



Original Article

# Land Law and the Security of Farmers' Land-use Rights in Viet Nam: Development and Challenges in Transition

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**Abstract:** Land tenure security is important to agricultural development, especially in developing countries. Viet Nam's land law has been significantly improved since its economic reform starting in 1986, and made a great contribution to the enhancement of the security of farmers' land-use rights. However, in a transition to a modern economy as emerging in Viet Nam, there remain challenges to the security of farmers' land-use rights such as limitation of arable landholding ceiling, unnecessary procedural provisions of renewals, and no clear-cut transition to modern thinking of law-makers for land use management. These challenges require a further reform of the land law in order to encourage more effective land use for agricultural development and bring larger economic benefits to small farmers.

**Keywords:** Agricultural land, farmers' land-use rights, land law, tenure security, Vietnam.

## 1. Introduction

Land tenure security has been raised as a concern since the 1970s [1], and has attracted a number of ongoing theoretical and empirical research. Several researchers consider the security of tenure as one's perception of the certainty of his/her rights to a piece of land and certainty as an element of land tenure security

[2]. Based on the nature of tenure security as the perception of people on the certainty of their rights to land, Place and others [3] gave a detailed and comprehensive definition of land tenure security. According to Place and others, land tenure security includes three elements: breadth, duration and assurance. Breadth is meant the number and the quality of rights to land that someone is entitled to hold. Duration

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relates to how long these land rights can be held, and assurance refers to how well the land rights are protected against outsiders, including the state. Although the three elements are normally considered as measurements of tenure security, to assess the security of a given land tenure, especially in a developing country, where the rule of law is underdeveloped, another measurement should be taken into account; that is unambiguity, transparency, and stability of land tenure [4].

Land tenure security is believed to be important for land-related investment and agricultural growth. Feder [5] found that tenure security can bring three benefits: i) creating an incentive for farmers to invest in land; ii) enabling farmers to improve their financial capacity to invest in land by using land rights as collateral for formal loans; and iii) facilitating land sales and rental markets. The first two benefits directly contribute to agricultural productivity, while the third can redistribute land from ineffective farmers to effective ones through the market mechanism, helping land to be used effectively. These advantages make tenure security more and more vital to agricultural development, especially in developing countries where agriculture meets challenges such as land loss, land degradation and climate change.

Viet Nam is a developing country and in a transition to a modern economy. Its socio-economic conditions have been changing dramatically since its economic reform starting in 1986. The economy moves from agricultural to an industrial one. The agricultural sector contributes 14.85% to the national economy structure, the labour force working in agriculture accounts for 33.1% of the whole national labour force, and arable land tends to reduce (for example, paddy area reduces 192, 500 hectares) in 2020 [6]. Furthermore, agriculture faces land loss, land degradation, and climate change,

which negatively affects its productivity [7]. Nevertheless, agriculture is required to boost its productivity to provide more products for industry and society. Although this is a dilemma, we still find ways to improve agricultural performance by making more investment in land and in technologies. However, the question arising is how to attract more investment in agriculture while agriculture is a less attractive industry compared to the others. The solution, among other things, to such a dilemma, is to enhance the security of farmland tenure.

Viet Nam's land law has been significantly improved since its economic reform and made a great contribution to the enhancement of the security of farmers' land-use rights. Since under the Vietnamese land law, there are several categories of land based on the purpose of land use such as agricultural land, residential land and other non-agricultural lands, in this paper, farmers' land-use rights are meant to the arable land used for growing annual and perennial trees only. The breadth of farmers' land-use rights has been widened, including better substantive rights to land such as the right to control arable land independently, to transfer land-use rights and to receive fair compensation over land expropriation. More importantly, the duration of land-use rights has been prolonged for fifty years and can be renewed automatically. However, in a transition to a modern economy as emerging in Viet Nam, there remain challenges to the security of farmers' land-use rights.

The purpose of this paper is twofold. First, it provides an overview of the security of farmers' land-use rights (especially annual and perennial cropland) under the law at the four stages of development signified by the four Land Acts of 1987, 1993, 2003 and 2013 in Viet Nam since its economic reform. The assessment of tenure security is based on three criteria of tenure security (breadth, duration and assurance) developed by Place and others [3]. Second, it

analyses challenges to the security of farmers' land-use rights and suggests further reforms to the Vietnamese land law so as to continue facilitating agricultural development in the changing socio-economic context in Viet Nam.

## **2. An overview of the security of farmers' land-use rights in Viet Nam since its economic reform**

### *2.1. Vietnam's Land Acts in a nutshell*

Viet Nam gained its independence in 1945 and established a socialist state since then. In order to establish equality in land distribution and land-use efficiency appropriate to its socialist ideology, private ownership of land was gradually abolished, and all land in Vietnam was nationalised with the 1980 Constitution [8].

