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| RESEARCH ARTICLE

## Vietnamese Regulations on the Compensation for Damage upon State Agricultural Land Acquisition

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| ABSTRACT

State land acquisition for national defense or security purposes and socio-economic development in the national or public interest is driven by the inevitable demand for national development. This activity is based on the general theoretical issues of agricultural land acquisition for national defense or security purposes, socio-economic development in the national or public interest, and the theory of damage determination and compensation upon State land acquisition. In particular, the concepts of agricultural land, agricultural land acquisition, and compensation for damage must be clarified and specified in relevant legal provisions to serve as grounds for practical implementation by the State and people.

| KEYWORDS

Agricultural land, land acquisition, compensation for damage, balance of interests.

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### 1. Introduction

In Vietnam, the economic development dynamics in the contemporary world have been anchored on the ability of the state and other business players to acquire land for urbanization, infrastructure, and industrial development. However, the quest for economic development inspiring this process has resulted in significant cases of land use change since agricultural land is the one being converted to other uses. As a result, this process has resulted in potential social and economic disruptions for farmers (Van and the Naval War College Newport Ri Joint Military Operations Dept., 2013). Agricultural land plays a significant role in economic development, contributing to environmental protection, food security, and people's livelihoods. According to the Socio-Economic Situation Report in November and 11 months of 2022 by the General Statistics Office, the area of autumn-winter rice cultivation alone in 2022 in the Mekong Delta was estimated at 647.8 thousand hectares.<sup>1</sup> As of 2021, the area of agricultural land in Vietnam was 27,994,319 hectares<sup>2</sup>, making it the largest type of land nationwide (84.5% of the total land area, at 33,134,480 hectares). Thus, it is clear that agricultural land is necessary for cultivation, animal husbandry, aquaculture, forestry, and other activities and for its users' lives.

However, industrialization and modernization for national development in Vietnam require land transfer to achieve specific socio-economic development goals. In order to carry out the transformation process, the State, as the representative of the entire people's land ownership, acquires agricultural land to perform strategic tasks and achieve objectives for national development. In essence, this activity refers to abolishing agricultural land use rights granted by the State and establishing requirements to protect the interests of land users whose agricultural land is acquired without their fault. Accordingly, land law is required to ensure the

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<sup>1</sup> Report No. 302/BC-TCTK by the General Statistics Office on the Socio-economic Situation in November and 11 months of 2022.

<sup>2</sup> Decision No. 719/QĐ-BTNMT dated March 24, 2023, by the Minister of Natural Resources and Environment on approving and publishing the land area statistics in 2021.

common interests of society upon compulsory land transfer while also balancing the interests of land users with acquired agricultural land. Research by Van and the Naval War College Newport Ri Joint Military Operations Dept. (2013) highlighted a critical social dimension of land acquisition in Vietnam. Their study revealed that the State acquisition of agricultural land, particularly in rural areas, has become a flashpoint for conflict between the Government and the populace. These findings underscore the need for significant improvements in land policies to mitigate such social tensions, even if the State's intentions behind land acquisition are positive.

Therefore, to improve land policies and laws, especially on compensation for damage caused by State agricultural land acquisition, it is first necessary to clarify, develop, and systematize the theory. Criteria for determining and compensating for damage caused by state agricultural land acquisition should be specified, thereby serving as standard grounds for effectively amending and supplementing legal provisions to overcome outstanding limitations and protect the rights and interests of land users whose agricultural land is acquired. This facilitates balancing and harmonizing the interests of the State, land users with acquired agricultural land, and investors. This paper sheds light on the theoretical foundations of compensating Vietnamese farmers for damages incurred when the state acquires their agricultural land. It unpacks the core principles guiding compensation practices, analyzes the implementation methods, and explores the associated challenges. By drawing on successful international models, the paper identifies potential areas for improvement. Furthermore, it offers a set of recommendations for strengthening Vietnam's legal framework for land acquisition compensation, informed by comparative analyses of how other nations approach this issue.

## **2. Overview of agricultural land acquisition for national defense or security purposes and socio-economic development in the national or public interest**

### **2.1. Concept of agricultural land**

Agricultural land holds immense significance in Vietnam, supporting the country's economy, livelihoods, and cultural heritage. Past decades have demonstrated that Vietnam has been an agrarian society with rice cultivation at its core, complemented by other forms of crop production to sustain life, particularly in the fertile Mekong Delta and Red River Delta regions. The concept of agricultural land in Vietnam encompasses its physical attributes and socio-economic and environmental dimensions (Leisz et al., 2022). According to Article 53 of the Vietnamese Constitution 2013, "*land is public property owned by the entire people and represented and uniformly managed by the State.*" This provision demonstrates the nature of the socialist State: land as a factor of production belongs to the entire people and cannot be privately owned by any individual or organization.

Agricultural land in Vietnam refers to land specifically designated and utilized for agricultural purposes, including cultivation, livestock rearing, forestry, aquaculture, and related activities, as defined by the Land Law 2023. It is classified based on its suitability for different types of crops, soil quality, climate conditions, and topography. Agricultural land is typically categorized into rice fields, upland crops, orchards, plantations, and aquaculture zones. In addition, the zonation of agricultural land informs the legal land relations relating to land ownership issues.

