

DECREE No. 197/2004/ND-CP OF DECEMBER 3, 2004 ON COMPENSATION, SUPPORT AND RESETTLEMENT WHEN LAND IS RECOVERED BY THE STATE

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 26, 2003 Land Law;

At the proposal of the Finance Minister,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

1. This Decree provides for the compensation, support and resettlement when land is recovered by the State for defense and security purposes, for national interests, public interests and economic development purposes prescribed in Article 36 of the Government's Decree No. 181/2004/ND-CP of October 29, 2004 on the implementation of the Land Law.

2. For projects using official development assistance (ODA), if the compensation, support and resettlement requests of the donors are different from the provisions of this Decree, before concluding international agreements, the agencies managing the investment projects must report such to the Prime Minister for consideration and decision.

Where the international agreements which

Vietnam has signed or acceded to contain provisions different from those of this Decree, the provisions of such international agreements shall apply.

3. Cases not falling within the scope of application of this Decree:

a/ Population communities build or embellish works in service of the communities' public interests with capital contributed by the people or supported by the State;

b/ Where land recovered by the State does not fall within the scope defined in Clause 1 of this Article.

Article 2.- Subjects of application

1. Domestic organizations, population communities, religious establishments, households and individuals, overseas Vietnamese, foreign organizations and individuals that are using land which is recovered by the State (hereinafter collectively referred to as persons who have land recovered).

2. Persons who have land recovered and suffer from damage of property attached to the recovered land shall receive land, property compensation, supports as well as be arranged with resettlement according to the provisions of this Decree.

3. The State encourages persons having land, property situated within the land areas to be recovered for use for the purposes defined in Clause 1, Article 1 of this Decree to voluntarily donate or present part or whole of their land, property to the State.

Article 3.- Payment of compensation and support and resettlement money

1. The State shall organize the compensation, support, resettlement and ground clearance:

a/ For organizations which are assigned land by the State without land use levy collection, compensation, support and resettlement money and funds for organizing the compensation, support and resettlement according to the provisions of this Decree shall be included in the projects' investment capital;

b/ Organizations and individuals that are assigned land by the State with land use levy collection or are leased land by the State shall have to pay in advance compensation, support, resettlement money and funds for organizing the compensation, support and resettlement according to the provisions of this Decree and have such money and funds subtracted from the payable land use levies or land rents;

c/ Foreign organizations and individuals, overseas Vietnamese investing in Vietnam shall not have to pay compensation, support, resettlement money; where they have paid such money, they shall have the paid money amounts subtracted from the payable land use levies or land rents.

2. Compensation, support and resettlement expenses shall be determined as a separate item in the projects' total investment capital.

Article 4.- Resettlement

When land users who have land recovered by the State under the provisions of this Decree must be relocated, they shall be resettled in one of the following forms:

1. Compensation with dwelling houses.
2. Compensation with new residential land.

3. Compensation with money for acquiring new residences.

Article 5.- Compensation, supports

Compensation, supports for land users who have land recovered by the State under the provisions of this Decree are prescribed as follows:

1. Compensation or supports for the whole land area recovered by the State.

2. Compensation or supports for the existing property attached to land and for expenses invested in the land recovered by the State.

3. Supports for relocation, supports for life stabilization, supports for job change training and other supports for persons who have land recovered.

4. Supports for stabilization of production and life in the resettlement areas.

Chapter II

COMPENSATION FOR LAND

Article 6.- Compensation principles

1. If persons who have land recovered by the State meet all conditions prescribed in Article 8 of this Decree, they shall receive compensation; if they fail to meet all conditions for compensation, the People's Committees of the provinces or centrally-run cities (hereinafter referred collectively to as provincial-level People's Committees) shall consider and provide supports.

2. Persons who have land recovered shall be compensated with new land having the same use purpose; if there is no land for compensation, they

shall receive compensation equal to the land use right value at the time of issuance of the recovery decisions; in case of compensation with new land or houses, if there is any difference in value, such difference shall be paid in cash.

3. Where land users who have land recovered by the State receive compensation while they have not yet fulfilled their land-related financial obligations towards the State according to law provisions, the money amounts for fulfilling such financial obligations shall be subtracted from the compensation, support money for payment to the State budget.

Article 7.- Cases where land is recovered without compensation

1. Land users fail to meet all conditions prescribed in Article 8 of this Decree.

2. Organizations which are assigned land by the State without land use levy collection or with land use levy collection but have paid levies which originate from the State budget; which are leased land by the State and have paid annual land rents; and which have been transferred the land use rights and have paid therefor money originating from the State budget.

3. The recovered land falls into one of the cases prescribed in Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Article 38 of the 2003 Land Law.

For the recovered land prescribed in this Clause, the disposal of land use levies, land rents and property built on such land shall comply with the provisions of Clause 3 of Article 34, and Article 35 of the Government's Decree No. 181/2004/ND-CP of October 29, 2004 on the implementation of the Land Law.

4. Agricultural land used by the population communities.

5. Agricultural land used by communes, wards or townships for public purposes.

6. Persons who have land recovered by the State meet one of the conditions prescribed in Article 8 of this Decree but fall into one of the cases prescribed in Clauses 1, 2, 3, 4 and 5 of this Article.

