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| RESEARCH ARTICLE

## Assurance of Market Principles in the Valuation of Land Use Rights when the State Recovers Land in Vietnam

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| ABSTRACT

Valuation of land use rights is one of the steps to ensure the lawful rights and interests of people whose land is recovered. In Vietnam, the state's valuation of land use rights upon land recovery is conducted and decided upon by competent state agencies. The process of industrialization and modernization to develop the country requires the State's valuation of land use rights upon land recovery to ensure the market principles. However, the 2013 Vietnam Land Law has yet to reflect this principle in the regulations on land use right valuation when the State recovers land. Therefore, the system of regulations on principles, subjects participating in the valuation of land use rights, and the process of conducting this activity must be completed to ensure the balance of interests between the State and the persons whose land is recovered. Through clarifying the concept of market principles when the State recovers land, the article proposes solutions to improve regulations on the principles, subjects, methods, and process of land use right valuation when the State recovers land in Vietnam.

| KEYWORDS

Land valuation, market principles, land recovery.

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### 1. Introduction

#### 1.1 The concept of market principles in the land use right valuation when the State recovers land.

##### 1.1.1 The concept of market principles

Vietnam is developing a socialist-oriented market economy under the management of the State of the People, by the People, and for the People. Thus, market principles are first identified and determined through the concept of "market."

The market is an economic category closely related to the division of social labor and commodity production. According to V. I. Lenin, "Where and when there is a division of social labor and commodity production, there is a market."<sup>1</sup> Thus, this concept is geared toward changing and forming different industries and occupations in society and commodity production. Commodity production is an economic organization in which products are produced for exchange or sale on the market.<sup>2</sup>

According to Adam Smith, the market can be understood as a place to exchange goods or services. The market is "an inevitable consequence of human nature bias... that is, the bias to barter or exchange one thing for another."<sup>3</sup> According to him, the division

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<sup>1</sup> Lenin, V.I. (2005) V.I. Lenin (1893-1984), *A Complete Volume - Volume 1*, National Political Publishing House, Ha Noi, p. 114.

<sup>2</sup> Ministry of Education and Training (2018), *Textbook of basic principles of Marxism-Leninism*, National Political Publishing House, Ha Noi, p. 186.

<sup>3</sup> Smith, A. (1997), *Wealth of Ethnic Groups*, Education Publishing House, Ha Noi, p. 63.

of labor results from the exchange. Accordingly, this principle of peer-to-peer exchange of goods is also known as "the invisible hand." Accordingly, the interests of the whole community are strengthened and developed through the participation of any individual who desires to maximize their profits in a market economy. A typical example of this theory is the law of supply and demand in the market, when the amount of supply and demand controls the price of goods. However, in today's society, the State must intervene in the economy through laws, taxes, and others, also known as "tangible hands." Thus, the market is defined as where the exchange of goods or services is affected by the rules, especially the law of supply and demand that affects the price of goods.

According to Malcolm Adiseshiah, markets are formed based on the exchange of goods they have in excess to receive goods they do not have or lack. Accordingly, each individual is considered to have some initial asset, and they begin to look around other individuals in similar circumstances. The difference between them is the package of goods that each person currently has, from which comes the desire to get rid of excess goods to get about goods that they do not have enough or do not have. These exchange transactions are the origin and basis that led to the emergence of the market. The market is where many participants, goods, and some good items are expressed.<sup>4</sup>

On the other hand, three typical definitions of agricultural economists are often referred to. In 1957, Cochrane introduced the concept of a market as a sphere of demand or space, where (a) demand and supply forces are active, (b) to determine or modify prices, (c) when ownership of some quantity of goods or services is transferred, and (d) certain physical and institutional agreements may be evidence.<sup>5</sup>

In 1970, Bressler and King defined a market as a region or context in which producers and consumers communicate, where supply and demand conditions operate, and where ownership of goods is transferred. The actual movement of goods in space or time is often but not necessarily involved.<sup>6</sup>

Shepherd et al. (1976) defined the market as a group of buyers and sellers that compete freely with the means of transaction.<sup>7</sup> Thus, this definition also shows the law of market competition between sellers and buyers.

Linguistically, the market is (1) the area of goods circulation, the overall aggregate of trading activities; (2) the part of the space in which the eye can see.<sup>8</sup> Thus, in conjunction with definitions of the market, it is possible to identify the market's most basic, general characteristics as the occurrence of the exchange of goods and specific laws.

