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**Policy Agenda for Advancing Land
Relations in Ukraine**

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PAPER OBJECTIVES

With the initiation of land reforms in the early 1990s, Ukraine sought to meet several goals, most notably, raising the efficiency of farm production, denationalizing state ownership of land, and creating a new class of private landowners. Having spanned the whole of the last decade of the 20-century, it has proved to be a very complex and time consuming process. This policy paper offers a critical analysis of some main features of land market development and considers what the next stages might be to advance land relations in Ukraine.

BACKGROUND

Land reforms in Ukraine began with the transformation of agricultural land ownership. The first stage assumed that the redistribution of lands would remain in state ownership, but that agricultural enterprises would be given greater control over their land resources and thereby would introduce a measure of pluralism in land management.

The idea of introducing private ownership on land was rejected in the early reforms and remained in exclusive state ownership. Those citizens and legal entities that did ‘receive’ land plots did not become the full owners of the land. The possession of land plots encompassed a right to exclusive possession and use of land but not the right to sell it, exchange, or hand it over as a gift. In practice, these early reforms to the ownership and management of land did little to raise efficiency levels in agricultural production as a whole and so to further promote land relations and to trigger the potential of market mechanisms in agriculture, the government decided to privatize agricultural lands. Members of collective agricultural enterprises (CAEs) were given the right to leave the agricultural enterprise with a plot of land corresponding to his/her individual share in the collective property. However, the government also introduced the idea of “land shares”. The option of conditional or paper shares without demarcated land borders rather than a physical land parcel was proposed. These conditional land shares allowed local authorities and new owners to postpone the decision of what to do with obtained land plots. It also minimized the costly procedure of land apportionment. The plan was that later on, land shares would be exchanged for “a State Act”.

In 2001, Ukraine made a big stride to reforming land relations and establishing a full-fledged land market. The new Land Code introduced the institute of land private ownership. The Code was built on the provision of observing the rights of individuals and ensuring security of tenure of every citizen to freely possess, use, and dispose of land parcels in their property.

Despite the presence of several progressive norms in the Land Code, there are significant legal constraints on the creation on agricultural land market. Until January 1, 2005 for example, the Transition Provisions of the Land Code, prohibits all citizens or legal entities possessing land parcel for private family farming from selling or in any other way alienating their land parcels or land shares. The only exceptions to this rule are land exchanges, inheritance and the withdrawal of land for public purposes.

CURRENT SITUATION

The restructuring of collective agricultural enterprises, the privatization of farm property and fixed assets, and the introduction of new methods in farm management have significantly changed the nature of property relations. Over 6.9 million of Ukrainian rural residents have obtained basic rights of private ownership in the form of land shares, which can (in the future) be sold, leased and otherwise transferred. They can also be converted into physical

land parcels for private farming. Of those who received land shares, 3.6 million (53%) have already completed all the necessary legal and administrative procedures to formalize their private right to land and obtained Land State Acts.

The introduction of private land ownership not only benefited members of the former CAEs, but also many other Ukrainians as well. As of January 1, 2004, more than 11.4 million Ukrainians had received a total of over 16 million land plots with an average size of 3.5 hectares. This land was privatized for purposes such as: constructing a private house, establishing individual subsidiary households, planting private orchards, building summer cottages (so called “dacha”), and erecting individual garages.

Although the state ceased to be the exclusive land owner, the share of land remaining in state ownership remains fairly significant, amounting to over 49% of the total. At the same time, the purpose that these lands are put to has substantially changed. Presently the reserve and forestry constitute 71% of state lands. The share of agricultural lands in state ownership has decreased to 9%, primarily being those lands of agricultural enterprises that carry out scientific and research functions (i.e., livestock breeding and developing new species of plants) as well as the land belonging to state higher education and extension facilities

Land privatization has created the basis for the development of a land market in Ukraine. At present, land inheritance transactions make up 86.2% of all transactions involving transfer of the right of ownership. This is explained by the simple reason that half of all land parcels are in the hands of elderly pensioners passing on their land right to their relatives. Land gift transactions rank in second place, while the share of land that changed ownership through purchase-sale is insignificant at only 1.6%. At present, such transactions are exclusively concerned non-agricultural lands that usually are being sold in urban territories by auction.

