

The ethnic minority people's future hung by a single threat Inadvertent or deliberate inconsistency among different legislative document

A guidance for a holistic, complete and urgent implementation process is reflected in a close linkage between Resolution 539/NQ-UBTVQH13¹ of the Standing Committee of the National Assembly on “the results of supervision of the implementation of policy and law on residential land, production land for ethnic minority peoples” dated 30 October 2012 and Resolution 19-NQ/TW of the Sixth session of the Eleventh term of the Central Committee of the Communist party on “the continuation of renovation of land policy and law for comprehensive renovation to create foundation for Vietnam as a modern industrialized country in 2020” dated 31 October 2012. The implication of “assisting ethnic minority peoples to escape from “backwardness” and “poverty” reflects the subjective perception of the leaders.

The two mentioned Resolutions, 539/NQ-UBTVQH13 and 19-NQ/TW, one after another were successively promulgated only one day, 30 and 31 October 2012. They aim at top-down strong and imperative urging to ministries and provinces to “... continuously renovate land law and policy for comprehensive renovation to create foundation for Vietnam as a modern industrialized country in 2020”.

Resolution 539/NQ-UBTVQH13 of the Standing Committee of the National Assembly dated 30 October 2012 has two considerable requirements: 1. The Ministry of Labour, Invalid and Social Affairs shall carry out assessment of vocational training and job creation for ethnic minority peoples for the period from 2006 to 2012; simultaneously research and set up specific policy to promote training and create non-agricultural jobs for ethnic minority labours. 2. Provincial People's Committee shall report and submit the review of the implementation of residential land zoning and agro-forestry land use plan in mountainous ethnic minority areas to Prime Minister in the third quarter of 2013; and

¹ Accordingly, the Committee for Ethnicity Affairs shall coordinates and manages ethnic policies, cooperate with other ministries, branches to monitor the implementation of plans; periodically review and report on results done by ministries, branches and localities to the Prime Minister. In the third quarter of 2013, the Committee for Ethnicity Affairs shall submit to the Prime Minister decision on the policy on support of production land, job transfer and fresh water for poor ethnic minority peoples for the 2012 – 2016 period; the policy on reallocation support to ethnic minority peoples for the 2013-2020 period; policy on investment and support to stabilize life of the ethnic free migrants. In the second quarter of 2013, the Committee for Ethnicity Affairs shall submit to the Prime Minister decision on the policy to support households of near poverty and poverty alleviation in the extremely difficult communes, villages of mountainous ethnic regions until 2016 towards 2020. At the same time, in the second quarter of 2013, the Ministry of Agriculture and Rural Development shall set up and submit policy on ‘post-reallocation’ to stabilize life and production of those who have to reallocate, lose residential and production land. Localities complete approval of land zoning to 2020 and land use plan of the 2013 - 2015 period; basically complete granting of land use certificates, report the Prime Minister in the third and forth quarters of 2013. The ministry of Natural Resources and Environment shall establish land database, especially for the border, islands and difficult regions, to report to the Prime Minister in the forth quarter of 2013. Simultaneously, the ministry of Natural Resources and Environment shall coordinate other relevant agencies to inspect land rent, implementation of land zoning, projects relating to acquisition of residential and production land, forestland in mountainous, bordering and ethnic minority areas for the 2005-2012 periods. Besides, they shall inspect the implementation of land law, forest protection and development done by state forestry and agricultural enterprises in mountainous, bordering and ethnic minority areas. Those activities shall be reported to the Prime Minister in the forth and third quarters of 2013 respectively. In the third quarter of 2013, the ministry of Planning and Investment shall set up and submit the Prime Minister proposal to support production land, job creation for poor ethnic minority households in the Cuu Long basin. The ministry of Labour, Invalid and Social Affairs shall review; assess vocational training, job creation for ethnic minority peoples for 2006 – 2012 period; simultaneously research and set up specific policy to promote non-agricultural vocational training and job creation for *ethnic minority labourers*. In the third quarter of 2013 provincial people's committees shall report the Prime Minister the review of implementation of residential land zoning, land use plan for forestry, agricultural purposes and forest classification in mountainous, ethnic minority areas; in the forth quarter of 2013 shall submit proposal of implementation of planning and constructions relating to acquisition of residential and agricultural production land in mountainous, bordering and ethnic minority areas. <http://baodientu.chinhphu.vn/Home/Ke-hoach-thuc-hien-NQ-cua-UBTVQH-ve-dat-o-dat-san-xuat-cho-dong-bao-dan-toc-thieu-so/20132/162515.vgp>

submit Proposal on implementation of land zoning, setting up schemes relating to acquisition of residential and agro-forestry production land in mountainous, border, ethnic minority areas in the fourth quarter of 2013. These series of comprehensive documents hasten industrialization of Vietnam, including mountainous regions, where ethnic minority peoples are especially considered by the Government. Resolution *539/NQ-UBTVQH13* **legalized** imperative role of the Ministry of Labour, Invalid and Social Affairs in immediate assessment and setting up specific policy on extension of vocational training for 1,000,000 youths towards non-agricultural and skilled workers for industrial zones and mining. **Thus, policy is made from political wills** according to *Resolution 19-NQ/TW* dated 31 October 2012.