Vietnam's legal framework defines and regulates agricultural land use, ownership, and management. The Land Law 2013 and associated regulations outline the rights and responsibilities of land users, including farmers, cooperatives, and agricultural enterprises. The Government plays a central role in land allocation, planning, and administration, ensuring the sustainable utilization and protection of agricultural land resources. According to Clause 1, Article 10 of the Land Law 2013, as amended and supplemented in 2018, types of agricultural land are land for cultivation of annual crops (paddy land and land for cultivation of other yearly crops); land for cultivation of perennial trees; land for production forests; land for protection forests; land for special-use forests; land for aquaculture; land for salt production; other agricultural lands, including land used to build greenhouses and other building types for cultivation purpose, including farming not directly on the land, or to build breeding facilities for cattle, poultry, and other animals as permitted by law; land for cultivation, breeding, and aquaculture for learning, research or experimentation; land for planting and nursing seedlings and breeders, and land for growing flowers and ornamental plants. However, the latter fails to demonstrate the rigor and comprehension of the law. It can be seen in the Land Law 2013 that "agricultural" land covers relevant activities such as forestry, salt production, learning, research, and construction for agriculture. It specifically encompasses land for cultivating perennial trees and annual crops, including paddy land critical to national food security.

From the above analysis, *agricultural land refers to land used for cultivation, animal husbandry, and other activities for agriculture, forestry, and aquaculture.*

## **2.2. Concept of land acquisition**

*Land acquisition varies by country due to the impact of land ownership. If necessary, the State acquires land from land users for national defense or security purposes in the national or public interest.”*<sup>3</sup>

FAO interprets land acquisition as the State’s compulsory acquisition: “Compulsory acquisition is the power of governments to acquire private rights in land without the willing consent of its owner or user to benefit society. It is a power possessed in one form or another by governments of all modern nations.”<sup>4</sup> Accordingly, in Vietnam, if a decision to acquire land is made, land users are required to transfer the use rights granted by the State as the representative of land owners.

Legally, Clause 3, Article 54 of the Constitution 2013 stipulates: “*The State may acquire land currently used by organizations or individuals in case of extreme necessity prescribed by the law for national defense or security purposes; or socio-economic development in the national or public interest. Land acquisition must be public and transparent, and the law must pay compensation.*” To clarify this provision, Clause 11, Article 3 of the Land Law 2013, as amended and supplemented in 2018, interprets *State land acquisition as the State’s decision to acquire land use rights of land users who are granted by the State or violate the land law.* Consequently, land acquisition is the process by which the State issues an administrative decision to abolish the land use rights or the actual land use of those with or without the right to use a certain land area for the purposes prescribed by law. Such a decision does not infringe on the people’s property rights because it is one of the statutory cases. However, compensation for damage caused by land acquisition is not overlooked so that the quality of people’s lives after the acquisition is balanced or improved.

Phuc et al. (2021) highlighted a social conundrum associated with Vietnam’s urbanization drive in the Central region. Their study revealed that state-led compulsory land acquisition, while intended to spur urban development, has resulted in a significant land loss for local inhabitants. Critically, the research suggests that the current financial compensation packages offered by the state were not translating into sustained household income after land acquisition. This indicates shortcomings in existing compensation programs for compulsory land acquisition. The study challenges the Government’s assumption that financial compensation packages are sufficient for livelihood reconstruction. Phuc et al. (2021) argue that the negative impacts of land acquisition persist even after financial compensation is provided. To address this gap, the authors recommend a more holistic approach that includes investments in education and skills training for affected households. Additionally, they suggest assisting individuals to convert their compensation money into sustainable livelihood opportunities.

## **2.3. Concept of agricultural land acquisition**

*Agricultural land acquisition is interpreted by analyzing the concept of land acquisition.* It literally means to forcefully transfer the right to use agricultural land, threatening land users’ livelihoods and depriving them of a key factor of production, necessitating compensation and other forms of assistance (Phuc et al., 2021). Furthermore, the State directly acquires agricultural land in cases of illegal use, such as encroachment, without the State’s permission. Accordingly, *agricultural land acquisition is defined as the State using an administrative decision to forcefully transfer the land use rights from legal land users without their fault to other entities.*

## **2.4. Grounds for agricultural land acquisition for national defense or security purposes and socio-economic development in the national or public interest**

### **2.4.1 Agricultural land acquisition for national defense or security purposes**

In Vietnam, agricultural land is acquired for national defense or security purposes in the following cases specified in Article 61 of the Land Law 2013: Land for military barracks or offices; construction of works of national defense or security, such as military bases, national defense works, battlefields, and special works of national defense or security; warehouses for the people’s armed forces; shooting grounds, training grounds, and weapon testing and destroying sites; training institutions and centers, hospitals and sanatoriums of the people’s armed forces; public-duty houses of the people’s armed forces; detention and re-education institutions managed by the Ministry of National Defense or the Ministry of Public Security.

The Draft Land Law (amended) dated May 23, 2023, provides similar grounds for land acquisition for national defense or security purposes as in the applicable one. Accordingly, the cases of acquisition are listed as follows: Land for offices; military bases; national defense works, battlefields, and special works of national defense or security; military stations, ports, and information works; industrial, scientific and technological, cultural or sports facilities that directly serve national defense or security purposes; warehouses for the people’s armed forces; shooting grounds, training grounds, and weapon testing and destroying sites; training and professional fostering institutions and centers, hospitals, sanatoriums, nursing homes, rehabilitation facilities, resorts, and medical institutions of the people’s armed forces; public-duty, guest, barracks of the people’s armed forces; detention, compulsory

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<sup>3</sup> Tran Quang Huy et al. (2013). *Land Law Textbook*, Justice Publishing House, Hanoi.

<sup>4</sup> FAO (2008). *Compulsory acquisition of land and compensation*, Rome, 2008, Page 05.

education, re-education institutions, labor and vocational guidance and training area for prisoners managed by the Ministry of National Defense or the Ministry of Public Security.

