

# Vietnam Land Registration from Terminology to the Practice

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**Key words:** Land registration, Land Law, Land use, Land Use Right Certificate.

## SUMMARY

Vietnam Land Administration system has implemented successfully the land policy in recent decades. In the next phase of socio-economic development plan, land is requested to become important domestic resources for many investment projects. Obviously, land registration needs further development so that land use rights or land use right certificate can be used as asset in the open market.

In the past ten years, many improved on land registration was undertaken. Many first-look problems have been identified and fixed. The issues of Vietnam land registration are more difficult to identify. This paper has objectives to contribute more in-depth of understanding on problems identification by analysis the registration system from two views: terminology and practice.

Analysis on the terminology view allows identify the real intention of land policy that was hidden in the land legal documents. Analysis on the results of land registration progress for the whole country, for each of seven socio-economic regions, allows the current status of land registration in the reality.

## TÓM TẮT

Địa chính Việt Nam triển khai thành công chính sách đất đai trong những thập kỷ qua. Trong giai đoạn phát triển kinh tế xã hội sắp tới, đất đai được yêu cầu phải trở thành một nguồn vốn quan trọng cho các dự án đầu tư. Do đó công tác đăng ký đất đai phải phát triển hơn nữa sao cho quyền sử dụng đất, giấy chứng nhận quyền sử dụng đất có thể được sử dụng như tài sản trong kinh tế thị trường.

Trong 10 năm qua, nhiều chỉnh sửa, cải tiến đã được áp dụng với công tác đăng ký. Nhiều vấn đề dễ nhận thấy đã được xác định và khắc phục. Vấn đề của công tác đăng ký càng ngày khó xác định hơn. Bài báo này có mục tiêu đóng góp sự hiểu biết sâu sắc về xác định vấn đề bằng cách phân tích hệ thống công tác đăng ký đất đai từ hai góc độ: thuật ngữ và thực tế.

Phân tích từ khía cạnh ngữ nghĩa cho phép hiểu sâu hơn những dự định của chính sách đất đai mà có thể bị che lấp đâu đó trong các văn bản pháp luật. Phân tích từ kết quả đăng ký đất đai trong toàn quốc và 7 vùng kinh tế, 3 loại đất chính sẽ cho phép nắm bắt được hiện trạng công tác đăng ký đất đai ở Việt Nam một cách sát thực.

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## 1. INTRODUCTION

Vietnam Land Administration system has implemented successfully the land policy in recent decades. Land is allocated to organizations, individual, private use and toward open market. Land allocation and its subsequent step – land registration partly supports Vietnam to have property reducing from 58% of population living under the poverty line in the year 1993 to 29% year 2002; GDP from VND132,000 Billion in year the 1990 to VND 362,000 Billion year 2004 and GDP speed up about 7% per year, (GSO, 2000 - 2005). In the next phase of socio-economic development plan, land is requested to become important domestic resources for many investment projects. Obviously, land registration needs further development so that land use rights or land use right certificate can be used as asset in the open market.

In the past ten years, many improved on land registration was undertaken. Many first-look problems have been identified and fixed. Land registration has got a lot of changes since very early day of Vietnam recognized the 5 rights of land use to today with more the concept of land ownership. For example, the objectives of research, international support to Vietnam in land registration are also changed from time to time. (DOLA, 1993) with advise to establish a land registration as Torrent's system. CPLAR program from 1997-2001 with objectives to establish a modern land registration system to facilitate efficient and quick issuance of Land Tenure Certificates (LTC) to legal land users and to support the completion of a unique land information system for the whole country", (CPLAR, 2001). And latest, Strengthening Environmental management and Land Administration - SEMLA program funded by SIDA (2004-2009) has turned objectives more in the direction 1) economic growth and poverty alleviation, 2) sustainable development and environmental protection, and strong local governance and participation of the population in decision making processes.

Where are field that Vietnamese land registration could be improved more for the current requirements of Vietnam society? Such question is difficult to answer since the problem of Vietnam is not very easy to identify well. One of main issue is the terminology of land registration might be not the same of what the consultant/researcher and decision makers have the same as it is in the practice. The term used in land registration might not exactly the intention from Vietnamese people intend to say and also not the thing is going on in the practices.

Vietnam is not only the case. With the same English word of land registration but it might be different among English speaking countries. The explanation for land registration from England, Australia, Kenya, Malaysia, etc is an evident for this different meaning (Larson, 1997).

