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# EXECUTIVE SUMMARY

## Aggregated outcomes of the community consultation supporting the improvement of the draft amended Land Law





## General introduction

This report *Aggregated outcomes of the community consultation supporting the improvement of the draft amended Land Law* presents the main findings from the community consultation process and recommendations of amendments of the draft Land Law. It aims to share the needs of the people, especially disadvantaged groups such as small scale farmers, marginalized poor and ethnic minority women and men. This report is based on the consultation with more than 1,300 people from the aforementioned groups and nearly 300 local government officers in 22 communes of 11 districts of 4 provinces (Hòa Bình, Yên Bái, Quảng Bình and Long An).

The community consultation explored the status of land management and land-use, its impacts on disadvantaged groups, weaknesses and shortages in the enforcement of land policies and procedures and the 2003 Land Law. It puts forth concrete recommendations for the draft amended Land Law. The contents of the consultation included the most pervasive issues facing the community, including: land-use master planning and planning; the use of agricultural land; land allocation for ethnic minority people and forest farmland; land pricing; land acquisition, compensation, support and rehabilitation; and the participation of

the community in land decision-making and oversight of the enforcement of land laws. Transparency of land management and land-use is a common issue in each of these areas.

The consultation was carried out through a combination of *direct community consultation and expert opinion collection*. Specific stories found in the consultation process were analysed by leading land law experts to identify factors relating to the enforcement of land laws and to shortages in the 2003 Land Law. A comparison was made to the new draft amended Land Law to identify issues that need to be further supplemented or amended in order for the amended law to be effective and enforceable.

The Institute for Legislative Studies and Oxfam supported and coordinated the community consultation with the participation of the Food Security and Poverty Reduction Network (CIFPEN), the Hoa Binh Province Farmers' Association, the Rural Development and Poverty Reduction Fund (PDPR), the Centre for Indigenous Knowledge Research and Development (CIRD), the Quang Binh province Member of Parliament delegation office, the Vietnam Women's Union and the Vietnam Rural Science Association.



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## Summary of major findings of the community consultation

### 1. On land master planning and planning.

People believe that they are not well informed and cannot participate in the land master planning and planning process. The authorities do not make it clear whether it is a socio-economic development master planning or land-use or construction master planning. Land-use master plans are still fragmented, under implemented and lacking information and mechanisms to closely protect agricultural land reserves. People experiences more difficult life because their production lands are unsecured and their livelihoods affected. The consultation outcomes have shown the need of people in many localities for information, participation in decision making, and oversight of activities relating to land policy implementation.

### 2. On land-use regimes for farmer-used agricultural land and land policies for ethnic minority people.

Traditionally and culturally, many ethnic minority people's lives are closely intertwined with the forest. In the past, ethnic minority people could use and protect the land and the forest but now **the people lack both residential and agricultural land, leading to a loss of livelihoods and frequent hunger.** Meanwhile, **state-owned agricultural and forest farms occupy large areas**

**of land, the majority of which is used inefficiently.** This has led to land disputes between the state-owned agricultural and forest farms and the local people.

### 3. On legal documents on land pricing.

Land price decided by the State is **inconsistent** and the enforcement of legal regulations on land pricing is **neither clear nor transparent.** There is evidence that in some situations the land price decided for taxation is higher than that for compensation for state acquired land. The land price decided by authorities for compensation for the people is often **very low and often considerably lower than the market land-use value and market land transfer price.**

### 4. On land acquisition, compensation and support for rehabilitation by the State.

It is widely agreed that **the land acquisition process lacks transparency.** Most people do not feel informed about investors who have land allocated or leased by the state. Additionally, they do not feel informed about the compensation, support or conditions of the land that they will be relocated to, or the impact that the rehabilitation process will have on their lives. People are upset that law enforcement does not follow the principle of "resettlement with development conditions equal or better than before", especially regarding their compensation, as people receive little compensation or support while many investors gain significant benefits from land acquisition.



## Major recommendations

This report recommends adding 12 new articles for chapters I, IV, V, VI, VIII and amending articles 34, 44, 46, 47, 81, 82, 95, 107, 130, 131 and 132 of the draft amended Land Law.

### A. Adding 12 new articles for chapters I, IV, V, VI, VIII

**(1). Chapter I. Adding 02 articles on *Provision for two methods of gathering people's opinions and the consensus of the community* for State decisions on land, land management and enforcement of land laws.**

#### ***Two methods of getting people's opinions:***

*i) Disseminating information and collecting opinions:* Tools used to gather community input must be prepared in written form, be concise and comprehensive and be in both Vietnamese and local languages for ethnic minority communities. The information should be available in electronic portals of the State, through public media, and at local People's Committee offices. The collection of people's opinions should be collected through mailings, telephone calls, fax and direct meetings with the people. The conveyance and collection of information must be open, transparent and supervised. Socio-political and socio-professional organizations have the right to supervise the conveyance and collection of people's opinions.