From the definitions of the market, the market principle in land pricing is understood as the pricing must be based on the grounds, the basis of the market law. Accordingly, the principle is the basic set necessary for a series of jobs<sup>9</sup>. Thus, the market principle is defined through the specific rules the market indicates, such as the law of supply and demand, the law of competition, and others. These rules impact the "exchange" (transfer, mortgage, and others) of land use rights in the market among land users. From there, land prices shall be determined not purely based on the will of competent administrative subjects but on the market's laws. Accordingly, some authors have introduced the concept of "market land price," typically as follows: "Market land price is the selling price of the right to use a certain piece of land that can be done by the ability of the seller and the buyer of the right to use land in a market with the impact of the law of value, the law of supply and demand, the law of competition; it manifests in money agreed by the transferor (seller) and the transferee (buyer) themselves at a specified time. The market value of land is determined based on the following factors: The agreement between the seller and the buyer, the Purposes of the buyer and the seller, the Land demand of the market, and the Impacts of the living environment and society."<sup>10</sup>

### **1.2 The concept of land use right valuation according to the market principle when the State recovers land.**

Valuation can be understood as the determination of the value of the asset under the market at a specific location and time. The 2012 Vietnam Price Law states, "Valuation is the competent state agency or organization or individual producing and trading prices for goods and services."<sup>11</sup> However, land use rights can be considered a particular type of goods because, in Vietnam, owners and users are not identical; exchanging these goods must also depend on land use master plans and plans decided by state agencies.

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<sup>4</sup> Kurien, C.T. (2015), 'The market economy: theory, ideology and reality,' *Real-word economics review*, N. 71, p. 75–91.

<sup>5</sup> Cochrane, W. W. (1957), 'The Market as a Unit of Inquiry in Agricultural Economics Research,' *Journal of Farm Economics*, No. 39, p. 21-39.

<sup>6</sup> Bressler Jr., R.G. and King, R.A. (1970), *Markets, Prices, and Interregional Trade*, New York: John Wiley and Sons, p. 74, 75.

<sup>7</sup> Shepherd, G.S., Futrell, G. A. and Strain, J.R. (1976). *Marketing Farm Products*, 6th ed. Iowa State University Press, Ames, 1976, p. 173.

<sup>8</sup> Phe, H. (Ed.), (2019), *Vietnamese Dictionary*, Hong Duc Publishing House, Ha Noi, p. 1188.

<sup>9</sup> Phe, H. (Ed.) , (2019), *Vietnamese Dictionary*, Hong Duc Publishing House, Ha Noi, p. 879.

<sup>10</sup>Tra, H.T.L. (Ed.), (2006), *The textbook on land valuation*, Ha Noi Publishing House, Ha Noi, p. 27.

<sup>11</sup> Article 4 (5) of the 2012 Price Law.

Therefore, land use right valuation is subject to independent and separate adjustment of the Land Law following relevant regulations on land use management.

The market economy theory indicates that individuals are delighted when exchanging, and exchange activities will set prices. Land pricing is an activity based on market laws and considers the factors that constitute the value of land formed based on consensus from the people. Besides complying with the law on principles, methods, order, and procedures for land valuation, the land use right valuation on market principles is based on the grounds and basis of market law. The 2013 Vietnam Land Law has provisions on the principles of land valuation under the market's everyday land use right prices. However, in the spirit of Resolution No. 18/NQ-TW, it is necessary to continue renewing valuation methods to suit the socialist-oriented market economy.

On the other hand, land pricing involves determining the price and value of land. The fundamental difference between price and value is that market prices specify how much an asset can be sold for in a specific period; the value specifies the actual value of an asset compared to other assets<sup>12</sup>. Thus, the market value of land is the price determined based on the factors constituting the land value, such as profitability, location, size, land use purpose, and supply-demand relationship of that type of land in the market<sup>13</sup>. However, in Vietnam, the land price, i.e., the price of land, is determined based on the value of land use rights and is mainly implemented by state agencies under the concept in Clause 19, Article 3 of the 2013 Land Law.

Land pricing is one of the four rights of the State to dispose of land. It is an essential tool in establishing an appropriate land management mechanism in the direction of a market economy. It is the basis for transferring land use rights with payments, auctions, and contractual agreements between managers and users. Based on land assignment with the collection of land use levies, the land users shall have the right to re-assign, mortgage, inherit, and lease land... and the State shall have the right to recover land according to the demands and interests of the entire society.

Land price determination must ensure a firm grasp of land market data based on economic and natural properties of land parcels, full consideration of the impacts of factors, projected incomes from land and land use policies, methods, principles, and synthesis to determine prices for one or many land parcels at a specific time with a particular right in the land use right. However, besides the technical factors, the people are the most important in determining the land price. The subjects participating in the valuation must meet professional qualifications, and the new methods and principles must be optimized. Land price is one of the areas requiring high expertise, so the training and retraining of human resources to manage the land price is very necessary<sup>14</sup>. Therefore, in determining the value of land use rights on the market principle when the State recovers land, it is required to ensure the close participation of individuals and organizations to ensure expertise in the valuation. On the other hand, to ensure objectivity, these subjects shall participate in an independent position and role and not be subject to the control of state agencies.