Vietnamese language has a number of words and phrase has the same meaning as “land registration”. Translation might be not the only one and the meaning is more important as discussed by (Graham, 2005) “the term ‘land use right’ in Vietnam refers to a right to occupy land but does not, of itself, determine the nature of the land use that is to be undertaken (although the permitted land use will normally be recorded on the Land Use Right Certificate)”. Household, land, land use right and land use certificate (if that is the best translation from Vietnamese; land tenure certificates has also been used and the two alternatives say quite different things) are examples of such terms... As the Vietnamese Civil Code contains some definitions closely connected to land, i.e. immovable property (which includes land), it is advisable to make use of some of these definitions and to make sure that the definitions are consistent, (Bengt. K, et all. 1997, 1998). Those definition issues are improved significantly in the Land Law 2003 with a specific article 4 for interpretation of terminology and further term definition for each term used.

This paper will not come up a final result with a clearer term definition or getting the debate of many terms relating to land registration. Aiming at to have a better problem identified for Vietnam land registration in future, this paper will analysis the Vietnam land registration from terminology, where is confusion remained, and what are practices of land registration by looking at the progress of registration for whole Vietnam, each of seven socio-economic region and each kind of three main land use purposes. By doing so, the intention and the issues of Vietnam land registration will be recognized.

Section II explains the terminology and section III, will give more practical results of progress of Vietnam in registration for 7 main socio-economic regions and three main kinds of land use. Section IV will conclude and give suggestion on how to improve Vietnamese Land registration.

## **2. VIETNAM LAND REGISTRATION FROM TERMINOLOGY POINT OF VIEW**

### **2.1 Land use rights registration has the same meaning as Land registration**

Vietnam use the term of land use rights registration instead of land registration. The main reason is that land belonging to entire-people and uniformly managed by the State, article 1 of Land Law 2003 (LL2003). Consequently, the State shall grand land use rights to land users in the form of land allocation, land lease, recognition of land use rights for current stable land users, section 4, article 5 (LL2003).

Generally, the term of Vietnam land use right registration (LURR) has the same meaning as land registration (LR). Registration of land use rights means the recognition of the legitimate land use rights in the cadastral records with respect to a definite land parcel in order to establish the rights and obligations of the land users. Cadastral record means the documentation for State management on the use of land, section 19, article 4, (LL2003). It is the same definition “land registration, the recording of rights to land in some form of public register. It includes information on the rights, their location, and their holders”, (FAO, 2002). Two terms both interpret the registration of rights to land. Furthermore, LURR and LR have

the same objectives as formalizing the property rights. LR systems provide the means for recognizing formalized property rights, and for regulating the character and transfer of these rights (Dale and McLaughlin, 1999).

## **2.2 Land user is who received land use rights from the State? Land user has a bundle of land use rights as a land owner has.**

Regarding the term of “land user”, LL2003 has allocated article 9 to make a list of 7 kinds of land users: 1) organizations, 2) domestic household, individual, 3) population community, 4) religious establishments including pagodas, churches, oratories, etc., 5) foreign organization with diplomatic function, 6) overseas Vietnamese who return to the country to make investment, 7) foreign organization and individual investing on Vietnam.

This list is not a definition but rather a classification of land user. The authors of this paper will not discuss on how more a precise definition could be. But it is totally wrong if some one interprets the meaning of “land user” as who is using land. There are two aspects that made Vietnam “land user” is different to the person who just use land: 1) land user has bundle of rights and land use term (timing of using land).

Land user in the Vietnamese context has a bundle of rights on land as determined as “land use rights”. However, when discussing on land use rights, people normally reference to the phrase “5 land use rights” (for the Land Law 1993) and “9 land use rights” (for the LL2003). This is not the real rights that land user has on land when the State grant to land user.

In fact, land user has more rights on land than just 5 or 9 rights as mentioned above. The Land Law 1993 stipulates 5 land use rights and the LL2003 has continued and added 4 and made to the total 9: 1) Rights to exchange, 2) transfer, 3) lease, 4) sub-lease, 5) inherit, 6) donate land use rights; 7) mortgage, 8) guarantee, 9) make capital contribution in the form of land use rights & receive compensation upon recovery of land by State. Beside, both land laws (1993 and 2003 version) have stipulated other rights for land user.