Article 8.- Conditions for compensation for land

Persons who have land recovered by the State shall receive compensation if they meet one of the following conditions:

1. Having the land use right certificates according to the provisions of land legislation.

2. Having the land assignment decisions of competent State bodies according to the provisions of land legislation.

3. Households, individuals that are using land in a stable manner, have certifications of the People's Committees of communes, wards or townships (hereinafter collectively referred to as commune-level People's Committees) that such land is dispute-free, and have one of the following papers:

a/ Land use right papers issued before October 15, 1993 by competent agencies in the process of implementing the land policies of the State of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of the Republic of South Vietnam, and the State of the Socialist Republic of Vietnam;

b/ Provisional land use right certificates issued by competent State bodies or named in the land registries or cadastral registries;

c/ Lawful papers on the inheritance, donation of the land use rights or property attached to land; papers on the hand-over of gratitude houses attached to land;

d/ Papers on the transfer of land use rights, purchase and sale of dwelling houses attached to residential land, made before October 15, 1993, with the certifications of the commune-level People's Committees that the land was used before October 15, 1993;

e/ Papers on liquidation, sale of dwelling houses, purchase of dwelling houses attached to residential land according to law provisions;

f/ Papers issued by competent bodies of the former regimes to land users.

4. Households, individuals that are using land and have one of the papers stated in Clause 3 of this Article which bear the names of other persons and are enclosed with the land use right transfer papers signed by the involved parties, but have not yet completed the land use right transfer procedures by the time of issuance of the land recovery decisions, and now have certifications of the commune-level People's Committees that such land is dispute-free.

5. Households, individuals that are using land, have local permanent residence registrations and are directly engaged in agricultural production, forestry, aquaculture or salt making in mountainous areas or islands with difficult socio-economic conditions, and now have certifications of the commune-level People's Committees of the places where the land exists that they are using land in a dispute-free and stable manner.

6. Households, individuals that are using land without the papers prescribed in Clauses 1, 2 and 3 of this Article but has used such land stably since

before October 15, 1993 and now have certifications of the commune-level People's Committees that such land is dispute-free.

7. Households, individuals that are allowed to use land under the executed judgments or decisions of people's courts, judgment execution decisions of judgment-executing agencies or land dispute settlement decisions of competent State bodies.

8. Households, individuals that use land without the papers prescribed in Clauses 1, 2 and 3 of this Article but have used such land from October 15, 1993 to the time of issuance of the land recovery decisions during which they have not violated any plannings; have not encroached upon the corridors for protection of works publicly announced and demarcated by competent authorities; which is not illegally encroached land, and have certifications of the commune-level People's Committees of the places where exists the to be-recovered land that such land is dispute-free.

9. Households, individuals that are using land which was covered under the State's management decisions in the process of implementing the State's land policies but has, in fact, not yet been managed by the State and has been used by such households or individuals.

10. Population communities that are using land on which exist works being communal houses, temples, pagodas, shrines, ancestral worshipping halls or family line worshipping temples and have certifications of the commune-level People's Committees of the places where exists the to be-recovered land that such land is used commonly for the communities and dispute-free.

11. Organizations using land in the following cases:

a/ Land has been assigned by the State with land use levy collection but the paid land use levies do not originate from the State budget;

b/ Land has been transferred from lawful land users but the money paid therefor does not originate from the State budget;

c/ Land being used has a lawful origin from households or individuals.

Article 9.- Land prices for compensation calculation and remaining expenses invested in land

1. Land prices for compensation calculation are land prices set for the purpose for which the land in question is being used at the time of issuance of land recovery decisions and publicized by the provincial-level People's Committees in accordance with the Government's regulations; compensation shall not be made according to the price of land set for the new purpose to be shifted to.

2. Cases of delayed compensation are prescribed as follows:

a/ If delays in compensation are caused by agencies or organizations responsible for compensation and the land prices at the time of compensation publicized by the provincial-level People's Committees are higher than those at the time of issuance of the recovery decisions, compensation shall be made at the land prices at the time of payment of compensation money; if the land prices at the time of compensation are lower than those at the time of issuance of the recovery decisions, compensation shall be made at the land prices at the time of issuance of the recovery decisions;

b/ For delays in compensation caused by

persons who have land recovered, if the land prices at the time of compensation are lower than those at the time of issuance of the recovery decisions, compensation shall be made at the land prices at the time of compensation; if the land prices at the time of compensation are higher than those at the time of issuance of the recovery decisions, compensation shall be made at the land prices at the time of issuance of the recovery decisions.

3. Remaining expenses invested in land mean expenses actually invested by land users in their land for use for the permitted use purposes, including: remaining prepaid land rents; expenses for ground fill-up and some other directly related expenses with grounds evidencing that they have been invested in land, which, by the time of recovery of land by the State, have not yet been recovered.

Article 10.- Compensation, supports for agricultural land of households, individuals

1. Households, individuals using agricultural land to be recovered by the State shall be compensated with land with the same use purpose; if there is no land for compensation, they shall receive monetary compensation calculated at the price of land having the same use purpose as prescribed in Clause 1, Article 9 of this Decree.

2. For agricultural land lying intermixedly with residential areas, and garden and pond land lying adjacent to residential areas, apart from compensation at the price of agricultural land having the same use purpose, monetary supports are also provided; the prices for calculation of supports shall be equal to between 20% and 50% of the prices of adjacent residential land; the specific support levels shall be decided by the provincial-level People's Committees to suit the

local realities.

3. Where compensation is made in the form of assignment of new land priced lower than the price of the recovered land, apart from being assigned new land, persons who have land recovered shall also receive monetary compensation equal to the difference value; where compensation is made in the form of assignment of new land priced higher than the price of the recovered land, compensation shall be equal to the land use right value of the recovered land.