The proposed revisions to Vietnam's Land Law, specifically adding new land acquisition categories like sanatoriums, nursing homes, rehabilitation facilities, and resorts, introduce a layer of ambiguity. This ambiguity stems from the potential clash between two key principles: public interest and private property rights. In particular, land for "resorts" cannot constitute land acquisition for national defense or security purposes, as defined in Clause 3, Article 54 of the Constitution 2013. The existing Land Law 2013 likely outlines categories for acquiring land for public purposes, such as infrastructure, education, and healthcare. However, the new additions raise questions about what constitutes "public interest" in these cases. Are these facilities truly essential public services, or do they cater more to private interests, like tourism in the case of resorts? Will they be accessible to the general public or serve a limited clientele?

Without clear definitions and limitations surrounding these new categories, the potential for a lack of transparency in the land acquisition process emerges. Hien (2022) observes that such discrepancies could lead to concerns about favoritism towards private entities and the displacement of private landowners without adequate compensation. The revised Land Law should tackle two key areas to address this ambiguity. First, the revised Land Law should clearly define "public interest" in the context of land acquisition. This definition should outline specific criteria these new categories must meet to qualify for land acquisition under the context of the public interest. Second, the revised Land Law needs to establish safeguards for transparency and oversight. This could involve public hearings, clear project selection and approval guidelines, and ensuring fair compensation for any private land acquired in line with existing principles within the Land Law framework. By taking these steps, the revised Land Law can find a better balance between facilitating development for genuine public benefit and protecting the rights of private landowners. Phan and Spitzer (2022) delved into the ideological tensions between private property rights and public interest regarding compulsory land acquisition by governments. Their research investigated the constitutional frameworks governing land acquisition in South Korea, Singapore, India, Australia, and the United States. By analyzing these diverse approaches, they identified potential amendments to Vietnamese policy on the Land Law 2013. They focused on fostering transparency in the acquisition process and strengthening legal safeguards for private landowners whenever the Vietnamese Government seeks to recover land for public purposes.

#### **2.4.2 Agricultural Land Acquisition for socio-economic development in the National or Public Interest**

Article 62 of the Land Law 2013 stipulates land acquisition for socio-economic development in the national or public interest by listing projects requiring decisions and approvals as grounds for land acquisition.

The Draft Land Law, dated September 13, 2023, adopts a novel approach by grouping socio-economic development projects in the national or public interest. According to the Draft, three groups of projects for socio-economic development in the national or public interest upon land acquisition include (1) construction of public works, works for industrial production purposes, and technical infrastructure facilities and amenities (technical infrastructure works); (2) construction of state agencies and non-business works; and (3) land acquisition for socio-economic development in other national or public interests.

Article 79 of the Draft provides types of projects not requiring any decision and approval for land acquisition, specifies the "sub-projects" for each kind, and supplements the types of essential projects, such as local and wholesale markets (Point h, Clause 1), projects for large-scale centralized agricultural, forestry, fishery, and seafood production and processing areas that centralize synchronously on shared infrastructure from production to processing of agricultural, forestry, fishery, and seafood products on an inter-district or inter-regional scale (Point c, Clause 3)..

Although the amendment thereto is to group specific projects requiring land acquisition for socio-economic development, the criteria to do so remain unclear. In detail, the first group indicates specific purposes; the second group indicates projects related to State management; the third group indicates other projects for socio-economic development for different national and public interests. Although the third is considered unspecified, it contradicts itself by listing certain items. As a result, the Draft appears to follow the same "path" as the Land Law 2013, in which the criteria for grouping projects requiring land acquisition for socio-economic development have yet to be determined.

In the spirit of balancing efficiency with fairness, Vietnam could adopt land acquisition practices from Singapore and South Korea (Stebek, 2013). According to Sengupta et al. (2023), Singapore has been known for its efficient and transparent land acquisition process. The country employs a one-stop shop approach, streamlining procedures and minimizing administrative burdens. On the other hand, Kim (2024) observes that South Korea is known for utilizing a risk-based approach, tailoring the complexity of the acquisition process based on the size and potential risks of the investment. This could help Vietnam manage the burden of smaller-scale acquisitions. In addition, emphasizing stakeholder engagement and participation throughout the land acquisition process, as used by the Netherlands (Czischke and Van, 2023), could inform most of the land acquisition dynamics in Vietnam. This can

help build trust and minimize social conflict in Vietnam. Additionally, the Netherlands has experience with land consolidation projects, potentially relevant for Vietnam's agricultural sector.

### **3. Damage Determination Upon Agricultural Land Acquisition**

#### **3.1 Concept of compensation for damage upon State agricultural land acquisition**

Damage is defined from various perspectives. In terms of linguistics, this word describes "harm or loss of life and property."<sup>5</sup> In legal science, damage is defined as the loss of life, health, honor, reputation, or property of individuals or organizations protected by law. The Civil Code 2015 stipulates that *damage caused by a breach of obligations includes physical and mental damage*.

Accordingly, the damage caused by the State agricultural land acquisition stems, directly or indirectly, from the acquisition activities. It can be measured fully and accurately based on the State's provisions. In addition, it ensures the State provides compensation to stabilize life and production. The State is willing to accept damage to land users for socio-economic development in the national or public interest, or, in other words, a greater interest during agricultural land acquisition.

Therefore, *damage caused by State agricultural land acquisition refers to both tangible and intangible losses suffered by agricultural land users due to land acquisition or its consequences*.

#### **3.2. Classification of damage caused by the State agricultural land acquisition**

Damage caused by the State agricultural land acquisition is classified based on different criteria and aspects as follows:

##### **3.2.1 Damage to land and assets**

Damage to land and assets upon State agricultural land acquisition is tangible and measurable with high accuracy. They involve the area of agricultural land lost due to acquisition, construction works, architectural objects, plants, and livestock that must be harvested early.