*ii) Community consultation:* Community consultation should be done through community meetings, questionnaires and interviews. Documents supporting the consultation must be concise and comprehensive and be in both Vietnamese and local languages for ethnic minority communities. It should be ensured that at least 75% of community members are present at community meetings. For marginalized groups such as women, poor people and ethnic minority people, there should be different and additional types of consultations completed in order to ensure that their voices are heard. Outcomes of consultation must be made into reports with sufficient and honest content and the information should be classified into areas of agreement, disagreement and other opinions on issues of consultation. Socio-political and socio-professional organizations have the right to take part in the consultation process, assist the community and supervise the implementation and collection of outcomes of the consultation.

#### ***The consensus-of-the-community mechanism:***

The community consultation will be carried out until a community consensus is reached. After each consultation round, those in charge of designing solutions will receive reports on the consultation outcomes and adjust their solution options for reaching a community consensus in the next round of consultation. The recommended consensus ratio is 75% based on experiences of countries with successful



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consensus principle implementation such as South Korea and Japan and Ho Chi Minh city of Vietnam. The National Assembly should consider various options such as the ratio of 2/3, 70%, 75% or 80% to decide the consensus ratio.

**(2) Chapter IV.** Adding 02 articles in chapter V ***on the position of land-use master planning in the national planning system and the process of collecting people's opinions*** on land-use master planning and planning at all levels.

***On provision for the position of land-use master planning in the national planning system:*** Land-use master plans and plans can only be made after the socio-economic development master plans are approved. Construction master plans, urban master plans and master plans of other sectors or areas can only be approved based on the land-use master plans and plans.

***On provision for collecting people's opinions:***

For ***national, regional and provincial level land-use master plans*** and plans, organizations in charge of making such master plans and plans ***must collect people's opinions in the form of sending out information and collecting opinions*** of interested people.

For ***district level land-use master plans and plans***, organizations in charge of making such master plans and plans must conduct community consultation for the people using the land for residential purposes. The community must have ***at least 75%***<sup>1</sup> consensus for all the land areas belonging to the commune, ward or town, that will be converted during the planning and land-use planning process. The district level land-use master plans and plans can be approved ***only when an agreement of the community has been reached.***

**(3) Chapter V.** Adding 02 articles ***on the management and use of agricultural and forest farmland and agricultural land for ethnic minority people.***

Land which has been ***allocated through contract by state owned agricultural or forest farms*** to a household or an individual ***is now allocated directly by the State to that household or individual*** for permanent use, according to legal provisions on the allocation of land by the State to households or individuals. ***Land owned by state farm enterprises with low yields and levels of production compared to the local average production yields will be seized by the State and allocated to local households or individuals who are lacking in land for production.***

<sup>1</sup> We recommend the consensus ratio of 75% based on experiences of countries with successful implementation of the consensus principle such as South Korea and Japan. In Vietnam, Ho Chi Minh city has recommended a consensus ratio of from 70 - to 80%. We recommend that the National Assembly members should consider various options, such as the ratio of 2/3, 70%, 75% or 80% and depending on the number of affected people, to decide the ratio of consensus. For example, for a number of more than 200 affected people, the ratio should be 80% at the lowest.



The **State needs to ensure an agricultural land reserve for ethnic minority people** for their lasting and permanent use. The State shall **allocate agricultural land, forest production land and aquaculture land for ethnic minority people to manage, protect and use in accordance with their traditions and customs**. For households within ethnic minority communities who are lacking land for production and residence will receive a second land allocation without land-use fees that will be managed by the community and the community shall decide to allocate to members according to traditions and customs of the community.

**(4) Chapter VI.** Adding 04 articles in chapter VI on **Land acquisition, compensation, support and resettlement**, including the following provisions:

**Provisions on land solutions regarding investment projects:**

- a) The mechanism in which the State can only acquire land under the provisions of Article 63 (acquisition due to land law violations) and Article 64 (acquisition due to voluntary or legal termination of land-use) of the draft amended Land Law.
- b) The mechanism in which the State acquires land applies for projects of national security and defense, national

interest and public interest are not tied to the profits of investors. The mechanism in which the State compulsory purchasing land-use rights applies for project of public interest with the profits tied to the investors.

- c) The community-consensus mechanism between the investor and the community applies for socio-economic development projects.

**Provision on open and transparent information about the investor for the acquisition and compulsory purchasing of land-use rights:** Before issuing a decision on acquiring or compulsory purchasing land-use rights, authorities must provide open and transparent information about the investor through the online portal of the provincial people's committee.

**Provision on community consultation on options for compensation, and support to resettlement when the State acquires or compulsory purchase land-use right:** The land development organization has the responsibility to consult the community about options for compensation, support and resettlement. The consultation shall be conducted within community where the land has been acquired for investment purposes. The consensus of the community shall be the agreed opinions of at least 80%<sup>2</sup> of the total members of the community.

