

# Legal Completion of the Law on Land Acquisition for Socio-Economic Development Purposes in Vietnam

Cao Thanh Son<sup>1</sup>

<sup>1</sup>Ph.D. Candidate, University of Economics and Law, Ho Chi Minh City, Vietnam and Vietnam National University, Ho Chi Minh, Vietnam.

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## ABSTRACT

Lawsuits related to land acquisition activities for socio-economic development purposes are widespread. Most projects have cases where people with land acquired lodge lawsuits to protect their legitimate rights and interests. This fact shows that the land acquisition for socio-economic development purposes and legal provisions, as well as the mechanism of compensation, support, and resettlement applicable to persons whose land is acquired, still needs more to be considered for amendment and supplementation. In particular, the determination of the scope and limit of land acquisition, the compensation value, and policies on support and resettlement are the core issues to ensure the balance of interests of both the State, investors, and people whose land is acquired not only in the short term but also in the long term. The article synthesizes existing inadequacies and offers several grounded and long-term solutions and recommendations in land acquisition activities for socio-economic development.

**Keywords:** Land acquisition, economic development, compensation value, balance of benefits, legal completion.

## INTRODUCTION

Vietnam has changed in numerous ways since the implementation of the 1986 comprehensive reforms. The impact of the great strides made in economic development is greatly felt on agricultural land. Over the years, large tracts of agricultural land have been converted into industrial and urban land. The increasing demand for land has precipitated the need for land acquisition. Although Vietnam has passed various laws, policies, and approaches to deal with land acquisition, there still are problems associated with land acquisition and compensation (Nguyen & Hegedus, 2022, p.103).

In Vietnam, land is fully under the control of the state; therefore, one cannot own land privately (Le, 2023). The same is echoed by Hien and Spitzer (2023), who aver that in Vietnam, according to the 2013 Land Law, the land is public property; therefore, it belongs to all the people and the state manages it on their behalf.

Under Article 53 of 2013 Vietnam's Constitution, land is held as "public property, owned by all the people, and represented and uniformly managed by the State (Hien & Spitzer, 2023, p.9-10).

The 2013 Land Law has recognised two types of land acquisition. The first type is when the state expropriates land for national defense, economic development and public interest projects. In the second one, prospective investors discuss directly (self-agreement) with the current land right holders (Nguyen & Hegedus, 2022, p.112). Land ownership has been a thorny issue in Vietnam for a long time. In Vietnam, the right to use, own, and transfer land is governed by the Land Law of 2013. This Law, which was enacted to

replace the 2003 Land law, is arguably the most comprehensive of Vietnam's laws. Despite the enactment of Vietnam's Land Law 2013, conflicts related to land keep triggering social unrest and tension in parts of Vietnam (Gioi, 2023).

The 2013 Land Law concretizes cases of land expropriation for socio-economic development in the national and public interests, eliminating existing restrictions.

“The law provides for land compensation and resettlement when land is expropriated for public purposes or national defense. It establishes the principles and methods for determining compensation and resettlement allowances, as well as the rights and obligations of the parties involved (Gioi, 2023, p.1780).

A Vietnam parliamentary discussion unearthed that there are cases whereby issues regarding land expropriation are vague. As a result of the lack of clarity in the regulations, there are some unfortunate instances where the 2013 Land Law is not clear, which has led to the violation of the law. There have been situations where land has been expropriated and awarded to private businesses, yet it was supposed to be acquired for public benefit (Vietnam Law & Legal Forum, 2023). Therefore, it is still necessary to clarify some specific issues, such as:

Firstly, the scope of land acquisition for socio-economic development in the national or public interest remains broad and unclear. It is a reality that the state can legally expropriate land for projects that would benefit the economy of Vietnam, the community, national interests, and security purposes. However, the main problem is that all these reasons are not explicitly defined in law (Le, 2023). The law does not clearly state what criteria is to be used in the determination of the said uses;

Secondly, the current land acquisition mechanisms and policies still have some inadequacies and difficulties; the provisions of law are not perfected, such as mechanisms and policies for land acquisition for socio-economic development for the national and public interests lack criteria for socio-economic development works and projects for the national and public interests that must be acquired land; lack of regulations on the State's proactive land acquisition according to the approved land use plan to create a “clean” land fund for auction of land use rights for the construction of socio-economic development works and projects for the national and public interests.

As part of the discussion regarding the amendment of Vietnam Land Law 2013, the national assembly discussed the acquisition of land for socio-economic development on 21<sup>st</sup> June 2023. During the discussion, Vietnam National Assembly deputies noted that the Land Law 2013 must be amended to make the process for land acquisition for socio-economic development transparent and fair. It was noted that there was a need to have a list of the specific projects for which the state may expropriate land for socio-economic purposes. However, it was noted that it was practically impossible to list all the possible projects for socio-economic development that may call for land expropriation. A workaround was suggested for the amended law to have a regulation that would deal with future socio-economic projects that are part of the list (Vietnam Law & Legal Forum, 2023).