Along with the aforementioned transactions, which transfer land on a permanent basis, land leasing has become another common form of temporary transferring of land property rights. The majority of those who received land shares entered into leasehold arrangements with agricultural entities and entrepreneurs. As of January 1, 2004, such owners concluded 5,235,600 rent contracts, with an area of leased land totaling 20,927,400 hectares. Short-term contracts are the prevailing form of agricultural land lease, totaling 88% of all concluded land rent contracts. The share of leases exceeding 10 years is insignificant and only amounts to 2% of all contracts.

Alongside the changes in land use, the land reforms brought about both quantitative and qualitative changes to the structure and volume of commodity production. The traditional soviet producers of agricultural commodities – kolkhozes and sovkhoses – lost their monopoly. In 1991 big state farms produced 95% of agricultural products. These were converted into agricultural cooperatives; although they remained managed by the state within the framework of a strictly regulated planned economy. As a result of the land reform, agricultural enterprises of various organizational and legal forms (limited liability companies, open/closed joint stock agricultural companies, agricultural cooperatives, and private farms) have become the main producers of food products. This also helped safeguard the food security situation in the nation.

For the last four consecutive years, agricultural production has been on the rise, approaching the production level of the pre-crisis period of the early 1990s. Today, the farming sector and agricultural processing have become an attractive option for investors, forming the basis for vertical integration in the agricultural economy. New investors have become owners of significant landholdings.

CHALLENGES AND CAVEATS

Land reform has become a vehicle for socio-economic changes in the farming and agribusiness sectors. Nevertheless, the reform process is still incomplete and “all the rules of the game” have yet to be set up. There is also a need to address several issues in land relations, some which will be covered in the remainder of this paper.

Incomplete Right to Land Private Ownership

Although the Land Code of 2001 legalized private ownership of land, it simultaneously established serious constraints of this right, the land moratorium being the most significant. Such a moratorium is generally considered as an extreme policy measure of a temporary character. If land cannot be sold and purchased legally, land is not fully tradable commodity and the land market cannot function to its full extent. This, in particular, concerns such related transactions such as land mortgages. The right to sell land can allow for its consolidation on a more permanent basis and thereby promote more productive land use. Short-term land leases do not create serious stimulus for leasees to maintain soil fertility which in turn can lead to serious environmental issues such as soil erosion and degradation.

Another impediment to land sales imposed by the Ukrainian land law is the requirement that a purchaser of agricultural land must demonstrate either experience or educational background he/she acquired in farming. While this type of requirement may be justifiable when land is initially privatized by the state, it may become a burdensome impediment to the sale of private land among private market participants.

In addition, the Ukrainian land law requires that land be used in accordance with its designated purpose. Citizens can own land parcels only for uses that are designated in the Land Code, that is, for private farming, residential construction and the servicing of housing, dachas and for garage construction, gardening, and subsidiary farming activities. This list of designated uses is strict and is not subject to wide interpretation.

Inflexible Land Use Regulations

Effective land use regulations require a balancing of public interests and needs with private rights. The Ukrainian land legislation establishes regulatory constraints, which are on the whole overly broad and with a restrictive character. The authority of government bodies in Ukraine to use sovereign power to terminate private land rights is too broad, expansive and too easily invoked. For example, the law does not adequately define the ‘essential public needs’ that justify land expropriations.

Furthermore, the law does not specify the mechanisms that ensure a fair compensation for expropriated land ownership. This lack of clarity together with the restrictive character of the Ukrainian law creates fruitful grounds for state bureaucracies to assert undue regulatory controls to the detriment of private land rights. The vaguely worded regulatory requirements may result in arbitrary enforcements by both national and local officials and lead to reluctance on the part of individuals from risking acquiring private land rights. Due to the very same reason, we may assume that commercial banks will be disinclined to get involved

in financing private purchase of land rights. This makes the land market non-transparent and void of predictability.