The Land Law 2013, as amended and supplemented in 2018, provides types of damage, including damage to land, assets, and production and business.

Damage to land is determined based on types of land specified in Article 10 of the Land Law 2013, as amended and supplemented in 2018. The land use purposes thereunder show the importance of agricultural development in the land law of Vietnam because the current area of agricultural land accounts for a high proportion of the total natural land area at 84%<sup>6</sup>. Vu and Goto (2020) highlighted the critical role of agricultural land as the primary factor of production for a significant portion of the Vietnamese population's livelihoods. This underscores the importance of considering land acquisition's broader social and economic impacts. Building on this point, Pham et al. (2021) argued that the Vietnamese Government's continued pursuit of Agricultural Land Acquisition for Urbanization (ALAFU) projects necessitates a comprehensive evaluation. This evaluation should assess the benefits of urbanization and forecast the potential for farmland abandonment following ALAFU projects. To ensure sustainable development in affected communities, Pham et al. (2021) further emphasized the need for the Government to prioritize the maintenance of agriculture, potentially through the promotion of peri-urban or urban agriculture initiatives. State acquisition of agricultural land generally goes beyond the immediate impact on a specific plot or farmer. It disrupts a crucial production factor, potentially jeopardizing entire communities' livelihoods. A holistic approach that considers both the needs of urbanization and the long-term sustainability of agricultural production is essential for navigating this complex issue.

According to the Land Law 2013, as amended and supplemented in 2018, the *remaining land investment costs include costs for ground fill-up and leveling and other directly related costs that can be proved to have been invested in the land and have not been retrieved by the time the State acquires the land*. In detail, related to agricultural land, they include ground costs for fill-up and leveling; enrichment of soil nutrients, soil desalination and de-acidification, corrosion and erosion control of the land used for agricultural production; costs for reinforcement load, vibration, and sinking bearing capacity of the land used as business premises; and other related costs in accordance with land use purpose<sup>7</sup>.

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<sup>5</sup> Hoang Phe et al. (2019). *Vietnamese Dictionary*, Institute of Linguistics, Hong Duc Publishing House, Hanoi. Page 1194.

<sup>6</sup> As of December 31, 2020, the area of agricultural land in Vietnam was 27,983,482 ha and total natural area was 33,134,427 ha according to Decision No. 387/QĐ-BTNMT dated March 2, 2022, by the Minister of Natural Resources and Environment on approving and publishing land area statistics in 2020.

<sup>7</sup>Article 3 of Decree No. 47/2014/ND-CP dated May 15, 2014, by the Government on compensation, support and resettlement upon land acquisition by the State.

Another case is damage to land plots that are not acquired but damaged during the implementation of projects by the State. Specifically, such an activity can change the purpose of land use or remain unchanged with restricted use of land. In this case, according to the law, compensation is made not for acquiring land but for damage caused by the implementation of projects due to the acquisition<sup>8</sup>. Pham et al. (2013) examine a case study focusing on the development of a hydropower facility by the Vietnamese Government. This initiative prompted the implementation of compensation and resettlement initiatives to address the adverse effects on forest ecosystems and hydrological patterns. Nevertheless, findings from Pham et al. (2013) underscore that despite policy amendments within the Land Law framework, inadequate execution emerges as the primary obstacle hindering the efficacy of compensation policies in cases of compulsory land acquisition.

Damage to construction works and architectural objects upon the State agricultural land acquisition concerns greenhouses and other building types for cultivation purposes, including farming not directly on the land or breeding facilities for cattle, poultry, and other animals as permitted by law.<sup>9</sup> However, no concept of an architectural object is introduced, so it is determined at the discretion of the local authorities. For example, damage to temporary fences made of barbed wire or B40 mesh without concrete footings is only classified as “supports for dismantling in Can Tho City.”<sup>10</sup> Meanwhile, in Ha Nam Province, architectural objects are determined to include but are not limited to drilled wells, dug wells, courtyards, stairs, attics, fences, water tanks, gates, and door overhangs<sup>11</sup>.

Damage to livestock and plants is typical upon the State agricultural land acquisition. Damage to livestock and plants cannot be easily determined. For example, damage to livestock upon State agricultural land acquisition is the cost of building barns and ponds and people’s income loss. In other words, livestock damage deals with early harvesting and reducing or terminating aquaculture operations<sup>12</sup>. Article 90 of the Land Law 2013 provides compensation for plants and livestock, while in Clause 2 hereof, only aquatic products are compensated. Damage to plants is determined by annual crops and perennial trees. However, it does not value the orchard at the time of handing over the land, but in some cases, it takes into account people’s income stability.

### **3.2.2 Damage before, during, and after land acquisition**

#### **3.2.2.1 Damage Before Land Acquisition**

Agricultural land acquisition can be determined to start from the effective date of the decision to its completion. However, damage caused by agricultural land acquisition should not be determined in this manner. It must begin when damage results from the decision to acquire agricultural land.

As stated in Article 63 of the Land Law 2013, as amended and supplemented in 2018, land acquisition for national defense or security purposes and socio-economic development in the national or public interest must be based on annual district-level land use plans and projects appropriate to annual land use plans and schedules<sup>13</sup>. According to Clauses 2 and 3, Article 49 of the Land Law 2013, *if the land use master plan has been published without an annual district-level land use plan, land users may continue to use land and exercise their rights as prescribed by the law. If the annual district-level land use plan is available, land users for whom the land use purposes are to be changed or whose land is to be acquired under the plans may continue exercising their rights but may not build new houses or construction works or plant perennial crops. They shall apply for permission from competent state agencies before repairing or renovating existing houses or construction works.*

Thus, the annual district-level land use plan should be published in detail in administrative decisions, including farmers’ current agricultural land area within the master plan and land use plan. Upon such a publication, civil rights to land, as well as other rights related to the use of agricultural land, are somewhat restricted as follows:

Damage to land relates to the rights specified in Article 167 of the Land Law 2013, as amended and supplemented in 2018, such as the right to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights, and contribute land use rights as

<sup>8</sup>Article 94 of the Land Law 2013 and Article 10 of Decree No. 47/2014/ND-CP: Compensation for damage to land in safety corridors upon construction of works with safety corridors.

