

Recommendations for changing the ideological framework for the Land Law 2013

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Renovation of thinking, understanding and perception of legislators of Land Law is a prerequisite for the sustainable development of Vietnam. National holistic land zoning and planning MUST be identified as a foundation and lodestar effecting every plan and decision of other types of planning for the sake of stable socio-political, cultural, economic development of the nation. Transparent, democratic land zoning and planning has special implications while land has become a very hot constraint today as well as in the future. Legislators as well as the society need to understand deeply that: 'land zoning and planning' is a decisive premise for a strategy of socio-economic, civil-political, and secure administration. Every citizen participating in discussions of land zoning and planning would deal with reality, courageously admit failures and errors of the previous land policies, and then embark upon stabilizing and strengthening faithful and effective state power of the people, from the people and for the people to deal with domestic and external obstacles in the market economy. A unique opportunity for prevention of and solution to land conflicts between people and companies, community and state enterprises, people and people, and between enterprises will become a reality if the Land Law 2013 is prepared and set up in a transparent, democratic and scientific way with a strategy of 'national holistic land zoning and planning and its digital management system'. With detailed apparent chapters, articles and provisions of the Land Law 2013, the optimal utility of a digital system and websites would ensure equality and transparency of information access for everyone. That also plays a vital role and serves as necessity for political regime and livelihood security for every Vietnamese citizen.

Part A. Concrete ideas and recommendation for Land Law 2013

I. List detail chapters, provisions which were not identified and acknowledged by society and particularly legislators of the process of setting up previous land laws (1987 - 1993 – 2003) in actual inter-relation to Constitutional provisions concerning land issues (1946 - 1959 - 1980 - 1992).

Quote constitutional provisions relating to land issues (Constitutions 1946 -1959 - 1980 -1992) which have not acknowledged and perceived land use planning as a planning of every planning for the sake of national stability and development.

Constitution 1946: No article specifically mentions land issues. However Article 12 provides private ownership in that 'property ownership of Vietnamese citizen is ensured'. At that time land belonged to ownership of individuals, households, community, organizations and state, so Article 12 can be understood that the state respects and guarantees the current situation of individuals as well as other types of land ownership.

Constitution 1959: Asserts that land and other natural resources ‘legally recognized as state ownership’ belong to the entire people’s ownership (Article 12). However peasants’ ownership of land is protected (Article 14). Article 12: All mineral resources and waters and all forests, undeveloped land, and other resources defined by law as belonging to the state are the property of the whole people. Article 14: The state by law protects the right of peasants to own land and other means of production.

Constitution 1980: Article 19: “Land ... other property defined by law as belonging to the state are the property of the entire people”. Article 20: “The state unifies management of land according to common planning. Collectives and individuals who are using land have rights to use land continuously”. In comparison to Constitution 1959, Constitution 1980 repealed ‘peasant’s ownership land’ and introduced the term ‘land use right’. According to law makers’ view since 1980 private ownership of land does not exist, and only ‘the entire people’s ownership of land’ is accepted.

Constitution 1992, amended in 2001. Article 17: “land ... and all other property determined by law as belonging to the State, comes under ownership by the entire people”. Article 18: ‘The State manages all the land according to overall planning and in conformity with the law’; and ‘The State shall entrust land to organizations and private individuals for stable and lasting use’. This is the first time a Constitution denotes ‘land zoning’ in context of ‘The State manages all the land’. On the other hand, people’s participation and initiation in land zoning is not mentioned.

Briefly, through 4 versions of Constitution, private ownership of land used to be recognized until 1980. Since 1980 law makers merely recognize the entire people’s ownership of land. There is no constitutional provision of land zoning until 1992. Though Constitution 1992, amended in 2001 refers to land zoning, but does not emphasize the importance of land zoning and the requirement of people’s participation, democracy, transparency and equality in land zoning and management.

II. Quote provisions of land laws of 1954 -1959 -1987 -1993 -2003 which have not acknowledged and perceived land use planning as a basis for all planning for the sake of national sustainable development.

Land Law 1987. Article 9 states that land zoning is one of the state’s land management tasks. Article 11 only designates the role of administrative agents at all levels involved in setting up and approving land zoning and land plans, National Assembly and People’s Council ratify proposals from the administrative branch. In practice most proposals from administrative organs are ratified by the people’s representative organ¹. Therefore actual rights of land zoning and land planning belong to administrative organs.