Thirdly, for projects implementing the mechanism of self-agreement as prescribed in Article 73 of the Land Law, it is still a significant inadequacy when there is no regulation on the rate of consent of people in the project; currently, there is no specific regulation on the land area that investors and land users cannot reach agreement, so the projects that investors and land users cannot reach 100% consensus cannot be implemented.

Fourthly, there still needs to be more mechanisms and policies on compensation, support, and resettlement upon land acquisition for socio-economic development. It leads to a need for more harmonization of interests between subjects involved in this process. Nguyen and Hegedus (2022), aver that if the

administrative procedures governing land acquisition and compensation are not strengthened and implemented effectively, those whose land is expropriated will not get compensated fairly. According to FAO (2009), as cited by Nguyen and Hegedus (2022, p.104)

if the compulsory land acquisition is not made effectively, it could lead to homelessness or to people not having land to live. In other words, they do not have access to the necessary resources or community support to make a living. It creates severe injustice.

Presently, in Vietnam, there are prevailing worries among investors about the power of the state to expropriate land without fair compensation. Vital decisions about the acquisition of land, allocation, and compensation in Vietnam are mainly made by state officials at local levels. The issue of unfair compensation (which leaves land certificate holders dissatisfied) for expropriated land is common because compensation does not consider the market value of the land but is pegged on fixed state rates (Le, 2023). Hien & Spitzer (2023) also point out that Vietnam's land administration agencies are given too much power during the land acquisition process at the expense of the landowners whose land is expropriated. One of the key problems noted is that in case a dispute arises at any stage of the land expropriation process, the land user has no recourse in a civil court. In such a scenario, the land owner can only seek redress in "a State administrative agency or an administrative court" (Hien & Spitzer, 2023, p.16).

The challenge of equitable compensation upon land acquisition is very pronounced. Gioi, 2023, p.1782) has noted that one major cause of this problem is what he refers to as 'corruption and rent-seeking behavior'. Gioi (2023) argues that there are instances where powerful officials abuse the land administrative process and award or take away land use rights irregularly. Gioi (2023) further posits that numerous cases have occurred where corrupt government officers have awarded land use rights not only to themselves and their associates but also to organizations. They achieve this by using their power to influence the land acquisition process. This behaviour has also led to the expropriation of land without adequate compensation (Gioi, 2023, p.1782).

Therefore, it is necessary to study and perfect the law on land acquisition for socio-economic development purposes in order to remove existing inadequacies and create clear legal grounds for more favorable land acquisition activities for socio-economic development purposes, ensuring the equality of interests of both the State, investors and people having land acquired.

There have been many studies related to this issue published, in which the authors have focused on analyzing such issues as the scope of land acquisition for socio-economic development purposes, not yet clearly defined area, scale, and investment capital, the boundary between the cases where the State acquires land, creates clean land funds for auction of land use rights for production, business, trade and services with the cases where the investors must agree to receive the transfer of land use rights, use for production and business purposes; there are still conflicts between the State, investors, and people, the question is how to ensure the interests of the people whose land is acquired, satisfy the demand for land use of the investors and under the interests of the State. The issue of land price compensation is also of interest to many researchers, such as the concept of land price, the nature of land price, and the factors affecting land price. From there, to point out the limitations and inadequacies of the difference between the price of land for compensation and the market price, as well as to point out the method of determining the unreasonable land price, not to clearly define the groups of damage when the State acquires land leading to the unfair and unreasonable compensation; the provisions on compensation are implemented by allocating land with the same use purpose with the type of land acquired that has not been implemented. Since there is no land for compensation or the value of the compensated land is not commensurate with the acquired land, an "underground agreement" exists between the investor, the construction contractor, and the person whose land is acquired.

Accordingly, the authors argue that the scope of land acquisition is broad or unclear and easy to abuse, affecting the safety of land use rights of people. From there, they propose to develop criteria to identify land acquisition cases for specific purposes and allow households subject to land acquisition to contribute capital to the project (in the form of shares) with the value of land use rights instead of receiving compensation. They would receive an annual dividend; the person whose land was acquired contributed to public development and benefited from that contribution. This benefit includes both tangible, including land, assets, and intangible capital such as the livelihood environment of the people, community relations, plus profits brought about by the development results; the determination of damage and conduct of compensation when the State acquires land for socio-economic development should be joint civil law.

In the process of national industrialization and modernization, especially in the context of continuous and rapid socio-economic changes, the results achieved by our country's legal science researchers in determining the essential boundaries of land acquisition for socio-economic and deeply humane purposes should still be studied, supplemented, and perfected. Therefore, an independent, intensive, and systematic study of the law on land acquisition for socio-economic development is currently essential.

## **METHODS**

The research is based on library-based research. The author has used existing published sources to collect data for the article.

