
RESEARCH ARTICLE

The Current Status of Compensation, Support, and Resettlement when the State Acquires Land for Socio-economic Development

Cao Thanh Son

Ph.D. Candidate, University of Economics and Law, Ho Chi Minh City, Vietnam and Vietnam National University, Ho Chi Minh, Vietnam

Corresponding Author: Cao Thanh Son, **E-mail:** caothanhsonagjustice@gmail.com

ABSTRACT

Mechanisms and policies for compensation, support, and resettlement when the State acquires land for socio-economic development purposes are concretized by the 2013 Land Law, aiming to harmonize the interests of the parties. However, the report from the General Department of Land Management (in 2018) said that the adjusted documents on compensation and support have yet to cover all the problems arising in practice, leading to difficulties and confusion in implementation (Nhan, 2022). In essence, the land acquisition is within the competence of the State; in contrast to the types of assets established on the land, there must be a voluntary mechanism of agreement. In this case, the State should not use its power to impose compensation prices. Although the purpose is to acquire land for economic development, the law empowers the State to decide on the value of land assets, and set on the land is not standard. When comparing the same type of asset, but the value of each place has a difference, there is no uniformity. In many localities, the market price has changed several times but still set meager compensation prices for people. From the above issue, when conducting compensation when the State acquires land for socio-economic development purposes, in any case, it is necessary to correctly and fully calculate the damage caused by land acquisition to the subjects who are using land and assets attached to land, including related intangible and tangible damage. In addition, it is also necessary to delete the support policy because when the damage is fully estimated, there is no need for support-related regulations.

KEYWORDS

Land acquisition, economic development, compensation, support, and resettlement

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1. Introduction

Under Article 54 of the 2013 Constitution, only in case of extreme necessity, the State shall acquire land from land users for socio-economic development in the national and public interests as prescribed by law. When land acquisition is inevitable, the method of implementation, as well as the determination of damage, should be considered carefully, absolutely not abusing power to deprive people of their lawful property. To do this, the corresponding legal grounds must meet the actual requirements set out. However, the provisions of the law on compensation, support, and resettlement upon land acquisition for socio-economic development still contain many inadequacies that need to be improved.

2. Methodology

To clarify the research problems, the author uses the methodology of dialectical materialism and historical materialism of Marxism-Leninism to study the problem in the State of movement, constant change and place in the overall relationship, and the interaction between the phenomenon to be studied with other phenomena. Moreover, the subject of study is considered and evaluated in the State of "moving...", making the research problem rich, diverse, traditional, and modern.

In addition, the author also applies the following research methodologies:

Doctrinal legal research methodology: This method is applied by the author to understand doctrines and theories directly related to the research topic, from which to build a solid foundation in building a theoretical framework for the research problem.

Analytical legal research methodology: The method is applied to clarify regulations related to land acquisition, specifically analyzing legal provisions related to land acquisition, determining the purpose of land acquisition, balancing and regulating interests between subjects when the land acquisition process takes place, thereby pointing out the inadequacies and limitations from a legislative perspective within the scope of the research topic.

Statistical methodology: This method is applied by the author to collect statistics and synthesize essential data directly related to the research scope of the topic, e.g., statistics related to the level of satisfaction of people whose land is acquired regarding compensation land prices, life and production support mechanisms, the data on complaints and lawsuits related to the compensation, support, and resettlement mechanism.

Comparative legal research methodology: The author applies it when there is a comparison of the advantages and disadvantages of legal provisions between the laws of Vietnam and some countries in the world, thereby having the most objective view when providing timely solutions to problems that have been set out in the scope of the research topic.