¹ People’s representative organs ratify laws or legal proposals in a top-down decisive way.
Analysis, critique, and ideological recommendation for improvement of draft Land Law 2013
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Land law 1993: Similar to Land law 1987, there is no provision or mechanism relating to people's participation in process of setting up land zoning, land planning. Article 13, Clause 2 mentions one of the items of state management of land: "land zoning and setting up land plan". Provision of land zoning and land plan in Article 16 is not much different from that of Land Law 1987, i.e. administrative organs set up and suggest proposal of land zoning, land plan, then the people's representative organ of the same level ratify before approval by the administrative organ of higher level. Article 18, Clause 1: "The National Assembly makes decision on land zoning, land plan of the whole country". However the question of detail and actual and real dimension of the decision is not clearly defined.

Land law 2003: Article 5, Clause 2 declares that, the state determines land issues, 'determine land use purpose via decision, approval of land zoning, land plan'. Article 7 arranges for the National assembly to "decide on land zoning, land plan of the whole country"; the Government "decides land zoning, land plan of provinces, cities under central government and land zoning, land plan for national defense and security purposes". According to Article 14, identification of land use type at the field should be based on 'current land use situation according to land zoning approved by authorized state agency'. The incongruity is that a certain person or community who has been using land for a long time and stably until the law takes effect, have no opportunity to be involved in land zoning or plan. They are easily vulnerable, their inherent legal status can suddenly be cancelled, and they will be considered as illegal just because their land use does not conform to the land zoning, land plan decided by authorities. This also causes discrepancy, irrationality, un-transparency and subsidized mechanisms of 'asking and giving' in land zoning, land planning, and granting land use certificates, and then conflicts and complaints over land and compensation. Article 21 mentions a discipline of land zoning, land plan to be congruous to the 'master planning', and land zoning 'comes from general to specific version'; land zoning and land plan of lower level has to be consistent with that of higher level; land plan has to be suitable to land zoning approved and decided by authorized agency'. On the other hand, "land zoning, land plan of the higher level must reflect land use needs of the lower". Article 25 provides that the Government and People's Committees of all levels organize and implement land zoning of their relevant level. Communal authority organizes land zoning for each specific plot of land. District level organizes detail land zoning for urbanization areas. Clause 5 asserts: "in process of setting up detail land zoning, the relevant authorized agency for land zoning must collect contribution ideas from people". There is no requirement of collecting people's contribution ideas to 'overall' land zoning authorized by higher level. Though People's Committee is required to "submit land zoning, land plan and get ratification from the People's Council of the same level before submitting and get approval from the authorized agency", (Article 25, Clause 6), final decision should belong to administrative organs.

Many cases reflect the reality that such centralization of rights would cause problems and social constraints. If there is no adequate mechanism for collecting and achieving people's contribution of ideas, supervising and deciding rights of the people,

then administrative agency would decide themselves on converting land in favour of business enterprises while leave behind insufficient land to local people and community. This situation will cause social disparity more serious, and the slogan of 'equality, democracy, civilization' would become ambiguous and unrealistic! Article 26, Clause 4 provides that district People's Committee approve land zoning, land plan of communal level. If district officials do not work well with reality, then it is difficult to meet the requirement of grass root democracy, in which local people have a say, and the right to know and contribute ideas to decision making process.

III. Quote provisions of Decrees and amendment of land laws 1987-1993-2003 which lack participatory contribution because of opportunistic intention in interest groups (private companies, if any) – with illustrating examples, e.g. Kxja village of elder Amachem, Êđê ethnic group;

IV. Analyze unavoidable changes of land use by people, ministries, and branches without NATIONAL HOLISTIC UNIQUE LAND USE PLANNING leading to overlapping discrepancy causing conflicts and corruption via land zoning and converting land use purpose (some focusing examples);

V. Analyze interrelation between constitutional provisions and land law provisions at different time lines (1987 - 1993 -2003) to clarify shortcomings of setting up land law at various times;

VI. Analyze in detail discrepancy between constitutional provisions and those of land laws at the mentioned times (examples to illustrate);

Based on the above analysis, find out ideological errors which affect land law setting and the law implementing consequences (focusing examples to illustrate, e.g. industrialization of Central highland via Bauxite mining);

List ideological and practical errors of Constitutions and land laws 1987 – 1993, the amendment in 1998 – 2001 and Land Law 2003 relating to land use planning and management of land use planning of different terms;

Analyze the unpredictable consequence caused by shortage of land use planning leading to political deterioration and economic corruption based on people using their term in power to opportunistically convert land use purposes (examples to illustrate);

Analyze tragedy due to shortage of respect of democratic and equal participation of various social interest groups in process of drafting and setting up land laws. Lack of land zoning and planning and its managing system causes interest conflicts between different social groups (illustrating examples from provisions of different land laws);

Analyze the impacts of corporations and enterprises on law amendment in 1998, 2001 and 2003 (examples to illustrate);

Collect some articles of Land Law 2003 to analyze and illustrate those mentioned errors.