4. For households, individuals using agricultural land in excess of the prescribed limit, when their land is recovered, compensation shall be made as follows:

a/ Where the land areas in excess of the prescribed limit are those inherited, donated or transferred from other persons, are reclaimed under the plannings approved by competent State bodies, compensation shall be paid therefor;

b/ For land areas in excess of the prescribed limit, which do not fall into the cases prescribed at Point a of this Clause, compensation shall only be paid for remaining expenses invested in land, but not for such land areas.

5. For households, individuals currently using land assigned by State-owned agricultural or forestry farms on a contractual basis for use for agricultural, forestry, aquaculture purposes (excluding land under special-use forests and protective forests), if their land is recovered by the State, they shall receive compensation only for remaining expenses invested in land, but not for the land, and supports according to the following provisions:

a/ Supports for households, individuals that

receive land on a contractual basis and are public employees or workers of State-owned agricultural or forestry farms, who are working or have retired, have stopped working for loss of working capacity or have quit their jobs and enjoyed allowances and are directly engaged in agricultural production or forestry; households, individuals that receive land on a contractual basis and are directly engaged in agricultural production as their major source of livelihood.

The highest level of monetary support shall be equal to the price of land to be compensated, calculated on the basis of the actually recovered land area which shall, however, not exceed the local agricultural land assignment limits; the provincial-level People's Committees shall decide on the specific support levels to suit the local realities.

b/ Where households, individuals receive land on a contractual basis but are other than the subjects specified at Point a of this Clause, they shall only receive compensation for remaining expenses invested in land.

c/ When agricultural land commonly used by State-owned agricultural or forestry farms is recovered by the State, compensation shall only be paid for remaining expenses invested in land if they do not originate from the State budget, but not for the land.

6. For households, individuals that use agricultural land to be recovered by the State but do not meet the conditions for compensation prescribed in Article 8 of this Decree, if they are directly engaged in agricultural production as their main source of livelihood, the People's Committees of competent levels shall consider and assign them new land, as suitable to the local conditions.

7. Where the recovered land is agricultural land belonging to the public land fund of a commune, ward or township, compensation shall not be paid for such land but the renters of such land shall receive compensation for remaining expenses invested in land.

Article 11.- Compensation for non-agricultural land (excluding residential land) of households, individuals

1. For land which is used as ground for building non-agricultural production and business establishments of households or individuals and originates from residential land already assigned for use in a stable and permanent manner or meets all conditions for being granted the land use right certificates, compensation shall be paid at the residential land price when such land recovered by the State.

2. Households and individuals using non-agricultural land for a definite term, which they have been transferred, inherited, donated, or assigned by the State with land use levy collection shall receive compensation at the non-agricultural land price; where they use land leased by the State or commune-level People's Committees according to their competence, they shall receive compensation for remaining expenses invested in land when such land is recovered by the State.

Article 12.- Compensation for agricultural, non-agricultural land of organizations

1. For organizations that are using agricultural and/or non-agricultural land which has been assigned by the State, and have paid land use levies therefor, or which has been transferred from lawful land users while the paid land use levies therefor or money paid for the land use right transfer

do not originate from the State budget, they shall receive compensation when such land is recovered by the State.

2. For organizations that are using land leased or assigned by the State and do not have to pay land use levies or have paid land use levies which originate from the State budget, they shall not receive compensation for such land when it is recovered by the State but shall receive compensation for remaining expenses invested in land if such expenses do not originate from the State budget.

3. Establishments of religious organizations that are using land in a stable manner, which has been assigned by the State without land use levy collection or has been leased by the State, shall receive compensation for remaining expenses invested in land but not for such land.

Article 13.- Compensation for non-agricultural land being residential land

1. If users of residential land must be relocated when their land is recovered by the State, they shall receive compensation with new residential land, dwelling houses in resettlement areas or monetary compensation if they so request, as suitable to the local realities.

2. The new residential land area compensated for persons who have land recovered shall not exceed the local residential land assignment limits; where the recovered residential land area is larger than the residential land assignment limit, the provincial-level People's Committees shall base themselves on the local land funds and the numbers of members of the households whose land is recovered to consider and decide to assign additional residential land to the persons who have

land recovered provided that the total compensated land area must not exceed the recovered land area.

Article 14.- Handling of some specific cases of residential land

1. After their residential land is recovered by the State, if users still have some remaining residential land area, which is smaller than the residential land assignment limit prescribed by the localities, competent State bodies must guide them to use such remaining land area according to the detailed urban construction planning and the rural population spot planning; if the persons who have land recovered request the State to recover also the remaining land area, competent State bodies shall recover such land for use according to the detailed urban construction planning and the rural population spot planning.

2. When their residential land is recovered by the State, if users are not entitled to compensation with land and have no other residences, the competent People's Committees shall consider and allow them to purchase or lease dwelling houses or assign new residential land to them; the persons who are leased houses or purchase houses must pay money for house purchase or house rents, pay land use levies according to regulations.

Article 15.- Compensation for residential land for land use right co-users

1. For organizations, households or individuals that are using common land and have the rights to co-use such land, if their land is recovered by the State, they shall each receive compensations based on the land areas under their respective use rights; if there are no papers determining land areas under the exclusive use rights of any organizations,

households or individuals, common compensation shall be paid to the land use right co-users.

2. The provincial-level People's Committees shall guide the division of monetary compensation for residential land of condominiums to land use right co-users in their localities.

Article 16.- Compensation for land lying within safety corridors when building public works with safety protection corridors

1. When land lying within safety protection corridors is recovered by the State for the building of public works with safety protection corridors, compensation or supports shall be paid according to the provisions of this Decree.