## **FINDINGS AND DISCUSSION**

Implementing the Conclusion of Resolution 19-NQ/TW as an essential premise for the formulation of Resolution 18-NQ/TW of the Fifth Conference on June 16, 2022, with new guidelines, orientations, and solutions, ensuring land resources are exploited and used most effectively and sustainably, this is an essential tool of the State in mobilizing land resources, promoting more sustainable socio-economic development, aiming to make our country become a high-income developed country by 2045. In particular, completing the land acquisition law for socio-economic development has significance and a vital role.

At the fifth Plenum of the 13th Central Committee of the Party, they analyzed, evaluated, and agreed on solutions to complete land-related policies. In particular, it was also straightforward:

- The work and management of land use are still limited. Some contents of the Resolution have yet to be institutionalized or institutionalized slowly and incompletely. The Land Law and some relevant documents are overlapping, inconsistent, and synchronous. In some cases, land policies have not kept up with the rapid changes of reality.
- The planning system, land use plans, and plans involving land use have yet to ensure uniformity and synchronism. The planning quality is not high, lacks a long-term vision, and fails to meet the requirements of sustainable development. The compensation, support, and resettlement when the State acquires land for socio-economic development purposes in the locality still needs to be improved. Improperly implementing the Resolution and complying with the law dramatically affects the legitimate rights and interests of persons having land acquired. Failing to adopt effective mechanisms and resolutely handling projects that are behind schedule or fail to put land into use.
- The methods of land pricing and land use right auction need to be revised and consistent with reality. The land price is often much lower than the market price, and the land price difference in the adjacent localities and adjacent areas has yet to be handled promptly.

From the above existence, the amendment of the 2013 Land Law will be implemented from the viewpoint of:

- The State shall exercise the rights of the owner through the decision of the land use planning and plan. The decision of the policy regulates the added value from the land not created by the land user.
- Land allocation and lease will be conducted mainly through land use right auctions and bidding for projects involving land use. To specify land use right auctions and bidding for projects involving land use; to restrict and strictly prescribe land allocation or lease cases not through land use right auctions or bidding for projects involving land use; to ensure publicity and transparency.
- The land acquisition must comply with the Constitution and the law only after the compensation, support, and resettlement plan is approved. In case of land acquisition and resettlement must be arranged, the resettlement must be completed before the land acquisition. The compensation, support, and resettlement must go one step ahead, ensuring publicity, transparency, and harmony of interests of the State, persons having land acquired, and investors by the Constitution and law; there must be specific provisions on compensation, support, and resettlement so that after acquiring land, people having land acquired must have places of residence, ensuring that their lives are equal to or better than those of their former places of residence. To effectively provide vocational training, create jobs, reorganize production, and stabilize the lives of people with acquired land. To continue piloting and soon review the policy on separation of compensation, support, and resettlement projects from investment projects for implementation first.<sup>[1]</sup>

To specify the competence, purposes, and scope of land acquisition, specific conditions, and criteria for the State to acquire land for socio-economic development in the national and public interests. To continue implementing the mechanism of self-agreement between people and enterprises in transferring land use rights for implementing urban and commercial housing projects. To improve the organizational apparatus, operation mechanism, and financial mechanism of land fund development organizations, ensuring their streamlining, efficient operation, and full capability to establish, manage, and exploit land funds and adequately perform the tasks of compensation, support, and resettlement upon land acquisition by the State. To specify the efficient exploitation of land areas adjacent to infrastructure works according to land use master plans and plans and the priority policy for persons whose residential land is acquired to be allocated land or purchase houses on expanded acquired land areas under the law. For socio-economic development projects in line with land use master plans and plans, it is necessary to formulate early and perfect mechanisms and policies for organizations, households, and individuals with land use rights to join investors in implementing projects in the form of transfer, lease or contribution of land use rights as capital. To provide for the mechanism of land use right contribution and land readjustment for projects on the development and embellishment of urban centers and rural residential areas. To adopt specific and synchronous sanctions to handle cases in which land has been allocated or leased by the State but is not used or is delayed in use. To resolutely acquire land from organizations, state agencies, and non-business units that use the land for improper purposes, especially in positions with advantages and high profitability, and prevent loss of state capital and assets (HOANG, 2022).