In summary, the valuation of land use rights on the market principle upon land recovery by the State is *the appraisal of results of land price determination by independent valuation organizations based on market laws and the principle of objectivity and honesty to determine specific prices for each type of recovered land as a basis for calculation of compensation, support, and resettlement*.

## **2. Some restrictions on the valuation of land use rights when the State recovers land do not ensure the market principles.**

### **2.1 Issues on the principles of valuation**

Currently, Article 112 (1) of the 2013 Vietnam Land Law stipulates the principles of land pricing as follows: (1) According to the lawful land use purpose at the time of pricing; (2) According to the land use term; (3) Following the typical land prices on the market of the land with the same use purpose transferred, the winning price of the land use right auction for places with land use right auction or income from land use; (4) At the same time, adjacent land parcels with the same use purpose, profitability, income from land use are similar, the price is the same.

From the above-prescribed principles, some inadequacies can be noticed as follows:

*Firstly, the Land Law does not provide for the principle of publicity and transparency.* Specifically, Article 64 (3) of the 2013 Constitution of Vietnam stipulates that "*The land recovery must be public, transparent and compensated under the law.*" Therefore, the valuation of land use rights when the State recovers land must also be public and transparent because this is one of the steps to implement land recovery and ground clearance, which is constitutionalized.

<sup>12</sup> Ewert, W.A. (1979), *The Saskatchewan Rural Land Assessment Manual, Vol.2: Value and Valuation Theory in Assessment*. Min. Municipal Affairs, Regina, Saskatchewan, Canada, 90p. [Gives a good overview of the valuation system used in Saskatchewan Province in Canada].

<sup>13</sup> Cuong, H.V. (Ed.) , (2022). *State Management of Land Economy under Market Mechanisms in Vietnam*, National Political Publishing House, Ha Noi, p. 254.

<sup>14</sup> Than, C.H. (2022), *State management of land prices*, National Political Publishing House, Ha Noi, p. 83.

Publicity and transparency are criteria to be ensured in land valuation so that people are entirely, promptly, and accurately informed of the law and all other information related to implementing part or the whole of land valuation when the State recovers land. On the other hand, once the principle of publicity and transparency is ensured, the people's right to access information and supervision are also guaranteed, and the responsibilities of competent entities for explanation in valuation arise.

*Secondly, it is impossible to determine the factor "consistent with the common land price in the market."* This issue has been discussed for a long time since the formulation of the Land Law in 1993 to 2003, and the 2013 Land Law was amended and supplemented in 2018. Besides, in the current real estate transaction market conditions, it is challenging to identify accurate databases and information related to land use right transactions. There have appeared many cases where the land prices of the conducted transactions do not reflect the correct market prices due to being dominated by various factors such as price coercion, sale and purchase between family members, or sale and purchase whereby the seller and the buyer agree to inscribe the contractual prices lower than the actual transfer prices in order to reduce the payable tax rates. Based on the information of such transactions, the land price determination will, of course, need to be revised.

The land price used as a basis for compensation when the State recovers land for national defense, security purposes, or socio-economic development purposes in the national or public interests is inconsistent with the market price, specifically being much lower than the market price.<sup>15</sup> With the amount of compensation so low compared to the prevailing land prices on the market, would they have enough money to buy another house, or would those doing business have enough money to find another place to do business to cover their living?<sup>16</sup> Since then, it can be seen that the principle of determining land prices under Article 112 (1c) of the 2013 Land Law, amended and supplemented in 2018, has not been effectively applied in practice when the compensation land price is determined to be much lower than the typical land price in the market. Accordingly, Article 3 (3) of the Government's Decree No. 44/2014/ND-CP of May 15, 2014, providing for land prices, explains that *The typical land price on the market is the price that appears with the most frequency in transactions that have been transferred on the market, land use right auction winners, land prices determined from expenses and incomes of land parcels with the same use purpose in an area and for a certain period.* However, because it is not possible to "quantify" the principle of determining the land price "in accordance" with the typical land price on the market," it is difficult to determine the land price for compensation to achieve high consensus from the people. On the other hand, the typical land price on the market, by the way, determined in Decree No. 44/2014/ND-CP, shows that it is not feasible to apply in practice because the current mechanism cannot accurately determine the input data and control the cost and income of the land parcels accurately.

Specifically, according to Clause 2, Article 18 of Decree No. 65/2013/ND-CP, *the price of land use right to transfer is determined to be the actual price stated in the transfer contract at the time of transfer.*<sup>17</sup> For example, in a typical case, the land use right transfer contract between husband and wife D and L is notarized according to regulations, recording the value of land use right transfer of VND 500,000,000<sup>18</sup>. However, the delivery record on the same day shows that Ms. L delivered to husband and wife D and L an amount of VND 3,200,000,000. Thus, the value inscribed on the transfer contract does not reflect the actual transaction, so it cannot be considered data to serve as a basis for determining land prices when the State recovers land. In addition, "our country has 1673 unformed projects, investors have known in advance information, gathered and speculated, land prices will be pushed up five times higher, even ten times the actual price. Moreover, people are unlikely to benefit because investors had gathered land before, pushed prices up, set new market prices, and enjoyed."<sup>19</sup> Therefore, the basis for determining land prices when the State recovers land is suitable to the situation and ensures harmony of interests. However, it is also problematic when the land market still exists at "two prices."