2. Where land lying with safety corridors is not recovered by the State, compensation shall be paid for damage caused by the restricted usability of such land and for damage of property attached thereto as follows:

a/ If the land use purpose is changed, monetary compensation equal to the land use right value difference shall be paid;

b/ If the land use purpose is not changed but the land usability is restricted, monetary compensation equal to the actual damage level shall be paid. The level of compensation for actual damage shall be prescribed by the provincial-level People's Committees on a case-by-case basis;

c/ If dwelling houses, other construction works and other property lying within the safety corridors are cleared up, compensation shall be paid according to the actual damage level.

Article 17.- Handling of cases where organizations have their land recovered without compensation

For organizations having their land recovered without compensation prescribed in Clause 2, Article 12 of this Decree, if they must be relocated, they shall receive monetary supports under investment projects approved by competent authorities; the maximum support level shall not exceed the level of compensation for recovered land paid by the organizations or individuals that are assigned or leased land by the State.

Chapter III

COMPENSATION FOR PROPERTY

Article 18.- Principles for compensation for property

1. Owners of property attached to land which is recovered by the State shall receive compensation when their property suffers from damage.

2. Owners of property attached to land which is recovered by the State but is not eligible for compensation shall receive compensation or supports for their property on a case-by-case basis.

3. Houses, other works attached to land, which are built after the land use plannings and plans are publicized and without permission of competent State bodies, shall not be compensated.

4. Houses, other works attached to land, which are built after July 1, 2004 but, at the time of building, run against the land use purpose determined in the approved land use planning and plan, shall not be compensated.

5. Property attached to land, which is created after the land recovery decisions are publicized, shall not be compensated.

6. For systems of machinery, production chains

which can be disassembled and removed, compensation shall be only paid for disassembly, transport and re-assembly expenses and damage caused in the process of disassembly, transport and/or re-assembly; the compensation level shall be prescribed by the provincial-level People's Committees in accordance with current legislation and to suit the local realities.

Article 19.- Compensation for houses, works built on land

1. For dwelling houses, works in service of the daily life of households or individuals, compensation equal to the value of newly built houses, works with equivalent technical standards promulgated by the Construction Ministry shall be paid. The value of newly constructed houses, works shall be calculated by multiplying the construction acreage of houses, works by the new construction unit prices of houses, works, which are prescribed by the provincial-level People's Committees according to the Government's regulations.

2. For houses, construction works other than those prescribed in Clause 1 of this Article, compensation shall be paid at the following level:

Level of compensation for houses, works	Existing value of damaged houses, works	+ percentage of the existing value of houses, works
A sum of money calculated as a		

The existing value of damaged houses, works is determined by multiplying the percentage of the remaining quality of such houses, works by the value of newly built houses, works with equivalent technical standards promulgated by the Construction Ministry.

A sum of money calculated as a percentage of the existing value of houses, works shall be prescribed by the provincial-level People's Committees but the maximum compensation level shall not exceed 100% of the value of newly built houses, works with technical standards equivalent to those of damaged houses, works.

For technical infrastructure works, the compensation level shall be equal to the value of newly built works with equivalent technical standards promulgated by the Construction Ministry; compensation shall not be paid if the works are no longer in use.

3. For houses, other construction works which have been dismantled in part with the remaining part being unusable, compensation shall be paid for the whole houses, works; for houses, other construction works which have been dismantled in part but still exist with the remaining part being usable, compensation shall be paid for the value of the dismantled part and for expenses for repair and improvement of the remaining part up to the technical standards of the houses, works before being dismantled.

4. Property attached to land which falls into one of the cases prescribed in Clauses 4, 6, 7 and 10 of Article 38 of the 2003 Land Law shall not be compensated.

5. Property attached to land which falls into one of the cases prescribed in Clauses 2, 3, 5, 8, 9, 11 and 12, Article 38 of the 2003 Land Law shall be handled according to the provisions of Article 35 of the Government's Decree No. 181/2004/ND-CP of October 29, 2004 on the implementation of the Land Law.

Article 20.- Handling of cases of specific

compensation and supports for houses, works

1. Houses, other works which are built with permission on land meeting all compensation conditions prescribed in Article 8 of this Decree shall be compensated according to the provisions of Article 19 of this Decree.

2. Houses, other works which are built without permission shall, depending on the extent and nature of legality of land, houses and works, be compensated or supported according to the following provisions:

a/ Houses, other works built on land meeting all compensation conditions prescribed in Article 8 of this Decree shall be compensated according to the provisions of Article 19 of this Decree;

b/ For houses, other works built on land failing to meet all compensation conditions prescribed in Article 8 of this Decree but, at the time of building, there were no land use plannings and plans publicized by competent authorities, or built in line with the land use planning and plan without encroaching upon the work protection corridors, supports equal to no more than 80% of the compensation level prescribed in Article 19 of this Decree shall be provided;

c/ Houses, other works built before July 1, 2004 on land failing to meet all compensation conditions prescribed in Article 8 of this Decree and in violation of the publicized land use planning and plan and placed landmarks or in encroachment upon the demarcated work protection corridors shall not be compensated; in special cases, the provincial-level People's Committees may consider to provide supports on a case-by-case basis.

3. For houses, other works built on land failing to meet all compensation conditions prescribed in

Article 8 of this Decree and, at the time of building, competent State bodies already issued notices banning such building, neither compensation nor support shall be provided; persons having such illegally built works shall be forced to dismantle such works or bear dismantlement expenses if competent agencies organize the dismantlement.

Article 21.- Compensation for houses, works to persons currently using State-owned dwelling houses

1. For persons currently using State-owned dwelling houses (rented houses or houses self-managed by organizations) which are situated within the to be-recovered land areas and must be dismantled, the current tenants shall not receive compensation for the areas of State-owned dwelling houses and the illegally extended areas but shall receive compensation for expenses for self-renovation, repair and upgrading at the levels prescribed by the provincial-level People's Committees.

