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**THE SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness**

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 - **H.E. Le Minh Hoan – Minister of Agriculture and Rural Development**
 - **H.E. Le Thanh Long – Minister of Justice**
 - **National Assembly’s Committee on Legislature**

Co-submitted to:

- **H.E. Mr. Nguyen Phu Trong – General Secretary of the Communist Party of Vietnam**
- **H.E. Mr. Nguyen Xuan Phuc – State President**
- **H.E. Mr. Pham Minh Chinh – Prime Minister**
- **H.E. Mr. Vuong Dinh Hue - Chairman of the National Assembly**

Three terms regarding actualization of Political Platform and Legislature Perception under the leadership of Vietnam Communist Party to be included in the revision of the 2013 Land Law at the 15th tenure of the National Assembly Session in May 2022

Key words

Each Citizen and Entire People of
Socialist Republic of Vietnam with 2 Missions:

1. *Be the master of the State;*
2. *Be the owner and user of each land plot and the whole 75 million land parcels.*
(Article 2; Article 53 of the 2013 Constitution)

Summary

According to the 2013 Constitution of the Socialist Republic of Vietnam, the People of Vietnam are the masters of the State (Article 2); the People are owners of the land (Article 53); and the National Assembly is the highest representative body of the People (Article 69). In compliance with these three Constitutional principles, Land Law No. 13/2003/QH11 at Article 25 recognised the commune People's Committee as the authorising agency for land use planning, thereby allowing each citizen in each village and hamlet, under the direction of and in consultation with the commune People's Council, to fulfil their dual mission as both owners and users of the land by organizing and implementing master plans and plans for land use at the commune level. This Constitutional and democratic provision was removed, however, by Land Law No. 45/2013/QH13, giving the role of land use planning to a higher authority at the province level, thereby violating the Constitutional principle that the People are the owners of the land. The effect of this law change has been that the People, as land owners, are no longer informed or consulted over land use changes in their villages, and this has resulted in endless conflict and disputes at great cost to the state. The failure of the Land law No 45/2013/QH13 to inherit Article 25 of Land Law No 13/2003/QU11 has also cause over the last 10 years numerous cases of institutional corruption, causing the People to lose faith in their representative, the National Assembly of Vietnam. The solution to these problems is to use the forthcoming amendment of Land law No. 45/2013/QH13 to restore Article 25 of Land Law No. 13/2003/QH11 to the amended land law.

Foreword

The Socialist Republic of Vietnam is the only country whose Constitution is characterized by a Root triad which is seen in no other country. The triad consists of 1) People are the Master of the State – Article 2, 2013 Constitution; 2) The People are the owners of land resources, which means each citizen of Vietnam carries two missions for each and the entirety of the 75 million parcels of land in the territory of Vietnam – Article 53, 2013 Constitution; 3) the National Assembly is the highest representative body of the People - Article 69, Constitution of the Socialist Republic of Vietnam 2013. The country and people of Vietnam have been and will retain their confidence and self-control walking through the Boulevard of CIVILIZATION (*VĂN HIẾN*) which is built upon the thousand year history of the country's building, protection and development. The Civilization arches over both the people and the supreme political regime. The Civilization of Vietnam has consistently nurtured the political stance and courage since the country's gaining of independence, 1946 Constitution; land reform and the journey of Socialist development, 1959 Constitution; through the war time and fight for peace, 1980 Constitution; the country's reconstruction period, 1992 Constitution; preparation for market regime integration, 2013 Constitution. Through all this time, our country's Constitution has persisted with one ideology, one objective to actualize the WILL and WISH of the people. The will and wish of people with its mission as the State's Master, Owner of special resource – land, and User of 75 million parcels of land in the whole territory of Vietnam has been the considered default since the country's independence. This has been the root triad of a stable political regime that puts the people at the center, and which can only be achieved thanks to the comprehensive, thorough and consistent leadership of the Communist Party of Vietnam. The country and people of Vietnam have been staying firm when facing storms and hardship because of the charismatic and wise leadership based on such a Root Triad. In a political regime ruled by law, the Constitution is the supreme power of the socialist state. Based on the Constitution, various laws and codes on economic, social, cultural, educational, scientific, technological and environmental aspects are issued for the single purpose of abiding by the People's Will and Wish.