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<sup>15</sup> Giang, T. (2019), 'Land price framing: it is time to change,' Ministry of Natural Resources and Environment's e-newspaper, Financial Times, <https://thoibaotaichinhvietnam.vn/bo-khung-gia-dat-va-boi-thuong-tai-dinh-cu-la-hai-van-de-cot-loi-122741.html> , accessed on [October 20, 2021].

<sup>16</sup> Vo, D.H. (2013), 'Mechanism of land recovery by the State and settlement of compensation and support for persons subject to land recovery from the perspective of international experience', Proceedings of the seminar on *Identifying difficulties and proposing solutions when recovering land for implementation of construction investment projects in Can Tho city*, Can Tho province, April 2013.

<sup>17</sup> Decree No. 65/2013/ND-CP of the Government dated June 17, 2013, detailing several articles of the 2007 Personal Income Tax Law (amended and supplemented in 2012).

<sup>18</sup> The land use right transfer contract No. 10452, book No. 01/2022 TP/CC-SCC/HDGD is notarized at the Notarized Office of Nguyen Thanh Dinh, 146G Tran Van Hoai Street, Xuan Khanh Ward, Ninh Kieu District, Can Tho City.

<sup>19</sup> Son, D. (2018), 'Obsolescence in clearance compensation,' Thanh Nien Newspaper, <https://thanhvien.vn/bat-cap-trong-den-bu-giai-phong-mat-bang-185816491.htm> , accessed on [September 24, 2022].

Thirdly, the "pricing time" has not yet been specified. This regulation cannot be implemented synchronously and uniformly among localities, leading to arbitrary and inconsistent application. According to the provisions of the land recovery process, before issuing a land recovery decision, at least 90 days for agricultural land and 180 days for non-agricultural land, the agency competent to recover land must issue a land recovery notice<sup>20</sup> (it is three months for agricultural land and six months for non-agricultural land). However, if, according to the provisions of the Land Law and its guiding documents, the valuation date cannot be determined accurately, the land price used for compensation calculation does not reflect the land parcel's actual value. The land price on the market is unstable and constantly fluctuates, thus making the valuation on this principle unfair to all subjects having recovered land eligible for compensation. Because the land users are in the same area, certain localities recover land simultaneously. However, due to different valuation dates, the land price for compensation differs between the subjects.

The land valuation time must be before the time of compensation payment. According to the 2013 Land Law provisions amended and supplemented in 2018, determining the compensation land price is the time to decide on land recovery. The provisions are unreasonable because land prices change over time, even in a very short period. Meanwhile, determining the market price of land use rights is complicated according to the order and procedures prescribed by law, requiring much time to collect and evaluate data. Therefore, there will likely be a difference in market value due to the difference between these two timelines. Therefore, when there is a difference between the valuation date and the compensation payment date, the compensation value on the payment date must be added to the added value. However, this provision is invalidated by the Land Law itself because before issuing land recovery decisions, the determination of land prices must be conducted, and the Land Law also does not prescribe the maximum time limit for subjects to conduct the determination of land prices.<sup>21</sup> The lack of regulation on the valuation date makes the requirement of "determining the specific land price" under the principle of "conformity with the market price" at the time of the decision to recover land no longer meaningful because a regular market is inherently different in each day, each moment.<sup>22</sup>

## **2.2 The issue of subjects participating in valuation activities**

Firstly, the issue of subjects competent to decide on land use right prices when the State recovers land. Article 114 (3) of the 2013 Land Law, amended and supplemented in 2018, provides the competence to decide on specific land prices of provincial-level People's Committees. Provincial-level land administration agencies shall assist provincial-level People's Committees in determining specific land prices. During implementation, provincial-level land administration agencies may hire organizations with the function of land price determination consultancy to provide consultancy on determining specific land prices.

According to the above provisions, the entity competent to decide on specific land prices for compensation, support, and resettlement when the State recovers land is the provincial or district-level People's Committee, with the role of the head as the Chairman. However, "playing football while blowing the whistle" still exists in both the effective law and the upcoming bill when the power is concentrated on the Chairman of the People's Committee. It can be seen that the above provisions do not guarantee democracy and fairness because in order to ensure democracy in the valuation of land use rights when the State recovers land, it is necessary to ensure the participation of people whose land is recovered in the process of deciding prices.

Specifically, the Chairmen of the People's Committees of Provinces and Districts can recover land and decide the specific land price when the State recovers land. At the same time, this is the leading subject of the Chairman of the Council of Land Price Appraisal of provinces and districts. Thus, although many steps have been set with agencies and subjects participating in the valuation process, most of the power is still focused on the Chairmen of the People's Committees of provinces and districts. Since then, the specific land price used for calculating compensation, support, and resettlement upon land recovery by the State does not reflect the mechanism and method of determining land prices on the market principle stipulated in the Bill have not ensured democracy and fairness because in order to ensure democracy in the valuation of land use rights upon land recovery by the State, it is necessary to ensure the participation of persons whose land is recovered in the process of price determination.

Secondly, the participation of land price determination consultancy organizations. Under current regulations, organizations with the land price determination consultancy function are not required to participate in the valuation process; the results of price determination consultancy are optional, so provincial-level People's Committees quickly refuse to accept the valuation certificates. Because of this, Clause 3 Article 114 of the 2013 Land Law, amended in 2018, stipulates that provincial-level land administration agencies may hire organizations to advise on determining land prices to determine specific land prices during implementation.

<sup>20</sup> Clause 1, Article 67 of the 2013 Land Law, amended and supplemented in 2018.

<sup>21</sup> According to point a, clause 3, Article 69 of the 2013 Land Law, The Provincial People's Committee issues a decision to recover land on the same day as approving the compensation, support, and resettlement plan. In this plan, the compensation land price must be determined.

<sup>22</sup> Hien, P.T. (2016), *Law on Land Management and Use in Vietnam*, Can Tho University Publishing House, Can Tho, p. 146.

The hiring of valuation consultants to evaluate compensation for big projects has been slow as too few units have the legal person status in valuation. At the same time, many provinces hire valuation consultants, leading to a shortage of human resources and thus delaying the implementation tempo. Meanwhile, valuation consultants are organizations providing valuation services with professional qualifications and satisfying the prescribed conditions. In other words, ensuring the participation of the valuation consultation organization and acknowledging the results of this organization ensures specialization, fairness, and objectivity. However, there should be a mechanism to control the power, avoiding the impact of state agencies on this organization as well as avoiding the "matching" between the agency (environmental resources agency) and the hired organization (valuation consultation organization). From there, the land price of the consulting organization may reflect the market price of the land use right to ensure fairness, objectivity, and specialization in land pricing.

Typically, at the exact location of a land parcel, at one time, two organizations advising on land prices offer different prices and have a massive difference in the value of VND 4,813,145,280<sup>23</sup> and VND 7,013,743,000<sup>24</sup>. Even in one case, the competent authorities determined that "due to non-compliance with regulations on price appraisal, colluding with customers to appraise prices illegally, the service fee amount of VND 364,114,000 that HQ Company has received, is illicit income, which should be recovered to remedy the consequences"<sup>25</sup>. The reason for the unrealistic valuation of these organizations partly comes from the provisions at Point b, Clause 1, Article 42 of the 2012 Price Law stipulating that this organization is *entitled to provide valuation services and receive valuation service remuneration according to the price agreed with the customer stated in the contract*, so the higher the valuation value, the greater the service fee and this organization is only responsible to the customer *for the accuracy, honesty, and objectivity of the valuation results* under Clause 1 (c).

Thus, despite being granted significant rights in the valuation of the organization with the function of land price determination consultancy, the 2012 Land Law, the 2013 Land Law, and Decree No. 44/ND-CP do not have provisions that this organization must be subject to inspection and supervision during and after the issuance of the certificate of valuation, which leads to the discretion when consulting the price does not specify the compensation liability of the land valuation consultancy organization when determining the price, thereby causing losses to the state budget for land valuation when the State recovers land.

Thirdly, the current Council of Land Price Appraisal for compensation has only recorded the participation of 02 groups of subjects: the group of state agencies and the group of subjects with expertise (including representatives of the organization with the function of advisory to determine the land price other than the organization with the function of advisory to determine the land price has been hired or land price experts.)<sup>26</sup> Thus, the Council of Land Price Appraisal for compensation must include the participation of the subjects whose land is recovered (group of subjects representing private interests) and representatives of the Fatherland Front (neutral group of subjects representing the supervision and social criticism). Accordingly, it is necessary to stipulate that the third entity has the authority to inspect and supervise to consider the reasonableness and veto the land price when there are inadequacies in the direction of disadvantage to the land users<sup>27</sup>. However, for the people whose land is recovered, the Fatherland Front Committee of the same level shall participate in the Council of Land Price Appraisal to criticize, supervise, and participate in the price appraisal. In addition, when the Appraisal Council has approved the land price for submission to the provincial People's Committee for decision, it is impossible to attribute responsibility to specific individuals in the Council because the Council has approved. Moreover, the Chairman of the Council is also the Chairman of the provincial People's Committee. Therefore, with this mechanism, it is easy to lead to abuse of power and legalization of the will of individuals capable of causing negativity and corruption.

### **2.3 Problems with valuation processes**

The order of determining specific land prices is based on the provisions of Article 16 of Decree No. 44/2014/ND-CP, specifically as follows: (1) Determining the purpose of specific land pricing; (2) Investigating, synthesizing, and analyzing information on land parcels, market land prices, applying land pricing methods; (3) Formulating land price plans and submitting them to provincial-level People's Committees; (4) Appraising land price plans; (5) Finalizing land price plans and submitting them to provincial-level

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<sup>23</sup> Valuation certificate dated March 09, 2021, of Century Valuation Joint Stock Company for land parcel No. 333, map No. 47, area 72 m<sup>2</sup>, land at address B11 Street, 91B Residential Area, An Khanh Ward, Ninh Kieu District, Can Tho City.

<sup>24</sup> Valuation certificate dated March 09, 2021, of Cuu Long Valuation Joint Stock Company for land parcel No. 333, map No. 47, area 72 m<sup>2</sup>, land at address B11 Street, 91B Residential Area, An Khanh Ward, Ninh Kieu District, Can Tho City.

<sup>25</sup> Indictment No. 26/CT-VKS-P3 dated 09/7/2018 of the People's Procuracy of Can Tho City prosecuting the defendants for "violating regulations on lending in the operation of credit institutions."

<sup>26</sup> Hien, P.T. & Than, C.H. (2017), 'Completion of current regulations on land pricing in Vietnam,' *Journal of State and Law*, number 3 (347), p. 65 - 75.

<sup>27</sup> Hien, P.T. (2018), *What to know about compensation, support, and resettlement when the State recovers land (revised and supplemented edition)*, National Political Publishing House, Ha Noi, p. 122.

People's Committees for decision; (6) Provincial-level People's Committees shall decide on land prices. In addition, Circular No. 36/2014/TT-BTNMT and Joint Circular No. 87/2016/TTLT-BTC-BTNMT guide in detail, specifically the determination of land prices.

*Firstly*, the independence and objectivity in the order and procedures for determining land prices have yet to be ensured<sup>28</sup>. Accordingly, the order and procedures for determining land prices to calculate compensation when the State recovers land are still heavy administrative management and subsidies. The determination of land price for compensation is done mainly by the majority of subjects, which are state agencies. Therefore, the will of the People's Committee and the state administrative agencies responsible for advising differs from the market's will<sup>29</sup>. It can be seen that the valuation of land use rights when the State recovers land is the "own" of the majority of state agencies.

*Secondly*, Article 69 (2a) of the 2013 Land Law, amended and supplemented in 2018, stipulates that *Organizations in charge of compensation and ground clearance are responsible for preparing compensation, support, and resettlement plans and coordinating with the commune-level People's Committees where the recovered land is located to collect comments on the compensation, support, and resettlement plan in the form of meeting directly with the people in the area of the recovered land to send written requests for opinions, organizing seminars and conferences to collect comments with the participation of relevant agencies and organizations and experts*<sup>30</sup>. Therefore, it can be seen that people have not really participated in the criticism and almost entirely have no right to decide on the land price to calculate compensation when the State recovers land because people are only consulted on the compensation, support, and resettlement plan without participating in the supervision and criticism in the Council to decide on the land price to calculate compensation when the State recovers land. Thus, the people's opinions may have absolutely no value for the decision on the plan, and the organization of implementation may only be conducted in a form and by the process because there is no regulation to ensure the right to participate in supervising the decision on land prices when the State recovers land.

It also can be seen that the current law has not yet ensured independence, objectivity, honesty, multi-component, and specialization when the determination of land prices - with the essence of professional work, but still prescribed as "private affairs" of the State administrative agencies, namely the provincial People's Committees. Because the final subject has the right to decide the land price for compensation, the land price is determined to be administrative in the view of the State management but not from the perspective of the person whose land is recovered. Therefore, leading to the consequence is that most people disagree with the price decided by the provincial People's Committee and constantly complain and sue.

### **3. Proposed solution to ensure market principles in land use right valuation upon land expropriation**

#### **3.1 Solution to improve regulations on land use right valuation upon land expropriation**

*Firstly*, it is necessary to add the principle of publicity and transparency in the valuation of land use rights in general and the valuation of land use rights upon land recovery by the State in particular. This mechanism is aimed at complying with the provisions of the Constitution and ensuring the people's right to access information, besides raising the accountability of the subjects competent to decide on land prices upon land recovery by the State.

*Secondly*, Vietnam needs to build a digital database and a national land information system that is centralized, synchronous, uniform, multi-purpose, and interconnected, ensuring effective exploitation. As such, it is necessary to identify specific and accurate input data sources on land to build an authentic, synchronous, and uniform database to become an effective tool for land valuation when the State recovers land. On the other hand, this is also a mechanism to review and monitor the price of land use rights traded in the market.

*Thirdly*, refer to the legal experience of the United Kingdom recorded on the valuation day, specifically "valuation day is the date of confirmation of the Court when accepting a petition to settle a disagreement on the price of land requisitioned."<sup>31</sup> On that basis, it can be used to build regulations on valuation day in Vietnam to determine the price of land use rights when the state recovers land. From there, the state agencies can determine the exact valuation date in case of land use rights market price fluctuations.

<sup>28</sup> Truong, X. Loc, X. (2022), *From Common Points in Land Misconduct Cases: Recommendations to Seal Gaps in Land Allocation and Land Price Mechanisms*, <https://phaply.net.vn/tu-nhung-diem-chung-trong-cac-vu-an-sai-pham-dat-dai-kien-nghi-bit-cac-lo-hong-trong-co-che-giao-dat-va-gia-dat-a251148.html>, accessed on [December 30, 2022].

<sup>29</sup> Hien, P.T. (2021), *What to know about compensation, support, and resettlement when the State recovers land*, National Political Publishing House, Ha Noi, p. 145.

<sup>30</sup> Son, T. (2019), 'Building a land price table suitable to development requirements,' Hau Giang Newspaper, <https://www.baohaugiang.com.vn/chinh-tri/xay-dung-bang-gia-dat-phu-hop-voi-yeu-cau-phat-trien-84670.html>, accessed on [November 30, 2022].

<sup>31</sup> Section 5 (2), Land Compensation Act 1961; Phan Trung Hien (2009), *The law of compulsory land acquisition - Striking a balance Public and Private Interests in the United Kingdom and Viet Nam*, VDM, Verlag Dr.Muller, Germany, pp. 156-157.

**3.2A solution to complete the provisions on subjects participating in land use right valuation when the State recovers land**

Firstly, it is necessary to change and reduce the competence of chairpersons of provincial- and district-level People's Committees in the determination of land prices. Accordingly, ensuring publicity and transparency with the participation and supervision of people, especially people whose land is recovered, serves as a basis for giving rise to the accountability of entities competent to decide on specific land prices. Besides, in order to promote democracy in deciding on specific land prices, each provincial - and district-level People's Committee shall promulgate a regulation on *democracy in compensation, support, and resettlement when the State recovers land in each locality* so that people in the recovered areas and the recovered areas can know and have access to information and participate in the process of land recovery, compensation, support, and resettlement. Accordingly, subjects of application of this regulation may include Agencies performing the state management of land; organizations in charge of compensation and ground clearance, land users<sup>32</sup> upon land recovery by the State; and other organizations and individuals involved in the compensation, support, and resettlement work in each locality upon land recovery by the State.

Secondly, it is necessary to stipulate that the land price determination consultancy organization is independent and must participate in the price determination process and the price appraisal council. This organization operates under the enterprise law and is bound by specific responsibilities and conditions prescribed by the specialized law, the Land Law.

It is necessary to supplement regulations allowing people whose land is recovered to hire advisory organizations to determine land prices next to organizations leased by natural resources and environment agencies when disagreeing with specific land prices for compensation, support, and resettlement calculation. Where the organizations hired by the people have differences in the specific land prices set, the State must pay the leasing service charges based on collecting charges from the initial valuation organizations. Where the land prices are equal to or lower than the initial land prices, the people shall have to pay the costs. To supplement such provisions to balance the interests between the State and the people when they can hire independent valuation consultancy organizations.

In order to ensure the independence, objectivity, and truthfulness of valuation consultancy organizations, valuation certificates of land price determination consultancy organizations must be recognized legally and serve as a compulsory basis for use when deciding on specific land prices. In case persons having recovered land subject to valuation refuse to accept the results of valuation certificates of valuation consultancy organizations, they may invite other valuation organizations to conduct a revaluation. An independent organization providing consultancy on land price determination is an organization that must exist in the course of land price determination and is not leased or not leased by any state agency.

Thirdly, it is necessary to add that the Chairman of the Land Price Appraisal Council shall be elected by the council members among the participating members on the principle of majority. The composition of the land price appraisal council should ensure the independence from the participants as follows: The *Council* with full participation of multi-component subjects of three groups of subjects: (1) Group of subjects representing public interests, including state agencies; (2) Group of subjects representing private interests and carrying out supervision and social criticism: including subjects having land recovered and subjects in the recovered area, representatives of Vietnam Fatherland Front Committees at all levels and other socio-political organizations, critics; (3) Group of neutral subjects with expertise in valuation: valuation experts, land price consultancy and determination organizations.