The current Constitution of 2013, which reflects the provisions of the 1980 Constitution, states that all the land in the country is publicly owned and managed by the State [9]. Private individuals, corporations, and other organisations are, however, allowed to enjoy certain rights to land under law; these are referred to collectively as land-use rights and granted with respect to all categories of land including agricultural land.

Viet Nam started its Doi Moi or economic reform in 1986. Since then, there are four Land Acts have been enacted. The first Land Act was passed in 1987 and then was replaced by the 1993 Act. The 1993 Land Act was amended in 1998 and 2000, and finally replaced with a new one in 2003 to meet the demands of new socio-economic conditions. After lasting for ten years, the 2003 Land Act was replaced by the existing Act 2013, which came into force on the first of July 2014.

### *2.2. Improvements in the breadth of land tenure*

Although the socialist principle of land ownership remains unchanged, the security of land tenure in general, and of farmers' land-use

rights over cropland have changed dramatically since the economic reform. Tenure security is affected by the breadth of land tenure, i.e. the number of rights to land and the quality of these rights [10].

In terms of the breadth, several rights to cropland have been granted to farmers in Viet Nam, especially the right to transfer and the right to manage land use. According to the first Land Act, farmers and farm households were entitled to hold arable land individually, not collectively, and land-use rights were granted to them [11]. Such a land-use right, however, was primarily limited to the right to cultivate on farmland and to harvest; transferability of the land-use right was mostly banned. The Land Act 1993 changed the land-use rights dramatically by recognising the property nature of the land-use rights and making the land-use right transferable [12]. As transferability is believed to be crucial to tenure security [4], this change initiated a breakthrough for the security of farmers' land rights in Viet Nam.

The other Land Acts keep the right to transfer, but make improvements in the quality of transfer rights [13]. The security of land tenure could be affected by the quality of land rights, especially negatively by restrictions over land rights. The first improvement is related to the right to sell. According to Article 3.2 of the 1993 Act, farmers' land-use rights were allowed to be transferred to those who resided in the same place as the arable land to be transferred was situated. However, such a requirement has been abolished by the 2003 Act. Generally, farmers can transfer their arable land to anyone throughout the country regardless of the place of residence of the transferee, except in a few situations where restrictions continue to apply, as in the case of agricultural land in protected areas and paddy fields [14]. This enables farmers to sell their land rights to the highest price as they can reach more potential buyers.

The second one regards the right of mortgage, which was initially restricted by the First Act. Under the 1993 Land Act, farmers were allowed to use their land-use rights as collateral, but only an assignment in favour of a

domestic credit institution under Vietnamese law was allowed. The 2003 Act extended the categories of mortgagees to include branches of foreign banks legally operating in Vietnam, along with any company and private citizens (including Vietnamese residing overseas investing in Vietnam) [15]. This expansion allows farmers more sources of capital and they should find that they have more choice in terms of credit suppliers potentially suited to their best interest and convenience. The 2013 Act makes a further release for the right to mortgage by allowing farmers to use their farmland rights as collateral for any purposes instead of only for a cultivation purpose as set forth in the 2003 Act [16]. Since the quantity, as well as the quality of the land-use rights, have been improved over the four Land Acts, it shows that farmers can enjoy more rights and more freedom to farmland, which helps an increase in their tenure security.

### *2.3. Improvements in the duration of land tenure*

With regard to the duration of farmers' land tenure, the first Land Act did not explicitly make a clear provision thereon. In the beginning, the term of farmers' land-use rights as defined by the policy of the Communist Party of Viet Nam and farmland was generally allocated to farmers for a short term, typically 3 to 15 years.

Unlike the 1987 Act, the 1993 Land Act clearly allowed farmers to enjoy a 20-year term of use for annual cropland and a 50 year-term for perennial cropland and subjected to renewal. The existing Land Act of 2013 prolonged the length of farmers' land-use rights to 50 years for both annual and perennial cropland and renewal is automatic. Theoretically, the longer land rights are held, the more secure the rights are if the other elements of land tenure are constant [17]. It can, therefore, be concluded that the security of farmers' land-use rights is further enhanced by the Land Act 2013.

### *2.4. Improvements in the assurance of land tenure*

Besides the breadth and duration of the land tenure, the assurance of Vietnamese farmers'

land tenure has changed significantly over the four Land Acts. The assurance means the protection of land rights against outsiders, including states. The Viet Nam's land law provides principal mechanisms to protect land rights such as compensation over land expropriation and land registry. As regards land compensation upon land expropriation, several improvements have been made through the development of the four Land Acts.