We recognized subtle inadequacies after thorough research the consistency of regulations provided in Resolution *539/NQ-UBTVQH13* dated 30 October 2012; Resolution *19 – NQ/TW* dated 31 October 2012; and articles 9, 13, 14, 15, 16, 17, 18, 19, 20, 26, 34, 35, 36, 37, 38, 39, 43, 154, 161² of the draft Land Law 2013. Inadequacies are especially suffered by farmers who count for more than 70% of the population, and ethnic minority peoples counting for 12%; they hardly have sufficient opportunity and capacity to read series of legal documents enacted during the last two years to analyze and contribute ideas to such subtle inadequacies. For instance:

Article 9 Land classification, Section 1: Agricultural land, and Section 2: Non-agricultural land - sub-section dd) Production, non-agricultural land consists of: industrial zones, industrial grouping, export processing zones, commercial land, service, land for production units, non-agricultural business, land for mining, land for construction material and ceramic production.

Article 26. The state's responsibility for residential and agricultural production land for ethnic minority peoples. *Section 1: Enact policy on residential land for ethnic minority peoples which is suitable to customs, cultural identity and real conditions of each region. Section 2: Enact policy to create opportunity for ethnic minority peoples who involve directly in agricultural production in rural areas to have land to practice agricultural production.*

Comment: To ensure actual validity of Article 26 as well as political will of the National Assembly according to Resolution *539/NQ-UBTVQH13*, an addition should be made to Article 26. The following sub-section is suggested: a) Residential land and production land of ethnic minority peoples are understood as spaces for practicing indigenous knowledge, religious belief of nurturing nature, ceremonies, as well as for vital daily livelihoods and basic conditions for eating, housing, breathing and clothing.

Definition of Non-agricultural land in Article 9 Section 2 should be corrected. Without this correction, Article 26 becomes meaningless. There is no longer land area to serve as agricultural land for ethnic minority peoples. Moreover, ethnic minority people perceive values of residential and production land as livelihood spaces granted by Yang (God), so

² Article 161. Right to exchange, assign, lease, sub-lease, bequeath and donate land use rights; right to mortgage, guarantee and contribute capital using land use rights; and right to be paid compensation when the State recovers land.

they maintain their immortal wisdom, customs and daily practices such as ceremonies before and after cultivation. Article 26 of the draft Land Law 2013 does not have any implication of this wisdom! Article 154 providing religious land is even worse. Section 1: Religious land is the land bearing temples, communal houses, shrines, hermitage, and ancestral altars. Section 2: religious land use must be compatible to objectives, land zoning, land use plan, urban land zoning, rural residential land zoning approved by the authorized state agencies. Section 3: The construction and expansion of temples, communal houses, shrines, hermitage, and ancestral altars of communities must be done upon permission of the authorized state agencies. So, Article 154 neither mentions any perception of the people's religious values. Ethnic minority peoples have never borne in mind conception of "temples, communal houses, shrines, hermitage, and ancestral altars" as it is ascribed in Article 154!

Therefore, to validate Article 154 there should be additional section to define religious land, which is specifically applicable to ethnic minority peoples. The reason is that, 15 million ethnic minority people do not share the same definition of religious land as "temples, communal houses, shrines, hermitage, and ancestral altars".

Without a definition of religious land which is specifically applicable to ethnic minority people the Land Law will eventually extinguishes wisdoms of ethnic minority peoples in Vietnam. On the basis of theoretical subjective political wills of leaders, article 154 and other Articles: 9, 13, 14, 15, 16, 17, 18, 19, 20, 34, 35, 36, 37, 38, 38, 43 actually aims at prompting industrialization, urbanization, and commercialization of land and root out millions of ethnic minority youths.

Those articles eventually damage spaces for ethnic minority peoples' livelihood where people practice their religious belief in holy spirits and traditional educational norms of voluntary relationship between human, soil and nature. Unwritten customs are passed down throughout generations, for instance, Macoong people's worship for land owner on 16 of the first Lunar month, worship for sacred stream spirits of Macoong and Katu ethnic groups, Tongsenh tree and Thuti saint of H'mong people, Liengpiho ceremony of Khmu people, Chuongmien ceremony of Dzaio people. Furthermore, these customs illustrate wisdoms and perception of natural law and diversity of the peoples. The mentioned Articles actually ignore cultural diversity and wisdoms of minority peoples living in forests and regions referred in Article 9.