- Land (land use rights) can participate on the real estate market by the land use rights, article 61;
- 6 general land use rights: 1) Receive land certificate, 2) benefit from their labor & investment in land, 3) enjoy the benefits derived from works constructed by the State, 4) receive State guidance & assistance in the process of rehabilitation & fertilization of agricultural land, 6) complain & denounces the violation to their land use rights, article 105, LL2003.

Regarding the land use term, there are two kinds of land use term: 1) stable and permanent land use and 2) land used with land terms. Many cases, people get stable and permanent land use, and most important cases are residential land and land with communal houses, temples, shrines, hermitages, etc. In the case of land used with land term, actually and in most the case, land user can use it stable and permanent. Item 1, article 67 of LL2003 stipulates that “at the expiry of the term, the State shall continue to allocate, lease the land to the land users

if the land users are still in need of such land and have strictly complied with land legislation during their period of occupancy, and the use of such land are in accordance with the approved land use planning”. Of course, this continuing of land use depends on what land use planning is approved after next 10 or 20 years. However, in practices, the land use plan with top-down approach, which was not taking into account the ability of implementation and the acceptant of land user, is failed, (Vietnamnet, 2006).

To conclude, the term of land use rights and the term of land ownership are different but has the same meaning in Vietnam context. Furthermore, land use rights are private asset, which is protected by civil code as other asset when entering the real estate market, (Vo, 2006).

### **2.3 Land User Rights Certificate versus Land Title Certificate**

The objectives of Vietnam land use right certificate are a mean/evidence, which allows the State to protect the rights of land user on their land. It is the same as land title certificate in the Torren’s system. Article 4 and article 6 in the LL2003 have given a definition as “Land tenure certificate (land use right certificate) means a certificate, which is granted by authorized Sate bodies to land users in order to protect their legitimate rights and obligations. The State will manage and carry out the registering land use rights; compiling and managing cadastral records; granting land tenure certificate”.

Content of Vietnam land us right certificate might be different to the other countries but it is easily to recognize four main groups of information similar to any LTC of Torren’s system, (Circular 24):

- Information about the land user: name, id, address, etc.
- Information about the land parcels:
  - Land parcel id, location, area, graphical description – sketch of land parcel from cadastral map, etc.
  - Areas for common and private use
  - Purpose of land use
  - Land use term (using in a certain time period)
- Description of property attached to land
- Updating changes since land certificate issued

Thought, the definition and meaning of land tenure certificate and land use right certificate are not the same. In the practices, however, one can find frequently the used of term “land certificate”: Land Tenure Certificate, Land Use Rights Certificate, Land use certificate, Building ownership and Land use rights, etc. The Housing Law 2005, which was put in implementation since 1<sup>st</sup> July 2006, has created more kinds of land related certificate leading to total 5 kinds of land tenure certificates:

- Certificate of Building ownership and Land use rights (guided by Decree 60/CP)
- Certificate of Construction building ownership (guided by Decree 95/CP)
- Certificate of Building ownership and Land use rights (guided by the House law)

- Certificate of House ownership (for the case house owner and is not the same with the land use right owner), (guided by the House Law).
- Certificate of Land use rights (guided by the Land Law).

In that case, we have not yet discussed a number of legal papers, which are also considered as valuable as LTC. A number of researchers has proved in the reality those “legal papers” are still in land transaction for many cities of Vietnam, (Annette, 2004).

The answered on Thanhnien newspaper by Ho Chi Minh Department of Natural resources & Environment is precisely comment for this situation ”That is matrix. What are working procedures to update land registration when we have to follow two laws, to produce 5 kinds of certificate relating to land? We are struggling to issue certificates for 500,000 houses in Ho Chi Minh City from now to the end of year 2006”, (Thanh nien, 2006).

In short, no mater what it is, let’s us use the term of Land Title Certificate (LTC) for Vietnam when concerning the similar terms in this paper.

#### **2.4 Land use right registration depends on land allocation and land use planning**

Vietnam LURR is distinction to others LR by two steps of registration: 1) land allocation and 2) land registration.

Land allocation but not adjudication is first step for LURR. The formalization of land registration in the world is undertaken when land are already owned informally by some ones. To formalize, therefore, a process known as adjudication is needed. Adjudication of title to land in which existing rights in parcels of land are authoritatively determined “who” owns “what”.