### **Some solutions to improve the law on land acquisition for socio-economic development purposes**

- **Developing a set of land acquisition criteria for use for socio-economic development purposes in the national and public interests**

Developing criteria to identify land acquisition cases by purpose is an urgent issue. The clarification and tightening of cases of land acquisition based on the set criteria shall serve as a basis for competent state agencies to properly select and approve projects subject to land acquisition, which shall be considered from the stage of supervision and approval of projects, evaluation of project effectiveness, inspection of projects upon their completion and operation, as well as in the settlement of complaints and lawsuits, inspection and



examination. Accordingly, the formulation of criteria for project evaluation, as well as criteria for determining cases of land acquisition for socio-economic development purposes, should attach importance to the following issues:

Firstly, given the present shortcomings, relevant adjustments in land acquisition cases for socio-economic development in the national and public interests have been made. However, with a view to efficient implementation, it is necessary to supplement the cases assigned to the Government for detailed regulation. It may assist the Government in issuing a Decree to explain and detail relevant concepts and clarify criteria for types of projects eligible for land acquisition. Therefore, it is necessary to assign the Government to detail relevant concepts and clarify criteria for types of projects eligible for land acquisition. In the long term, there should be a roadmap to promulgate a direct-adjustment law related to the determination of cases of land acquisition in the public interest, the set of criteria for determining cases, as well as the method of calculating compensation for cases, which is being implemented uniformly in South Korea through the 2000 Law on Land acquisition for Public Projects and Compensation (SON, nd, p.72).

Secondly, according to Thai (nd) the criteria for evaluating cases of land acquisition for socio-economic development should clarify the process of land acquisition to implement projects that bring a valuable value to the community or the country when the interests are concentrated in the hands of some subjects is the risk of unfair division of interests. Accordingly, the criteria for evaluating land acquisition projects for use for socio-economic development purposes in the national and public interests should be noted whether economic activities are associated with social objectives or not; in projects subject to land acquisition, it is necessary to prove that the purpose of the use is in the national and public interests; The purpose of land acquisition for socio-economic development is not allowed to be simplified or expanded; accordingly, cases of land acquisition for socio-economic development in the national and public interests should be strictly prescribed in law documents, avoiding the abuse of expanding the scope by guiding documents. In the long run, it is necessary to promulgate a law that directly regulates land acquisition cases; the legalization of a law will be stable and uniformly applicable at the national level. The purpose of the acquisition, as well as the implementation process, should be supervised by the National Assembly, the Prime Minister, the People's Council, and the judiciary to develop a set of project evaluation criteria; this set of criteria should assess the scope (scale) of the project that directly affects the environment, economy and society in the area where the project is implemented, as well as delimit the size of the project into different norms. According to Nhan and Anh (2022, p.11-12)

“With this criterion, it will help localities and competent management agencies in deciding to invest in the project, overcome the current shortcomings and limitations, and not be confused in determining the size of the area of the socio-economic development project in the national and public interests that must be acquired land. For the same type of project, the competence to decide on investment of each administrative level must be clearly and specifically prescribed in terms of project area while determining separate criteria.”

Thirdly, the Law on Construction Investment has four criteria for projects of national importance, similar to the 4/5 criteria designed in the Law on Public Investment. On the other hand, according to the Law on Construction 2014, projects of national importance are also specified according to the law's criteria on public investment. Therefore, it is possible to amend the case of land acquisition for socio-economic development in the national interest under the National Assembly's investment policy by specifying national important projects referred to in the Law on Public Investment: “Execution of national important projects under the National Assembly's investment policy that require land acquisition; National important projects are specified in the Law on Public Investment.” This regulation helps to understand and apply the law uniformly.

- **Clearer delineation between land acquisition projects for socio-economic development in the national and public interests and production and business projects and works**

Firstly, it is necessary to clearly define the concept of “land acquisition for socio-economic development in the national and public interests,” helping to correctly identify application cases under this mechanism, ensuring that land acquisition is necessary for the national and public interests. When listing land acquisition cases for set purposes, it is necessary to clearly explain the concepts in such a list to ensure proper and uniform understanding and accurate classification of socio-economic development projects for national and public purposes.

Secondly, the 2013 Land Law, as well as the draft Land Law (amended), should be separated into three cases: (i) land acquisition for national defense and security purposes; (ii) land acquisition for economic development in the national interest; (iii) land acquisition for economic development; in which, the purpose of land acquisition for economic development in the national interest only covers the implementation of essential projects decided by the National Assembly and the implementation of projects approved by the Prime Minister, investment decision. Besides, Clause 3, Article 63 of the Land Law should be amended along the direction of separating several particular projects, such as investment in and trading in markets, cemeteries, crematoria, funeral parlors, and dwelling houses in new urban centers into separate groups in order to specify appropriate acquisition and compensation mechanisms. From this issue, it is necessary to clarify whether these projects serve the common interests of the community or not. If the project is funded by the State budget and the compensation is paid at the price set by the State, it shall be used for non-profit public purposes; if the non-budget capital is mobilized and the business investor earns profits, the State shall set a separate price bracket for compensation, which must be close to the market price or switch to the mechanism where the investor agrees to lease or receive the land use right transfer (NAM & LONG, 2021). Thirdly, in order to clearly distinguish between land acquisition projects for socio-economic development in the national and public interests and production and business projects and works, it is necessary to clarify cases of land acquisition for the construction of religious works, focusing on grounds for land allocation for the construction of religious establishments and whether the construction of religious establishments is included in land use master plans. As well as socio-economic factors when constructing these works, it is necessary to assess the environmental impact of religious facilities because the pilgrimage “praying” will ultimately affect transportation and the environment... Therefore, the land use purposes of religious organizations should be divided into three groups: (i) For religious purposes (religious worship, religious ceremonies); (ii) For purposes related to religious activities such as charity, education, and health; (iii) For business purposes. If falling in the first case, the socio-economic factors will be considered; in contrast to the second or third case, the agreement to donate land for the construction of facilities or the agreement to transfer land use rights should be considered instead of covering the above cases, all have the right to acquire land for socio-economic development.