Land zoning and land ownership: Article 20 regulates the state represents and implements for land ownership. The National Assembly, the Government, People's Councils and People's Committees of different levels implement their representative rights according to **PRESCRIBED AUTHORITY ACCORDING TO THIS LAW!** In a system of land zoning and land use plan (Article 35), national-level land zoning and land use plan is approved by the National Assembly according to Regulation of Section 1, Article 43. *All land zoning and land use plan mentioned in Article 35 (Section 2: land zoning and land use plan at provincial level, Section 4: land zoning and land use plan for national defense, Section 5: land zoning and land use plan for public security), are approved by the Government according to Authority provided in Section 2, Article 43. Article 13: the*

state makes decision on land use purposes via land zoning, land use plan and decisions on CHANGES of land use purposes. Article 14: the state provides land size limit and duration of land use. Article 15: the state DECIDES on land acquisition. Article 16: the state GRANTS land use rights to land users. Article 17: the state DECIDES on land price. Article 18: the state decides on land financial policy. Article 19: the state provides rights and obligations of land users.

Actually Section 3, Article 35 makes land zoning and land use plan at district level invalid. District level is not responsible for consequences of land zoning because district authority does not direct manage people but document. Households, villages and communes are those actually impacted by land zoning and land use plan. So, if Article 35 does not involve communal land zoning and land use plan, it will reject the impacted actors and invalid their role and status. Scientifically and substantially, every land zoning and land use plan should consider communal level as vital actor which decisively involves in activities beyond land zoning, for instance, implementation of land zoning, supervision and critique on the effect of land zoning. Furthermore, communal authority direct deal with people or land users, who are among land owners according to Constitution and the Land Law!

In practice ethnic minority people are facing problem of insufficient land area. Most of forestland is managed by state forestry enterprises and state agricultural enterprises according to Decree 163/CP/1999. Law does not explicitly regulate whoever responsibly has to return land to ethnic minority people, how to return and the dimension of the returned land. There is not any exact data reflecting the land area held by the state enterprises. Evidently, ethnic minority people are almost landless and have no spaces for livelihood, which is perceived by them as spaces for living, breathing, worshipping, marketing, holding festival, and the unwritten rights on the basis of those activities as well as community animist belief. A scientists-defined 'yellow-leaves cottage' of the Ma Lieng people consists of 15 natural hollies, which are believed to reside and protect peaceful life of the people (*see research of the Centre for Indigenous Knowledge Research and Development (CIRD) published on the Ethnicity Literature Magazine*)

Agricultural production land should be specifically defined to suit to the ethnic minority perception of forestland. Without a specific definition for ethnic minority peoples, there will not be basic legislation to enforce Article 26 of the Land Law to return land to ethnic peoples. If so, law will end up in a document, and the remaining flaws will continuously exist.

Once again, referring Article 154 conception of religious land should not be understood subjectively as the definition of Section 1. The definition of residential and production land for ethnic minority people should not be understood in a shortage of objective and practical understanding as regulated in Section 1 (agricultural land), Section 2 (non-agricultural land) of the Article 9 (Land classification). This inadequacy exists because of the legislative perception which does not well embrace long-term adaptability of the worldview, values and wisdoms of the ethnic minority peoples. Most of customs and viewpoints of ethnic minority people traditionally have not retained a definition of

agricultural land or non-agricultural land. People do not classify land according to the scientists' economic view and tendency of industrialized agriculture. People have their own way of land classification, values and objectives which are based on a respectful behavior towards nature. In Section 1, Article 26, the regulation of "*Enact policy on residential land for ethnic minority peoples which is suitable to customs, cultural identity and real conditions of each region*" should be confirmed to reflect objective and practical political will. Conflicts exist because such regulations as of Article 9 (land classification) and Article 154 (religious land) in the Law do not reflect reality, ideology and viewpoint of 15 millions ethnic minority people. Inconsistency between regulations prescribed in Article 26, Article 9 and Article 154 should be analyzed and recognized to avoid conflicted and invalid regulations caused by subjective and undemocratic legislative process. Otherwise, inappropriate legislative process will continuously cause problems to land owners and land ownership representatives, such as conflicts, fighting and distrust. Hopefully, those concerns will be recognized by the Party leadership and the state's willing to correct the past faults. Threats to the nation as well as people's heartfelt hurt and loss of trust will be able to be reconciled if the land ownership representatives, or the people's servers recover their kindness to improve their legislation.

Trần thị Lành.