

# LAND POLICY IN 1981-2005

## Achievements and Shortcomings

by NGUYỄN TẤN PHÁT

### 1. Achievements

a. Ownership of land by citizens is established and ensured: Legal infrastructure for implementing the ownership of land and other properties is an important precondition for the socioeconomic development. Better market access and increases in population make the land price rise. Disputes over the land ownership start to appear, which forces the Government to amend the land policy and law.

In Vietnam, such rights as using, inheriting, transferring, exchanging, mortgaging and leasing, in fact, are different aspects of the ownership of land. In other words, the establishment of rights to land is an act of handing a limited ownership of land. This establishment comprises the affirmation of legal ownership by the State and economic ownership by the land users. This means that, there is no privatization of land. The Government only grants the right to use the land to citizens comprising five above-mentioned rights. This policy is considered as appropriate to the VCP political viewpoint and normal development process.

Thus, the ownership of land in practice could be in the hand of private persons but the legal ownership still belongs to the State, because the land owners have to transfer their ownership to the State if required. In Vietnam, citizens and organizations are granted the right to use, and earn benefits from, the land. This

practice brings about the following benefits:

- Equality: when the land use right is established and ensured by the State, land owners can engage more actively in the markets and spend more time and energy on their business instead of on protecting their land ownership. Sometimes, they, or their children, could move to other places for non-farming jobs. The land ownership could be mortgaged with banks for formal loans, which save owners from spending time and money securing bank fiduciary loans.

The establishment of the land ownership by the State also helps reduce disputes and conflicts about the land between citizens, and at the same time, make the land management by local authorities more transparent.

After securing the land ownership, citizens tend to use the land more effectively, and sometimes they can help protect the environment. For example, as noted by many foreign researchers, the forest in

Vietnam is better kept after lots of forest are handed to citizens who are responsible for protecting and preserving them.

- Better investment and productivity: When the land ownership is ensured for a long time, owners are saved from unnecessary disputes and they tend to look for a better way of using their land. The land ownership also allows them to secure bank loans. These factors lead to higher investment and productivity in using land.

Researches in China, Pakistan and Vietnam show that the assurance of the land ownership determines the size of investment. When peasants believe they own their land, they spend more time and money caring the crops. That is why the productivity is higher. A WB survey in Vietnam also reports that on pieces of land that has been registered, peasants increased watering and invested more money and labor in their crops or decided to plant perennials. In short, the land ownership always

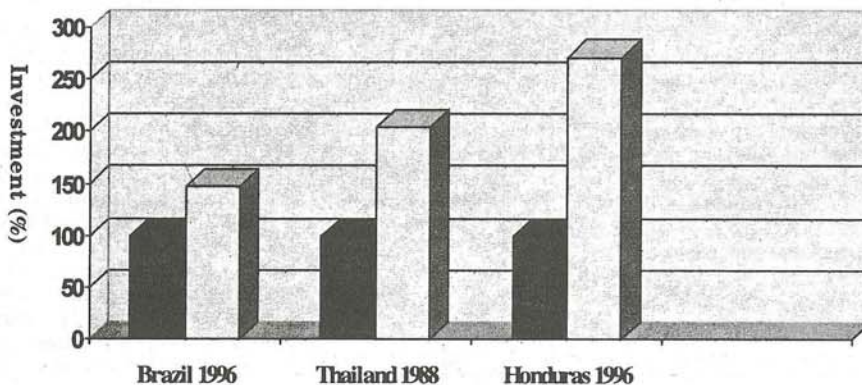
changes behavior of owners in a favorable and positive manner.

b. Improvements in land use and management: Professor Lan Williamson from Melbourne University, director of the investigation of the realty market in Vietnamese rural areas, noted, "In the past 10 years, a formal and busy market for real estate has come into being in rural areas. This is a great achievement compared with other countries and Vietnam can feel proud about it."

In 2004, the UNDP report on the realty market in Vietnamese rural areas said Vietnam had made good progress in granting certificates of the land use right when implementing the 1993 Land Law. Official market mechanisms for transferring and mortgaging farming land have been established.

However, it's the realty market in cities that reflects clearly the progress of the land policy. Rights to land held by the State and users have been determined. The State acts as a

Figure 1: Effects of the land registration on investment in some countries in certain years





representative of the people to whom the legal ownership of land belongs. Rights relating to the use of land have been granted to citizens, thereby helping them feel confident in their investment in the land and try to use it more effectively, the land is transferred and concentrated in hands of the best users. Legal recognition of transactions relating to the land has helped develop a realty market.

In the realty market in rural areas, however, there are obstacles to the equal participation by ordinary people. High fees of the land use right prevents poor families from securing certificates of the land use right – the paper that allows them to get bank loans. UNDP officials said that the main challenge to Vietnam today is to ensure market access for all citizens, especially the poor ones. Transparency of procedures and practices applied on the realty market and low costs for market access will help the poor to gain more profit from the land.

c. Gender equality and the land policy: Article 48, Section 3, one of important article of the 2003 Land Law, reads, "If the land is co-owned by husband and

wife, their names must be registered in the certificate of the land use right."

This is an effort to affirm the gender equality, and women's right to land in particular. According to recent statistics, some 97% of women didn't have their names registered in the certificate of the land use right. This put them at a serious disadvantage: they could be denied this right at any time. In cases of divorce, separation, or the death of their husbands, most of them are usually provided with a small piece of land or dismissed by the husband's family.

In economic aspect, they can't secure bank loans without the certificate. They must get approval in writing from the husband or his family and from local authorities if they want to borrow from banks. This situation encourages the husband to give, sell or lease their land without consulting his wife.

At present, the practice of writing down both names still meets with the following difficulties:

- Other laws relating to the land use right by a couple, such as Civil Code, Law on Protection of Natural Resources and Forest

Development, Construction Law, banking Institutions Law, etc. haven't been amended with a view to ensuring the gender equality.

- Male chauvinism is still common among local officials and families in rural areas.

- Even women know almost nothing about their rights and protection by law.

## 2. Shortcomings

a. Problems caused by the land policy:

- The distinction between the ownership and the land use right is not done properly and clearly, which leads to different interpretation and implementation of the law, unnecessary disputes and lawsuits, and social unrest when many citizens don't agree with local officials about some solutions to their complaints.

- Policies on tax, fee of the land use right, compensation before land clearance, etc. are not clear enough to ensure legitimate rights of citizens and the State.

- The task of zoning and employing the land stock by local governments is not carried out according to trends of the socioeco-

nomics development and realities.

- The granting of certificates of the land use right is done too slowly.

- Duties and rights relating to the land management are not delegated properly between authorities of different levels, which makes it difficult for them to implement the land law.

- The bulk of subordinate legislation is clumsy, overlapping, and inconsistent making the land management difficult.

b. Problems caused by informal realty market:

Operations on this market lead to inefficient employment of land and real estates, bigger gap between the rich and the poor, speculation in real estate, complaints and disputes, loss of income from trading in land for the budget, and higher production cost and lower competitiveness for companies because of high expenses on the land use right.

c. Urgent questions:

The situation and shortcomings of the realty market pose many urgent questions. The following are some of them.

- The procedures for granting the certificates of the land use right is too complicated and time consuming. How can they be improved?

- Expenses on process of getting the certificate, transferring the land use right or changing the purpose for the land are beyond reach of the poor. How can the Government cut them?

- The land use right is only valid for a period. How can it be renewed? Are citizens content with this period?

- Is a limit on the area of land granted to a citizen necessary? Does this limit cause bad effects on the development of the realty market?

- Are auctions of public land for some budget income reasonable? ■



Photo by Huynh Tho