3. Findings and Discussion

In the legal aspect, based on the concept of land acquisition, the interpretation of the concept of land acquisition for socio-economic development in the national and public interests is as follows: *“Land acquisition for socio-economic development in the national and public interests is the State’s decision to acquire the land use rights of persons who are granted land use rights by the State or acquire land of land users who violate the land law to serve the needs of socio-economic development based on maintaining a peaceful and stable environment for the implementation of national industrialization and modernization along the socialist orientation, ensuring that all people and society enjoy the land values brought about after the acquisition.”*

Many research opinions believe that “Land acquisition for socio-economic development for national and public benefits” needs to have its “intent” clarified. In the long term, it is necessary to replace the term “The State acquires land for socio-economic development” with “The State acquires land use rights.” In essence, this will help change perspectives towards an increasingly progressive society. Accordingly, “Towards unification between the Constitution and the Land Law, it is necessary to limit the State’s authority to acquire land to cases where it is necessary to use the land to serve national interests, public interests, and national defense and security interests” (Vo, 2013,p.11). Also, Son (2018) argues that because some projects bring benefits to businesses, but in order to reduce compensation costs, they often take advantage of gaps in regulations and assign State land acquisition mechanisms. In this case, there is no harmony between the interests of the State, the interests of investors, and the people whose land is acquired. The lack of transparency is a premise for violations by state management agencies in the land.

3.1. Compensation, support, and resettlement when the State acquires land for socio-economic development purposes

3.1.1 Compensation when the State acquires land for socio-economic development purposes

According to nationwide statistics, 63/63 provinces and centrally-run cities have issued specific regulations on compensation, support, and resettlement levels according to the decentralization of the Land Law and Government Decrees to be applied locally. In particular, regulations clearly define the responsibilities of departments, agencies, units, and organizations involved in implementing compensation, support, and resettlement. However, when considering the compensation mechanism, many things could be more consistent. Specifically, regarding compensation for moving costs when the State acquires land for socio-economic development purposes, in different localities, there is no uniformity in regulations, e.g., there are 7/63 regulated provinces and cities compensated for travel expenses divided by distance; 6/63 provinces and cities compensated according to actual costs; by house type or house construction area acquired (8/63 provinces); according to administrative units at commune, district, and province levels from 2,000,000 VND to 15,000,000 VND (32/63 provinces); There is no regulation on compensation for travel expenses (10/63 provinces) (Nhan, 2022) In general, according to Hien and Thang (2021), land valuation to have a basis for calculating compensation for land is a susceptible category because conflicts of interest may arise. Based on clause 3, Article 112 of the 2013 Land Law, the State acquires land for socio-economic development, and the land price calculated for compensation “must be consistent with the prevailing land price on the market.” It is also imposing, as determining specific land prices tends to be lower than the market price (Thai, 2016, p.11). “Maybe it is only relative because the market price has many fluctuations” (Hien, 2017, p.98-99). The determination of compensation value is based only on the current land use status, not considering the increase in land value after the State acquires land from people and investors implementing the project. The State’s land price frame is only about 20%-30% of the market land price frame. The provincial land price range is only 30% - 60% of the local market land price.

It leads to a situation where when land is acquired, the compensation land price is far lower than the market price (Huyen & Ha, 2022, p.165). Recognizing the process of land allocation to implement investment projects in Da Nang, with land areas A2 and A3 belonging to the Son Tra-Dien Ngoc Resettlement Area project in Da Nang City decided the compensation unit price of 2,570,000 VND/m² for affected households, the total compensation amount for parcel A2 is 25 billion VND and area A3 is 63 billion VND, respectively (Than, 2020). One month after the Da Nang People's Committee allocated the land, the enterprise transferred the project to the new investor. Accordingly, the value of parcel A2 is 133 billion VND, a difference of 107 billion VND compared to the original unit price.¹

Through consultation, the research sample includes 540 households whose land was acquired for socio-economic development purposes in 2020, of which 188 households in Ha Noi and Ho Chi Minh City 177 households, City. Da Nang 175 households. The questionnaire uses a Likert scale (5-point scale). Research results show that the level of people's satisfaction with compensation and support when the State acquires land for economic development and community service purposes is generally low at 2.54 points; People's perception of land compensation price is 2.32 points; The change in life after the State acquired land compared to expectations, was not rated highly with 2.45 points (Phuong, 2021). In a situation of economic development, the exercise of the right to reclaim land has the potential to create surplus value, such that only profits belong to the final owner of the property, not the original owner. Suppose the surplus is greater than the cost of land acquisition. In that case, it means that the organization that is transferred land use rights will gain a surplus, which gives them an incentive to persuade the government to carry out land acquisition on their behalf even when the land area acquired is only for personal gain. Therefore, laws in developed countries such as the UK and the US will require courts to carefully consider when using the right to compulsory land requisition to serve the public interest when *"one or a few people will capture the surplus value"* (Gallagher, 2005, p.77)