Pursuant to Article 2 and Article 53 (2013 Constitution), the People of Vietnam has a prerogative, responsibility and privilege which can be hardly be found in any other

country: the State of the People, the Land of the People, and the National Assembly as the highest representative body of the People.

On the basis of this Constitutional spirit, *Land Law No. 13/2003/QH11* fully and precisely demonstrated, and fully abided by the Constitution's root triad as specified in Chapter I. Article 5. Point 1; Article 11. Point 1; Chapter II. Section 2. Article 21, Principles for the formulation of master plans and plans on land use, Point 3. "The master plans and plans on **LAND USE** of a **SUPERIOR LEVEL MUST** express the **LAND USE REQUIREMENTS** of the **SUBORDINATE LEVEL**"; Point 7. It must be democratic and disclosed publicly; Article 22. Grounds for formulation of land use zoning and planning. Point 2. Term c. Land use requirements of organizations, households, individuals and citizen community. *Article 25. Formulation of land use zoning and planning. Point 4. The commune People's Committee shall organize the preparation of local land use zoning and planning. Point 5. The commune's land use plan shall be formulated in details based on the land parcel.*

However, *Land Law No.45/2013/QH13* presents the **CONTRARY!** Chapter IV. Master plans and plans on land use. Article 35 and Article 36, by accident or on purpose, have eradicated¹ Article 25. Points 4 and 5 specified in Land Law No. 13/2003/QH11.

Question 1: *Why is the Article on Master plan and plan for land use at commune level, which is the one that actualizes the People's will and wish, invalidated in 2013 Land Law?*

In eradication of master plans and plans on land use at the commune level, skipping the step of organizing land planning to each land parcel of the people, of People's Council, Land Law No. 45/2013/QH13 not only fails to comply with the Constitution but *more accurately, to respect the People – the Owner of land, and creates inconsistency between the Constitution and Land Law.*

Accordingly, chapter 4. Article 35. Point 2. "The master plan on land use of the **SUBORDINATE LEVEL MUST** conform to the master plan on land use of the **SUPERIOR LEVEL**" goes against Article 21. Point 3. Of Land Law No. 13/2003/QH11. Thus, the principle of the People being the land owner in compliance with the Constitution

¹ Article 36. Eradicate the Article on Master plan, plan on land use at commune level, especially skip the detailed planning for each land parcel.

has been invalidated. Inconsistencies between Land Law No. 13/2003/QH11 and Land Law No. 45/2013/QH13 related to the root triad have hosted numerous cases of planning development projects where land matters come from the superior level. Definitely, any structure, including security, national defense or civil use at any planning level, originates from land parcels among 75 million parcels which are owned by each and entire People of Vietnam. The fact that the People are not informed or made aware of those plans has violated the Constitution (Article 2 and Article 53, 2013 Constitution). Making the People unable to discuss or to be aware of these plans has resulted in most master plans on land use resulting in disputes, overlaps and conflicts which are found both in urban to rural areas, especially in the areas that are home to ethnic minority community. *(In this paper, details of places, how many hectares of land of primeval forests have been planned into agriculture land for perennial trees, natural forests that have been planned into production forest to make it easier to misuse laws, which are covered by what is called “following procedures”, land allocation to corporations, companies, people who signed, Decisions, and consequences are not mentioned by the author. The data for some key areas, especially mountainous regions which are home to ethnic minority groups are available).* Such acts that fail to properly, strictly and democratically respect, inherit and abide by the terms and articles of previous and current land laws, between land law and 1) Forestry law; 2) Law on Biodiversity; 3) Law on the Environment; 4) Law on Minerals; 5) Civic Code and 6) law on planning during the legislature process, have caused serious consequences in both social-economic and security-political terms. The absence of consistency, and the conflict between the Constitution and Land Law, and between the land law and other laws, are the root causes of institutional corruption, which has been more and more sophisticated and complicated as the country journeys along the road to the market economy.

Land is a special resource. The People of Vietnam is the owner of such special resource. The National Assembly of Vietnam is the highest body that represents the special resource owner, eradication of Point 3. Article 21²; Section c. Point 2. Article 22³. Point 4

² Land use master plans of the superior level must express the land requirements of the subordinate level

³ Land requirements of organizations, individuals and citizen communities

and Point 5 of Article 25⁴ specified in Land Law No. 13/2003/QH11 is a Constitutional violation!