In Vietnam the case is different. Vietnamese people, individually, do not own any land (after 1954 in the North and after 1975 in the South). Land belongs to entire people (article 1, Land Law 2003). And before 1986, land also was managed by the State. For rural area, all land was managed by cooperatives or State enterprises from year 1954-1987 in the North and from year 1975-1978 in the South. Therefore, the first process of this registration is land allocation. Land allocation, not adjudication, is process to grant or allocate land from the entire people managed directly by cooperatives to organization, individual and household use. After the allocation process completed, land user know what land they are allocated and what are rights they have (purpose of using land).

Land use registration depends on land use planning. To undertake the land allocation process, the State have to identify what is purpose of land use could be. The purpose of land use is normally defined by the land use plan, which is approved by an appropriate authority. Of course, that does not mean all land allocation always rely on land use plan. Because there is only 55% commune has land use plan up to year 2005 (MONRE, 2006).

Furthermore, when the land user wants to change the purpose of land use, land use plan is needed again. The LL2003 has given more freedom for land user to change the purpose of land use. There are only 5 cases of land use changes need the approved by the authority, (item 1, article 36, LL2003):

- Change of paddy land to land for cultivation of perennial crops, for forestry farming, for aquaculture farming;
- Change of land for special-use forests and protection forest to land for other purposes;
- Change of agricultural land to non-agricultural land;
- Change of non-agricultural land which was allocated by the State free of land use fees to non-agricultural land which is allocated by the State with land use fees payable;
- Change of non-agricultural land, which is not residential land to residential land.

To conclude, LURR is LR but it has 2 distinction characteristics of land allocation and land use planning, which are mostly originated from the term of “land use” and history of Vietnam land management.

### **3. VIETNAM LAND REGISTRATION FROM PRACTICAL POINT OF VIEW**

#### **3.1 Progress since the first registration 1993**

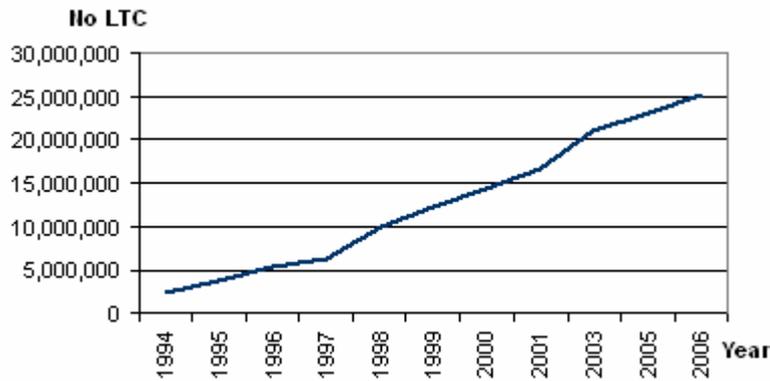
To make a completed picture of land registration progress in Vietnam since the year 1993 – year of starting to recognize 5 land use rights, a dataset from 7 socio-economic zone are collected based on the land statistics system run by land agencies (MONRE, 1991-2006).

There are two statistical periods for land use: 1) annual land use statistics (ALUS) and 2) every five-year land use statistics (FLUS). Land statistics is collected and synthesized throughout 4 administrative levels namely commune, districts, province and nation. Since 1993 up to now, many changes in this statistics system are 1) re-structure number of provinces and districts (from 53 in year 1993 to 64 provinces in year 2002) or 2) changes in the land use classification after the Land Law 2003 released. Fortunately, the structure of 7 socio-economic regions is remained. Those seven regions are very distinctive to each other by the socio-economic conditions, which are easy to recognized by named on the following figures.

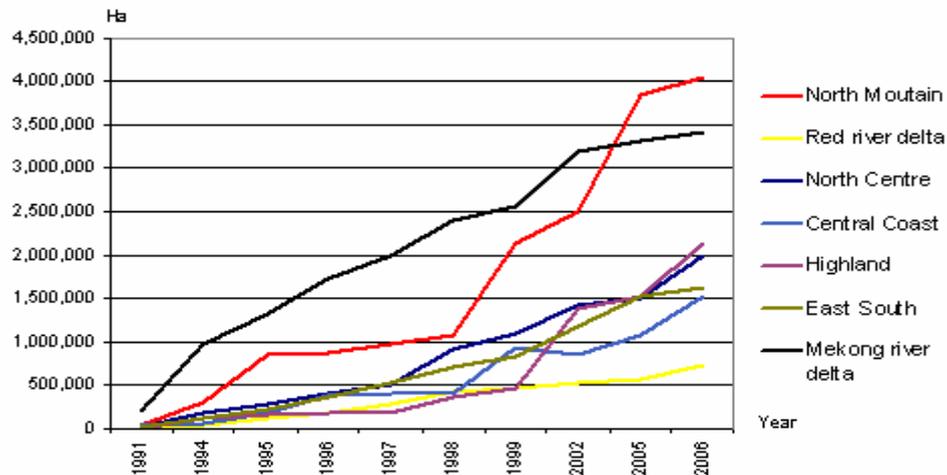
Before analysis on the data of LURR in practice some bellowing rules are applied in data verification and refinement process:

- The latest report in year will be used.
- If natural land area for each region, each kind of land use is are not available then the FLUS from year 1995 will be used for year from 1991-1995; FLUS from year 2000 will be used for year from 1996-2000; and the FLUS 2005 will be used for 2001-2006. Especially because the changes of land use classification system, area of residential land is kept as the data from year 1995.
- Residential land contains both urban and rural residential land.

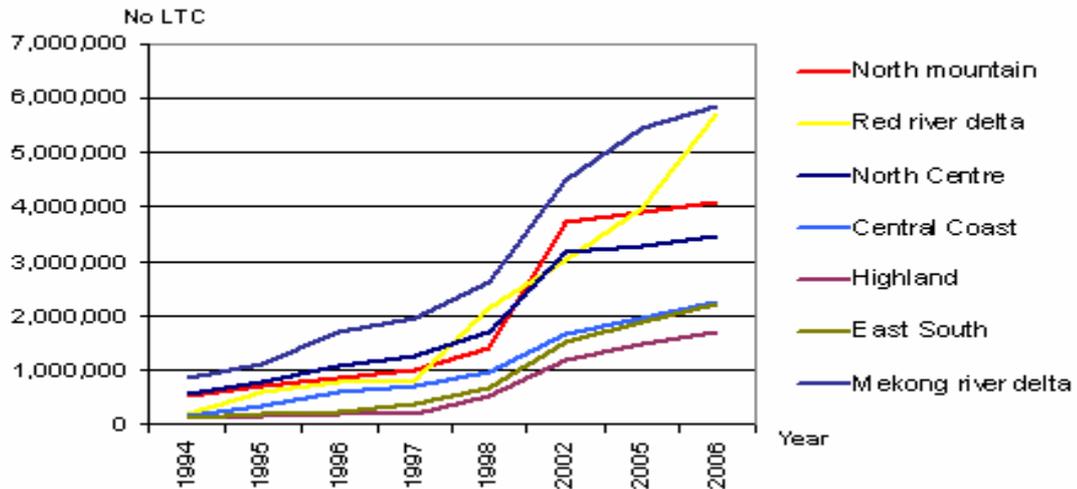
There are two analysis of LTC in practices. The first analysis will focus on the number of LTC and the area of land with LTC for whole country and for each socio-economic region. These results are presented on figures 1,2, 3, and 4. The second is in-depth analysis will focus on three kinds of land use: 1) agricultural land, forestry land and 3) residential land. Those analysis results are shown on figure 5,6 and 7.



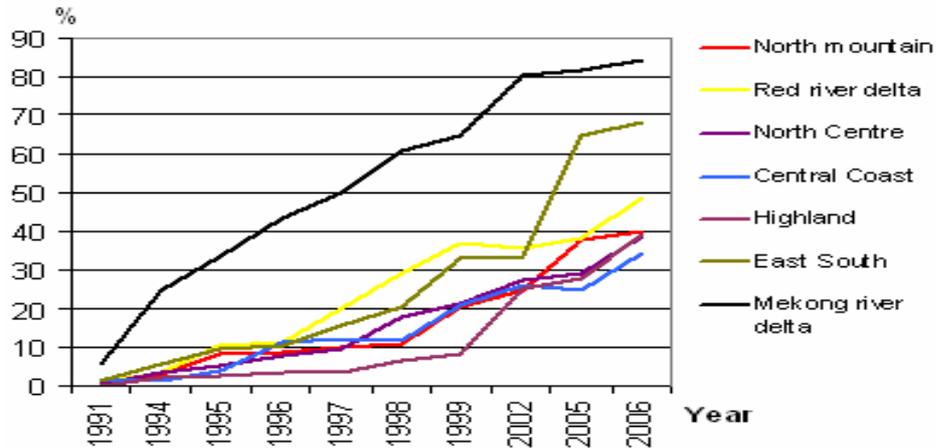
**Figure 1:** Number of LTC issued in Vietnam since the Land Law 1993