<sup>2</sup> Similar to our recommended ratio of agreed opinions regarding land-use master planning and planning, our recommended consensus ratio of 80% is based on the experiences from successful foreign countries and of Ho Chi Minh City. There should be different options in the draft amended Land Law for National Assembly members to decide. Because compensation, support and rehabilitation will have great impacts on the community, the ratio of agreed opinions is recommended to be higher than that regarding land-use master planning and planning (75%).



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**Provision on community consultation regarding the agreement mechanism between the investor and land tenants:**

The investor conducts a consultation with the tenants of the investment project area regarding the proposed land-use change: transfer of land-use right, leasing, or the contribution of capital for land-use right. The minimum consensus ratio is 80%. The investor has the responsibility of hiring an independent land pricing service provider to decide on the price of the land and to formulate options for land-use changes with the witness of representatives of the People’s Committee. The selection of the service provider for land pricing and land transfer must be done through a community consultation process.

**(5) Chapter VIII.** Adding 02 articles. Land pricing agencies should be **independent land pricing institutions** which are organized from central to local levels. The land pricing institution has the responsibility of conducting community consultations with persons who are using the land on the selection of a land pricing service provider. The order and procedures during land price decision-making must be democratic, open and transparent, and socio-political organizations and socio-professional organizations must have the right to supervise the land price decision-making process of the State.

**B. Recommended amendment of articles 34, 44, 46, 47, 81, 82, 95, 107, 130, 131 and 132:**

**Article 34.** We recommend adding the following principles: **Guaranteeing the**

**feasibility, focus and synchronization with the overall socio-economic development master plan, urban master plan, construction master plan and other master plans; and ensuring social security and environmental protection** in making land-use master plans and plans.

**Article 44.** We recommend the following supplement and amendment: **Getting the consensus of the people living in areas of land-use master plans**, for areas of the plans or master plans that are being amended or adjusted.

**Article 46.** We recommend adding the following provision: **Responsibility of the State in providing open and sufficient information on the content, timing and roadmap of the implementation** of land-use master plans and plans, and adding: **For agencies in charge of making public land-use master plans and plans, which do not provide the information or do not provide it in a timely manner, the heads of these agencies shall be held responsible under the provisions of law.**

**Article 47.** We recommend adding the following provision: **The people have the right to supervise the State’s implementation of land-use master plans and plans and the State has the responsibility to create favorable conditions for the people to supervise the implementation of land-use master plans and plans.** The People’s Committee has to report on their compliance with the supervision of the



- ▶ people regarding the implementation of land-use master plans and plans to the People's Council of the same level.

**Article 81.** We recommend adding the following provision: ***Providing rice support with the amount of 30kg per month in 24 months for each person whose agricultural land was acquired or compulsorily bought.*** Adding the provision: ***establishing an unemployment fund and a social insurance fund*** to stabilize the lives of elderly, single or widowed, or retired persons in households whose agricultural land was acquired or compulsorily bought.

**Article 82.** We recommend amending and adding the following provision: ***On the consultation with persons whose land was acquired or compulsorily bought, the infrastructure of the rehabilitation areas must be in accordance with the traditions and customs of the local people, and the acquisition or compulsory buying of land can only be done after the infrastructure of the rehabilitation areas has been comprehensively developed.***

**Article 95.** We recommend abolishing paragraph 2 of Article 95.

**Article 107.** We recommend adding principles for land pricing: State authority agencies have the responsibility of providing sufficient, timely and exact information on land prices. Decisions on land prices ***must be consulted by the people***, ensuring ***democracy, openness, transparency and oversight.***

**Article 130.** We recommend changing this article to "The State allocates natural forest land for ***households, individuals and communities to directly manage forest production*** and to manage, protect and develop the forest".

**Article 131.** We recommend changing this article to "The State allocates protective forest land for ***households, individuals and communities to directly manage forest production*** and to manage, protect and develop the forest".

**Article 132.** We recommend changing this article to "The State allocates special-use forest land for ***households, individuals and communities to directly manage forest production*** and to manage, protect and develop the forest".

**For more information, contact:**

**NGUYEN DIEP HOA** | Media & Communications Specialist  
Oxfam | 22 Le Dai Hanh Street | Hanoi | Vietnam  
+84 4 3945 4448 ext 715 | mobile +84 904 388 292  
[www.oxfam.org/vietnam](http://www.oxfam.org/vietnam) | [www.oxfamblogs.org/vietnam](http://www.oxfamblogs.org/vietnam)

**DAO SONG DUC** | Department of  
General Affairs, Institute of Legislative Studies  
51B Phan Dinh Phung Street | Ba Dinh District | Hanoi | Vietnam  
Tel/fax: +84 804 3348 | <http://vnclp.gov.vn>