The first Land Act of 1987 did not consider farmers' land-use rights as proprietary rights; it provided no compensation for the land value when the land was taken by the State for public interests. Instead of compensation, the land user whose land-use rights were acquired was allotted another plot of land in order to re-settle his or her life affected by land expropriation. Such a mechanism cannot be equated with land compensation, but it is like an exchange of land in which the re-allotted land was not required to be equivalent to the acquired land in value and size [18].

However, since the adoption of the 1993 Land Act, the State acknowledged the economic value of farmland and land compensation had been sanctioned together with land expropriation. The 2003 Act continually granted the State eminent domain, but limited the cases in which the State can execute its eminent domain as well as defined rather clearly the concept of public interests for land expropriation. Additionally, the 2003 Act required the land price used for land compensation equivalent to market price instead of being set by the State. Inherited all improvements of the 2003 Act, the existing Land Act of 2013 provides better land expropriation procedures and higher financial support to assist the affected farmers in seeking for alternative jobs since they can not keep their farm works. As such, it is shown that the State has gradually recognised the property nature of farmers' land-use rights and farmers' land-use rights are economically valuable, enhancing the security of the land rights.

In addition to the advance in land expropriation and compensation, the land law

has secured farmers' land-use rights meaningfully by providing for land registration. The registration of farmers' land-use rights has been a statutory requirement since the 1987 Act. However, not until the adoption of the 2003 Act has the registration of farmers' land-use rights been defined clearly and comprehensively in a statute. The 1987 Act required farmers to register their land-use rights but made no provisions for the procedures to do so. It only assigned the fundamentals relating to land registration such as the competent authority, the conditions, and the form the land-use rights certificate should take, and left implementation of land registration up to the discretion of the competent authority. Although the 1993 Act attempted to accommodate the issuance of land-use rights certificates as a requirement of all land transactions and land compensation, and stipulated land registration procedures, these procedures were regarded as complicated and time-consuming.

The 2003 Act simplified the procedures and established offices of land registration to make land registration approachable, transparent, and convenient through "one-stop-shop" procedures in which farmers deal with a single local authority and one location for land registration. Thanks to one-stop shops, farmers now can save time and expense in land registration, because they only have to contact a single agency to initiate their land registration [19]. More conveniently, under the one-stop-shop mechanism, all relevant procedures must be announced publicly, and applicants can check these procedures at the local municipality [20]. Farmers can access cadastral information by submitting a request to the office of land registration.

Additionally, the 2003 Act mandates the registration of joint ownership of land-use rights between spouses unless the couple expresses a written disagreement; therefore, the land-use rights of female farmers are largely ensured. In 2007, a regulation passed under the 2003 Act further clarified the land-use rights registration provisions recognising the land-use rights of those who enjoy *de facto* long-established and

unchallenged use of land [14]. The aim of the regulation was to accelerate the formalisation of all landholdings, thus supporting a functioning land market.

Furthermore, Article 28 of the 2013 Land Act recognises the right to access land information to everyone, facilitating a further development of the land market in Viet Nam. Simplified and convenient land registration contributes to tenure security in several ways. Land formalisation ensures that the land-use rights of farmers are recognised and protected by the State against the claims of outsiders, and they can now make a claim for land compensation in the case of land expropriation.

### **3. The challenges to the security of farmers' land-use rights in Viet Nam**

It is undeniable that the security of farmers' land tenure has been gradually enhanced in Viet Nam and at present, it is thought that the land-use rights of farmers can be virtually equated with *de facto* private ownership of land [4]. Land-use rights have been securer to adapt to the new socio-economic context of industrialisation and modernisations as emerging in the nation since its economic reform. In such a changing context, it is required, among other things, an enhanced tenure security so as to encourage more capital investment in agricultural land to boost land productivity and agricultural growth. Despite the enhancement as above mentioned, there are limits and challenges to farmers' tenure security in Viet Nam.

#### *3.1. Limits on the duration of the land tenure*

The first limit is related to the duration of farmers' land-use rights. Although the land law allows farmers' land-use rights to be renewable automatically, there is a possibility for the State's land takings without compensation if the land use is due to expire and can not be renewable because the State needs the land for public interests. On the other hand, the remain of the land use term provision in the land law is

unnecessary. If the law-makers would like to save the provision for land expropriation just in case the State needs the land but could not afford land compensation. This is not fair and unrealistic. We can look through past experience to find that such an expectation does not come true. Even in the year 2012, when most of the farmers' land-use rights to annual cropland were due, several farmers were afraid that their land-use rights would be taken by the State. However, this did not happen and the State should not do this in the existing socio-economic context since it could cause a social crisis.