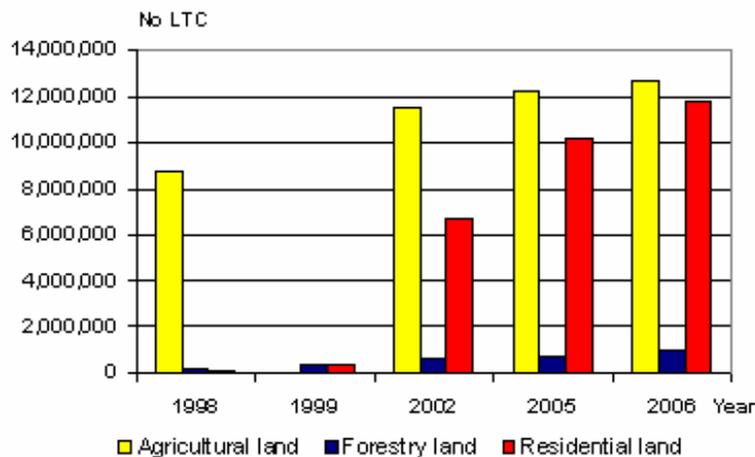
**Figure 2:** Area of land with LTC for 7 socio-economic regions



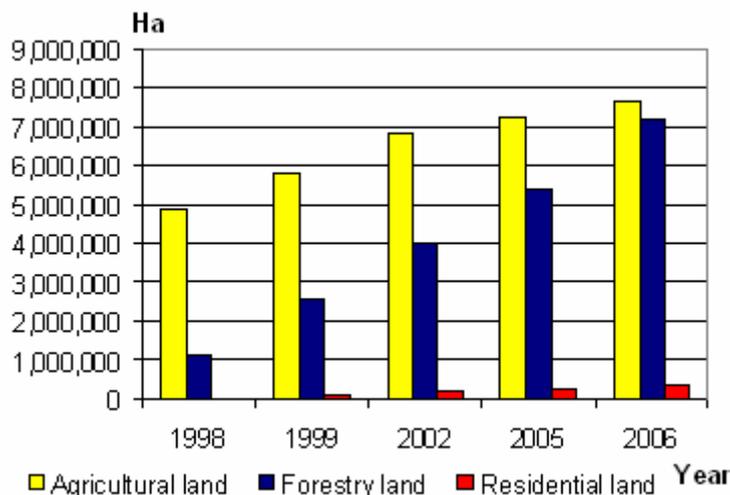
**Figure 3:** Number of LTC issued for 7 socio-economic regions



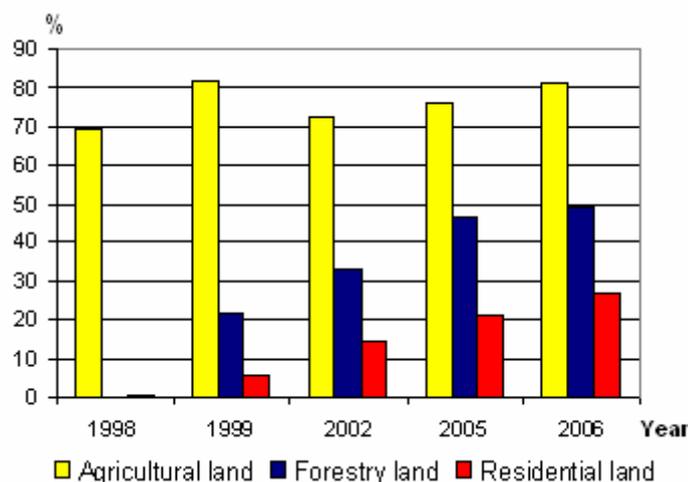
**Figure 4:** Percentages of land with LTC for 7 socio-economic regions



**Figure 5:** Number of LTC for 3 main kinds of land use



**Figure 6:** Area of land with LTC for 3 main kinds of land use



**Figure 7:** Percentages of land with LTC for 3 main kinds of land use

### 3.2 Main findings from analysis of LTC from practices

Generally, Vietnam Government has a stable policy in LTC issuance. Figure 1 shows the constant speed of LTC issuance is about 2.5 million LTC per year from 1993 to 2006. This speed is only achieved with the same and stable support from the Government for every year. In the other side, this shows that the LTC issuance not yet get other funding support from society.