<sup>9</sup> Point h, Clause 1, Article 10 of the Land Law 2013, as amended and supplemented in 2018.

<sup>10</sup> People’s Committee of Can Tho City (2020). *Appendix 1 Unit price of houses, works and architectural objects attached to Decision No. 10/2020-UBND dated September 9, 2020, by the People’s Committee of Can Tho City stipulating the unit price of houses, works, architectural objects and aquatic animals*, Can Tho.

<sup>11</sup> People’s Committee of Ha Nam Province (2021). *Decision No. 48/2021/QD-UBND dated December 20, 2021, by the People’s Committee of Ha Nam Province promulgating the unit price of compensation for houses, architectural objects, other construction works, and reinterments upon State land acquisition in Ha Nam Province*, Ha Nam.

<sup>12</sup> Phan Trung Hien, Nguyen Thanh Phuong (2019). Improve the law on livestock compensation when the state recovers land, *Journal of Science of Lac Hong University*, (06), Pages 67 -72.

<sup>13</sup> Article 63 of the Land Law 2013, as amended and supplemented in 2018.

capital. However, the said right is not restricted during the publication of the annual district-level land use plan. According to Article 49 of the Land Law, only agricultural land is subject to restrictions, such as prohibiting changing the purpose of land use from agricultural to non-agricultural and planting perennial trees. The Land Law contains provisions that alleviate some difficulties for farmers whose land is in an overdue planning area. In detail, “agricultural land users are not restricted in their rights related to land and land-attached assets” if the expired land use plan (more than three years from its publication) is not adjusted, canceled, or re-published by the competent state agencies.”<sup>14</sup> This provision is considered progressive. Nonetheless, more specific guidelines and mechanisms should be available to ensure that people exercise this right (for example, sanctions when state agencies and officials do not accept the exercise of the above right and consider this a violation)<sup>15</sup>.

Damage to construction works and architectural objects. In fact, the Land Law 2013 prohibits the construction of construction works and architectural objects after the land use plan has been published and agricultural land has been acquired; meanwhile, the decades-long planning complicates the lives and daily activities of farmers whose land is within the master plan. Farmers must be involved in production during this time to earn income and accumulate wealth. They cannot, however, construct cages, farms, or greenhouses for agricultural production, which affects their quality of life pending the acquisition decision.

### **3.2.2.2 Damage during land acquisition**

Damage during agricultural land acquisition can be seen from many different perspectives and aspects. For example, the damage affects both farmers who have acquired agricultural land and land users near the land clearance area. These impacts may include dust, light, noise, vibration, and the like, adversely affecting surrounding land users and their agricultural production and cultivation activities. Furthermore, agricultural land acquisition causes damage to assets on agricultural land, livestock, and crops that will be harvested soon.

### **3.2.2.3 Damage after land acquisition**

Damage still exists after the decision to acquire agricultural land and the operation of projects and works. This type of damage is usually suffered with a long-term impact by land users whose land is not acquired but near the clearance area. Some examples are a newly built airport or a factory with untreated or improperly treated wastewater affecting domestic water sources and production. In addition, the high-voltage light on the highway causes damage to the crops of neighboring households.

In addition, after land acquisition, people can also suffer intangible damage, which is normally neither seen nor touched, hence not quantified and not compensated, as observed by Nguyen (2021). It can affect the mental health, physical health, and psychological insecurity of the farmers whose land is acquired or damaged as a result of the acquisition process. More importantly, intangible damage can also be seen from a cultural, social, and environmental perspective. In fact, such damage is difficult to repair or even irreparable in some cases. In particular, the spiritual, emotional, and cultural damage to the land that farmers have lived in and produced cannot be determined for compensation easily and accurately.

Thus, damage caused by agricultural land acquisition should be viewed from a holistic perspective and aspects for full and accurate determination. This is significant in compensating land users whose agricultural lands are indirectly or directly acquired.

## **4. Compensation for Damage Upon State Land Acquisition**

Compensation for damage can be considered one of the important stages decisive to the success of agricultural land acquisition. Moreover, this process requires consistency and coherence in the principle of implementation to achieve efficiency. On the other hand, the quantity and quality of relevant claims and lawsuits depend on the efficiency of compensation for damage caused by agricultural land acquisition, so the implementation must take into account the balance of interests between the parties in this relation.

### **4.1 Concept of compensation for damage upon State agricultural land acquisition**

The Land Law 2013, as amended and supplemented in 2018, stipulates that land compensation is the return of the value of land use rights to the acquired land area to users by the State<sup>16</sup>. The compensation for damage upon State agricultural land acquisition, in particular, and land acquisition, in general, is not stipulated in terms of conceptual content but only in terms of compensation principles. In addition, the Civil Code 2015 stipulates compensation for damage: “*Individuals and legal entities whose civil rights are violated shall be compensated for all damage unless otherwise agreed by the parties or prescribed by law.*” For civil relations,

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<sup>14</sup> Article 29 of the Land Law 2003 and Article 49 of the Land Law 2013, as amended and supplemented in 2018.

<sup>15</sup> Phan Trung Hien (2021). *Information on compensation, support, and resettlement upon State land acquisition*. National Political Publishing House, Hanoi. Page 45.