Explaining the reason why compensation land prices have not approached market prices some scholars give many reasons. In particular, the time to determine the specific land price has yet to be clarified, as Clause 2, Article 74 of the 2013 Land Law stipulates that the Provincial People's Committee decides the specific land price at the time of land acquisition decision. However, there is still no document guiding *"when to decide on land acquisition"* (Hien, 2017, p.98-99). When comparing experience in India under Article 22, Part 3 of the Land Acquisition Act, in case land is needed for economic development, the State calculates compensation according to the market value of the land; land damage will be considered to decide the compensation level at the time of land acquisition notification. In addition to the market price basis, the Court may consider adding 30% of the compensation value because this is a case of compulsory land acquisition (Ministry of Natural Resources and Environment, 2012, p.19). According to experience from Australia in Article 55 of the WA Land Management Act 1997, compensation for land is determined according to the principle of *"value to the owner,"* recognizing that the compensation level is higher than the market value. Value to the owner includes the market value of the affected interest, exceptional value due to the ownership or use of the acquired land, damage due to the land parcel being divided, noise damage, or other damage. The price for calculating compensation is the current market price, decided with the management agency in consultation with the head of the valuation agency.

According to the Ministry of Natural Resources and Environment (2012, p.19-20), market value is determined as the amount of money that the asset can be sold voluntarily and readily at a specific time. In addition, Hien (2017, p.98-99), citing Section 5 (2) Land Compensation Act 1961 Clause 2 Article 5 Law on Compensation for Land Damage 1961 of the United Kingdom, avers that in some developed countries, the Valuation date is the *"legally fixed date"* to determine all assets according to the market return on that date.

Referring to the problem and experience in Taiwan under Taiwan's Land Occupation Law in 2000, real estate valuation needs to distinguish between the value of land and assets created on land. The compensation price for land is the value at the time of land allocation; the compensation value for construction works on land is calculated according to the price of replacement works with equivalent conditions (Vo, 2012). Thereby, the compensation price for land is for public benefit purposes, and some countries have compensation calculations higher than the market price. Because, after all, this is a compulsory land-acquiring mechanism, which may be contrary to the wishes of land users. Unlike British law and some developed countries, our country's law does not widely recognize cases of compensation for damages that occur even though land is not acquired (Hien, 2018). Because when determining compensation, our country defines the scope *"according to the law."* Unforeseen arising damages will be outside the scope. In addition, Vietnam's prediction mechanism only limits damage during the land acquisition process, with invisible damage, damage from the time of land acquisition notice (before land acquisition), or damage after the land acquisition process has not been calculated.

¹ Notice of Inspection Conclusion No. 160/TBKL-TTCP dated January 17, 2013, of the Government Inspectorate on the responsibilities of Da Nang City People's Committee in complying with the law on inspection, complaints, and denunciations of corruption, inspection of some investment projects using land, p. 5

Regulations on the mechanism for seizing land for public purposes, annual land valuation, and adjusting land prices to calculate compensation in Taiwan have many similarities with Vietnam. The fundamental difference is that the agency with authority to decide land prices and compensation values belongs to the valuation committee, consisting of many members, and is not decided by an administrative agency like in Vietnam. Notably, at the provincial level, there is a specialized management agency for land prices, assisting local leaders independent of the financial management agency and land management agency. Vietnam can consider Taiwan's experience in applying a mechanism that assigns responsibility for deciding land prices according to the market and compensation levels to a land valuation committee. The law can assign many different tasks related to land prices to this committee, such as resolving land price disputes and resolving land price complaints (Vo, 2012).

3.1.2. Support when the State acquires land for socio-economic development purposes

The 2013 Land Law in Clause 14, Article 3 states: *"Support when the State acquires land is the State's assistance to people whose land is acquired, to stabilize their lives, production and development."* Support amounts are understood as the added value when the State reviews compensation payments; this is a regulation from the added value of land, not brought by the investment of the land user.

