership in their localities according to their authorization as prescribed in this Law; exercise the right to

supervise the enforcement of land laws in the locality. Commune-level People's Councils shall supervise the organization and implementation of land use master plans and land use plans for each household's land plot coordinated by the People's Committees.

4. People's Committees at all levels shall perform the State management of land in their localities according to their authorization as prescribed in this Law.

Secondly, we recommend:

1) To establish the Land Committee of the National Assembly as the highest representative body of the People;

2) To establish the Land Departments of the Provincial People's Council, the District People's Council, especially the Commune People's Council to cover the management in every land plot;

3) Inter-provincial land finance fund shall specialize in updating, monitoring and auditing the values of over 75 million land plots and each land plot by different types of land users;

4) To establish an independent land bank;

5) To establish an independent land court.

Thirdly, amend the Article 27. Responsibilities of the State for residential land and agricultural land for ethnic minorities

The 2013 Land Law has highlighted the State's responsibility for residential and productive land of ethnic minorities. However, through monitoring the law enforcement process, we found that the provisions of Article 27 are too general, not showing implementation solutions as well as specific sanctions in the management and protection of residential and productive land for ethnic minorities. Therefore, the land of ethnic minorities is being purchased and acquired by the Kinh people (the major group of population) every day and every hour and turned into farms and hi-tech zones. The survival space of ethnic minorities with the "Forest - cultivated land - agricultural fields" livelihood model is gradually disappearing to be replaced by the hi-tech agricultural zone of companies and production farms of the Kinh owners, and mining areas, etc. Hundreds of thousands of hectares of forest, hundreds of thousands of hectares of arable land are being flooded deep by large and small hydropower plants of unknown private companies approved without transparency by the provincial administration. If the people lose their land, forest or swidden fields, they will lose their living space, their livelihood space, and when lost, they will not know where to go? Therefore, the State must be more drastic and stronger in protecting the survival space and livelihood space of the ethnic minorities. We must start from the traditional customs of the people in preserving the land, preserving the village, in the protection of the forest to develop legal regulations to protect the land and protect the living space of the ethnic minority people. One of the traditional social characteristics of ethnic

minorities is: ***“Village and the collective ownership of the village community over land and forests”***. The village community's collective ownership of land and forests is the economic and material foundation of the village community entity. The entire material, economic, cultural, spiritual, spiritual and moral life exists on this foundation. This is also the most important solution for protecting residential land and the most effective production land for ethnic minorities against the brutal attack of the market mechanism on the land. The swidden land in the heart of the communities of the ethnic minorities needs to have a regulation for allocating the Land Use Right Certificate to the whole community, but keeping each farming land plot of the households. Why? Because if the land use right certificate is handed over to the household, the mafia forces in the society will collect all the red books of the people, turning them into slaves on their own land of the owners who are sprouting up like mushrooms in the mountainous areas in Vietnam’s territory.

Therefore, we propose to amend the Article 27 as follows:

Article 27. Responsibilities of the State for residential land and agricultural production land for ethnic minorities

1. To work out policies on residential land and land for community activities for ethnic minorities in accordance with the customs, practices, cultural identity and actual conditions of each region.
2. To work out policies to create favorable conditions for ethnic minorities who directly engage in agricultural production in rural areas to have land for agricultural production according to their culture and customs.
- 3. For forestry land and agricultural production land of ethnic minorities, the State mainly assigns land use rights to the community for management and use.***

Fourthly, in order to ensure the spiritual interests of ethnic minority communities, the 2013 Land Law on track for revision, must adjust and redefine Article 160. Religious land should be ensured with synchronization between religious forest land and owners of religious forest land as regulated in the Forestry Law No.16/QH14/2017 regulating community legal entities in the Civil Law and adjusting regulations of the Law on Biodiversity related to religious lands where there are religious forests, sacred streams, sacred waterfalls, sacred stones and sacred mountain peaks to ensure consistency between the Land Law and other laws when being implemented in villages.

Fifth, we have thoroughly studied 10 recommendations of the business forum posted on websites with messages trying to push the 2013 Land Law revision into private land ownership under the capitalist regime, which entails private ownership of labor power and means of production. The emerging Vietnamese businesses, with awareness, knowledge and experience of “half Western, half Eastern or even half chicken, half duck” are trying to argue for an outdated “Neo-liberalism” which has been inherently unacceptable since its inception in 1970s. More cowardly, the justification for extracting profit from the exploitation of the land and labor power of the peasantry and workers are being polished by the used of phrases

such as humanity, human rights, peace, cooperation and development. Land resources are owned by the people, the State represents the ownership with the ONE - HEAD regime and we fear that sooner or later, the land in Vietnam will be in the hands of corporations and private companies, even if it is limited to 50 years, 70 years or 90 years of land use. When the land is in the hands of the capitalists, surely the workers, who are farmers or laborers, will become modern slaves, and this is of course UNCONSTITUTIONAL.

The country and its people in the magnificent cities can change over time with high-rise towers, stylish cars, mysterious and luxurious villas and every house with servants. But we could not have imagined that, when the country was under poverty, it was difficult for people of ethnic minorities - the cradle of faith and national pride, the cradle of solidarity and love with the Uncle Ho's soldiers who have chased it all away the French, Japanese, American, and Chinese - to live in the country of modernization and industrialization, and where many ethnic minorities have become slaves in their ancestral land because of the pressure from corporations and companies. Where else are the village bamboo ramps, new rice fields, banyan trees, water wharf, communal house and survival spaces where praying for good luck, praying for favorable rain and wind, where offering buffalo sacrifices, are now all becoming high-tech, entertainment and recreation parks that we have to pay MUCH MONEY to step through the doors of the land owners. In the socialist-oriented market economy, if it does not begin from the revision of the 2013 Land Law with a fair and legislative view and in consistency with the Articles 53 and 69 and with 5 proposals in Section II for the 2013 Constitution, we fear that emerging corporations will gather land and rural farmers will lose their land and become the victims of modern slavery. Under the hands of capitalists, land and human's labor power are exploited to the marrow, the biodiversity of nature and the logic of dependence among all species are destroyed. The creative labour power of the human being and authentic socialism of the people are distorted. (Marx's Concept of Man. Third Manuscript. Private property and labor, page 119-139).

Above are some comments from the Consultancy on Development Institute (CODE) to suggest the direction in amending the 2013 Land Law, to the leaders of the Party, State, Ministries and the Land Law Drafting Committee for consideration./.

Received by:

Consultant on Development Institute

As above;

The National Assembly's Legal Affairs Committee;

Chairperson

The 2013 Land Law drafting committee;

Offices of the Central Party, the State President;

Signed

National Assembly, Government,

Central Economics Commission;

MONRE, MARD, MOJ;

TRAN THI LANH

Keep as records.