Moreover, it would be unfair for farmers to whom the State allocated a piece of arable land as a means of production for their living, like social welfare, but then the State took the land back, even in case of in the public interest, without compensation for the living of the farmers. The allocation of farmland to farmers in Viet Nam is social welfare, unlike a lease in terms of a civil law matter; therefore, it could not be treated the same as the termination of a land lease under the civil law principle. In addition, since the first redistribution of farmland in 1992, farmers' land rights have been transferred over several hands; the existing owners of the farmland may not those directedly receiving the first allocation from the State, but they have received the land from those first farmers and have paid for these land transfers, and at the time of transfers, they seldom thought of the duration of land rights, but the value of the land, and have already invested their labour and capital on the land transferred gradually through generations. As such, taking farmers' land rights due to expiration is impossible and unjust in the existing socio-economic context in Viet Nam.

### *3.2. Limits on the landholding ceiling in land transfers*

The second limit is related to the landholding ceiling in land transfers. To facilitate agricultural development in the new context where small farms could be beautiful but less profitable, large-scale land farming is preferable and it is necessary to have large-scale farms. In this

context, redistribution of farmland should be carried out by market mechanism.

The fear of land exploitation should be reconsidered thoroughly, especially in the existing socio-economic and political context where the state power is in the hand of the working class and non-farm jobs are quite available. However, to prevent farmland concentration as well as encourage effective land use, it would be wiser to apply tax thresholds over arable landholding. Moreover, the tax thresholds could be flexible to not restrict the development of large-scale farms that provide a number of farm jobs to local people. Agricultural workers are protected by the labour law and must be treated equally with other labourers in order to prevent the reoccurrence of the exploitation between landlords and land tenants experienced during feudalism. Furthermore, the regulations on banning abandoned agricultural land should be strictly observed to prevent land speculation.

### *3.3. Limits on the assurance of the land tenure*

The third limit is linked to the assurance of the right to lease land-use rights and land registration. The right to rent arable land to corporations must be protected by assuring that farmers can keep the land-use rights and be allowed to renew their land rights during the land rentals. According to the existing land law, farmers' land rights are renewable with the conditions that the use of the land complies with an approved land use planning and the farmers must have a need to continue their use of the land. When the farmers rent out their land rights, this may imply that they do not need to use the land anymore, and it could lead to the termination of the land rights when the rights are due. Therefore, it should be defined clearly in the law that farmers' land-use rights are allowed to renew even in the case that the arable land comes to expire during it has been rented out to others.

In addition, digital land registration has been underdeveloped in Viet Nam, and this causes obstacles for the healthy development of the land market. The right to access to land information is granted to individuals by law, but this right is

seldom well respected and protected in practice, leading to frauds in land transfers and affecting the security of farmers' land-use rights. It is, therefore, a need for the Government, to make clear that cadastral information is accessible for anyone and access to cadastral information shall be paid reasonably.

### 3.4. Limits on the land market

In addition to the limits of the three elements of land tenure security as mentioned above, the security of farmers' land rights faces challenges to make tenure security matter. Tenure security becomes less valuable when other factors that materialise the security are unavailable or underdeveloped.

Land markets, among other markets such as labor and credit markets, are important to materialise the security. There is a land market in Viet Nam, but it is underdeveloped, especially the market of farmland. An increase in farmers' land tenure security would be unworthy if such an increase brings few benefits to farmers. One of the benefits of tenure security is to enable landowners to regain their investments on land, even in case they do not use the land, by selling it. And to facilitate this benefit, there must be a market for arable land available, where farmland can be sold to the most wanted user with the highest price. Thus, an agricultural land market should be formally established in rural areas in order to help farmers' land-use rights be redistributed efficiently and economically.

## 4. Conclusion

Land tenure arrangements are supposed to bring tenure security to land right holders so as to ensure land-use efficiency and sustainability. The security of farmers' land-use rights for cropland has been significantly enhanced through the changes of the four land laws in Viet Nam. However, since its economic reform, Viet Nam is in a transition to an industrial economy, its socio-economic conditions have been changing dramatically and the agricultural sector

is required to robust its performance and productivity while facing challenges such as land loss, land degradation and climate change. To tackle such a dilemma, farmers' land-use rights are required to be protected better in order to encourage higher capital investment on agricultural land to increase land productivity.

The security of farmers' land-use rights has been improved significantly since its economic reform in Viet Nam. The lawmakers gradually moved away from traditional socialist thinking of state management over the use of agricultural land; making land tenure of small farmers more secured. Nevertheless, there remains a hesitation in making a complete transition to a modern model of state management over farmland. There are restrictions on landholding, duration and registration, which are believed to make a hindrance to the development process of agriculture as well as the economic benefits of small farmers' land rights. It is suggested that landholding restrictions should be repealed and replaced by land taxation with different thresholds, farmers' land-use rights are held in perpetuity, and an arable land market be established with land information accessible to everyone and via digital land registry. These changes are needed to continually secure farmers' land-use rights in a changing socio-economic context and facilitate capital investment in land for agricultural growth in the country.

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