There are three primary forms of support when the State acquires land for socio-economic development purposes:

-Regarding support for training, career change, and job search when the State acquires land for socio-economic development purposes

Support policies represent the vision of the State because the land acquisition process can disrupt people's lives, and providing support helps minimize the social problems that arise. Accordingly, the Prime Minister issued Decision 63/2015/QĐ-TTg related to vocational training policies and job creation for workers after the land acquisition process took place, institutionalizing regulations in localities have also issued documents guiding relevant content such as Decision 24/2017/QĐ-UBND of the Ha Noi People's Committee on supporting vocational training and job search, or implementation plans. Decision 63/2015/QĐ-TTg in Ho Chi Minh City (Huyen, 2022, p.38), or Decision No. 08/2015/QĐ-UBND dated March 24, 2015, of Nam Dinh Provincial People's Committee regulating unit prices for vocational training and job search support. However, the support mechanism when the State acquires land for socio-economic development purposes needs to clarify the following issues:

Firstly, the form of support for training, career change, and job search does not stipulate the minimum land area to be acquired. It leads to acquiring only a few square meters of Agricultural land, still enjoying the policy. Logically, it is necessary to reconsider because, in reality, people will not lose their jobs at all.

Secondly, Point a, Clause 1, Article 20 of Decree 47/2014/ND-CP stipulates: *"Monetary support is not more than 05 times the price of agricultural land of the same type in the local land price list for the entire area of agricultural land acquired, the supported area does not exceed the local agricultural land allocation limit."* Agricultural land is acquired, the supported area does not exceed the local agricultural land allocation limit. The law only specifies a maximum support limit of no more than five times the price of agricultural land but does not indicate a minimum limit. It may lead to differential support between localities (Hien & Thang, 2014, p.389-390).

Thirdly, according to Hien (2019), land is a means of production, but the nature of the support sometimes does not help people whose land is acquired to reestablish their livelihoods. Because there is no data to orient the use of compensation and support accordingly, statistics in the southern provinces have about 57.5% of people using the amount of compensation and support for the construction of new houses, 8.72% buying utensils and living. At that time, only 2.55% of people used the compensation money to support career change and finding new jobs. Therefore, after only a few years of spending all the supported money, with no means of production left, the people whose land was acquired fell into poverty (Minh, 2010, p.g5)

3.1.3 Support to stabilize life and production when the State acquires land for socio-economic development purposes

Compared to the past, the 2013 Land Law has clearly defined the conditions and beneficiaries of policies related to support when the State recovers land as households and individuals directly engaged in agricultural production. Accordingly, in Clause 3, Article 19 of Decree 47/2014 / ND-CP, the support for life stabilization is as follows:

a) Acquire from 30% to 70% of the currently used agricultural land area, receive support for six months in case of not relocating, and 12 months in case of having to relocate. If moving to areas with challenging socio-economic conditions, the maximum support period is 24 months.

In cases where more than 70% of the agricultural land area in use is acquired, support will be provided for 12 months if there is no need to relocate and for 24 months if there is a period of relocation; in cases of having to move to areas with difficult socio-economic conditions or poor socio-economic conditions.

b) The prescribed land acquisition area is determined according to each land acquisition decision of the competent People's Committee. For challenging situations, the maximum support period is 36 months;

From the regulations on conditions to determine the amount of life support when the State acquires agricultural land, the following observations can be drawn:

Firstly, Decree 47/2014/ND-CP defines many limits on land to be acquired to ensure fairness for land users. However, this change is only partially comprehensive and meets social requirements. Because a household may have a small amount of land acquired but still benefits from the support policy (for example, losing 100m²/200m² will be converted to 50% of existing agricultural land). On the contrary, subjects whose land area to be acquired is many times larger may not be considered for support (for example, losing 3,000m²/20,000m² currently); this shows that there will be a case of losing a large land area, but The percentage conversion on the existing land area is relatively small. Therefore, this issue needs to be considered and corrected promptly.

Secondly, as noted in Hien (2021), the regulations to support life stabilization are determined according to each acquisition decision, showing that there will be cases affected by many different acquisition decisions. However, with each decision to acquire lost land Fragmented, although we know that the total lost land area is quite large, each decision will need more support consideration ratio.