2. Persons currently using State-owned dwelling houses which are dismantled may rent dwelling houses in the resettlement areas; new rented areas in the resettlement areas shall be equal to old rented areas; house rent rates shall be those applicable to State-owned dwelling houses; rented houses in the resettlement areas shall be sold by the State to the current tenants according to the Government's regulations on sale of State-owned dwelling houses to current tenants; in special cases where there are no resettlement houses to be arranged for them, monetary supports equal to 60% of the land value and 60% of the value of currently rented houses shall be provided for seeking for new residences.

Article 22.- Compensation for relocation of graves

For the relocation of graves, compensation shall be paid for expenses for land, digging, exhumation, moving, re-building and other directly related reasonable expenses. The provincial-level People's Committees shall specify the compensation levels suitable to the local practices and realities.

Article 23.- Compensation for cultural works, historical relics, churches, communal houses, pagodas, shrines

For projects involving the recovery of land on which exist cultural works, historical relics, churches, communal houses, pagodas or shrines which must be relocated, the compensation for centrally managed works and locally managed works shall be decided by the Prime Minister and the provincial-level People's Committee presidents respectively.

Article 24.- Compensation for cultivated plants and reared animals

1. The level of compensation for annual trees shall be equal to the value of the output of their crop. The value of the output of a crop shall be calculated on the basis of the productivity of the biggest crop in the last three years of the major cultivated tree in the locality and the average price at the time of land recovery.

2. The level of compensation for perennial trees shall be equal to the existing value (exclusive of the land use right value) of the orchard, calculated at the local price at the time of land recovery.

3. For unharvested crops which may be moved to elsewhere, compensation for expenses for

moving and for actual damage from relocation and re-planting shall be paid.

4. Forest trees planted with the source of State budget capital, natural forest trees assigned to organizations and households for growing, management, tending and protection, compensation for the value of the actual damage to the gardens shall be paid; monetary compensation shall be divided to forest managers, tenders and keepers according to law provisions on forest protection and development.

5. For reared animals (in aquaculture), compensation shall be paid as follows:

a/ For reared animals that have reached the harvest time by the time of land recovery, compensation shall not be paid;

b/ For reared animals that have not yet reached the harvest time by the time of land recovery, compensation shall be paid for actual damage caused by premature harvest; where they can be moved elsewhere, compensation for expenses for moving and for damage therefrom; the specific compensation levels shall be prescribed by the provincial-level People's Committees to suit the realities.

Article 25.- Disposal of money compensated for State-owned property

Organizations that have their land recovered by the State, suffer from damage to property assigned by the State to them for management and use or must move to new locations may use money compensated for their property for investment in their new locations under investment projects approved by competent authorities.

Article 26.- Compensation to laborers for their

job stoppage

If economic organizations, registered production and business households employing laborers under labor contracts have to stop production and business due to land recovery by the State, laborers shall receive compensation according to the job stoppage allowance regime prescribed in Clause 3, Article 62 of the Labor Code; the subjects entitled to compensation shall be laborers defined at Point a and Point b, Clause 1, Article 27 of the Labor Code; the period for compensation calculation shall be the period of production and business stoppage but must not exceed 6 months.

Chapter IV

SUPPORT POLICIES

Article 27.- Relocation supports

1. If households must be relocated within a province or city or to another province or city when the State recovers land, they shall each receive a support of VND 3,000,000 at most or VND 5,000,000 at most respectively; the specific support level shall be prescribed by the provincial-level People's Committees.

2. If organizations that meet all conditions for compensation for land and property upon land recovery must be relocated; they shall receive supports for all relocation, dismantlement and installation expenses actually incurred.

3. If persons who have their residential land recovered and have no other residences; pending the time of creating new residences (arrangement for resettlement), they shall be arranged to live in makeshift shelters or receive monetary supports for renting dwelling houses; the specific periods

and support levels shall be prescribed by the provincial-level People's Committees to suit the local realities.

Article 28.- Supports for life stabilization and production stabilization

1. When households, individuals directly engaged in agricultural production have over 30% of their assigned agricultural land areas recovered, they shall receive life stabilization supports for 3 months if they must not be relocated and for 6 months if they must be relocated; where they must be relocated to places with difficult or specially difficult socio-economic conditions, they shall receive supports for 12 months at most. The level of monetary support per household member per month shall be equivalent to 30 kg of rice, calculated at the average local price.

2. When economic organizations or registered production and business households have to stop production and business when their land is recovered by the State, they shall receive compensation of no more than 30% of one year's after-tax incomes, calculated according to the average level of the last three years, which is certified by the tax office; the specific support levels shall be prescribed by the provincial-level People's Committees to suit the local realities.

Article 29.- Supports for job change and job creation

1. If households, individuals directly engaged in agricultural production have over 30% of their assigned agricultural land areas recovered, they shall receive supports for job change if they are still within the working age; the specific support levels shall be prescribed by the provincial-level

People's Committees to suit the local realities.

2. The job change training support shall mainly take the form of sending for job training at vocational training establishments.

Article 30.- Supports for current tenants of non-State-owned houses

1. If households, individuals currently renting non-State-owned dwelling houses must dismantle their houses or must be relocated when the State recovers land, they shall receive supports equal to the level prescribed in Clause 1, Article 27 of this Decree for relocation.

2. Basing themselves on the local realities, the provincial-level People's Committees shall provide life stabilization and production stabilization supports for households and individuals.