Main findings regarding 7 socio-economic regions:

- 7 regions have the same trend of land registration. Very distinctive to each other on the condition of social, natural and economic conditions but actually they are only two main groups regarding the land registration. The first advanced group in land registration contains Mekong river delta, the East South and Red river delta regions.

The second group with less advanced in land registration progress contains the rest of four regions.

- However, from the percentages of LTC issued point of view, Mekong river delta and the East South region are on the top with above 84% and 64% of land with LTC respectively. All other regions are in between of 34%-48% of land with LTC issued.
- Concerning the high percentage of land with LTC for Mekong river delta and the East South region, one main reason could be those land are flat & large area. It also could be the different in history and cultural of land use since the Nguyen Dynasty (1804-1945) with the land reclaim program (Phuc, 1979).
- For the less advance group, Highland and the Central Coast are always in bottom line for both number of LTC issued and the percentages of area with LTC. Highland is a large and fertile area but somehow still is constrained with the customary land use system (ethnic people); many re-settlement programs might cause the slow speed in land registration process. However, this less advanced in Highland was recovered since the year 1999, 2000. The percentages of land with LTC in Highland are the same (39% of land with LTC) as the North Mountain and North Centre regions.
- Statistic data seems has some inconsistency for Red river delta between year 1999 and 2002 for the total number of LTC in year 2002 is less than 1999. The same issue for the Central Coast in year 2002 and 2005. However, the main reason for reducing number of LTC is caused by land consolidation program and some changes land users. Land consolidation, in Vietnamese is “dồn điền đổi thửa”, is actually a program to support and encourage land users to exchange land parcels to each other to increase the extent of land parcels and to reduce number of land parcels per land user, (Trung, 2006). Changes in land users also might reduce the number of LTC. For example, one investor buy land from many land user (many LTC) and re-register with only one LTC.

Main findings regarding three kinds of land use:

- Very different land registration progress for three kinds of land use. Agricultural land is on top of registration, second is for forestry land and the bottom is residential land. This differences are very easy to recognize from figure 5,6 and 7 from number of LTC, are of land with LTC and the percentages of land with LTC.
- Concerning agricultural land, the number of LTC and area of land with LTC is increasing gradually since year 1998, but the percentages of land with LTC increased from 68% (1998) to 81% (1999), reduced quickly to 75% (2002) then increased steadily up to 81% (2006). The main reason is the total area of agricultural land is increased annually from about 7 to 9 million ha from 1993 to 2006 by land reclaim program, converting more un-used land to other land use purpose.
- Concerning forestry land, the number of LTC is not much in compared to agricultural and residential land but the area and percentages of land with LTC is very significant results. It is about 50% of forestry land with LTC. This also shows that the extent of forestry land registration on each LTC is much larger than the one of agricultural and residential land.

- Residential land with a huge number of LTC, just behind the agricultural land, but only has very limited percentages of land with LTC (only 25%). It is worth to remind that the total residential land area is data from 1995, which is must be very different for recent years with high urbanization process. That means that the real percentages of residential land with LTC must be lower to 25%.

## 4. CONCLUSIONS AND SUGGESTIONS

### 4.1 Conclusion

From terminology analysis, there two main findings as following:

- All Vietnamese land belong to entire people and uniformly managed by the State; organizations, individual and private only has land use right, which are presented and proved on the LTC. The terminology of land use right registration and land registration is therefore different. However, in practices of policy implementation they are the same.
- Regardless the debate on the terminology of land users but in practices land-user has bundle rights as the land-owner has. Land user or land owner is just a playing word in Vietnam. Land use right certificate is the same with land title certificate from terminology and practices point of view. However, Vietnam has cumbersomeness with many regulations and kinds of LTC implemented in practices. Vietnam land use right registration requests land allocation process for the initial registration and land use planning for land use change registration.

