

Empowering the Poor by Strengthening Formal Rural Land Titles

Land is a vital productive asset for the poor. In Viet Nam, around 90% of poor people depend on agricultural production as their main source of income. Land is relatively evenly distributed in Viet Nam. Only 4% of agricultural households have no agricultural land of their own. Protecting and developing the land assets of the poor are, therefore, an important facet of poverty reduction.

*Many economists consider formal land tenure as a crucial tool in protecting and developing land value. Formal land title may increase security of tenure, enabling farmers to feel confident in making long-term investments. Clear delineation of land boundaries may help reduce costly disputes. Formal title also helps turn land into an economic commodity. In his book *The Mystery of Capital*, noted economist Hernando de Soto describes formal land title as the transformative key that unlocks the "dead assets" of the poor.*

While progress has been made, poor rural households still face obstacles that prevent them from participating fully in the formal land market. This bulletin discusses main issues relating to the informal rural land market, its causes, and solutions.

Overview of the rural land use in Viet Nam

In Viet Nam, land is the property of the whole people and the state is the representative owner. But farmers are allocated land use rights for 20 years for annual crop land and 50 years for perennial crop and forest production land. These rights are renewable on expiry and equate closely to full land ownership. Since the passage of the 1993 Land Law, rapid progress has been made in issuing formal land use right certificates (known as Red Books). As of 2003, there were about 13 million land users in Viet Nam occupying a total of nearly 100 million land parcels. By October 2004, Red Books had been issued on over 92% of agricultural land. The process of issuing Red Books is planned to be completed by the end of 2005. The market in agricultural land is most active in southern Viet Nam. A recent survey of the Making Markets Work Better for the Poor (MMW4P) Project¹ found that over 5% of agricultural Red Books were transferred each year in three districts of An Giang and Hau Giang provinces. Most agricultural land transfers are

registered formally with district authorities. A significant reduction in tax rates on land use right transfer in 2000 helped promote formal registration of land transfers. Rates were reduced to 4% on residential land and 2% on agricultural land (from 20% and 10%, respectively). Stamp duty of 1% is also payable. The survey showed that the processing of most land transfers took around one month, though cases of delays from three months to a year were found. Formal transaction costs were relatively low: dong (D)15,000-D50,000 (\$1-\$3.5) per transaction. In some provinces, a "one-door" service has been established by which land users deal only with a single local government transaction office.

Farmers are able to use their Red Books as collateral to access loans, particularly from the Viet Nam Bank for Agriculture and Rural Development (VBARD). A high proportion of land users mortgage their land use rights for bank loans. Figures from two districts in An Giang province indicate that 15-33% of agricultural Red Book holders use them as collateral for loans from VBARD each year. The MMW4P survey showed that mortgage transactions generally took

from five days up to three weeks to complete, with low formal transaction costs.

Informal rural land market

Though significant progress has been achieved, informal unregistered tenure and transactions are still widespread in certain parts of the rural land market.

Rural residential land. The issue of Red Books for residential land has been slower than for agricultural land. In the MMW4P survey, over 70% of households in only two districts out of 12 had received Red Books for residential land. Consequently, the incidence of informal transactions in residential land is also high.

Informal mortgages. A traditional, informal land transaction known as *cổ đất* is commonly found in the Mekong Delta. Full use of an agricultural land plot for a fixed period of time is transferred in exchange for an interest-free cash loan. The land is returned on repayment of the

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¹ For more information, see Discussion Paper No. 3 "The Impact of Land Market Processes on the Poor-Implementing de Soto." Making Markets Work Better for the Poor Project at www.markets4poor.org.

loan or forfeited in the case of loan default. Such transactions are not formally registered.

Resorting to the informal land market can have great costs for poor people. Without state recognition of title, boundary and ownership disputes are common. Untitled land sells for much less than land with a Red Book. Informal mortgage terms are less favorable than those offered by the banks for titled land.

Key issues

A number of obstacles prevent poor households from gaining formal land titles or encourage the growth of informality in the land market:

High formal and informal fees. As with some other categories of non-agricultural land allocated by the state, land use levies of between 20% and 100% of land value are payable when Red Books are issued on residential land acquired since 1993. This constitutes a significant financial burden on poor households and, in some areas, has resulted in a high incidence of refusal to pick up Red Books from commune authorities. Fees are also levied in transferring garden or pond land to residential use. In many cases, the Red Book issue involves formal recognition of de facto land use change and consequently incurs land use levies.

The imposition of informal fees by local officials to process or accelerate land transfers is commonly reported. Sometimes such fees are institutionalized into contributions to local infrastructure development funds. Such fees have been shown to push some poorer farmers into informal land transactions.