The failure of Land Law No. 45/2013/QH13 to inherit Article 25. Land Law No. 13/2003/QH 11. Organization of commune-level land use planning to each land parcel, has caused, in the last 10 years, numerous corruption cases which arise from land parcels in communities nationwide, especially in mountainous areas which are home to ethnic minority people.

The failure to inherit the Article on Organization of commune-level land use planning to each land parcel, especially when it comes to the role of People's Council in monitoring the organization of land planning for each land parcel *goes against the Land Owner*, violates the Constitution, and indirectly causes the People's disbelief in the Owner's representative: in particular: 1) disrespect the position and value of each parcel among 75 million land parcels (special resource) in the whole territory of Vietnam; 2) disrespect the owner representative that is the Commune People's Council; 3) disrespect the privilege and responsibility of a citizen, as well as the near hundred million citizens who carry the two missions of being both owner and user.

One citizen with two missions

Being the land owner

Vietnam has approximately 75 million land parcels of a total of 31 million hectares, of which mountainous areas account for 25 to 30 million land parcels. Each land parcel in the territory of Vietnam is engaged to each owner and user, and also to ownership and use of the entire People with two missions.

The institutionalization of Article 53 into the procedure of developing 2013 Land Law (amended), and discussion in the meeting session of May 2022, should clarify why the role of each citizen and of the entire People over each and all of the 75 million land parcels in the organization of land use planning at the commune level, which was specified in Land Law No.13/2003/QH11, was eradicated.

General Secretary Nguyen Phu Trong once said “When there is anything difficult, ask the People”. *The complete eradication of the role of each citizen and of the Commune*

⁴ Master plans, plans on land use at commune levels are prepared for each land parcel

People's Council in organizing implementation of master plans and plans on land use of each land parcel not only is a Constitutional violation but also causes harm and loss of trust between the people and the Party. The political platform and legislative perception not only remain consistent throughout the 1946 -1959 -1980 -1992- 2013 Constitutions in terms of the root triad in the country leadership, but also serves as the lodestar that lights the way day after day for the whole of Vietnam – people and country – the People and the Party. Rivers may dry up, mountains may erode away, but the root triad remains the same, which makes up the glorious Civilization history of our People and Party. No one can neglect when this triad has been faded and dimmed, as in the amended 2013 Land Law, at the 15th National Assembly Meeting session in May 2022.

The irrationality of the complete eradication of the role of organizing land planning on each land parcel at commune level, especially of the Commune People's Council (the immediate body that represents the People), in Land Law No.45/2013/QH13, as well as the irrationality of the private ownership over land, will, according to law of cause-effect, lead to the irrationality of Capitalism, which has been trying for ownership of natural resources! (Tran Thi Lanh, Logic of Dependence. Chapter IV. Remain in Red Revolution, Refuse Green Revolution. Page 135).

In reality, enabling each citizen, each village and hamlet, under direction and consultation of the commune People's Council, to organize and implement land planning on each land parcel, and on the whole 75 million parcels, is truly the democratic approach. That citizens in each village be allowed to discuss together while the commune People's Committee plays the role of coordinating and compiling for submission to People's Council for supervision, is THE TRUEST AND MOST ECONOMICAL ORGANIZATION FOR DEMOCRATIC GOVERNANCE IN LAND USE PLANNING. This not only abides by the Constitution, realizing the comprehensive, thorough and consistent leadership of the Communist Party, fully promoting economic, social, cultural, security and political effectiveness, but also raise the sense of responsibility in each citizen with two missions over each land parcel: being the Owner and the User. Based on such master plans and plans, the citizens shall be excited, and volunteer whenever the country requisitions a land parcel of which they are both user and owners. No one will be unwilling to donate for the country's sake, as they are both the master and beneficiary of the State

benefits. It costs the State, the owners' representative, no effort to address disputes, contradiction and even conflicts which involve competent agencies, causing disbelief among citizen. It is said that "With clear perception, nothing can be impossible". We should realize that all land-related conflicts originate from an understandable reason which is lack of discussion and participation of citizens and commune People's Council. Since 2013, there have been heart-rending cases involving both the owner and the representative. More importantly, some people have lost their trust in authorities at different levels.