- **Solution to complete the land use planning and plan, determine the purpose of land acquisition for socio-economic purposes**

Land use plans are the plans of local authorities. In particular, they are detailing the annual demand for land use. Therefore, if this mechanism is implemented scientifically, the land will be used properly, according to an economical and efficient equation. In order to improve the quality of land use master plans and plans and determine the correct purposes of land acquisition for socio-economic development, the following issues should be raised:

Firstly, Cuong (2022) points out that it is necessary to detail the terms “economical and efficient use of land” and “acquisition of adjacent land” to generalize the criteria for assessing the thriftiness and efficiency in land use. To achieve the safety threshold, it is necessary to think that the law should have a mechanism to

protect land resources and prioritize the use of fertile land for agriculture; only land that cannot be renovated will be reserved for non-agricultural development purposes towards the principle of economical and efficient use of resources.

Secondly, the Land Law and its implementation documents should add provisions to approve land use plans. The institution must clearly state the time for appraisal and approval of land use plans, for cases where the plans are not approved, the corresponding adjustment time, and the mechanism for collecting people's opinions on how they are implemented. In this case, the law should be clarified. Separate sanctions shall be imposed on each organization or individual that breaks the principle of observance of the order and procedures for elaboration and appraisal of land use plans. In addition, it is necessary to clarify the mode of making counter-arguments from the Council for Appraisal of Land Use Plans, the approval rate for the plan to be adopted, and specify the legal responsibility of the members of the Appraisal Council for the results of an appraisal of land use plans so that the land use plans are truthful and objective. In particular, the Council must gather leading experts related to land, environment, and others to raise the quality of the original land use plan (SON, 2021a).

Thirdly, to establish a mechanism for handling cases in which state agencies competent to organize the elaboration of land use plans fail to conduct surveys and record people's comments upon the elaboration of land use plans or the collection of people's comments on land use plans fails to comply with regulations on the time limit for gathering comments to be 30 days from the date competent state agencies decide to collect comments.

– For district-level annual land use plans, organizations tasked to elaborate these plans shall consult communities within the scope of land users in residential areas. The community's consent is defined as the number of community members who consent must reach at least 75% of the total number of community members for all land areas in communes, wards, or townships subject to change of use purpose in the land use plan period. Annual district-level land use plans shall only be approved by competent authorities when the community consents.

– The mechanism for community consultation may be implemented once or many times until the community's consensus is reached. After each consultation, the plan-making organization shall summarize and report the consultation results and adjust the plan toward reaching a consensus in the next consultation.

Fourthly, the mechanism for collecting comments should be established in parallel with the explanation from the competent authority. However, the 2013 Land Law has not specified the explanation after collecting people's comments resolving the settlement procedures (direct explanation to the people or written explanation to the people). Since then, the law needs to design a separate law on accountability in the Land Law in the direction of outside the internal accountability vertically; the current movement trend of local governments is to pay more attention to external accountability, which means that local governments must take more direct responsibility before the people and organizations in society. In order to materialize the above contents, it is necessary to perfect legal grounds prescribing the mechanism for an external explanation by local administrations, first of all, socio-political organizations, professional organizations, press agencies, and so on, to build compelling legal grounds through the Land Law, and at the same time to adopt mechanisms for practical inspection and supervision of the explanation related to district-level annual land use plans, ensuring the accountability of local administrations.

Fifthly, Son (2021b, p.143) avers that the additional proposals collecting comments from the people should also be reformulated when the land use plans are adjusted. Besides, to add regulations on the responsibility to publicize and publicize land use plans, the time and roadmap for implementation. At the same time, agencies responsible for publicizing information on planning and plans that fail to implement or fail to implement them within the prescribed time limits shall be handled by their heads according to law. From the



above analysis, the amendments and supplements are necessary for the mechanism to ensure the lawful rights and interests of the people towards a fair, democratic, and civilized society.