**3.3 Solution to improve regulations on the process of land use right valuation when the State recovers land.**

Firstly, it is necessary to build a mechanism to allow subjects whose land is recovered to hire independent valuation organizations to participate in determining land prices for compensation together with the State's valuation organizations. Under the practical law of Vietnam, determining land prices for compensation is mainly carried out by the state agency, and the state agency decides the final land price. Under the practical law of Vietnam, the determination of land prices for compensation is currently mainly carried out by the State agency and the State agency that decides the final land price<sup>33</sup>. Besides, in terms of the stability of the land use rights market, our country still needs to secure this problem; one of the prominent reasons is the impact of the two-price land mechanism<sup>10</sup>. Therefore, it is necessary to consider and formulate a mechanism to allow subjects having land recovered to hire valuation organizations to participate in determining land prices for compensation calculation together with consultancy organizations hired by provincial-level Natural Resources and Environment Departments.

Secondly, to overcome the limitations in the order and procedures for land valuation for compensation and to ensure the harmony of interests between the parties, especially those whose land is recovered, it is necessary to renew the land valuation process in Vietnam. Accordingly, "The valuation process should be divided into two clear steps. One is the professional process; the other is

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<sup>32</sup> Article 5 of the 2013 Land Law, amended and supplemented in 2018.

<sup>33</sup> Articles 28, 29, 30, 31, and 32 of Circular No. 36/2014/TT-BTNMT provide detailed regulations on land valuation methods, build and adjust land price lists, determine specific land prices, and advise on land price determination.

the administrative process."<sup>34</sup> Accordingly, the head of the elected agency presides over the professional process, namely the Chairman of the provincial and district People's Council as the Chairman of Council. Then, hire specialized organizations to provide services on land price appraisal and relevant people. However, the professional process (Land Price Appraisal Council) should be assigned to independent consultants and members of the provincial state administrative agencies if any participation must be less than 50% of the composition of the Appraisal Council. It is significant in ensuring democracy, objectivity, and fairness. Subsequently, chairpersons of provincial-level People's Committees, departments, branches, and district-level People's Committees may participate in the administrative process of approving specific land prices.

#### 4. Conclusion

This paper set out to answer the question of whether Vietnam valued land rights during land acquisition. The researcher has established that Vietnam's Land Law requires some revision to legislate the need for more publicity and transparency during the valuation of land expropriated by the government. The study has also established that it is not easy to attach value "*consistent with no updated database containing* updated database containing information regarding land transaction prices. A database reflecting the exact land transaction information for similar pieces of land within the same locality would be invaluable during the land valuation exercise. Also, when the state acquires land for national defense, security purposes, or socio-economic development in the national or public interest, it offers compensation that is much lower than the actual value of the land. In addition, there is usually a discrepancy in land pricing for land within the same area but in different localities.

The article has also found that there is a gap when it comes to the involvement of all interested parties in the land valuation process. Notably, the person from whom the land is being expropriated is not actively and transparently involved in the process of determining its value. In addition, the law has given too much power to the chairperson of the People's Committee (whether at the provincial or district level), and sometimes land owners end up being short-changed because his word carries the day. Moreover, the 2013 Land Law does not make it mandatory to use land valuers in determining the value of land and the price to be compensated. Consequently, more often than not, the valuation certificates from such organizations are ignored. However, Clause 3 Article 114 of the 2013 Land law was amended in 2018, but the language of the amendment leans towards a suggestion, not a directive. It says that "*...agencies may hire...*" not agencies must/shall hire.

The findings of this research point out some gaps that exist in the valuation and pricing of land during acquisition by the state. There is a need to ensure adequate publicity and transparency during the entire land acquisition process. When there is transparency and unfettered access to information, the feeling of fairness will prevail. The process should not end with the parties involved feeling exploited. This situation is manifested because the public is party to every decision made and knows the reason for such a decision. Also, the fact that there are no up-to-date databases reflecting land transactions within localities is worrying. Every locality at both district and provincial levels should create a real-time land transaction database. The importance of such a database is that it will act as a reference point during land valuation for compensation when the government expropriates land. Such a database will solve a problem whereby pieces of land within the same locality get different valuations and pricing during acquisition.

Moreover, it has been established that there is a need to involve the person from whom land is being acquired. As it is, the land owner is not part of the land valuation and pricing process, which could lead to discontent among landowners.

Finally, the use of land valuers should be made mandatory. Presently, many times, land valuation certificates are disregarded because the use of land valuers is not mandatory.

The researcher acknowledges that this research has some limitations. The main limitation is that it was a library-based research relying on published data. The nature of this approach is that the paper relies on secondhand information. The researcher suggests future quantitative research that shall be conducted amongst respondents involved in the land valuation and acquisition process. This kind of research could provide new insight into the actual state of affairs in Vietnam's land valuation and pricing process.

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<sup>34</sup> Bich Lan (2022), 'Assoc. Prof., PhD. Phan Trung Hien: Land valuation must be public, transparent, democratic and implements accountability', Electronic information portal of the National Assembly of the Socialist Republic of Vietnam, <https://quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=69161>, accessed on [March 16, 2023].

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