Even if land use restrictions may accomplish their intended purpose, they may do this by imposing unnecessarily high costs on individuals and the society as a whole. As a result, land use restrictions/ requirements that impose too heavy burdens on private parties jeopardize the security of land tenure, especially when the penalty for violation is losing the right to the land. This will not contribute to the establishment of trust needed to finalize initiated land reforms. In the conditions when the Ukrainian public has a limited access to land legislation databases and public awareness about legal issues remains low, this trust would be very instrumental to combine the government and civic efforts in advancing land relation in the country.

Threats of Land Fragmentation and Environmental Issues

The breaking up of collective lands, although generally a positive process, did lead to a number of new problems, one being the problem of land fragmentation. Ukraine has over 6.5 million personal subsidiary farms that produce agricultural commodities both for their own consumption and for sale on the market for. There are also 19,739 reformed agricultural enterprises and 43,403 private family farms. In many enterprises, agricultural practices have a distinctively extensive character with increased output achieved primarily from an expansion of arable land instead of the growth of yields. This can place an extra pressure on land resources.

Another problem connected with the break up of the large farms is the problem of unrestricted access to public facilities. Where one land parcel is divided into two or more new land plots, it often occurs that these plots have no access to streets and roads, to power supply lines and telephone network, and other facilities and communications. As a result, the owner/user of such a land plot is unable to enjoy full advantage of the right to use the land parcel by its designation, provided to him by the law.

In Ukraine with the imposed moratorium on land sales, land consolidation is realized mostly by leasehold arrangements. However, as already said, land leasing does not allow consolidation to take place on a permanent basis and does not encourage stable capital investments on the land that has to be returned. Thus, although the present legislation foresees land consolidation, so far it has failed to ensure land amalgamation in the most effective way through sale and purchase transfers.

Constrained Land Lease Arrangements

The restructuring of collective agricultural enterprises has created a new class of landowners. However, having received land parcels in ownership and being left facing no choice how to dispose this land, many former CAE members leased it immediately to the newly established private agricultural enterprises. As a result, in eighty percent of cases, these private enterprises became the monopolistic lessee of the land parcels owned by the former CAE members. The monopolistic position of these new enterprises has had a negative effect on the lease payment rates: the amount of lease payments is rather low

Another issue that is inherent in the present land lease market is the short-term of the majority of land lease arrangements. Presently, leasing contacts concluded for the period less

than five years amount to 55% of all leasing contacts. Since the land lease contracts remain predominantly short-term, there are few incentives for lessees to use effectively the land and make long-term investments such as land protection melioration systems.

Undeveloped Land Market Infrastructure

The current system of land registration in Ukraine is rudimentary, problematic and does not provide for the protection of owners' rights. A sound land market infrastructure cannot be developed without a strong land registration system that secures legal rights to land. Currently, documented legal rights are spread throughout different register books, which makes it more difficult and time-consuming for potential buyers to obtain accurate information about the private right and transactions undertaken with land ownership. Besides, the register books are not organized according to a given parcel, but by the date the State Act (or a land market transaction) is recorded in the books. The absence of an accessible registration system inhibits the development of practically all aspects of the land market, including land transactions, alienation of land rights, and land mortgage.

Further, the current process of land administration and decision-making in Ukraine suffers from several deficiencies. The structure of land administration is characterized by overlapping distribution of responsibilities amongst state regulatory agencies. The land administration has incorporated many of the economic, administrative and legal peculiarities typical of the pre-reform period. Decision-making is greatly slowed by the necessity to involve different agencies with often conflicting interests and intentions.

The development of a sound registration system requires not only the overcoming of the various legal inconsistencies and institutional rivalries, but also the development of private institutions that provide services for the land administration process.

The undeveloped and inefficient land market infrastructure significantly increases the costs associated with land market transactions. These high transaction costs can reduce the amount of land transacted, thereby making it more difficult to capitalize on advantages of the land market.

Absence of State Information Campaign and Education Programs

The absence of nationwide awareness campaign and public education programs is an explanation why the general public in Ukraine, and rural residents in particular, do not know their rights and, on some occasions, do not understand the significance of a full-fledged land market and which benefits it can bring to them.

Until now the government has failed to conduct any nationwide programs that educate rural residents on the basics of land reforms and make them independent and effective decision makers. Two years had already passed as the Parliament adopted the Land Code; however, there have been no coordinated efforts at the national level to explain to rural residents the Code's main provisions. Today there are numerous prejudices and stereotypes among rural residents regarding private land ownership and the right to sell agricultural lands. This situation is also the reason of numerous conflicts in the area of land relations.

Now new landowners experience serious difficulties in obtaining reliable information on their legal rights, the scope of land market transactions, and procedures for securing and enforcing their rights. This especially concerns the most vulnerable social groups (pensioners, invalids, and women), which are in a less advantaged position to protect their rights and enjoy a free access to the information. No surprise that such a situation leads to

uncertainty and skepticism about positive outcomes of the reform process and promote poor decision making by landowners.

POLICY RECOMMENDATIONS AND TASKS FOR THE FUTURE

In order to address the present problems and make the land market more effective, the government has to make additional efforts to advance the regulatory framework. On the basis of the carried out research, the following steps could be suggested:

Safeguarding the Right to Land Private Ownership

The government must complete the process of formalizing private ownership rights to agricultural land, including leasehold rights, and finalize the development of a system of legal and institutional underpinnings to protect private land rights. The completion of the land privatization process by finalizing the issuance of State Acts to land share holders will make this process logically finalized.

Another important step in safeguarding the private right to land is the cancellation of the land moratorium, which will be remaining in effect till January 1, 2008. The moratorium remains an extreme policy measure of a temporary character and it does not create any grounds for transferring land from less productive to more productive landowners. If land cannot be sold and purchased legally, the land market cannot function to its full extent, there is no room for the development of land mortgages. The right to sell land will be also conducive to land consolidation on a more permanent basis, which in turn may promote more productive land use. As said, the dominance of short-term land leases does not create any serious stimulus for leasees to maintain soil fertility. This presents serious environmental threat engendering soil erosion and land degradation.

An important step in expanding the right of private landownership is the inclusion of foreign nationals in the list of persons who may possess, use, and dispose agricultural lands. This may make the land market more competitive and encourage more foreign investment into the national agrarian sector: the primary production and the processing industry. The current land legislation has the necessary prerequisites preventing some possible negative outcomes of these measures (i.e. the squandering out the necessary wealth and concentration of land in the hands of big latifundiums). The Land Code, in particular, says that for the period ending on January 1, 2010, individual citizens and legal entities can acquire agricultural land parcels into ownership, provided their total surface area does not exceed 100 hectares. However, this surface area can be increased, in the event citizens and legal entities legitimately inherited these land parcels.

The other way the government can reduce insecurity of land rights is the elimination of some severe penalties and sanctions (excessive fines, inappropriate criminal penalties, confiscation, and forced land sales) for non-compliance with agricultural land use laws. The defining principal of land property right should be the following postulate: the termination of private property rights should occur only after all alternative penalties have been exhaustively pursued. Along with that the government has to develop mechanisms that would ensure a fair compensation for the loss of terminated rights.

Redefining State Regulatory Policies

There is no doubt that the state has an important role in defining and regulating land relations. Government has to establish a legal basis for a functioning land market. Through the relevant legal underpinnings the government has to ensure an effective balance of public

and private interests. The latter has to be consistent with the principles of private land ownership and with the longer-term goals and values of the wider Ukrainian community.

As stated in the paper, currently the land legislation gives to government bodies in Ukraine the broad authority to use their sovereign power to terminate private land rights. It says that the government can expropriate private land ownership for “essential public needs”; meanwhile, it does not adequately define such needs. Thus, we think that the state should not interfere into the decision making process of private landowners and should withdraw its excessive control functions from regulation of private market institutions.

State regulatory policies should enjoy a high degree of predictability and should apply equally to all land markets participants regardless of their public connections or private powers. To this end, it is necessary to phase out the practice when state bureaucracies assert undue regulatory authorities and enforce the land law arbitrarily. This can reduce the predictability of law and will increase the transaction costs for the benefit of bureaucrats who can use such practices to extract rents.

In general, to promote the use of agricultural land to its highest and best, the government has to rely more on market incentives rather than to resort to strict regulatory mechanisms. To develop such an understanding the Ukrainian national and local authorities could benefit from studying and possibly apply international experience. The specifically refers to the experience of the countries of Central and Eastern Europe and Baltic states that became new members of the European Union.

In addition, to raise the efficiency of state regulatory policies, the government has to address the issue of overlapping responsibilities amongst state regulatory agencies. The current land administration has incorporated many of the economic, administrative and legal characteristics typical for the pre-reform period. The decision-making in the area of land relations is greatly slowed by involving different agencies with, often conflicting, interests. For example, the State Land Resources Committee, the Ministry of Justice, and the Ministry of Agricultural Policy, which take similar initiatives but act incoherently in promoting a sound land registry system. In this situation, the Cabinet of Ministers and Parliament have to assign clearly tasks and responsibilities for different institutions and regulatory bodies. This also allows for saving the state funds earmarked for land reform and land market development.

Promoting an Environmentally Sound Land Use

An important task in promoting an environmentally sound land use has to be the development of a concrete national program of land protection. To date, the government has repeatedly declared its intentions to make environmentally friendly land use among its highest priorities. However, these declarations have not been transformed yet into any palatable policy initiative. Meanwhile, for the last years environmental problems in the farm sector and in agricultural land uses have substantially aggravated.

From this prospective, one of the important tasks of such a program should be optimization of land structure use (agricultural lands used as ploughed land, pastures, hayfields, and conservation lands). This allows for molding highly productive, ecologically stable agrarian landscapes.

Agricultural land conservation by means of withdrawals of low-productive and degraded lands from intensive agricultural production also has to become an indispensable part of the program. To facilitate the process of land conservation, it is necessary to amend the exiting

scheme of land use, which does not encourage the use of environmentally poor and damaged lands. This would promote some positive shifts in land use from more intensive (arable lands) to less intensive one (hay lands and pastures).

While promoting an ecologically sound land use the government has to be reasonably restrictive, i.e. it has to outline clear guidelines defining such a land use. For example, the Law on Fertilizers in Germany provides that fertilizers must not be applied other than "in accordance with good professional practice." The latter is defined as adjusting the kind, quantity and time of fertilization to meet the need of the plants and soil, taking into consideration the nutrients and the organic substance in the soil as well as the conditions of the location and kind of cultivation. To encourage application of the soil law, the government makes available for farmer special financial aid.

To promote environmentally sound land use practices, the government has to extend information and provide guidance on soil management to local farmers. These services can be provided by a network of agricultural extension centers, which are recipients of state aide on agricultural advisory programs. This information and advice have the nature of a public good and can benefit the whole society. This is also ones of extension services' priorities in developed countries that receive public funding.

The spread of ecologically sound land use principles has also to address the issue of land fragmentation. To this end, the government has to develop regional state programs that can facilitate more rapid consolidation of holdings at lower costs. Such programs may also facilitate many issues of rural poverty by promoting new off-farm businesses (green tourism, rural SMEs, others). The experience of other countries experiencing fragmentation–Albania, Bulgaria, Romania– can be very helpful here. Thus, land consolidation should be included within broader rural-regional development programs.

Improving the Land Market Infrastructure

One of the highest priorities in the area of land market infrastructure is to introduce a single identification system for land parcels and real estate and develop a state cadastre database. This will allow the general public to have an unrestricted access to the land registry and cadastre and will increase the transparency and efficiency of land market transactions. The practice shows that the current system of land registry is rather rudimental, fragmented and not user friendly. To ensure the effective work of this land registry, the government can set up a separate agency. This can be a quasi-governmental institution that is authorized with maintenance of the registry of real estate rights.

To increase farmers' access to commercial loans, the government has to promote the development of a land mortgage market and establishment of a mortgage bank. However, these tasks are impossible to accomplish without establishing straight forward foreclosure procedures. These procedures will be important in advancing mortgage relations and securing the legal rights to land.

At present when land relations in Ukraine are associated with numerous disputes and the level of trust in the national court system is rather low, new mechanisms of rapid, low-cost dispute resolution may prove to be an important toil in addressing these issues. A third-party arbitration court can be an example of such a mediation mechanism. By passing the law "On

Third Party Arbitration Courts” the government has already has taken first steps in this direction.