Question 2: *Will the committee in charge of composing 2013 Land Law (amended) restore the Article 25. Points 4 and 5 specified in Land Law No.13/2003/QH11 in the final draft to be submitted to the 15th National Assembly for discussion in May 2022?*

Mission as land user

That users have rights to know, discuss, implement, monitor and benefit from the land parcels for which they play both roles of user and owner in organizing the implementation of master plans and plans on land use at the commune level for each parcel, is land governance and development at the level of a super-equal, democratic and economical society. **Why?** Year 2022 is the transitional year when Vietnam is about to join the market regime. During the transition in the administrative governance of land (which is a special resource) when shifting into organization and management under a market regime, definitely the characteristic of the special resource shall be dimmed over time. In a market economy, land is property which is privatized. Pricing and auctioning of land depends totally on market rules. Accordingly, land pricing, land price appraisal, land auctioning, site clearance and compensation are still confusing matters given the lack of a complete, professional, transparent and fair legal framework based on market rules, such as the capitalist regime of "Land is of private ownership". Above all, Vietnam, given its socialism oriented market regime, should have at least a quarter of the special resource (land) in the whole country, especially in mountainous and border areas (equivalent to 8 million hectares where the topography, terrain and tropical forests are granted to us from the North to the Central Region, CO2 preserver of the biogeochemistry) **MUST** be upheld with a special law. The nature of this special resource **MUST** be used by the citizen communities in villages, as only when the citizen communities are the users, can our country be confident and assured! Otherwise, once this special resource falls into the hand

of corporations and companies, we will definitely one day face the situation which many other countries in the world have faced in term of insecurity and instability!

Question 3: *Is the Article that the community of the same customs, traditions, and ethnic minority villages in the mountainous border areas are the owner of land use right certificate included in the Draft 2013 Land Law (amended) to be submitted to the 15th National Assembly, Meeting session in May 2022?*

Two prerequisite conditions, 1) Users are citizens, village communities, 2) Commune-level master plans and plans on land use, must be recognized as two fundamental, practical, effective and logical foundations for guaranteeing the comprehensiveness of democracy and serving as the core to EVERY PLANS at HIGHER LEVEL! Why?

Firstly, it will take the owner representative no effort to resolve cases of overlaps, institutional corruption caused by the lack of participation of each citizen, over each land parcel, to know, discuss, implement, monitor, assess and be recognized with two missions of being owner and user (*The author will not go into details of comparisons among cases related to land and consequences in terms of political security, social solidarity and unstable livelihood of ethnic minorities communities over the last 10 years*).

Secondly, organizing the implementation of commune-level master plans and plans on land use for each land parcel is a practical and effective approach for the stability of people, land and overall environment.

The mountainous areas of Vietnam account for approximately 25 to 30 million land parcels with complex topography and terrain as well as population structure. These are also homes to scarce fauna and flora species and valuable minerals. Approximately 30 million land parcels are used by villages, citizen communities, former agricultural farms and afforestation yards that are now agro-forestry companies. The entire people in one person, one person in the entire people, are the owner and user, and the concern of one person could be understood by the whole village. The concern of a forest could be seen by each citizen. Citizens are owners, users and informants of the community and the owner representative. The Land Law No. 13/2003/QH11 has specified at Article 25. Points 4 and 5. Organization of implementation of master plans and plans on land use at commune level for each land

parcel. Though it is just documented, with minor enforcement in reality, the people could still feel appreciated. It is understandable when there is no Constitution-based democracy in this planet that could be as profound and subtle, affirmative and consistent as the Constitution of the Socialist Republic of Vietnam. The firm stance regarding land owner and user is that Vietnam is one single entity! The policy makers – servants of People - should be well aware of this core value.

Thirdly, master plan and plan on land use for each parcel, when prepared with participation of citizen communities who share the same traditions and customs, are the only solution to promoting the ownership and creativeness of each citizen, each community on their land, in their habitat, to actualize the democratic regime and guarantee the State ruled by the law. Desirable or not, the market economy will end up turning citizens into victims that disregard the land and nature. Consequently, farmers will gradually lose their land and work as waged labours in industrial agriculture farms. The nature of large scale farms is a disguise for making the public land fall into the hand of large corporations and companies for reasons of yield and productivity increase and job creation. Once land is given to capitalists, farmers lose their property and are forced to work for corporations. The corporations and companies in turn continuously exploit the land and labours to increase their own wealth. Social stratification and wealth gaps will be the consequence as is seen in many other countries. The socialism-oriented market economy is also at risk if the owner representative fails to harmonize the land resource, especially in the mountainous and border areas; only when the community is defined as the owner of at least 8 million hectares of upland, can the People and Party be assured to follow the market economy without being lost.