<sup>16</sup> Clause 12, Article 3 of the 2013 Land Law amended and supplemented in 2018.

compensation for damage is a form of civil liability that obliges the party causing the damage to compensate materially and spiritually for the damaged party, except for certain cases<sup>17</sup>.

In addition to considering compensation for damage, the State's support policy demonstrates its responsibility for land users' loss due to acquisition. In essence, these two concepts are not identical in compensation for damage to the aggrieved. According to Article 3 of the Land Law 2013, support upon State land acquisition means the State assists those whose land is acquired to stabilize their livelihood and production. However, the determination between compensation or support for damage has not been delineated in practice. These two concepts are different in nature, leading to many profound consequences from wrong determination.

Compensation for damage upon State agricultural land acquisition is different from compensation upon land acquisition. Basically, compensation for land acquisition arising from fixed damages is prescribed in the Land Law 2013 by the State. The State's compensation for damage caused by the transfer of agricultural land use rights is determined in many areas of law and is not fixed in all cases. Beyond financial compensation, Vietnamese land acquisition policies incorporate land replacement as a form of compensation. This approach offers affected farmers alternative land parcels intended to be of comparable quality and location. However, Tran et al. (2022) identify challenges associated with land replacement. Their research, focusing on densely populated areas like Ha Tay and Nghe An provinces, reveals a scarcity of alternative land that can match the production qualities of the acquired land. This highlights a potential limitation of land replacement as a compensation strategy. Thus, by combining relevant concepts such as agricultural land acquisition, damage caused by agricultural land acquisition, and so on, *compensation for upon State agricultural land acquisition refers to the State's compensation for all damage caused by agricultural land acquisition to land users with acquired land.*

#### **4.2. Purpose and significance of compensation for damage upon State agricultural land acquisition.**

In general, compensation for damage upon State agricultural land acquisition has the following typical purposes and significance:

*Firstly, the effective implementation of compensation for damage upon state agricultural land acquisition shall receive a high consensus from land users regarding acquired land so that site clearance can be carried out quickly and smoothly.* Specifically, if the Government effectively provides compensation for damage in the previous projects, the people's trust will facilitate compensation caused by agricultural land acquisition in the following projects. For land users with acquired land, the damage affects their current livelihoods and their subsequent generations with a family tradition of agricultural production.

*Secondly, compensation for damage is a factor that ensures property rights upon State agricultural land acquisition.* At the most basic level, the affected rights can be mentioned as property rights, labor rights, the right to access information, the right to a legal residence, etc. In particular, the three most typical rights are property rights, the right to legal residence, and labor rights. Upon land acquisition, these must be ensured. Legally, land use rights are property rights, and other land-attached assets are qualified for constituting ownership rights. However, agricultural land use rights, land-attached ownership rights, and some other human rights must be reasonably compensated for any infringement, even for the State.

*Thirdly, good settlement of compensation for damage caused by agricultural land acquisition facilitates stabilizing people's lives after acquisition.* People's lives are inevitably affected upon acquisition, even if the land is partially acquired or mutilated. Meanwhile, the damage occurs at important locations to direct water into fields for irrigation or fishponds or to have light obscured due to the projects implemented after acquisition are heavy to the lives of farmers. This is not to mention that the damage is extremely significant for land users whose agricultural land is fully acquired. Therefore, compensation for damage is a basis to ensure that people with damage caused by agricultural land acquisition are compensated accordingly to stabilize their lives after acquisition. Ineffective implementation can deteriorate people's quality of life and slow down industrialization and modernization for national development.

In addition, good settlement of compensation for damage caused by agricultural land acquisition also contributes to the implementation of major economic and social policies of the affected party and the State through the harmony of the interests of the parties. Moreover, the economic restructuring and career change of land users with acquired agricultural land is a recognizable sign for effective compensation.

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<sup>17</sup>Clause 2, Article 584 of the Civil Law 2015 stipulates that the person who causes damage shall be discharged from liability for compensation in case where the damage incurs due to force majeure events or at entire fault of the aggrieved person, unless otherwise agreed or otherwise prescribed by law.



### **4.3. Criteria to ensure compensation for damage upon State agricultural land acquisition**

With the requirements set out in the situation of land transfer for national development, the compensation for damage upon State agricultural land acquisition must be adjusted by effective and feasible provisions. Therefore, some criteria can be considered when assessing the quality of the national law on compensation for damage when the State acquires agricultural land as follows:

#### **4.3.1 Fairness, proportionality, and attachment to damage**

Fairness is interpreted that all entities participating in a relationship with the same conditions and circumstances have similar rights and obligations.

Proportionality is used for equal comparison between two things, or more broadly, two events that have the same degree but are not identical.

Land resources are tools to create benefits, so the value of land is determined by the value of the benefits a person generates from the land that add to his well-being. "Compulsory acquisition of land equates to taking away these functioning, which may be both financial and non-financial. Thus, fair compensation would mean recreating or replacing this functioning for the landowner."<sup>18</sup> The law must ensure that benefits from agricultural land lost by legal land users after acquisition must be compensated equally. "The compensation policy for farmers upon agricultural land acquisition cannot be compensated by the transfer price of agricultural land in the market but must be commensurate with the value of agricultural land - the income and life of farmers."<sup>19</sup>

The principle of proportionality dictates that the value of compensation, particularly the land price, should be directly proportional to the market value of the land being acquired. This principle ensures that the compensation amount reflects the actual loss incurred by the landowner, regardless of the specific purpose of the acquisition by the state. For instance, whether the land is acquired for infrastructure development or industrial use, the compensation should reflect the fair market value of the agricultural land. Furthermore, proportionality applies regardless of the form of land transfer, whether voluntary, compulsory, or "requisitioned." Any transfer that results in demonstrable damage to the landowner necessitates proportional compensation. This ensures consistency and fairness in the land acquisition process.