Lack of awareness of rights and responsibilities among rural land users. Many land users are not aware of the importance of formal land title and registration of land transactions. This is particularly common in cases of inheritance or transfer between family members. Formal registration is often deemed unnecessary by those involved, though failure to do so can lead to family disputes.

Many obstacles to land mortgaging. Bank staff members sometimes require informal fees to facilitate the processing of mortgage transactions. In addition, bank ceilings on mortgage size are sometimes cited as a problem for farmers. The VBARD lends to a maximum of 50% of the value of agricultural land collateral, and 75% of the value of assets on the land, valued according to state price frameworks.

Local government intervention. Local government regulations have prevented formal transfer of small land plots in some cases. Such regulations are aimed at preventing land fragmentation but may push poor farmers into informal land sales.

Inaccurate plot measurement. In some cases, Red Books issued to farmers contain errors on the designation of the plot area or location. Such problems were common in rapid Red Book issue campaigns that took place shortly after the 1993 Land Law was passed. In such cases, formal land title clearly does not contribute to increased tenure security.

Solutions

A new Land Law was passed in November 2003 and came into effect on 1 July 2004. Reforms under this law could have significant benefits in protecting and developing land assets of the poor. To address some issues raised here, particular attention should be paid to the following.

Development of efficient land registry network. Under the 2003 Land Law, the state land management function will be separated from the provision of land market services. New provincial and district land registries will be set up to provide services, including the registration of land transfers, to land users. These registries should operate with transparency and should be able to provide quick and efficient service, thus reducing transaction time and costs to land users.

Capacity building for land registry officials. With the development of new land registries, significant investment must be made in staff training. This includes technical training, particularly at the commune level, and a shift from state management culture toward customer-oriented service provision.

Enforcement of commitments on time and cost. Clear charges and time limits for various land transaction services are set out in the Land Law and other related decrees. Enforcing these time limits will reduce the scope for informal "facilitation" charges.

Increase public awareness. Awareness-raising campaigns are necessary to increase public perception of the rights and responsibilities of land users. This should focus specifically on poor and vulnerable households. Clear information on the procedures and costs for registration of various transactions, as well as time limits set out in the new legislation, should be given.

Affordable fees and taxes. High land use levies are an obstacle for farmers to

gain formal land use rights. International best practice suggests that the state should underwrite the cost of first registration of land rights. This promotes wide-scale participation in the formal system and, in the long term, results in increased state revenue from subsequent dealings.

Prompt implementation of positive new policies for vulnerable groups.

The new Land Law includes positive steps to protect the rights of vulnerable groups. These steps include requiring that the names of spouses be entered in to the register for matrimonial property, reducing fees for disadvantaged groups, and allocating land to community groups. These steps should be implemented quickly.

Viewpoints

ISSUES

Informal transactions still exist

In Van Giang district, the local administration register most land transactions, except the type of land rent that local farmers call *ban het chuong* (rental of land until the current land use right allocation expires in 2013, in this case), which is often informal. The contracts for this type of land rental transaction are often handwritten, with an agreement for the lessor to pay the lessee annually, every 5 years, or in a single lump sum.

Nguyen Hong An, Head of the Land Administration Division, Van Giang District, Hung Yen Province



I think informal land transactions mostly take place in the case of transfer of land use right among households and individuals. In some cases, the reason for informality is the lack of land use right certificates, which forces the parties to undertake informal transactions. When users want to avoid financial levies, they also undertake informal transactions so that they do not have to pay taxes for land use right transfer or land use purpose transfer. In addition, some fees are still relatively high, which provides an incentive for people to try to avoid payment. The Government does not yet have a strict policy for punishing violations on land transactions.

Quach Cong Huan, Expert, Land Registration and Statistics Department, Ministry of Natural Resources and Environment

In the early 1990s, I bought a pond from my uncle, but we just had a written agreement between us because the



commune authority had not yet provided land use right certificates for households at that time. In 2000, the commune people's committee issued certificates for residents. I did not apply for a land use right transfer because I thought that, since I purchased the land use rights from a relative, possibility of conflict was low. In 2003, I sold the pond and part of my garden, and the buyer took the responsibility of fulfilling the procedures to get a new land use right certificate. However, according to the certificate, the pond still belonged to my uncle and the buyer had to ask for a double land use right transfer—one for the transfer of the pond that belonged to my uncle, and the other, for the part of land under my name. Two transactions took more time and money.

Luu Van Lua, Van Trai Hamlet, Van Duong Commune, Que Vo District, Bac Ninh Province

In 2000, I bought a garden parcel of 273 square meters (m²) from a neighbor named Pho. The land was originally allocated to Mr. Pho by the cooperative in 1986. As Mr. Pho was not issued a formal land use right certificate at that time, we just made a personal agreement without registering with the local authority. After buying the land, I built a house and a carpentry workshop on it. In 2004, I wanted to sell this land parcel and the buyer was only prepared to pay D40 million, provided the land had a Red Book. I knew from the commune people's committee that for the issuance of a Red Book, I would have to pay a tax of 100% of the land value for the land use purpose transfer from garden land to residential land. To legalize the transfer deal between Mr. Pho and me, I would have to pay a tax of 4% of land value and a stamp duty of 1% of the land value for the land use right transfer. I could not afford such a high payment; I needed funds for my business and could not wait for months to fulfill all the necessary procedures. I decided to sell the land informally at a lower price but very few people wanted to buy a land parcel without a certificate. The highest price offered was just D27 million.

Nguyen Van En, Ha Lam Town, Thang Binh District, Quang Nam Province

Taxes and fees are still high

To apply for the land use right certificate, the user will have to pay taxes and fees. These costs are lower than before, but still represent large amounts of money for poor households. Therefore, if a user does not need a land use right certificate, he or she will generally not bother to apply for or receive a certificate



from the local authority.
Dang Thai Son, Director of the Research Centre for Land Legislation and Policies, Viet Nam Research Institute for Land Administration, Ministry of Natural Resources and Environment

The Land Law of 2003 and related documents guiding its implementation clearly classify the limitations of residential land and garden land used by households. However, based on each period set out in the law, not all land tenure is considered residential land. If the users want to convert garden land into residential land, they will have to pay a tax for the land use purpose transfer. As a result, people, who do not need to conduct land transactions will not apply for land use right certificates.

Currently, users only have to pay informal fees when they conduct informal transactions, while for plots of land having Red Books, the procedures are relatively simple, except that the waiting period is a little long.

Do Thi Thanh Van, Deputy Director of the Land Policy Implementation and Real Estate Market Research Division, Research Centre for Land Legislation and Policy, Land Administration Institute, Ministry of Natural Resources and Environment

The new Land Law and other documents guiding its implementation have not specified the fee for measuring new land plots. Currently, local authorities in different regions calculate this fee differently—based on the value of the land rather than the complexity and the volume of work they have to undertake. This also makes land users hesitate to register their transactions.

Quach Cong Huan, Expert, Land Registration and Statistics, Ministry of Natural Resources and Environment

I think that the current fee and tax rate of 5% for land transactions are reasonable. The new land price frame is also closer to reality, although still lower than the actual value of the land. Therefore, as stipulated by law, upon the valuation of the land, tax officers can have a 20% margin, compared to the given frame price to make it closer to reality.

Currently, for each transaction, the chairman of the commune people's committee certifies the price of the land, and then submits it to the district people's committee. The district tax office confirms whether the price is reasonable; if not, it proposes the adjustment. By doing so, the proper tax is collected according to the actual price, while ensuring equal treatment

regarding evaluation and collection of taxes for different plots of land and different households to avoid different tax rates being imposed for similar land plots.

Nguyen Van Tham, Deputy Director of the Van Giang District Tax Division, Hung Yen Province

Land mortgage



The loan amount depends on various factors such as the feasibility of the loan proposal or the value of mortgaged properties; but the ceiling limit is 75% of the value of

mortgaged properties. According to Decree No. 79, farmers must have a Red Book as collateral when they apply for bank loans. However, for farmers who do not have a Red Book, VBARD is flexible and applies Article 50 of the new Land Law to accept other alternative documents, such as a land purchase contract certified by the local authority, land allocation decision, or certification from the local government for the land use right without any disputes.

To Thi Thu, Deputy Director of VBARD branch in Van Giang District, Hung Yen Province

Informal land transactions, especially informal mortgages, make poor people poorer. For example, when they mortgage land to gain capital for production, a single problem in production can result in failure to pay back the loan, consequently losing their land. In addition, in most informal mortgages, the loan does not match the value of the plot of land. If they do these transactions formally, by taking a bank mortgage, they enjoy some preferential treatment and can even be considered for a delay of repayment in case a problem happens in their production or business.

Quach Cong Huan, Expert, Land Registration and Statistics, Ministry of Natural Resources and Environment

I bought 15,000 m² of cultivated land in 1995 and was issued a land use right certificate for it in 1998. I dug three ponds on this plot and have been raising basa fish for several years. Last year, I needed about D960 million for investment in production and decided to mortgage the Red Book to obtain a bank loan. But despite my rather good relationship with the bank, I could borrow only D70 million at an interest rate of 1.1% per month because the lending ceiling level for mortgaged cultivated land is only 50% of the land value. If the land use purpose was transferred from cultivation to other purposes, the ceiling level would be

much higher, about D500 million-D600 million. On the one hand, I have to borrow D300 million from an individual lender for one month and a half with an interest rate of 3% per month; on the other hand, I am applying for land use purpose transfer to get a bigger bank loan in the future.

Ly Cong Tam, Phu Tan District, An Giang Province



I used my Red Book or the 2003 Land Book (for agricultural land allocated by the Government for 20 years) to obtain a mortgage at the Van Giang branch of VBARD.

With a Red Book for 2 sao (720 m²) of residential land, I asked for D30 million, and was lent D25 million. I think the loan was reasonable and the procedure was simple and quick.

Dinh Van Luyen, Lien Nghia Commune, Van Giang District, Hung Yen Province

Weak system of land administration

In various localities, discrepancies exist between the land administration maps and the files, making issuance of land use right certificates difficult. Some areas have only manually measured maps and no formal cadastral maps.

Dang Thai Son, Director of the Research Centre for Land Legislation and Policy, Land Administration Institute, Ministry of Natural Resources and Environment

The process of issuing land use right certificates is slow partly because of the difficulties in obtaining legal information about the land, especially in cases where a clear boundary between residential land and garden land must be defined for the issuance of land use right certificates under the 2003 Land Law.

Do Thi Thanh Van, Deputy Director of the Land Policy Implementation and Real Estate Market Research Division, Research Centre for Land Legislation and Policy, Land Administration Institute, Ministry of Natural Resources and Environment

Low capacity of Land Administrators

Decree 181/2004/ND-CP dated 29 October 2004 on land law implementation by the Government clearly stipulates the time limits and required procedures for the settlement of each type of transaction (for example, 20

days for land use purpose transfers, 55 days for land use right certificate issuance, etc.). But such time limits are hard to apply if we consider the capacity and the working conditions of land administrators at the grassroots level.

Quach Cong Huan, Expert, Land Registration and Statistics, Ministry of Natural Resources and Environment

Currently, there is a shortage of land administrators at the grassroots level. Each commune has only one, while the Van Giang Land Administration Division has three staff members. With such limited human resources, land transaction procedures are difficult to complete on time. People usually wait for a week longer than the time limit set by the law.

Nguyen Hong An, Head of the Land Administration Division, Van Giang District, Hung Yen Province

SOLUTIONS

Increase the effectiveness of land management

To ensure the progress of land use right certificates issuance, investment is needed for land administration work, especially in carrying out standard mapping for every commune.

Dang Thai Son, Director of the Research Centre for Land Legislation and Policy, Land Administration Institute, Ministry of Natural Resources and Environment



To better and more effectively manage land and to simplify and streamline land transactions, a common land database between the three agencies of land administration,

taxation, and banking is needed. Setting up land registration offices according to the new Land Law will facilitate coordination among these three agencies so that they can share their official data. When all three share the same database, the procedures will be simplified and done faster.

Do Thi Thanh Van, Deputy Director of the Land Policy Implementation and Real Estate Market Research Division, Research Centre for Land Legislation and Policy, Land Administration Institute, Ministry of Natural Resources and Environment

Regarding the issuance of land use right

certificates, I think the documents guiding the implementation are sufficient; however, some sample contracts for land transactions have yet to be issued. Currently, people use the old form of contract, some points of which do not conform with the new law. Therefore, new sample contracts should be issued so that land transactions can be completed quickly.

Quach Cong Huan, Expert, Land Registration and Statistics, Ministry of Natural Resources and Environment

Capacity building for land administrators

The capacity of land administrators should be increased because they are weak in both number and capacity, while the jobs assigned to them are not stable. Besides, the facilities and equipment for land administration at the grassroots level are limited, and more investment is needed.

Quach Cong Huan, Expert, Land Registration and Statistics, Ministry of Natural Resources and Environment

Land administrators should be trained in both technical skills and knowledge. At the district level, more staff members are needed. In Van Giang district, for example, three staff members cannot deal with procedures for all land transactions in the district.

Nguyen Hong An, Head of the Land Administration Division, Van Giang District, Hung Yen Province

Reasonable taxes and fees



As the new land price under the state's price framework is quite close to the market price, I think we should consider decreasing the taxes for land use right transfer to reduce the tax burden on

the people and encourage them to participate in the formal transaction system. In addition, stamp duty should be reconsidered. This is the fee for administrative procedures applied for each land transaction, not a tax. Therefore, to impose the stamp duty at 1% of the value of the property is unreasonable.

Quach Cong Huan, Expert, Land Registration and Statistics, Ministry of Natural Resources and Environment