The habitat has made a special Vietnam with wisdom, understanding and traditions of 53 ethnic groups living along Truong Son Range. At Article 160. Religious land, the Land Law No. 45/2013/QH13 defines at Point 1. Religious land includes land for communal houses, temples, shrines, hermitages, ancestral worship houses and ancestral temples.

What a thing! The division in charge of preparing 2013 Land Law is so unreasonable, negligent and unethical. With the definition at Point 1. Article 160, we can understand that the whole sacred mountains, forbidden streams, sacred farms and sacred

fields of more than 14 million ethnic minority people of 53 ethnic groups living in mountainous areas are totally eradicated. Religious land as defined in Land Law 45/2013/QH13 is only seen in Thai Binh, Bac Ninh and some provinces which are home to Kinh people in the deltas and coastal regions!

Therefore Point 1. Article 160. Land Law No. 45/2013/QH13 has wiped out the whole wisdom and understanding of 53 ethnic groups who are silently nurturing nature! Although at the time of the referendum in September and October 2013, the Social Policy Ecology Research Institute sent their comments in writing to the preparing committee with details regarding the definition of Religious land (Article 154 of the draft), which included an integral and complete definition for all 53 ethnic groups, the comments were not recognized.

Question 4: *Will the Definition of Religious land at Point 1 Article 160 the 2013 Land Law (amended) be redefined in the final draft to be submitted to the 15th National Assembly for discussion in May 2022?*

Recommendations: Vietnam is one of the countries with warnings of sea level rise. If the 2013 Land Law (to be amended) takes effect in 2023 in the market regime, it is imperative to take actions toward the about 8 million hectares of upland belonging to more than 14 million ethnic people, and roughly 20 million Kinh people who migrated from the delta in the 1980s, working individually at the household level and retaining their cultural characteristics. This land fund is characterized by features unsuitable for large scale industrial agriculture. Industrialized agriculture harms the biodiversity by replacing indigenous plants with hybrid high yield species, even genetically modified ones, and especially for annihilating the precious organic layer that makes up the thin cultivation layer. The steep sloping terrain causes erosion and even landslides. In addition, the use of pesticides and chemical fertilizers in industrialized agriculture is the cause of pollution of aquatic and land environments, and adverse impact on human health, all of which are now red flagged, not mentioned the increasing of CO2 emission. Therefore: 1) The communities, villages and hamlets should be named in the Land Use Right Certificate for the remaining mountainous land area as soon as possible; 2) The Article that master plans and plans on land use at the commune level for each parcel should be specified in 2013 Land Law (amended) which shall take effects in 2023 to fully promote the participation of the citizen

community, especially in mountainous and ethnic areas; 3) Article 160. Religious land should be redefined in Point 1 as follows: Religious land includes areas of sacred lands, sacred mountains, sacred farms, sacred fields, sacred streams, sacred rivers and sacred plateaus where ethnic minority people live, and land on which there are communal houses, temples, shrines, hermitages, ancestral worship houses and ancestral temples where Kinh people live. Point 2. The law on use of religious land located in mountainous areas which are home to ethnic minority groups should harmonize with the custom of nurturing land; 4) the 15th National Assembly, meeting session in May 2022, should discuss a special exception for about 8 million hectares of upland and border areas that host special ecosystems, terrain and topography, and are physically vulnerable and socially, economically and politically sensitive; and at the same time, it should confirm the role of the citizen community as Owner of land use right certificate, and issue special policies on agro-ecology oriented cultivation methods based on the local knowledge, understanding, experience and technology in land use planning. This not only promotes land use effectiveness, guarantees absolute democracy and gains trust of the people, but the land area (about 8 million hectares) can be preserved for millions of citizens in the case of sea level rise. It also prevents the land from acquisition by corporations and companies. If the State, as the owner representative, is not steered by the market economy and capitalist corporations, this will avoid large scale industrial agriculture which results in soil degradation, eradication of ethnic knowledge and biodiversity, and destruction of the sensitive balance of the upland ecosystems.

“Capitalist production only develops by simultaneously undermining the original sources of all wealth – the soil and the worker” (Marx. Capital Vol 1. Page 638)./.

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