Article 31.- Supports upon recovery of public land of communes, wards or townships

Where the recovered land belongs to public land funds of communes, wards or townships, supports shall be provided; the highest support level can be equal to the compensation level; the specific support levels shall be prescribed by the provincial-level People's Committees; monetary supports shall be remitted into the State budget and incorporated into the annual budget estimates of communes, wards or townships; monetary supports shall only be used for investment in building infrastructural works, for public interests of communes, wards or townships.

Article 32.- Other supports

Apart from the supports prescribed in Articles 27, 28, 29, 30 and 31 of this Decree, basing

themselves on the local realities, the provincial-level People's Committee presidents shall decide on other supporting measures to stabilize life and production of persons who have land recovered; special cases shall be submitted to the Prime Minister for decision.

Chapter V

RESETTLEMENT

Article 33.- Formulation and implementation of resettlement projects

1. On the basis of local socio-economic development plans as well as land use plannings and plans already approved by competent authorities, the provincial-level People's Committees shall have to formulate and implement resettlement projects to ensure resettlement for persons who have land recovered and must be relocated.

2. The project formulation and resettlement area construction shall comply with current regulations on investment and construction management.

Article 34.- Resettlement arrangement

1. Agencies (organizations) that are assigned by the provincial-level People's Committees to arrange resettlement must inform every household that has land recovered and must be relocated of the tentative resettlement arrangement plans and publicly post up these plans at their headquarters, at the offices of the commune-level People's Committees of the localities where exists the recovered land and in the resettlement areas 20 days before such resettlement plans are approved by competent State bodies; the contents of such a

notice include:

a/ Locations, sizes of the resettlement land fund and house fund, design, acreage of each land plot, apartment, resettlement land price, house price;

b/ Planned arrangement of households in the resettlement area.

2. To prioritize on-spot resettlement for persons who have land recovered in the areas covered by the resettlement projects; prioritize convenient positions for households that were the first in making ground clearance, households having convenient positions in old places of residence, households being social policy beneficiaries.

3. To create condition for households that agree to move to resettlement areas to look through the resettlement areas and publicly discuss the planned arrangement prescribed in Clause 1 of this Article.

Article 35.- Compulsory conditions on resettlement areas

1. Resettlement areas must be built in line with land use plannings and plans, construction plannings as well as construction standards and rules.

2. Resettlement areas must be commonly used for many projects.

3. Before residential land is arranged for households, individuals, comprehensive infrastructure must be built in resettlement areas to ensure that users have the same or better conditions compared with their old places of residence.

Article 36.- Measures to support production and

life in resettlement areas

Basing themselves on the local realities, the provincial-level People's Committees shall decide on measures and specific levels of support for stabilizing production and life in resettlement areas, including:

1. Supporting plant seeds and animal breeds for the first agricultural production crop, agricultural promotion, forestry promotion, plant protection, veterinary services, cultivation, husbandry and professional techniques for production, business, industrial and trading services.

2. Supports for creating some trades and occupations in resettlement areas, which are suitable to laborers, particularly female laborers.

Article 37.- Rights and obligations of persons who have land recovered and must be relocated

1. Rights:

a/ To register in writing to move to resettlement areas;

b/ To be given priority to register the residence status for themselves, other family members who move to new residences and to transfer family members of school age to new schools;

c/ To refuse to move to resettlement areas which fail to ensure the conditions already notified and publicly posted up;

d/ To be provided house design models free of charge.

2. Obligations:

a/ To move to resettlement areas according to the deadline set by competent State bodies;

b/ To build houses, works according to planning and fulfill other obligations according to law provisions;

c/ To pay money for purchase of dwelling houses or land use levies according to law provisions.

Article 38.- Resettlement for special projects

If due to investment projects decided by the Government or the National Assembly, the entire population communities must be relocated, affecting their life, economy, society and traditional culture, on a case-by-case basis, the Prime Minister shall decide on or submit to the Government for consideration and decision special resettlement policies with the applicable highest support level, i.e. supports for all expenses for creation of new resettlement areas, building of dwelling houses, improvement of crop fields, construction of socio-economic infrastructure, supports for life and production stabilization and other supports.

Chapter VI

ORGANIZATION OF IMPLEMENTATION

Article 39.- Assignment of compensation, support and resettlement tasks

1. Basing themselves on the local realities, the provincial People's Committees shall assign the compensation, support and resettlement work to:

- The compensation, support and resettlement councils of rural districts, urban districts, towns and provincial cities (collectively referred to as the district level);

- Land fund development organizations.

2. A district-level compensation, support and

resettlement council shall have a People's Committee leader as its chairman and the following members:

- A finance agency's representative as its vice chairman;
- The investor as a standing member;
- A natural resources and environment agency's representative as member;
- A representative of the commune-level People's Committee of the place where land is recovered as member;
- One or two representatives of households having land recovered;

A number of other members shall be decided by the compensation, support and resettlement council chairman to suit the local realities.

Article 40.- Responsibilities of compensation, support and resettlement councils

1. The compensation, support and resettlement councils shall assist the People's Committees of the same level in making, and organizing the implementation of, compensation, support and resettlement arrangement plans; work on the collective principle and decide by majority; where the numbers of votes for and against are equal, the opinion of the side joined by the council chairman shall be followed.

2. Responsibilities of council members:

a/ The council chairman shall direct the council members to make, submit for approval and organize the implementation of, the compensation, support and resettlement plan;

b/ The investor shall be responsible for assisting the council chairman in making the compensation,

support and resettlement plan, ensuring sufficient funds for timely payment of compensation, support and resettlement money;

c/ Representatives of persons who have land recovered shall be responsible for reflecting the aspirations of persons who have land recovered, persons who must be relocated; mobilizing persons who have land recovered to move and clear the ground according to schedule;

d/ Other members shall perform the tasks as assigned and directed by the council chairman, suitable to their respective branches.