VII. Concepts of Land Law 2013 need to be clarified in discussion focusing on:

Concept of Ground Rent of Marx?; How was Ground Rent understood and applied in drafting and setting up land laws in Vietnam (in socio-economic, cultural, political context of land laws 1987 – 1993 – 2003, and especially in amended laws in 1998 and 2001) (examples to illustrate);

Concept of Absolute Ground Rent of Marx?; How was Absolute Ground Rent in ‘the entire people’s ownership of land’, “the state uniquely manage all land according to law and land zoning and planning” (Article 20 of Constitution 1980 and Article 18 of Constitution 1992) understood and applied in drafting and setting up land laws 1987 – 1993 -2003 (examples to analyze);

How were concepts of values of First Ground Rent and Second Ground Rent of Marx applied, managed and adjusted via land laws 1987 – 1993 -2003?

Concept of nationalization of land: “land belongs to the entire people’s ownership, whoever is using land shall continuously do” in Vietnam (introduced by Truong Chinh). Is that different from Lenin’s idea? Lenin: confiscate all land to redistribute to the poor. Why does this difference happen? How does it differ in socio-economic, civil, political context of Vietnam?

Production relations between land owners and agricultural capitalists in Marx’s time, how was managing mechanism and absolute ground rate arranged? Analyze the application of production relations between land owners and agricultural capitalists in current context of Vietnam via relations between community and non-state enterprises (e.g. economic zone in suburbs of big cities – reflection in relation between capitalists and land under communal, district, provincial levels – use of ground rent – e.g. Xiputra Thang Long in Hanoi?);

How is concept of land ownership understood and applied in land laws 1987 – 1993 -2003? Examples to illustrate

How is concept of regime of land ownership understood and applied in process of legislation of land laws 1987 – 1993 -2003? Examples to illustrate

How is management mechanism of land ownership operated in land laws 1987 - 1993 -2003? Example to illustrate

How is mechanism of management and adjustment of ground rent values in land laws 1987 – 1993 -2003? Example to illustrate

How is concept of land economy, land finance understood and applied during process of legislation of land laws 1987 – 1993 – 2003? Example to illustrate
On what foundation is land tax provided in Vietnam and why?

Are tax of land ownership and tax of land use the same or different? How are they the same or different? Examples to illustrate

How is state ownership, the entire people's ownership, community ownership of land understood in Vietnam?

Analyze ideological values in land use planning policy and management of China (case study directed by Mr. Tôn Gia Huyền, with study tour, workshop, reference and introduction of document)?

Analyze practical values of land, field, farming, and village planning of Taiwan (case study directed by Mr. Tôn Gia Huyền, with study tour, workshop, reference and introduction of document).

Analyze transparency of strategy of creating network of digital land management system in Malaysia, possibility to apply into Vietnam's land use planning system? (Case study directed by Mr. Tôn Gia Huyền, with study tour, workshop, reference and introduction of document).

Transparency of strategy of creating network of digital land management system for prevention and restriction of corruption on land?

Does transparency of strategy of creating network of digital land management system become fundamental foundation of social democracy via application of high technology in national governance?

VIII. Land economy, land finance and types of land tax

How is mechanism of management and use of uneven values of ground rent operated in Vietnam? (Converting land to urban zoning, from urban zoning to economic zones, and converting from province/ rural zoning to capital/ urban zoning, etc. Examples to illustrate)

Transparency in system of adjustment and use of ground rent values? (Examples to illustrate)

What kind of criteria is land price based on? How is process of decision of land price and ground rent uneven values operated? (Examples to illustrate)

Design planning of land price setting system based on uneven values of ground rent with high technology (setting up network, mapping on websites, illustrate with

Malaysia examples - directed by Mr. Tôn Gia Huyền with study tour, workshop and document)

Foundation for setting up Land Law 2013 is transition from administrative management to management of land market (special real estate market)

Foundation for setting up Land Law 2013 is transition of habits from natural resource management to management of land assets (with price, as a special goods determining nature of Vietnamese socio-political, cultural and economic characteristics.

Foundation for setting up Land Law 2013 is interrelated to law on Real estate business, law on Environmental protection and Resolution of the Political-bureau on National development orientation 2010- 2050 based on transparent management system on digital website network (environmental tax against investors on land, regenerated resources and un-regenerated resources).

Foundation for setting up Land Law derives from trust, reputation and relation between people and state power relating to public assets, ensuring social equality and civilization.

The foundation for setting up Land Law is admitting shortcomings in perception, and attitudinal errors, and then creating active motivation for improvement and self-change of the self-respectful nation of Vietnam.

Foundation for setting up Land Law is a unique solution for jurisdiction respect for restriction of land and ethnic conflicts.

Part B. Objective 2010 - 2012 of ideology, contribution and sharing for setting up Land Law 2013

B.I. Legislative objective

1. To have the first article of the Constitution specify that “Nationwide land zoning and land use planning respect the natural character of existing villages as the national heritage. and that this becomes the fundamental principle for any other planning and alternative decisions on political development trends, social economic arrangements and cultural and religious characteristics of Vietnam” ; (study and analyze of Chinese land zoning and planning, Taiwanese rearrangement of field and Malaysia management of land zoning and planning management system via digital network, which is directed by Mr. Tôn Gia Huyền);

2. To have Land Law 2013 with detail transparent, understandable provisions, chapters, articles, which are based on the first Article of Constitution "NATIONWIDE LAND ZONING AND PLANNING IS PLANNING FOR ANY OTHER PLANNING " (Objective 1 for the period 2010 - 2013);

3. To have a managing system of "NATIONWIDE LAND ZONING AND PLANNING IS PLANNING FOR ANY OTHER PLANNING" via digital website network transparently informing every citizen.

B.II. Administrative objective

1. Land zoning and planning should become the first article of the revised constitution and be perceived as ideological foundation and philosophy for development of Vietnam.

2. A law on land zoning and planning based on land classification in Vietnam in interrelationship of Indochina landscape should become strategic leading and basis of other national strategies.

3. Synchronous land zoning and planning system via DIGITAL NEWTORK with annual control, updating and monitoring by an independent professional agency for land zoning and planning management, so as to detect legal violation. That should be considered as systematic solution and strategy towards target of “transparency and grassroots democracy”.

4. Based on land zoning and planning management via digital network, and improvement of perception and practical understanding of consequences of land corruption due to shortage of the mentioned foundation of constitution and legislation, which causes landslide and degradation of land natural value and abuse of land.

5. Rearrange system of land classification mapping with provision that “land use value and land value consists of setting price of types of ground rent” with land economic criteria interrelated with spirit land reflecting ethnic identity, geographical human ecology and political ecology including culture, has to become cross-cutting development strategy of the nation without being subject to change at each new term of power. Land classification mapping must be based on the natural character and carrying capacity of each type of land nationwide and in relation with neighbor countries in Indochina.

6. A professional agency manages land zoning and planning management based on nature and characteristics of Vietnam land according to constitution and “ZONING AND PLANNING MANAGEMENT OF NATIONWIDE VARIOUS TYPES OF LAND”.

7. All types of cultural, civil, socio-economic, security, national defense development planning and orientation should be supervised under constitution and law on land zoning and planning of Vietnam.

8. To have a system of mapping of development land zoning posted in every village, commune, town, and city and covered daily on the media, updated timely as the hottest news.

9. To have clubs, forums discussing land zoning and planning as criteria for grassroots democracy and foundation for maintaining and strengthening state power of the people, from the people and for the people.

Part C: Methodology

1. Access legal documents, constitutions, laws and degrees concerning land issues: responsible by Phạm Văn Dũng - pvdung@speri.org; skype: pvdung.speri and Trần thị Lành - tlanh@lupapa.org; skype: tlanhsperi;

2. Access to scientific document relating to constitutions, land laws and implementing solutions of China, Taiwan, Malaysia: directed and supported by Ms Tran thi Lanh and Mr. Tôn Gia Huyền; updated and filed 'Contribution and sharing for building up Land Law 2013' by Phạm Văn Dũng;

3. Link knowledgeable enthusiastic scientists who are concerned to contribute for building up Land Law 2013: expert on land finance and tax, setting up land price and making projects of converting land use purpose transparent (with focusing examples to illustrate). Participation: Public Asset Bureau, Department of Legality of Ministry of Industry and Commerce, Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment, General Department of Tax, various Institutes of design and planning under different ministries;

4. Link policy implementing officials from several communities, communes, districts: Mr. Nguyễn Khắc Thứ who coordinates issues on causes, process, consequences of land conflicts between community and companies, companies and people, people and state enterprises. Suggest strategic solutions for conflict and the target of "NATIONWIDE LAND ZONING AND PLANNING IS PLANNING FOR ANY OTHER PLANNING" and providing Articles of Land Law 2013 should be based on practice, focusing examples of some state forestry and agricultural enterprises from three different regions (Northern - Central - Central Highland).

5. Analyze specific cases of converting land use purpose for urbanization and industrialization, which lacks of respect for strategic land zoning and planning or without land zoning, such as Xiputra, merging Ha Tay province into Hanoi capital, Bauxite mining in Central Highland, etc. to draw experiences and learning lessons, as well as pragmatic bases for building up provisions of Land Law 2013.

6. Diverse forums, discussions, conferences, workshops linking elders, key-farmers, law implementing officials, law makers, law making supervisors to top policy makers.