- **Decentralization of competence to decide on the approval of land acquisition projects for socio-economic development in the national and public interests**

The National Assembly shall promulgate land laws and resolutions, decide on national-level land use master plans and plans, and exercise the supreme right to supervise land management and use nationwide. People's Councils at all levels shall exercise the rights to approve local land use master plans and plans before submitting them to competent agencies for approval; to approve land price tables and the Land acquisition for implementation of socio-economic development projects in the locality's national and public interests; and to supervise the implementation of the land law in the locality. In particular, current regulations classify three groups of cases of land acquisition for socio-economic development in the national and public interests at three levels: first, for the implementation of important national projects in which investment is decided by the National Assembly and the land must be acquired; second, for the implementation of projects in which investment is approved or decided by the Prime Minister, and the land must be acquired; and third, for the implementation of projects approved by provincial-level People's Councils, and the land must be acquired. The decentralization of competence to decide on the approval of projects on land acquisition for socio-economic development in the national and public interests must express the following contents:

Firstly, land and some other resources are public property under the ownership of the entire people, and the State represents the owner and unified management (Article 53 of the Constitution in 2013). The role of the owner's representative and unified management of the State, namely the National Assembly, the Government with the specialized agency is the Ministry of Natural Resources and Environment, the People's Councils, and People's Committees at all levels. Therefore, it is appropriate to assign the two highest State management agencies, namely the Prime Minister, to decide or approve projects that require land acquisition, depending on each type of project. The National Assembly is elected by the people. The Prime Minister and the People's Council are elected by the National Assembly among the National Assembly deputies at the proposal of the President, thus demonstrating one of the rights of the State to dispose of land and demonstrating the spirit of "all people have the right to own and dispose of land." The division of powers in the abovementioned cases is necessary to avoid concentrating powers on a single state agency appraising and approving a project subject to land acquisition. The division of powers depends on the size and importance of the project subject to land acquisition in order to limit negative phenomena when concentrating powers on a single state management agency deciding and approving the investment policy. In addition, this decentralization helps reduce the workload because if focused on a single agency, helping to implement the policy of reforming administrative procedures, the locality can decide on projects under local management through the People's Council. From there, enhance the role and responsibilities of the provincial People's Council. The determination of the competence to supervise and decide on projects permitted for land acquisition along the direction of promoting the role of the elected bodies being the National Assembly at the central level and the People's Councils in the localities shall create an effective mechanism to limit the abuse of power and arbitrariness of the management bodies in deciding on the land acquisition for projects. However, land acquisition cases in implementing projects approved by provincial-level People's Councils are still significant in scope, and construction works have not yet been clearly and concretely identified according to the setlist. When the necessity is unclear, land acquisition for the national and public interests will continue to lead to abuse in land acquisition. Therefore, when elaborating on documents guiding the implementation of the Land Law, it will be necessary to clarify the role of provincial-level People's Councils in controlling land acquisition. On the other hand, provincial-level People's Committees still have many other competencies, such as land allocation, land lease, land acquisition decisions, and land valuation. Meanwhile, the role of the provincial People's Councils is to exercise the right to supervise the management and use of land under the Constitution, based on the Law on

Organization of Local Governments in 2015. Specifically, through the land price list (clause 1 Article 114 of the Land Law 2013) and consider approving land acquisition cases when implementing projects that require land acquisition under (clause 3 Article 62 of the Land Law 2013). Therefore, the role of the provincial-level People's Council is still quite limited. In order to bring to the fullest the role of the provincial-level People's Council as the voice of voters, it is necessary to work out regulations clarifying this representative role.

Secondly, it is necessary to clearly define the roles and powers of provincial-level People's Councils in determining land acquisition cases under Article 62 of the 2013 Land Law. Thereby, provincial-level People's Councils shall have a basis for strictly controlling projects subject to land acquisition, paying attention to projects prone to abuse for socio-economic development in the public interest but mainly for economic benefits when detailing the role of the People's Council in controlling land acquisition in order to limit land acquisition for improper purposes. In addition, in order to settle matters, the provincial-level People's Councils shall meet only twice a year while ensuring their roles and responsibilities in land management and not obstructing the implementation of socio-economic development projects, it is necessary to assign the competence to the Standing Boards of the provincial-level People's Councils to supervise projects which need to be acquired or supplement projects which must be acquired between two sessions of the People's Councils.

- **Solutions for balancing interests and ensuring people's livelihoods after the State expropriates land for socio-economic purposes**

Firstly, finalizing compensation and ground clearance regulations for project implementation is essential in regulating and balancing the interests of parties to real estate projects: the State, persons whose land is acquired, and project investors. In order to settle this relationship, the Land Law and legal provisions on compensation and ground clearance should be amended and supplemented along the directions:

1. Determination of principles for calculating land prices subject to land use levy when the State allocates or leases land for project implementation to investors in proportion to land prices used for compensation calculation upon land acquisition by the State.
2. In order for the compensation, support, and resettlement when the State acquires land to ensure democracy, publicity, objectivity, and fairness, it is necessary to record more specifically the right to request the State agency to consider and adjust the compensation, support, and resettlement plan if the rate of people who disagree with the compensation, support, and resettlement plan is over 50% (or another reasonable rate)
3. Recognize the encouragement of project investors to "expenditure" or "supplemental support" for people whose land is acquired in addition to the approved compensation, support, and resettlement plan. Accordingly, it is possible to consider subtracting this cost from the land use levy payable by the investor or record these costs as legitimate project investment costs.
4. To supplement regulations on handling and regulating the added value (geographical difference) of land around the project fence. In which to consider for people whose land is acquired to benefit satisfactorily from this new difference.

Secondly, finalizing regulations on cases in which project investors agree to receive transferred or contributed agricultural land use rights to implement non-agricultural projects is necessary. Specifically:

1. Amending and supplementing regulations on expenses deductible from land use levy payable to the State in case real estate project investors implement agreements on receipt of transferred or contributed agricultural land use rights as capital (the provisions on the level of deduction should be calculated based on the balance with the land use levy collected by the State when changing land use purposes and/or supplementing the principle of offsetting part of the cost of ground clearance for

project investors).

2. Consider amendments to the Land Law, the Law on Housing, and relevant documents on procedures for agreement on transfer or contribution of agricultural land use rights to execute non-agricultural projects to ensure consistency. In particular, consider skipping the procedure “Approval of a competent state agency for an economic organization to receive transferred, contributed capital or leased agricultural land use rights for project implementation.”

Thirdly, complete regulations on the selection of investors in real estate projects and other regulations related to the relationship between procedures for selecting investors in real estate projects and procedures for approval of investment policies.

Fourthly, in order to ensure the land transfer on schedule and harmonize the community’s and land owners’ interests, the State shall establish two legal mechanisms for forcible land transfer:

1. Consultation (agreement) in this mode, the person with land use rights will directly negotiate with the State on compensation and benefits. It should be noted that the State will not determine the compensation price for land but rather decide by valuation consultancy organizations based on harmonizing benefits with the land price people can transfer in the market.
2. The issue of coercion, forcing people to transfer land, is that 2 to 3 independent valuation companies implement a case within the limits of determining land prices. The law should have a mechanism to assign the responsibility for valuation to an independent organization and remove the valuation task of the provincial People’s Committee or the Valuation Council.

• **Solutions to complete the mechanism of compensation, support, and resettlement when the State acquires land for socio-economic development purposes**

Regarding mechanisms and policies on compensation, support, and resettlement, although the 2013 Land Law and documents guiding the implementation of compensation, support, and resettlement upon land acquisition by the State have been concretized, issued synchronously and promptly to ensure the harmony of interests of the State, people with land acquired and investors. However, certain limitations exist, such as mechanisms and policies on compensation, support, and resettlement when the State acquires land that has not yet been “true” to ensure democracy, publicity, objectivity, and fairness. Land prices for compensation are still imposed and decentralized to provincial-level People’s Committees for decisions with unclear qualitative criteria. The current legal documents on compensation and support have not yet adjusted all the actual problems arising in practice, leading to difficulties and confusion in the implementation. Accordingly, to clarify this issue, it is necessary to pay attention to the following core issues:

Firstly, the method of conducting compensation when the State acquires land for socio-economic development purposes should be carried out according to the consultation process. Accordingly, when it is necessary to use land for socio-economic purposes, public authorities will negotiate directly with the person whose land is acquired. When the consultation process fails, the State will consider coercive measures to acquire land. Where the data can be applied when the consultation process fails, the land users disagree with the land acquisition by the State.

Secondly, in order to avoid damage that may not be anticipated by law or the compensation prices are not commensurate with the damage, the project investors shall not be allowed to take the initiative in determining the compensation prices, be forced to assign the damage quantification and the compensation unit prices to no less than two valuation bodies, which shall operate independently after the model of State or joint-stock companies. When calculating the compensation for houses, the compensation shall be calculated according to the necessary conversion cost, in addition to data on several cases, such as those in which it is challenging to convert houses, where the conversion cost is higher than the property value, where

the project owners buy houses for direct use instead of public purposes for socio-economic development.

Thirdly, the compensation for property damage when the State acquires land for socio-economic development purposes should be determined by the actual damage of the person whose land is acquired. Accordingly, Clause 3, Article 26 of the 2013 Land Law should be amended in the direction: “3. When the State acquires land for defense or security purposes, for socio-economic development in the national or public interests, land users shall be compensated, supported, and resettled by the State according to actual damage,” instead of determining damage according to current law.

Fourthly, concerning land compensation, there is the view that legislators should remove the principle that compensation is “at market price” because the market price is considered the agreed price for each piece of land (case by case) at the specified location. In developed countries such as Korea, Brazil, and others, when people need land for community purposes, the State will pay most of the compensation through land bonds. This experience limits cash payments simultaneously for people who are not yet oriented to spend, making people impoverished when using compensation for improper purposes.