3. The compensation, support and resettlement councils shall be responsible for the accuracy and rationality of inventory statistics, the legality of land and property eligible or ineligible for compensation, supports in the compensation, support and resettlement plans.

Article 41.- Expertise of compensation, support and resettlement plans of projects

1. Expertise of compensation, support and resettlement plans in the following cases:

a/ Recovery of land related to two or more rural districts, urban districts, towns, provincial cities;

b/ Compensation, support and resettlement plans of the projects approved by the provincial-level People's Committees.

2. Contents to be expertized include:

a/ The application of compensation and support policies of the projects;

b/ The application of land prices, property prices to compensation calculation;

c/ Resettlement arrangement plans.

3. The provincial/municipal Finance Services shall assume the prime responsibility for, and coordinate with, the concerned agencies as may be appropriate to the characteristics of each project in, expertising the compensation, support and resettlement plans.

In case of necessity, the provincial-level People's Committee presidents shall decide to set up an expertising council having the provincial/municipal Finance Service director as its chairman.

4. The expertise shall last for no more than 15 working days, counting from the date of receipt of the compensation, support and resettlement plans of the projects; past this time limit, if the expertising agencies give no opinions, the presidents of the People's Committees of competent levels shall approve the plans.

5. The compensation, support and resettlement plans of the projects other than those prescribed in Clause 1 of this Article shall not be expertised.

6. After obtaining the opinions of the expertising agencies, the investors shall assist the compensation, support and resettlement councils in improving the compensation, support and resettlement plans for submission to competent State bodies for approval.

Article 42.- Agreement on compensation, support

Where the persons who are assigned or leased land or land fund development organizations manage to reach agreement with the persons who have land recovered on the compensation, support levels in accordance with this Decree, such agreement shall be followed; the State shall not

organize, effect the payment of compensation, supports.

Article 43.- Responsibilities of People's Committees at all levels

1. The provincial-level People's Committees shall have the responsibilities:

a/ To direct, organize, propagate and mobilize all organizations and individuals concerning compensation, support and resettlement policies and ground clearance according to the land recovery decisions of competent State bodies;

b/ To direct the provincial/municipal services, departments, branches and district-level People's Committees:

- To draw up resettlement and resettlement area plans in service of the land recovery;

- To draw up compensation, support and resettlement plans according to their competence;

c/ To approve or assign the district-level People's Committees to approve compensation, support and resettlement plans;

d/ To approve land prices; promulgate the property price tables for compensation calculation; prescribe support levels and supporting measures according to their competence; resettlement arrangement plans, job change training plans according to their assigned competence;

e/ To direct the concerned agencies to settle citizens' complaints, denunciations related to compensation, support and resettlement according to their law-prescribed competence;

f/ To guarantee impartiality and equity when considering and deciding on the compensation,

support and resettlement when land is recovered by the State according to their competence prescribed in this Decree;

g/ To decide or assign the district-level People's Committees to apply coercion to cases of deliberately failing to abide by the State's land recovery decisions according to their competence;

h/ To direct the examination and handling of violations in the compensation, support and resettlement domain.

2. The district-level People's Committees of the places where land is recovered shall have the responsibilities:

a/ To direct, organize, propagate and mobilize all organizations and individuals concerning compensation, support and resettlement policies and ground clearance according to the land recovery decisions of competent State bodies;

b/ To direct the compensation, support and resettlement councils of the same level to draw up, and organize the implementation of, the compensation, support and resettlement plans; approve the compensation, support and resettlement plans according to the responsibility assignment by the provincial-level People's Committees;

c/ To coordinate with the provincial/municipal services, departments and branches, organizations and investors in executing investments projects to build and plans to create resettlement areas in their localities according to the assignment of the provincial-level People's Committees;

d/ To settle citizens' complaints, denunciations related to compensation, support and resettlement according to their assigned competence; issue

coercive decisions and organizing coercion in the cases falling under their competence; coordinate with the functional agencies in organizing coercion according to the decisions of competent bodies.

3. The commune-level People's Committees shall have the responsibilities:

a/ To organize propaganda on the land recovery purposes, compensation, support and resettlement polices of the projects;

b/ To coordinate with the compensation, support and resettlement councils in certifying land and property of persons who have land recovered;

c/ To join in, and create conditions for, the payment of compensation and support money to, and arrange resettlement for, persons who have land recovered, and create conditions for the ground clearance.

Article 44.- Responsibilities of provincial-level services, departments and branches

1. The Finance Services shall have the responsibilities:

a/ To assume the prime responsibility for, and coordinate with, the concerned agencies in, submitting to the provincial People's Committees for approval land prices, property price tables (not including prices of houses and other construction works) for compensation calculation, to the provincial-level People's Committees for decision support levels and support and resettlement measures in localities;

b/ To assume the prime responsibility for the expertising work prescribed in Article 41 of this Decree;

c/ To inspect the payment of compensation,

support money and expenses for the organization of compensation, support and resettlement in their localities.

2. The Planning and Investment Services shall have the responsibility to guide and inspect the formulation and execution of investment projects.

3. The Construction Services and the Architecture Planning Services shall have the responsibilities:

a/ To guide the identification of the size, acreage, legality or illegality of construction works attached to land to be recovered, serving as the basis for the calculation of compensation and supports for each subject;

b/ To determine the prices of houses and construction works attached to land for compensation calculation and submit them to the People's Committees of the same level for approval;

c/ To assume the prime responsibility for, and coordinate with the functional agencies in, determining the positions and sizes of resettlement areas in accordance with the general development plannings of localities, submit them to competent State bodies for approval.