Thirdly, the assistance was calculated at the price of rice, which was then converted into money, which proved illogical. If this is determined from the beginning according to the regional minimum wage, it will appear reasonable and fair between subjects when rice prices have specific differences (Vo, 2015). Phuong (2019) argues that, essentially, a "stable life" must contain the most comprehensive values such as food, accommodation, travel, entertainment, and so on. The valuation of rice does not represent the core of its nature.

3.1.4 Resettlement when the State acquires land for socio-economic development purposes

Land acquisition/expropriation, forcible evictions, forcible displacement of people from their homes for development projects, and business projects (roads, plants, hydropower, industrial parks, urban areas, and others) occur in many countries. Eviction risks harming the right to housing and many other social rights (education, health care, employment) of the population.² The seriousness of forced evictions from the place of residence has long been of concern to the international community. In 1976, the United Nations Conference on Settlements noted that countries must pay special attention to eviction and that "eviction activities are carried out only when conservation and restoration are not possible, and resettlement measures have been taken."

Practical application related to the level of resettlement support in Vietnam shows that the level of support can be in money or equal to the value of infrastructure investment in concentrated resettlement (45/63 provinces). There is support from 5% to 50% of land compensation value (7/63 provinces); Support based on a percentage (%) of the value of the minimum resettlement rate (6/63 provinces)... three provinces do not stipulate this support (Nghe An, Da Nang, and Long An), regarding the minimum resettlement rate, including regulations: minimum resettlement rate equal to residential land; minimum resettlement rate equal to housing; minimum resettlement rate in cash.

There are 53/63 provinces and centrally-run cities that regulate the minimum resettlement rate equal to residential land, with different areas depending on the conditions of each locality... ten provinces do not regulate this content. There are 27/63 provinces and centrally-run cities that stipulate the minimum resettlement rate is equal to apartment buildings with different minimum areas or according to the resettlement housing area of the approved project... 36/63 provinces do not stipulate a minimum resettlement rate equal to housing (Nhan, 2022).

The minimum resettlement rate in money is regulated in localities according to each administrative unit of commune, ward, and town (ranging from 25 to 300 million VND) or according to the minimum resettlement area multiplied by the land price. Expressly,

² Office of the United Nations High Commissioner for Human Rights, Forced evictions and human rights:

<https://www.ohchr.org/EN/Issues/LandAndHR/Pages/ForcedEvictions.aspx>, excerpted from La La Khanh Tung, "Land acquisition: international human rights standards and some issues in Vietnam," Conference proceedings: Theoretical and practical basis of amending the Land Law in 2013, National University Ha Noi, November 24, 2021, page 221.

at the resettlement location or the average investment value for each resettlement rate, 16 provinces do not stipulate a minimum resettlement rate in money.

Resettlement arrangements in localities are carried out by allocating residential land or houses with a total residential land area for resettlement of 567.40 hectares for 25,770 households and individuals (an average of 220.18 m²/household) and the house area for resettlement is 29,745 m² for 347 households and individuals deployed in Quang Ninh province. For households and individuals who care for their accommodation, the State will support them with money to find accommodation and resettlement in the amount of 1,218 million VND. Localities generally carry out resettlement using residential land, and resettlement housing areas are mainly carried out in cities with limited residential land funds (Nhan, 2022).