Fourthly, with the experience of acquiring land for public purposes, according to the Law on Land Acquisition for Public Projects and Compensation 2000, in South Korea, Vietnam should also distinguish the case of compensation when the State acquires two cases:

1. Land acquired for national defense and security purposes, railway, road, airport, hydropower, dam, school, library, museum, and others, the State shall be responsible for compensation through consultation, which is carried out through public authorities agreeing with the person whose land is acquired on the plan and method of compensation.
2. Land acquired for housing construction projects, infrastructure construction in new urban areas, residential areas for lease or transfer..., the investor will make the compensation. Accordingly, the investor can make compensation in package and phase. In the lump sum method, the investor pays a lump sum (either in cash or company shares), buys insurance for this object and also means that the two parties will no longer have any constraints, in contrast to the phased payment, which requires the investor, in addition to compensation, to create a livelihood for the person who lost land through receiving them into the workplace when the project is completed, responsible for training the person who lost land in each position to suit later work (TUYEN, 2012).

Fifthly, on the support levels for training, occupation change, and job seeking in case the State acquires agricultural land for households and individuals directly engaged in agricultural production: Regarding policies, it is necessary to diversify forms of support. Persons whose land is acquired are entitled to vocational training support according to their demands, free-of-charge vocational training and job recommendation consultancy at employment service centers, and foreign language training support if they work abroad under contracts. At the same time, they are prioritized to borrow capital from the Social Policy Bank for vocational training, job creation, and labor export under contracts. To diversify forms of ensuring livelihoods for people with acquired land: monetary support, job-seeking support, and capital lending. To open more financial management and investment classes parallel to job training and seeking classes (LANG, 2021).

### **To formulate institutions to clarify the responsibilities of judicial agencies for controlling and supervising the purposes of land acquisition**

The experience of reviewing the use of land for public purposes in the United States shows that most of the time, courts of appeals will be given the power to review the use of public land to make decisions about the legitimacy of taking land from the State. Accordingly, courts will never assume the constitutionality of taking land is a simple matter when the legislature has deemed it constitutional. When other scholars are



skeptical of judicial respect for public-utility land decisions, legislatures will have the right to require some level of oversight, though only sometimes rigorous. Scientists in the United States require thorough oversight of the economic development of decisions to acquire land for public or other public uses. At the same time, he demanded that an economic model of land expropriation be developed that, in general, mandated that “courts should give virtually complete deference to legislative determinations of public use.”

This model would require courts to scrutinize a decision to use a land appropriation right when one or a handful of people would gain a surplus value (ELICKSON & BEEN, 2000; MERRILL, 1986). Therefore, even if legislative differences are ordinarily appropriate for land appropriation decisions, using a land appropriation right for economic development may require stricter judicial oversight. Through this, Vietnam needs to build institutions to clarify the responsibilities of judicial agencies in controlling and supervising the purpose of land acquisition, gradually expanding the jurisdiction of the Court, allowing the Court to implement measures to value assets, value assets for complaints about decisions on land acquisition, compensation, support, and resettlement, and allowing the Court to have the right to judge the purpose of land acquisition for socio-economic development goals, although this was delayed in Resolution No. 18-NQ/TW dated June 16, 2022, has not been institutionalized in the draft Land Law (amended)

## CONCLUSION

Land acquisition is an objective matter in the national economic development process, serving the common objective of socio-economic development. Although, the law on land acquisition has changed over time to suit the social context. However, there still exist “gaps” in legal regulations when the interests of subjects such as the State, investors, and people whose land is acquired in compulsory land transfer and land use for socio-economic development objectives have not yet been harmonized. The paper has pointed out some issues: The scope of land acquisition for socio-economic development in the national and public interests remains broad and unclear; there are no provisions related to criteria for works and projects subject to land acquisition for socio-economic development in the national and public interests; the State has not yet managed to increase the value of land due to poor investment in order to increase budget revenues, failing to ensure equality among persons subject to land acquisition. In addition, mechanisms and policies for land acquisition for socio-economic development in the national and public interests lack criteria for socio-economic development works and projects in the national and public interests that require land acquisition; lack of regulations on the State’s proactive land acquisition under the approved land use plan to create a “clean” land fund for auction of land use rights for construction of socio-economic development works and projects in the national and public interests; lack of specific mechanisms and policies for land acquisition for projects, in which, it is necessary to add regulations on handling of assets invested in land, competence, valuation methods and determination of the residual value of assets invested in land. For projects implementing the mechanism of self-agreement as prescribed in Article 73 of the Land Law, it is still a significant inadequacy when there is no regulation on the proportion of people’s consent in the projects.

The author has focused on clarifying several crucial issues. How do we determine the criteria to ensure land acquisition for socio-economic development purposes to balance the interests of the parties? Besides, it also clarifies that the provisions on land acquisition for socio-economic development purposes have ensured the balance of interests between the parties involved. From there, provide solutions to ensure scientificity and modernity and limit the scope of land acquisition for socio-economic development in Vietnam in the current period.

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