



Land Reform in Ukraine: Achievements and Tasks for the Future

by Alexander Kobzev¹

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 article offers a critical analysis of some main features to date and considers what the next stages might be.

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 lands 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.

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

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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.

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.

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 article.

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. 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 create 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 a reluctance on the part of individuals from risking acquiring private land rights.

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.

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. The absence of such an accessible 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.

In order to address the present problems and make the land market more effective, the government has to make additional efforts to advance regulatory framework. In particular, there is a need to pass such laws as

- "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".

The majority of these documents are either undeveloped or awaiting agreement between various state bodies responsible for land and agrarian reforms.

Finally, one important tasks of land reforms is to educate rural residents on the basics of land reforms and make them independent and effective decision makers. To this end, the government needs to conduct nationwide education and awareness programs. Today there are numerous prejudices and stereotypes among rural residents regarding private land ownership and the right to sell agricultural lands. There is also a need to develop a network of NGOs which activities would help advance rural residents' awareness on land rights.

Land reform has become a powerful catalyst of socio-economic transformations in Ukraine. It has removed the state's monopoly on ownership and led to the introduction of private ownership. However, the process is by no means complete. Additional efforts are necessary to complete the right to land private ownership, amend inflexible land use regulations, and develop a sound infrastructure for a market in land.