Fairness in compensation requires that the awarded amount be commensurate with the losses suffered by the individual landowners. Support programs and assistance initiatives, while valuable components of the land acquisition process, cannot be used as a substitute for compensation in cases where demonstrable damage has occurred. For example, if a farmer loses their primary source of income due to land acquisition, financial compensation should be provided to help them transition to a new livelihood. Support programs, such as training in new skills or assistance with starting a small business, can be offered in addition to compensation, but they should not replace it. By adhering to the principle of fairness, compensation policies can strive to achieve a more equitable and transparent system for state acquisition of agricultural land.

#### **4.3.2 Stability, timeliness, and assurance of immediate and long-term benefits**

The law on compensation for damage caused by the State's acquisition of agricultural land demonstrates stability and permanence firstly through two aspects: (1) stability in the governing law and (2) stability and permanence in political and social aspects, meeting the requirements of economic, cultural, social development, defense, security, and international integration.

First of all, the stability in the law on compensation for damage upon State agricultural land acquisition does not mean the absolutization of the law. That is, the law shall be changed by amendments, supplements, or new promulgations to adjust social relations as necessary by social change.

In terms of ensuring the stability and long-term development of the country in general, the provisions on compensation for damage caused by the State's acquisition of agricultural land must be a strictly legal ground for the acquisition of agricultural land for the purposes prescribed by law. The stability and permanence of compensation for damage upon agricultural land acquisition must ensure the stable life and long-term livability of the people with damage after having agricultural land acquired.

In addition, for the stability of security and politics, the provisions on compensation for damage upon the state agricultural land acquisition must be strict. It ensures the harmony of interests between the entities in the relationship and guarantees that the

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<sup>18</sup> Jyoti Rao (2019). *Designing a fair approach to the compulsory acquisition of private land for public purposes - Evidence from Australia, India, and the United Kingdom*. Faculty of Architecture, Building and Planning university of Melbourne. Page 05.

<sup>19</sup> Hoang Van Cuong et al. (2022). *State management of land economy under the market mechanism in Vietnam*. National Political Publishing House, Hanoi. Page 245.

legitimate rights and interests of the people are respected and protected. As a result, disputes, complaints, and grievances that destabilize social order, security, and politics are limited. Also, investors will feel secure, which will promote their access to land and the development of projects. This contributes to long-term socio-economic development.

The timeliness in compensation for agricultural land acquisition is reflected in the order and procedures for determining damage and its value when it occurs. It ensures that the compensation value is equivalent to the market price of the acquired land use right or the property damaged by the agricultural land acquisition. Timeliness in compensation for agricultural land acquisition contributes to creating and quickly stabilizing the lives of households and individuals immediately after having agricultural land acquired. In addition, timely compensation reflects the current status of the damage value, contributing to the harmonious settlement of interests between the State and the people.

#### 4.3.3 Balance and harmony of interests

The balance in compensation for damage upon agricultural land acquisition shows the proportion between the nature of the damage and the value of compensation. Also, the compensation must be adequate and accurate compared to the damage. Compensation for agricultural land acquisition damages is truly fair when a balance is reached between public and private interests<sup>20</sup>. "Balancing interests is that the State, through law and policy, harmoniously resolves the relationship between the public interest and the legitimate interests of land users with acquired land. It can be seen as an optimal principle that needs to be chosen to protect the interests of both parties."<sup>21</sup> Compensation for damage is a mechanism for balancing the benefits for the parties in agricultural land acquisition projects. However, this process can only be done fairly and adequately when the issue of benefits is balanced and objective.

In addition, property rights are not absolute and may still be restricted for public purposes, but they must be ensured by adequate compensation. Accordingly, "the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid."<sup>22</sup> Thus, to guarantee the right to agricultural land as well as other property damaged by agricultural land acquisition, it is inevitable for the State to provide compensation for damage (including spiritual damage). It is to balance the interests of the parties.

However, the value of compensation is an important factor in ensuring fair and adequate compensation. Obviously, if the purpose of harmonizing public and private interests is to be achieved, the value of compensation must be equal to or higher than the market price. For example, "similar to India, in Australia, compensation is determined to be higher than market value, including (i) the market value of the affected interests, (ii) the special value of the land and property of the landowner; (iii) damage due to land parcel division; (iv) noise damage and other damages<sup>23</sup>." The level of compensation is determined by the market price or the amount that the property can be voluntarily sold or available at a given time. Thus, the most important general principle is negotiation and agreement.

When compensating for damage caused by agricultural land acquisition, the harmony of interests stems from the theory of balancing public and private interests. The role of this theory is demonstrated in various views. The most general can be affirmed *in a democratic society, where not only the public interest is emphasized, but also the private interest must be taken into account*<sup>24</sup>. In fact, balance is a state over a certain period and in a particular circumstance.

The process of agricultural land acquisition in Vietnam involves a complex interplay between various stakeholders. Investors are primarily motivated by the potential for profit and the ability to exploit discrepancies between approved land-use plans and their intended development projects. In contrast, the impact on the populace is multifaceted. While some landowners might benefit from increased land value due to their proximity to development projects, others experience significant disruption and loss. For instance, land acquisition can lead to the devaluation of remaining agricultural plots due to fragmentation or changes in surrounding infrastructure. The state's primary objective is, of course, to achieve the goals outlined in the approved land-use plans. However, the process often takes into account a broader range of political, cultural, social, and economic considerations beyond

<sup>20</sup> Phan Trung Hien (2022). *Land acquisition legal framework in Vietnam: balancing public and private interests*. Development - Induced Displacement and Resettlement in Vietnam, Exploring the State - People Nexus, Routledge. Page 23.