From the practices, progress of land registration in Vietnam lead to 3 main findings:

- Regardless of some terminology issues, land registration progress is steadily.
- There are different issues of land registration for different socio-economic regions.
- Agricultural land is a step in advanced of registration. Meanwhile, residential land is very big issue with number, percentages of land registration and multiple style of registration.

### 4.2 Discussion

Debate on Vietnam land registration from terminology to the practice is an interesting topic. The main reason making this debate interesting and continuous is the differences of land tenure in Vietnam from the north to south, from time to time. Furthermore, the intention in land policy is not always easily recognized and identified by reading land law and other regulatory papers. Playing words on the term of land use rights and land ownership, the steadily speed of land registration for more than 10 years are examples.

Vietnam land registration seems got more results in agricultural land, in the South (Mekong river delta and the East South regions) than forestry land, residential land and the north. However, the objectives of bringing land (land use rights) as important domestic resources to

economic development program, only is achieved by a land market, where residential land are key proportion not agricultural land. The theory of de Soto only generally imply the need and conditions of establishment and formalization of a land market, by which land rights could be used as asset for economic development, (de Soto, 2004). However, to come to that stage, in practice Vietnam has to identify where is main land market. Clearly forestry land is not very potential good for this market, at least for near future of Vietnam. Agricultural land could be but not a potential one as the residential land in big cities such as Hanoi and Ho Chi Minh.

However, from both terminology and practices land registration for residential land is most unclear part. From terminology, it is difficult to handle land registration with building and the construction attached to land.

### 4.3 Suggestions

A number of researches works and practices could be done in next time:

- Urban land registration is most difficult part for next step of Vietnam land registration.
- More study on linkages between the characteristics of social, natural, history, cultural and economic conditions of 7 regions and the progress of land registration.
- The aspect land changes registration and updating works of land registration is not yet touched in this study. This limitation could be overcome by other study.
- Land use statistics system of MONRE could be strengthened and be used as very useful tool for land decision-making progress.

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## BIOGRAPHICAL NOTES

Prof. Dr. Sc. Dang Hung Vo plays two roles 1) as chairman at Land Administration Faculty in University of Natural Science – Hanoi National University and 2) Vice Minister of Ministry of Natural resources & Environment, where he is in charge of Land Administration area. Prof. Vo has contributed a lot for Vietnam land administration, Survey and Mapping at both science and practical works. Recently, one of his academic works on the National Coordinate System has got a Ho Chi Minh Award (highest level of academic work in Vietnam). Prof. Vo is also acknowledged as the pioneer for Vietnamese land administration reform.

Tran Nhu Trung holds Survey & Mapping university degrees in 1993 in Hanoi and M.Sc. with distinction in Geo-Informatics for Cadastral applications in 2000 in ITC/The Netherlands. Trung started to work for government (GDLA) in 1993. Then he moved to private sector since year 2002. Now, he is working for two consultancy companies dealing with land and environment: TECOS and VNGEO. He has followed a number of consultancy projects in fields of land administration, survey & mapping, NSDI, remote sensing, integrated coastal zone management, and environment protection in Vietnam and Lao PDR. At the moment, Trung is National Consultant of Land Administration and ELIS for SEMLA program. Trung considers himself as an independent researcher in field of land administration. He publishes regularly a number of research papers in both Vietnamese and English in topic of land administration.

Ian Hyde holds a Bachelor Degree in Applied Science (Surveying) in 1975 and a Graduate Diploma in Computing in 1978 from Curtin University in Perth, Western Australia. Ian commenced working for the Government of Western Australia in 1975 and has held a variety of positions, including the WALIS Coordinator, Director, Information Systems, Registrar of Titles, Director, Business Development and Executive Director, Information Access Division, Department of Land Information (DLI). As part of these roles he has been instrumental in transforming the business model for land administration in WA, managing the change agenda with stakeholders and securing high level commitments from Government. He has also undertaken a number of international consultancy assignments in Thailand, China, Philippines, Bangladesh, Mauritius and Zimbabwe and is currently on secondment from DLI working on the SEMLA Programme in Vietnam.

Dao Anh Kiet is vice director of Department of Natural resources & Environment of Ho Chi Minh City. He is a survey engineer. Kiet has about 30 years working on cadastral surveying and land administration in Ho Chi Minh city.

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