Another task in area of land infrastructure development is promoting private sector institutions. Taking into account the practice of rent seeking and clumsiness of state instructions in dealing with land relation issues, the government has to tap the private sector capacity in surveying, evaluation and providing real estate services. From the point of view of technical ability, private companies are capable of carrying out practically all the steps needed to prepare a Land State Act.

Conducting Information and Awareness Campaign

To secure the private right to land and obtain grassroots support, the state should convey to the civil society a clear message about the objectives and expected outcomes of land reform. The government has to recognize the importance of public education and conduct a wide information campaign to secure the general public’s support for new policy initiatives in the area of land market development. The state has to facilitate dissemination of information on land relation and promote the establishment of information advisory centers both at the regional and national levels.

New landowners have to enjoy unrestricted access to the information on their legal rights, the scope of land market transactions, and procedures for securing and enforcing their rights. This will help address many biases and skepticism about positive outcomes of the reform process and will provide an information base to improve decision making by landowners. To this end, national and local authorities have to enhance access to this information through local departments of agriculture and land resources departments. Extension services—and particularly those that obtain state funding for socio-oriented programs—can play an important role in dissemination of such information as well.

Institutions capable of and interested in promoting land market development largely do not exist in Ukraine. The private associations related to land sales and the landowners rights that do exist are weak and in their infancy, and need greater support and guidance. These market institutions will drive the development of the land market and provide services to those who wish to engage in market transactions. Some of the private services that are needed for a functioning land market include: trained land lawyers, landowners groups, surveyors, and appraisers.

There is also a need to advance the sector of non-governmental organizations that protect landowner rights. Currently, this sector is in its infancy and is financed exclusively by donors’ governments. The NGO sector could also play a prominent role in exercising public control over state policy initiatives and conduct their evaluation.

Formation of an Appropriate Regulatory and Institutional Framework

Despite the adoption of the Land Code, which became a stride in advancing land relations, the formation of an appropriate legal framework for market land transactions in Ukraine is yet to be completed. As already stated in the paper, in the opinion of many land experts and practitioners today there is a need to adopt approximately 30 new laws and normative

documents. They have to specify and make fully operational some provisions and clauses of the Code. Particularly, we can speak about the following laws:

- “On Land Market”;
- “On State Land Cadastre”;
- “On State Control on Land Use and Protection”;
- “On the Order of the Demarcation in Kind of Land Shares and Their Exchange”;
- “On the Delimitation of the Land in Communal and State Ownership”;
- “On the Establishment and Functioning of Land Mortgage Institutions”;
- “On Land Registration”.

CONCLUSIONS

The principal argument presented in this paper is that land markets are one of prerequisites for the efficient functioning of a market economy. Its main task is to ensure that land and other natural resources are used in a way that offers maximum contribution to the economy. The market can encourage productivity-enhancing investments and secures tenure for all land relation participants. In a country that for many years was under a communist regime, this can be critical for advancing democratic principles. Thus, the institution of an effective land market and the introduction and consolidation of new property rights has the potential to bring substantial economic and social benefits.

Land reform in Ukraine commenced with the redistribution of state lands and the transformation of ownership of agricultural land. This was followed by land demoponolization and the legalization of the right to private ownership on land. Land sharing and large-scale land privatization was the next stage of the reform. It created the necessary institutional basis to establish a land market and formalize the right of private ownership on land.

Regardless of its present incompleteness, land reform has become a powerful catalyst for transforming the national agricultural sector and has had some positive impact on the lives of the rural population. However, a simple recognition of private land ownership is insufficient to bring about the development of an efficient land market. Private ownership implies the existence of a whole regulatory framework that facilitates land transfers and land use. The right to transfer a land parcel, and especially the right to buy and sell it, is at the core of private ownership. Without these rights, land remains virtually worthless as collateral and prevents market incentives from bringing about the social and economic benefits of an efficient land market. In light of the aforementioned, Ukraine has to take further efforts to advance land reforms and develop a fully-fledged market in the nation.