<sup>21</sup> Phan Trung Hien (2009). Law on compensation and site clearance in Vietnam - Balancing the interests of the State and the people, *Can Tho University Journal of Science*, (10), pp. 109-117.

<sup>22</sup> Thomas Paine (1969). *The Right of Man*. first included in *Everyman's Library* 1915. London. Page 97.

<sup>23</sup> Hugh D. Spitzer, Phan Trung Hien (2021). The constitutionality of compulsory land acquisition in Vietnam: Issues and Recommendations, *Law and Development Review*, Page 01 - 22.

<sup>24</sup> Phan Trung Hien (2009). *The law of compulsory acquisition of land - public and private interest. The law of compulsory acquisition of land - Striking a balance between public and private interest in the United Kingdom and Vietnam*. VDM Verlag Dr. Muller, Germany. Page 31.

the immediate purpose of acquisition. State authorities carefully navigate this calculus of interests, particularly during the implementation phase. Consequently, a potential imbalance emerges. The state and investors often enjoy localized benefits from land acquisition, while the burden of disruption and potential losses falls disproportionately on the individuals whose agricultural land is acquired; therefore, balancing and harmonizing interests is a fundamental and important criterion for establishing a legal system of compensation for damage caused by State agricultural land acquisition.

## **5. Conclusions and Recommendations**

Through the analysis of theoretical background contents, the core issues affecting the formation of provisions and the basis for evaluating the regulations on compensation for damage caused by State agricultural land acquisition are clarified, specifically:

*Firstly*, the theoretical foundation for compensating damages arising from state acquisition of agricultural land draws upon several core principles. A critical first step involves a comprehensive analysis of agricultural land and the land acquisition process. This analysis necessitates a thorough understanding of key perspectives on the subject. By synthesizing these various viewpoints, we can identify the most relevant concepts and characteristics that reflect agricultural land's contemporary nature and role. This foundational understanding then allows us to define the specific requirements for converting agricultural land to non-agricultural purposes. Establishing these requirements creates a critical framework for analyzing key legal cases involving agricultural land acquisition.

*Secondly*, while land in Vietnam is ultimately owned by the people and managed by the state, the state is still obligated to compensate for damages incurred when acquiring agricultural land. However, effective compensation hinges on a rigorous identification and assessment of these damages. Therefore, a critical first step involves clarifying the concept, characteristics, purpose, and significance of determining such damages. By precisely defining these elements, we illuminate the essential nature of this process within the broader context of agricultural land acquisition. In essence, the precise determination of damages becomes a central component not only of land acquisition itself but also, more specifically, of the compensation process for damages arising from state acquisition of agricultural land.

*Thirdly*, theoretical considerations surrounding compensation for damages arising from state acquisition of agricultural land highlight the multifaceted nature of this activity. Several factors contribute to a smooth and effective compensation process, with the accurate determination of damages remaining paramount. From a property rights perspective, compensation should encompass land use rights and potential property and emotional damages incurred by the affected landowners. This ensures compliance with the human rights enshrined in the Vietnamese Constitution and international law. State management considerations further underscore the importance of compensation. Adequate compensation serves as a cornerstone for building public consensus on land acquisition policies. Consequently, when damage compensation is conducted efficiently and expeditiously, it facilitates site clearance, fosters socioeconomic development, and ultimately contributes to the successful implementation of land acquisition projects.

*Fourthly*, the imperative of agricultural land acquisition for national development necessitates the effective implementation of two key activities: damage determination and compensation. To achieve this effectiveness, a set of criteria can be established to evaluate the quality of the legislation governing these activities. These criteria should be constructed based on the evolving nature and trends in the development of legal provisions regarding damage determination and compensation for state acquisition of agricultural land. Firstly, with respect to damage determination, the following criteria are crucial:

- (1) Accuracy and efficiency: The process of damage assessment should be precise and streamlined to minimize delays and ensure fair outcomes for affected landowners.
- (2) Adequacy and timeliness: Compensation amounts awarded should accurately reflect the full extent of damages incurred, and these payments should be distributed promptly to minimize financial hardship.
- (3) Democracy and objectivity: Damage determination procedures should incorporate opportunities for public participation and be free from bias or influence by external factors.
- (4) Publicity and transparency: The entire process, including methodologies and criteria used for damage assessment, should be clearly communicated to all stakeholders.

Since damage serves as the foundation for compensation, additional criteria are essential for ensuring its effectiveness:

- (1) Fairness, proportionality, and attachment to damage: Compensation awards should be equitable, reflecting the severity of the damages sustained by each landowner.

(2) Stability, timeliness, and assurance of immediate and long-term interests: Compensation policies should be consistent and reliable, providing immediate financial relief while also safeguarding long-term livelihoods.

(3) Suitability for good governance standards: Compensation practices should uphold principles of good governance, promoting transparency and accountability.

(4) Balance and Harmony of Interests: Effective compensation strategies strive to achieve a balance between the needs of national development and the fair treatment of landowners whose land is acquired by the state. In general, the Vietnamese State acquisition of agricultural land necessitates a delicate balancing act between the interests of various stakeholders. This chapter focuses on ensuring harmony between the State, investors, and the affected land users. Here, we delve into the research question, as explored by a PhD student during a seminar, regarding the legal framework for determining and compensating damages arising from such acquisitions. By analyzing legal principles, this chapter establishes a set of criteria that guarantee fair compensation for affected landowners. These criteria provide a basis for legal evaluation and serve as a theoretical foundation for studying the existing provisions and their practical application in damage compensation cases.

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