Based on Article 86 of the 2013 Land Law, inheriting and supplementing the principles of resettlement in case of land acquisition that requires relocation as follows: (i) The resettlement plan must be made public; (ii) People whose land is acquired will be given priority for on-site resettlement if there is a resettlement project or resettlement conditions in the land acquisition area; (iii) Prioritize convenient locations for people whose land is acquired to hand over the site early; (iv) Priority will be given to those whose land is acquired and who have contributed to the revolution; (v) Receive enough financial support from the State to buy a minimum resettlement rate if compensation is lacking, support if not enough to buy a minimum resettlement rate. In this case, the land use fee calculation will be based on the specific land price at the resettlement place, and the Provincial People's Committee will decide the selling price of the house in the resettlement place. However, central legal documents need to mention the issue of guidance on determining land prices and land use fees that people must pay when receiving resettlement grounds. Based on research from local documents. In addition, Clause 4, Article 86 of the 2013 Land Law stipulates: "If compensation and support money are not enough to buy a minimum resettlement rate, the State will support money enough to buy a minimum resettlement rate." However, with Clause 1, Article 22 of Decree 47/2014/ND-CP, this issue is stipulated as follows: "Vietnamese households and individuals residing abroad receive residential land and houses. Resettlement, where the amount of compensation for land is less than the value of a minimum resettlement rate, will be subsidized by the difference between the value of the minimum resettlement rate and the amount of compensation for land. From the above issue, it can be seen that the conditions for support in the two regulations mentioned above are contradictory; if the Land Law is based on calculating total compensation and support (compensation for land, assets attached to land, and other supports, if any), the Decree only considers calculating compensation related to land (Hien & Trang, 2013). In addition, the time for handing over residential land and houses is determined based on Clause 3, Article 85 of the 2013 Land Law, which stipulates: "Residential land acquisition will only be carried out after completing the construction of housing or infrastructure of the resettlement area." In general, the completion of construction is different from the resettled people who will be handed over land and resettlement houses soon. Through the study, the authors found that there still need to be documents specifying the time of handing over land and resettlement houses (Than, 2017).

Besides, there is still no close attention related to the post-resettlement process; the case of resettlement in Ha Noi is a typical example when 173 resettlement apartment buildings were handed over. At that time, there were 103 buildings without community houses, only 119 buildings with service business areas, and 54 buildings without parking spaces; the number of established management boards needed to be more significant. According to the data reported by Ha Noi Housing Management and Development Company, by the end of 2018, out of more than 100 resettlement apartment projects, there were over 700 resettlement apartments for ground clearance. However, people have yet to come to carry out procedures for handover, and the number of vacant apartments accounts for a relatively large proportion, with more than 370 apartments³. Therefore, it is necessary to set up management boards in resettlement areas to receive and handle relevant issues in the resettlement area.

In addition, the 2013 Land Law does not stipulate a "policy for dealing with temporary accommodation (temporary residence)." However, it can be understood as still containing "policy for dealing with temporary accommodation (temporary residence)." However, this leads to the understanding of some localities that do not regulate "policy for dealing with temporary accommodation (temporary residence)." Clause 3, Article 6 of the 2014 Housing Law on resettlement housing arrangement stipulates: "In case the State invests in renovating or rebuilding an apartment building, the project investor must provide temporary accommodation or pay for resettled people to take care of their accommodation during the renovation and reconstruction period; In case a real estate business and the owner agree to invest in renovating and rebuilding an apartment building, the parties shall agree on the temporary accommodation of the owner during the renovation and rebuilding period." Proposal to amend and supplement clause 2, Article 83 of the Land Law with the content: "Support for temporary accommodation (temporary residence) for cases where households, individuals, and Vietnamese residing abroad have to relocate." in order to ensure the consistency of the legal system, making it easy for localities to implement and satisfactorily address people's temporary residence needs while waiting for resettlement (Dang, 2021).s

³ Central Management Board of Irrigation Projects (CPO): Resettlement Policy Framework (RPF), Ha Noi, June 2013 http://agrovi-et.gov.vn/Lists/appsp01_Jawdocumenlist/Attachments/111/KhungCS_TaiDC.pdf, dated February 26, 2019

4. Conclusion

In the process of national economic development, land acquisition is an inevitable and objective issue, serving the common goal of socio-economic development. The law on land acquisition has changed many times from time to time in order to suit the social context. However, there still exist "gaps" in legal provisions when the issue of regulating the harmonious balance between the interests of subjects such as the State, investors, and people whose land is recovered in the process of compulsory land transfer and use of land for socio-economic development objectives has not yet been addressed.

Accordingly, the compensation, support, and resettlement when the State recovers land for socio-economic development should be built on the following theoretical foundations: (i) towards the management and coordination of land in a scientific manner, helpful for life, society and people, (ii) towards ensuring fairness and equality in the process of the State conducting compensation, support and resettlement when recovering a land area, (iii) to heighten the responsibility of the State, the relevant subjects in the process of land recovery, towards the goal of sustainable development.

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ORCID ID: <https://orcid.org/0009-0007-0540-3801>

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