4. The Natural Resources and Environment Services shall have the responsibilities:

a/ To guide the determination of land acreages, categories, grades and compensation conditions, land ineligible for compensation when it is recovered by the State;

b/ To guide the determination of land areas eligible or ineligible for compensation; compensation or support levels for each land user

who has land recovered, serving as the basis for the calculation of compensation and support for each subject;

c/ To assume the prime responsibility for, and coordinate with the Planning and Investment Services and the Construction Services in, deciding on the area of land to be recovered for each project.

Article 45.- Responsibilities of organizations assigned to perform compensation, support and resettlement tasks

1. To draw up plans on compensation, support and resettlement and plans on organization of compensation, support and resettlement; then submit them to competent authorities for approval according to the regulations of the provincial-level People's Committees, take responsibility for the accuracy and policy conformity of compensation, support and resettlement plans.

2. To give guidance and respond to land users' inquiries on matters related to compensation, support and resettlement.

3. Other law-prescribed tasks as according to the regulations of the People's Committees of the provinces and centrally-run cities.

Article 46.- Responsibilities of the Finance Ministry, the Planning and Investment Ministry, the Construction Ministry and the Natural Resources and Environment Ministry

1. Responsibilities of the Finance Ministry:

a/ To guide and inspect the implementation of compensation, support and resettlement policies;

b/ To assume the prime responsibility for, and

coordinate with the concerned branches in, guiding the handling of problems arising in the determination of land prices and property prices, and compensation, support policies in the compensation, support and resettlement work at the requests of the provincial-level People's Committees.

2. Responsibilities of the Planning and Investment Ministry: To guide and examine the formulation and execution of resettlement projects according to law provisions on investment and construction management.

3. Responsibilities of the Construction Ministry:

a/ To guide and inspect the determination of the legality of houses, other construction works for compensation calculation; guide the formulation of resettlement area construction plannings, standards of houses and construction works in resettlement areas;

b/ To guide and inspect the determination of the prices of houses and other construction works for compensation, support and resettlement according to its assigned powers.

4. Responsibilities of the Natural Resources and Environment Ministry:

a/ To inspect the observance of specific land use plannings and plans by each investment project; determine land users to be eligible for compensation, support or ineligible for compensation, serving as the basis of compensation and support calculation; grant land use right certificates to resettlers;

b/ To provide for and guide the management of land in resettlement areas.

Article 47.- Coercive execution of land recovery, ground clearance decisions

1. The People's Committees at all levels shall coordinate with political organizations, socio-political organizations and mass organizations in mobilizing persons who have land recovered to voluntarily execute land recovery and/or ground clearance decisions. Where, though compensation, support and resettlement regulations have been properly implemented, the persons who have land recovered deliberately fail to execute land recover decisions, the land recovery decision-issuing agencies shall issue coercion decisions and organize coercion according to law provisions.

2. Basing themselves on the local realities, the provincial-level People's Committees shall assign or authorize the district-level People's Committees to issue coercion decisions and organize coercion.

Article 48.- Expenses for organization of compensation, support and resettlement

1. Organizations responsible for organizing compensation, support and resettlement shall have to make cost estimates for this work for every project as follows:

a/ For expenses for which the limits, criteria and unit prices have been prescribed by competent State bodies, current regulations shall be complied with;

b/ For expenses for which there are no or not yet limits, criteria and unit prices, cost estimates shall be made to suit the characteristics of each project and local realities;

c/ For expenses for printing materials, stationery,

car petrol, logistics and other amounts servicing the managerial apparatus, they shall be estimated according to each project's actual demands.

2. Funds for ensuring the organization of compensation, support and resettlement shall be equal to no more than 2% of, and deducted from, the total compensation and support funds of the projects; the specific levels shall be decided by the provincial-level People's Committees to suit the local realities and depend on the size, nature and characteristics of each type of project; the spending, payment and settlement shall comply with law provisions.

Article 49.- Complaints and settlement thereof

If persons who have land recovered disagree with compensation, support and resettlement decisions, they may lodge complaints according to law provisions. The responsibility for settling complaints, statute of limitations for lodging complaints and order of settling complaints shall comply with Article 138 of the 2003 Land Law and Articles 162, 263 and 164 of the Government's Decree No. 181/2004/ND-CP on the implementation of the Land Law.

Pending the settlement of their complaints, persons who have land recovered must still abide by land recovery decisions, hand over their land according to plan and deadline already decided by competent State bodies.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 59.- Implementation effect

1. This Decree takes effect 15 days after its

publication in the Official Gazette.

2. This Decree replaces the Government's Decree No. 22/1998/ND-CP of April 24, 1998 on damage compensation when the State recovers land for defense and security purposes, national interests, public interests. All previous regulations on compensation, support and resettlement when the State recovers land, which are contrary to this Decree, are hereby annulled.

For projects, project items that have completed the compensation, support and resettlement work; that have approved the compensation, support and resettlement plans or are making payments for compensation, support and resettlement according to the plans approved before the effective date of this Decree, the approved plans shall be implemented without application of, or adjustment according to, the provisions of this Decree.

Article 51.- Implementation responsibility

The Finance Ministry shall assume the prime responsibility for, and coordinate with the Natural Resources and Environment Ministry and the Construction Ministry in, guiding the implementation of this Decree.

The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies, the presidents of the People's Committees of the provinces and centrally-run cities, land-using organizations, households and individuals shall have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI