



CENTRAL EUROPEAN UNIVERSITY  
CENTER FOR POLICY STUDIES



OPEN SOCIETY INSTITUTE

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# Policy Agenda for Advancing Land Relations in Ukraine

2004 / 2005

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**TABLE OF CONTENTS**

1	Introduction	
2	Land Reform Legal and Institutional Frameworks	3
2.1	Redistribution of Lands and Introduction of Land Ownership Pluralism	3
2.2	Land Demoponolization and the Legalization of the Right to Private Ownership on Land	5
2.3	Land Sharing and Large-Scale Land Privatization	6
2.4	Liquidation of Collective Ownership	8
2.5	Land Market Development and the Formalization of the Right of Private Ownership	9
3	Social and Economic Significance of Land Reforms	13
3.1	Transformation in Land Use and Ownership Patterns	13
3.2	The Role of the Land Market	16
3.3	Land Market and Land Market Infrastructure	18
3.3.1	Land Transactions of Ownership Rights: Land Sale, Exchange and Inheritance	18
3.3.2	Land Leasing	22
3.3.3	Land Mortgage and the System of Land Registration and Assessment	23
4	Main Challenges and Caveats in Land Market Development	27
4.1	The moratorium on the Sale of Agricultural Land	27
4.2	Inflexible Land Use Regulations	29
4.3	The Threats of Land Fragmentation and its Consequences	31
4.4	Constrained Land Lease Arrangements	32
4.5	Incomplete and Inconsistent Legal and Institutional Frameworks	33
4.6	Irrational Land Use Practices and Environmental Issues	35
4.7	Undeveloped Land Market Infrastructure	35
4.8	Absence of State Information Campaign and Education Programs	38
5.	The Development of Land Relations at the Regional Level: Empirical Results	47
5.1	Survey Methodology, Objectives, and Goals	47
5.2	Problems in the Formalization of Private Land Ownership	48
5.3	Land Use and Land Lease Practices at Surveyed Farms	50
5.4	Land Disputes and Conflicts	53
5.5	Legal Awareness of Rural Residents and Their Attitude to the Right to Sale Farm Lands	55
5.6	Land Reform Successes and Failures, and Tasks for the Future	58
6	Conclusion and Recommendations	63
	References	69
Annexe 1	Land Relation Questionnaire	71

## **ABSTRACT**

Land markets are one of the main prerequisites for the efficient functioning of a market economy. The main task of such a market 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.

Establishing a market in land remains one of high priorities of socio-economic reforms in Ukraine. In the early 1990s, the country embarked upon comprehensive land reforms, ending the state monopoly on ownership of land and introducing a right to private land ownership. Since their inception, these reforms have become a powerful catalyst for transforming the Ukrainian agricultural sector and the country's socio-economic development as a whole.

The present paper offers a critical analysis of the institutional, social and economic aspects of land relations, in particular, the evolution of the land market in Ukraine. The author carried out a comprehensive analysis of land reforms in Ukraine examining its main achievements and shortcomings and outlining some tasks for the futures. The 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.

The process of transforming land relations has become a process of finding a policy compromise between different political forces and interest groups. Although Ukraine has institutionalized the right of private ownership, at the same time the Land Code imposes a moratorium on all agricultural land sales.

The paper addresses the question: "How an effective land policy can promote a balancing of public interests and needs with private rights? ". The urgency of this question is explained by the fact that Ukraine has inherited some legacy of a socialist state with a strong planning economy with an omnipresent role for state bodies. It has failed to ensure a reasonable balance between private and public interests.

To conduct this comprehensive policy research and demonstrate how an efficient land market can improve the national well-being, the paper analyses national statistic and secondary literature on the topic. The latter provide a deep insight of the experience of developed countries and counties of the former soviet block in reforming and regulating land relations.

In addition to the aforementioned research methods, the author carries out sociological survey of rural property relations. This field study provided data to investigate specific features of the land market at regional level and gave empirical evidence concerning some arguments provided in the paper.

The paper has both an informative and a practical dimension. The analysis of the legal underpinnings of land reforms and the socio-economic data on land relations allowed the author to identify main challenges towards the development of a land market in Ukraine. These conclusions were used to outline a policy agenda for future actions by national and local

governments that could accelerate land reforms and to establish a fully-fledged land market for Ukraine. These policy actions are as follows: safeguard of the right to land private ownership, refashion of the role of the state in conducting regulatory policies, advancement of the land market infrastructure, conduction of information and awareness campaign, and some others.

The work should be of interest to a wide audience, including policy makers, development scholars, and land market practitioners. It can be used as a policy tool by the Ukrainian government to continue the reformatory process in the nation.

## **I. INTRODUCTION**

When Ukraine regained its independence in 1991, it inherited from the Soviet Union an ineffective command economy and a farming sector that was dominated by large loss making agricultural enterprises. The Ukrainian state was the exclusive owner of all land. In order to raise the efficiency of industrial and farm production, to introduce effective market mechanisms into the national economy, and to create a new class of private landowners, the government initiated a number of major socio-economic reforms. Reform of the structure of land ownership was an indispensable part of these transformation processes in Ukraine.

The initial goals of the land reforms were the redistribution of lands and the transformation of ownership of agricultural land. The privatization of land and its conversion into a tradable commodity created a basis for the development of a land market in Ukraine. This land market set the basis for the mortgage of rights in land, which can increase access to the capital that is often critically necessary for productivity-enhancing investments.

At present the land market has not become yet an important means of securing unfettered access to land resources, organizing the efficient allocation of land resources from less to more productive users, and encouraging productivity and investment among land users.

The present policy research project investigates the institutional, economic, and social aspects of land reforms in Ukraine. The first chapter provides a comprehensive analysis of the legal and institutional frameworks that ensured the redistribution of state lands and the introduction of the principle of pluralism in land management. This chapter elaborates on the different evolutionary stages in land reforms, including: land demopolization, land sharing and large-scale land privatization, and the introduction of a land market.

The author outlines the main outcomes of each stage and addresses some of the challenges that they raise. The objective is to answer why the initial reforms based on state ownership and some management pluralism at corporate farms failed to make their employees real landowners and did not bring market mechanisms into land relations.

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. The second chapter sets out some of the social and economic benefits of land reforms and how land use and ownership patterns have changed. As a result of the reforms, over 6.9 million of Ukrainian rural residents obtained the basic rights of private ownership in the form of land shares. These could be sold, leased and otherwise transferred. There was also the option of converting the shares into physical parcels of land for private farming.

On its own, a simple recognition of private land ownership in land is insufficient to bring about the development of an efficient land market. The author argues that private ownership implies the existence of a whole regulatory framework that facilitates land transfers and land use. The experience of countries with developed economies confirms that 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. To back up this argument, chapter three dwells on the experience of developed countries and countries of Central Europe in institutionalizing the right to private land and establishing a fully fledged land market.

Although the demopolization of state ownership and the introduction of private ownership has been one of the most significant outcomes of land reform, this reform remains incomplete. The

main restrictions on the land market are the subject of the third chapter of the paper. Here, the author considers such problems as the nature of restrictions over private ownership; the existence of inflexible land use regulations; the undeveloped land market infrastructure such land property registration, land assessment and land cadastre, and a number of other issues.

The author argues that although the Land Code of 2001 legalized private ownership, it simultaneously set serious constraints over this right, the land moratorium being the most significant. The moratorium was a political compromise to obtain support from conservative political circles to pass the Land Code. Their argument was that under non-transparent procedures and at artificially low prices agricultural land, once subject to sale, would immediately end up into the hands of large latifundiums.

Along with that, the Ukrainian land legislation establishes regulatory constraints, which are on the whole overly broad and with a restrictive character. The 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. In addition, currently Ukraine does not have a sound land market infrastructure, including 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.

In order to study both land relations and the development of the land market at the regional level the author carried out a field survey, the findings of which are presented in the fourth chapter. These findings allowed the author to present new information concerning such issues as formalizing the ownership rights, land disputes and conflicts, and the rural residents' awareness of legal developments. This data was used as a basis for providing policy recommendations and defining tasks for the future.

The paper concludes with policy recommendations and setting out a policy agenda for the future. The author defines the necessary steps to advance land relations and develop an effectively functioning land market in Ukraine. These include: safeguarding the right to land private ownership, redefining the role of the state and reshaping state regulatory policies, improving land leasing and land use practices, promoting an environmentally sound land use, advancing the land market infrastructure and others. To this end, the government must complete the process of formalizing private ownership rights to agricultural land by finalizing the issuance of State Acts to land share holders will make this process irreversible. Cancellation of the land moratorium, which remains an extreme policy measure of a temporary character, would be another important step in safeguarding the private right to land. This will make land a fully tradable commodity.

In author's opinion, in order to safeguard the right to land private ownership, the government has to achieve an effective balance of public and private interests. This means, first of all, making regulatory policies more predictable, ensuring equal treatment of all land markets constituencies regardless of their public connections, and relying generally on market incentives to promote the use of agricultural land to its highest and best.

In the area of land use, the author proposes to develop a concrete national program of land protection as a guideline in promoting an environmentally sound land use. An important task 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.

A wide information and awareness campaign has to become an integral part of future land reform initiatives. The author maintains that 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. 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.

The paper concludes with a statement that 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.



## 2. LAND REFORM LEGAL AND INSTITUTIONAL FRAMEWORKS

In Ukraine, like in many other countries of Central and Eastern Europe, land reforms and the development of a land market were conducted, primarily, by adoption of a comprehensive set of legal and normative documents. These documents have underpinned legal, institutional, and financial aspects of further land relations in the nation. While initiating land reforms, Ukraine was pursuing, first of all, the goal of raising the efficiency of farm production, denationalization of state ownership on land, and the creation of a new class of private landowners. This process has proved to be complex and time consuming, having spanned the whole last decade of the 20-century. Nowadays, when the legal framework remains still incomplete and “*all the rules of the game*” have yet to be set up, there is a big need to ensure continuation of the land reform course in the nation.

While initiating land reforms in the early 1990-th, Ukraine was pursuing, first of all, the goal of raising the efficiency of farm production, denationalization of state ownership on land, and the creation of a new class of private landowners. This process has proved to be complex and time consuming, having spanned the whole last decade of the 20-century. Land reforms in Ukraine began with the transformation of ownership of agricultural land. The first stage of the reform process assumed that the redistribution of lands would mean that they remained in state ownership, but this would give the agricultural enterprises greater control over their land resources and thereby would introduce a measure of pluralism in land management.

The success of land reforms is conditioned upon numerous factors and agents. The legal basis, being one of the factors that directly influences the course of land and agrarian reforms, holds a special significance since they set the so-called “*the rules of the game*”. Through the prism of legal and institutional frameworks one can analyze the main tendencies, obstacles and prospects of the reformation of land and agrarian relations. The timely adoption of laws allows government to provide for effective regulation of the reform process while their absence or uncoordinated or contradictory nature creates obstacles in the development of legal relations (ROLFES JR, 2001). In order to comprehend the specifics of the land reform process, we provide a retrospective analysis of the transformation of land relations, with a special focus on the main stages in legal groundwork development.

### 2.1. Redistribution of Lands and Introduction of Land Ownership Pluralism

Before looking at the main stages of land reforms in Ukraine and analyzing its historic and socio-economic consequences, it should be said that there are two general patterns for the development of legal and institution frameworks for transforming land relations. The experience in Central and Eastern Europe is divided between those countries who (a) develop a code of land laws that attempts to cover the whole field of basic land relations; or (b) move forward on a piecemeal basis, passing a series of laws or decrees that cover only specifics aspects of land relations (PROSTERMAN and HANSTAD,2000). Both approaches are potentially viable choices for transforming land relations, the final choice depends on local political and institutional contexts.

Despite some potential advantages of the presence of a single comprehensive bundle of laws in the form of a land code (such as the land codes of Ukraine adopted in 1990 and 2001 ); for a country aiming at an extensive overhaul of land relations and with no previous experience of such transformations, the piecemeal approach may prove more beneficial. Following the tradition of post-soviet lawmaking, Ukraine decided to conduct land reforms through the development of comprehensive land codes. However, it should be said that Ukraine had neither

the legal nor the institutional framework to adopt a law encompassing all dimensions of land relations. Regardless of the presence of various land codes passed at different stages, in reality, the transformation of land relations in Ukraine took place via the adoption of a series of separate laws, and particularly, by decrees initiated by the President of Ukraine.

Land reforms in Ukraine began with the transformation of ownership of agricultural land. The first stage of the reform process assumed that the redistribution of lands would mean that they remained in state ownership, but this would give the agricultural enterprises greater control over their land resources and thereby would introduce a measure of pluralism in land management.

In 1990, the Parliament of Ukraine passed the resolution *“On Land Reform”* (№ 563-XII, December of 1990), which proclaimed that all lands, including almost all lands in rural areas, were the potential object of reform. The law provided for the redistribution or as called *“the repatriation”* of state lands with their simultaneous transferal to peasants (private family farms) in possession for life and subject to various inheritance conditions, and in permanent possession to collective agricultural enterprises (hereafter referred as CAE). The latter were created on the basis of soviet type corporate farms known as *“kolkhoses”* and *“sovkhoses”*. This law also created various types of land management to ensure the development of multi-sector economy, and thereby promote rational land use and protection.

In order to promote the private farm as a source of commercial agricultural production, the government allowed private family farmers to acquire up to 50 hectares of farmland and up to 100 hectares of land in total. To further guarantees of citizens' land rights, Ukraine defined the right of possession of land, which was later secured in *the Land Code* (№ 561, December of 1990). However, granting agricultural producers and citizens such guarantees was envisaged to be carried out with little changes in the land relations system, which means under the exclusive state ownership of land. Land possession had two main forms: possession by citizens for life-subject to certain inheritance conditions and permanent land possession by named agricultural legal entities.

Land was granted to citizens in possession for life subject to certain inheritance conditions for the following purposes: Running a private farm, building production and housing constructions, horticulture, summer cottage and garage building, and traditional handicrafts. Land was also granted in permanent use to kolkhozes, sovkhoses, other state, cooperative, community enterprises, establishments and organizations, religious organizations – for the purposes of running agriculture and forestry. Thus, citizens and legal entities that received land plots into possession were not the full owners of the land. Most rights concerning possession of the land plots comprised a right to exclusive possession and use of land but not the right to sell it, exchange, or hand it over as a gift.

Unlike other countries in central and Eastern Europe, Ukraine rejected land restitution as a basis for the land reform. Restitution was thought to be too complex and intricate, and finding former land owners could have created undesirable tensions in a vulnerable Ukrainian society. Demonopolization and the transferal of agricultural and non-agricultural land became the main directions of the first stage of the land reform. It was the first attempt to carry out the land reform without a significant overhaul of the national land legislation.

In the early 90-th, the introduction of private ownership on land was not a subject of reforms. In accordance with the resolution of *“On Land Reform”*, the redistribution of lands was to be carried out by the decisions of local/village councils (radas) provided that these lands remain in exclusive state ownership. Thus, the authority to implement land reform was delegated to local councils (i.e. bodies of local self-government), which were obliged to do the following:

- register all citizens willing to establish private family farms, to expand individual subsidiary land plots<sup>1</sup>, to deal with horticulture, as well as to receive land plots into the use for vegetable gardens, haylands and pastures;
- conduct checks and analyses of requests of enterprises, establishments and organizations for land plots needed for running subsidiary farms, collective orchards and vegetable gardens;
- study how substantiated are the needs of enterprises, establishments and organizations for land plots used by them for agricultural and nonagricultural purposes;
- on the grounds of the land checks, terminate ownership of land plots used for purposes other than those specified, as well as for land plots infringing established rules, or if used irrationally.

Thus, all technical procedures relating to the transformation of land ownership were conducted by local councils. They were authorized to allocate land, to issue land titles to new private landowners, (primarily private family farmers) to keep the registry of rights to land and to resolve land conflicts. The 1990 resolution “*On Land Reform*” also called for the establishment of a special state institution to be responsible for spearheading land relations reforms. Such an institution was established in 1992 in the form of the State Committee of Ukraine, and its main mandate was to oversee the implementation of land reform in Ukraine.

## **2.2. Land Demopolization and the Legalization of the Right to Private Ownership on Land**

As already mentioned, the early land reforms were not aimed at establishing the private ownership of land. It was a by-product of the land transfers to those working in agriculture-private family farms and collective and state agricultural enterprises, namely the grant of rights of permanent use/land possession. However, the reform of the agricultural production system based of management pluralism did not introduce market mechanisms into the business operations of CAE, in particular market motivations. Nor did it raise efficiency levels in agricultural production as a whole.

To further promote land relations and trigger the potential of market mechanisms in agriculture, the government decided to privatize agricultural lands. In the first half of the 1990s, the privatization of agricultural lands was regarded as the principal method of land reform expected to bring with it the following:

- Demonopolization of land ownership and the repeal of the state’s exclusive land owner’s status.
- Introduction of the right to private ownership, first and foremost, of agricultural lands.
- Granting agricultural producers the status of landowners and owners of other agricultural means of production.

Thus, although the first steps in reforming land relations were dated at the end of 1990, land reforms commenced in Ukraine in May 1992, when the Land Code of 1990 was amended and took effect. This law created the real grounds for land privatization and the introduction of private ownership to land. The right to land ownership for life was replaced by private land ownership. Peasants obtained the right to acquire land for the purpose of running a private family farm, thereby establishing serious political and legal preconditions for furthering land reforms in agriculture. The Land Code was complemented by the Resolution of Parliament “*On Speeding*

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<sup>1</sup> Individual subsidiary land plots is a type of small land holding largely operated by the labor of rural residents who, as a rule, are also members of the reformed agricultural enterprises.

***Up the Land Reform and Land Privatization***" (№ 2200, March of 1992), which dealt with the following main tasks:

- The resolution of all pending issues concerning land re-distribution and granting enterprises, establishments and organizations land plots for collective vegetable gardening at the expense of available land stock;
- The elaboration and approval of the respective state-wide, national, regional, and local programs of land reform for the period of 1992-1995;
- The identification of agricultural enterprises and organizations whose lands are to be transferred to collective and private ownership in 1992;
- The provision of specific terms for completing the transfer of land plots for private ownership of citizens where they were so used as of April 15, 1992.

Alongside with the Land Code of 1992, Ukraine passed the Law ***"On the Forms of Land Ownership"*** (№ 2073-XII, January of 1992), which specified three main forms of ownership: private, collective, and state land ownership. Since the early 1990s, practically all lands that were suitable for agricultural production were in use by the collective agricultural enterprises which had been founded as a result of the restructuring of the kolkhozes and sovkhozes. This explains the fact that the CAEs' land became the primary object of land privatization.

The privatization of the lands for commercial agricultural commodity production, i.e. by CAEs and private family farms, was carried out in two ways. First, the state transferred lands from the state stock and reserve fund into the private ownership of citizens intending to run private family farms. Second, the state initiated complex of measures to grant members of collective enterprises the status of landowners.

To this end, Ukraine adopted the Law ***"On Collective Agricultural Enterprises"*** (№ 2114-XII, February of 1992) stipulating that each member of the CAE is entitled to receive a *"share"* of the collectively owned land in case the member decides to leave the CAE. In this way, the concept of a *"land share"* appeared as part of Ukraine's land reform policy. This established a fundamental mechanism for the transfer of land from collective to private ownership, and guaranteed the individual's freedom of choice in his/her future production activities.

### **2.3. Land Sharing and Large-Scale Land Privatization**

The initial experience of land reform showed that transferring land into the collective ownership of CAEs did not make CAE members the true landowners. In practice, heads of collective enterprises were in the position of exclusive decision-makers, whereas ordinary members were removed from this process. To address this issue, in 1994, the state strengthened the legal status of CAE members as co-owners of land transferred into collective ownership.

The next stride that had become the main vehicle for agricultural land reforms in Ukraine was the right of each member to leave the agricultural enterprise with a physical plot of land corresponding to his or her individual share in the collective property. These provisions ensured that a collective enterprise was no longer a closed entity, as it was the case during the Soviet era, and individuals were entitled to leave the enterprise and take their share of land with them. All enterprise current agricultural workers, employees of enterprise social infrastructure (hospitals, schools, and kindergartens, and others), and retired workers were entitled to obtain a land share. The size of such a land share was defined as an average of the total enterprise land (10-15% of the total enterprise land was allocated for an enterprise land reserve) divided by the number of all entitled CAE member

The notion of “*a land share*” was first mentioned in the Land Code of 1990 (Article 5), which specified that citizens may own land together as "collective" property, that they may withdraw their "share" in kind, and that they were eligible to lease or bequeath it, but not to sell it. The latter provision aimed to safeguard the wholeness of an agricultural property complex in collective ownership. Besides, the Code did not intend for land shares to exist apart from the underlying collective property as independent legal elements with their own specified body of rights, most importantly the right to ownership. The Land Code made no provision for land share rights to be represented by title documents, or to be registered.

According to the Presidential Decree “*On Speeding Up the Land Reform and Land Privatization*” (№ 666, November of 1994), the lands in collective ownership were to be divided into “*land shares*” and members of CAE were eligible to receive land share certificates.

The scheme of land privatization was marked by a heated debate, which was mostly centered on the following questions:

- Should lands be shared between all rural residents or only between the present members of existing corporate farms;
- Who should be included into the list of owners (current workers, pensioners, social sphere employees such as teachers, medical workers, others) and;
- Finally, should this process be free of charge or does one have to pay for a land share?

Along with these questions, there was an issue of whether new property owners would receive conditional shares, so called “*paper shares*” without demarcated land borders, or land plots in kind, with strictly defined borders of a land parcel. The government decided that the option of conditional shares appeared more preferable since local authorities and new owners could postpone the decision of what to do with these land plots and could avoid the costly procedure of land apportionment.

The possibility of transferring the paper land shares created opportunities to buy, exchange, rent, bequeath, pledge, and invest them as equity capital. An underlying assumption of the land share approach was that shareholders would actively use their rights to seek higher incomes, whether through the lease or sale of land shares to the highest bidder. In addition, the decree gave the land shareholder the right to convert his/her share into a privately-owned demarcated land parcel and obtain a land title referred to as “*a State Act*”.

The right to a land share was certified by “*a land share certificate*”, which represented a nominal right to obtain a physical parcel of the CAE's collectively owned land. In order to receive the physical parcel of land, the CAE member was required to withdraw from the enterprise and apply to receive a land parcel in private ownership, with the parcel's borders demarcated.

This division of land into shares was used not only in Ukraine, but also in Russia, Moldova, and in some other countries of CIS. According to various commentators, this approach was a political compromise between the different political forces. It provided the possibility of maintaining large agricultural enterprises while ensuring the evolutionary transfer from a socialist to market-based agriculture (LERMAN, CSAKI, and FEDER, 2002). At that time, the land share privatization also gave the possibility of land consolidation without preliminary physical division, which allowed the enterprises to keep big agricultural fields, rather than having to divide these lands into smaller plots as was the case, for example, in Romania and Bulgaria.

The introduction of land shares did not change significantly the internal nature of the collective ownership. In many instances, the landowners did not know the exact location of their land plot. The ownership of the shared land remained with the collective agriculture enterprise members as collective property, though these same people as land share holders could independently carry out transactions with their shares, but with no right to sell them.

As some land relations experts maintain, at that stage, while privatizing agricultural lands, but not allowing farmers to sell their land, the land reform, actually, could lead to the preservation of large-scale farm production with some personification of land ownership (KULINICH, 2002). Although the distribution of shares, combined with the legal right of exit from the existing corporate farm was an important mechanism for restructuring the agricultural sector; nevertheless, it was an interim measure which ultimately was expected to lead to the physical distribution of land plots and farm assets.

#### **2.4. Liquidation of Collective Ownership**

The land share policies introduced in the mid 90s did not bring expected significant outcomes. In particular, they did not transform collective ownership and did not create a full-fledged private right to land. At that time the land share rights were not well understood by the population and new land share holders did not take any strong proactive position in exercising their rights, leaving the real decision making in the hands of collective farm bosses. In this situation, land reforms indelicately had led to so called “*a system of double ownership over the CAE land*”, the right on the same land was simultaneously exercising collectively by CAE and privately by a CAE’ member (KULINICH, 2002).

Recognizing this failure, the President of Ukraine issued the Decree “*On Immediate Measures to Accelerate the Reform of the Agrarian Sector of the Economy*” (№ 1529/99, December of 1999). The decree was revolutionary in setting out a new policy agenda for land reforms in the nation. In particular, it provided the following important guidelines:

- It ensured that every CAE member has the right of withdrawal from the CAE with their land and property shares. In this case, the land and property shares are to be withdrawn and their owners are to obtain specific land plots and specific items of property in private ownership.
- It created one or more market-oriented legal entities, such as private enterprises, private farms, business partnerships, agricultural cooperatives or others, on the basis of each CAE. The established legal entities carry out their operations on the basis of private ownership, not collective ownership.
- It ensured the transfer by former CAE members of their land plots and property to the private-leasing enterprises on the basis of lease contracts.
- It aimed at preserving, as much as possible, the integrity of land surfaces and property complexes for use by the new legal entities on the basis of the lease of withdrawn land plots and property shares.

In the first half of the 1990s, with all the might of Soviet style bureaucracy, the government, and in particular local authorities, actively interfered into the process of reforming land relation, and according to some authors, on many occasions they were trying to block it (CSAKI AND LERMAN, 1997). That is why, when proclaiming in 1999 a new direction in land reform, the Decree assumed the active and constructive participation of the state executive power bodies both at the national and local levels. Specifically, local authorities were responsible for ensuring

that during 1999-2002 all existing CAEs were restructured as new businesses operating on the basis of private ownership on land.

In order to create a more favorable environment for the CAE restructuring, the government also undertook the following steps:

- lowered the costs incurred when individuals applied for the issuing of land state deeds;
- made the procedure of land lease contract registration less cumbersome;
- introduced new rules for land registration at local village councils.

At this stage, although the government called upon holders of land share certificates to exchange these certificates for state land acts so as to promote the greater institutionalization of private ownership on land, at the same time, there was no order setting out the time frameworks which would require land shares be converted into identified land parcels evidenced by State Acts titles. The 1999 Decree strengthened the legal meaning and practical effect of the land share certificate. The decree provided that

*“a certificate on the right to a land share is a document having the force of a legal entitlement that certifies the right to possess, use, and dispose of the respective parcels”.*

In this way, the law made a direct link between the possession of a land share certificate and the control of an identifiable parcel of land, in contrast to the share simply being a tradable piece of paper which was redeemable for a demarcated land parcel (KULINICH, 2002).

Prior to 1999, the restructuring of CAEs and land privatization had the character of pilot programs, mostly carried out by technical assistance projects with financial support from international agencies and foreign governments. The executive power bodies in many Ukrainian regions distanced themselves from the donor projects regarding CAE restructuring, or rendered only their formal support, arguing that there is no institution frameworks for large scale privatizations. The Decree created the legal basis for nationwide privatization of collective agricultural enterprise and agricultural lands.

The establishment of private ownership of land and issuance of land titles have intensified entrepreneurial activity in the agricultural sector and led to the increase in the number of new private agricultural entities that make more effective use of land. Next year after the 1999 Presidential Decree, the national statistic agency reported that as of July, 2000 1.5 million of the 6.5 million land share certificates had been already converted into title documents for land plots.

## **2.5. Land Market Development and the Formalization of the Right of Private Ownership**

Although denationalization of agricultural lands and liquidation of collective agricultural enterprises had significantly changed the landscape of land relations in the nation, it did not lead in itself to the development of a full-fledged land market. A fundamentally new stage in the development of land relations began in 2001 with the adaptation of the new *Land Code* (№ 2768, October of 2001). This Land Code placed the final nail in the coffin of collective and state farms' agricultural production on the basis of collective ownership of agricultural land. It made land relations more market oriented, proclaiming the following main principles for the functioning of the land market:

- Effective land use, which assumes a rational treatment of land spatial, natural, and market qualities.

- Equity between the rights of given citizens, legal entities, territorial communities, and the state in land relations.
- Non-intrusion by the state in the activities of citizens, legal entities, and bodies of self-governance as regards land possession, use, and disposal, excluding the cases that are specified in the law.
- Ensuring state guarantees of human rights concerning landed property.

The Land Code proclaims that land is the basis of human life. The regulation of land use and protection of land is based upon an assumption that land is both a natural resource as well as real estate. The Code sets the priority for land protection as a vital component of environment and a means of production in agriculture and forestry over the use of land as real property. Owners of land parcels can possess, dispose of and otherwise freely use their property unless it damages the environment.

Thus, the Land Code tries to balance private and societal interests. In particular, it is 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. The Code restricts and specifies the grounds for terminating the right to ownership of land. This right can be terminated in the following cases:

- voluntary refusal of the owner from the land parcel;
- death of the land parcel's owner, provided there are no heirs;
- alienation of the land parcel based on the court ruling;
- seizure of the land parcel for debts upon the request of creditors;
- alienation of the land parcel for certain public or social needs;
- confiscation of the land parcel by court ruling (in the event the owner of the land parcel has committed a certain criminal offence, the punishment for which envisages confiscation);
- failure to alienate agricultural land parcels within a year by foreign entities or persons without citizenship, which had inherited such land parcels.

On the other hand, the Land Code clearly provides that the regulation of the use of and the protection of land is performed in the interests of the society in general.

The Land Code stipulates two forms of ownership to land inherent in the market economy, namely, public ownership, which includes state and communal ownership, and private ownership. The latter includes the ownership of individual citizens and that of legal entities.

Alongside, the Land Code establishes a number of restrictions on the acquisition of land parcels into ownership. The Land Code does not allow foreign physical and legal entities to acquire agricultural land parcels into private ownership and restricts their right to acquire non-agricultural land parcels into private ownership. As a compromise, it does allow foreign physical persons and persons without citizenship to acquire non-agricultural land parcels into ownership within the boundaries of settlements and outside settlements provided they are located beneath the immovable property owned by them. Agricultural land inherited by foreign physical and legal entities and by persons without citizenship is subject to alienation within a year.

In order to ensure a smooth transition to the new rules, the Land Code contains *Transitional Provisions*, which imposed certain restrictions on the private right on land. In particular, it set the following:

1. Individual citizens and legal entities, which have land parcels in ownership for private family farming and other commodity agricultural production, as well as the citizens of



Ukraine—owners of land shares have no right till January 1, 2008 to sell or in some other way alienate land parcels belonging to them and land shares, except for exchange, inheritance or withdrawal for public needs.

2. 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.
3. Until January 1, 2008, owners of land shares have no right to contribute them to the statutory fund of business associations/commercial companies which might result in the transfer of the ownership right to the land share to commercial company.

The Land Code of 2001 reflected the main elements of the land reform as set forth in the Constitution. The constitutional concept of land regulation is based on the following key principles:

- Land is recognized as an object of ownership rights for the people of Ukraine.
- On behalf of the people of Ukraine, the rights of the owner are exercised by the state power bodies and local self-government bodies.
- Land is the main national wealth which is under the special protection of the state.
- Citizens, legal entities and the state acquire and exercise the ownership right to land exclusively according to law.
- The right to private ownership of land is inviolable: nobody can be deprived the right to private ownership of land except for the forced alienation of land parcels for social needs on condition of preliminary and equitable compensation of the cost of the land parcel. Under conditions of martial law or state of emergency, forced alienation may be used with subsequent full reimbursement.

The private ownership rights on land and other real estate objects are clearly stipulated in a number of articles of the Constitution. In particular, Article 23 states that *"every person has the right to possess, use and manage his/her property."* Citizens may also use the objects of state and communal property rights to satisfy their needs, in accordance with the law.

The Land Code set forward a new legal framework that has to regulate and spearhead land relations in Ukraine. However, this framework assumed the adoption of a whole host of normative and regulative documents in order to make the national land market effective.

To-date Ukraine has passed a number of laws in support of the Land Code. The Law of Ukraine **"On Mortgage"** (№ 898-IV, June of 2003) began a new page by using immovable property in the field of credit and other economic relations. It established the necessary legal basis for the formation of a legal mortgage field in Ukraine, similar to that found in countries in the EU.

The law defines *"immovable property"* (real estate) as land parcels and objects, located on the land parcel and inalienable from it, the displacement of which is impossible without their depreciation and change in designation. The Law is based upon the concept of indivisible immovable property, which means that in case a building (construction) is mortgaged, the mortgage includes the land parcel or its part on which is located the building (construction) and which is necessary to ensure its use by designation, belonging to the mortgagor by ownership right.

Thus, the Law **"On Mortgage"** stipulates that not only buildings and other constructions, but also privatized land parcels may be mortgaged. The Law contains no specific restrictions as to

the mortgage of land parcels. The main restriction lies in the fact, that agricultural land parcels may not be mortgaged until January 1, 2005.

With the goal to speed up the development of the land lease market, Ukraine passed a new land lease law. The Law "***On Land Lease***" (№ 1211-IV, November 2003) envisaged a number of important changes. Specifically, they were as follows:

- lessors of land may be not only be landowners, but also persons authorized by them;
- any natural person or legal entity, regardless of their type of activity (for legal entities) or farming experience (for natural persons) may be the lessees of agricultural land parcels;
- lessee has the right to transfer his land parcel into a sublease (without changing its designation) to another person, in case in the course of one month he receives no written consent or refuse from the lessor in answer to his written proposal on sublease.

Finally, by passing the law "***On Assessment of Land***" (№ 1378-IV) the Parliament of Ukraine set forth the legal principles for performing assessment of lands, and engagement of the professional land assessment business in Ukraine. The Law is aimed at regulating relationships ensuing from the process of land assessment. It provides that assessments are completed when and where they are required, in order to protect the interests of the state and other subjects of land assessment. Assessments of land provide information for taxation purposes and for the development of land market. Depending on the goals and methods, they distinguish the following types of assessment of land: land quality valuation, economic and monetary assessment. According to this law, monetary assessment falls into the categories of normative and expert assessment.

The law specifies that an economic assessment of farmlands is performed at least once each 5 to 7 years, whereas the results of such evaluations are taken as the basis for undertaking a normative monetary assessment of land plots. Each assessment includes an analysis of the effectiveness of land usage compared to other natural resources, as well as defines the economic suitability of farm lands.

*Expert monetary assessment* is a result of determined value of land plots and related rights. *Normative monetary assessment* is the capitalized rental revenue from land plot, derived on the basis of established and approved standards. It is applied in the determining the size of land tax and duty in such civil transactions as exchange, inheritance and donation of land plots, in the establishment of the size of rentals, and payment for land plots in state and communal ownership. Normative assessment of farm lands is undertaken once per each 5 to 7 years, while the assessment of non-farm lands takes place once per 7 to 10 years.

*Normative monetary assessment* of land plots is performed in the following cases: 1) when the size of land tax is to be established; 2) for establishing the size of rentals for land plots held in state and communal ownership; 3) to establish the size of state duty in transactions of exchange, inheritance and donation of land plots in accordance with law; 4) to estimate losses of agriculture and forestry operations; 5) to develop benchmarks and incentives for efficient usage and protection of land.

*Expert monetary assessment* of land plots is performed in the following circumstances: 1) alienation and insurance of land plots in state and communal ownership; 2) pledge of land plot in accordance with the law; 3) evaluation of investment contributions into the implementation of an investment project for land amelioration; 4) estimation of the value of land plots in state or communal ownership if they are contributed to the statutory fund of joint stock company; 5) estimation of land plot value when an enterprise with a state shareholding owning such a land

plot undergoes reorganization, bankruptcy or liquidation; 6) allocation or definition of the portion of state or territorial community within land plots in the communal and state ownership.

The law imposes also certain limitations on the undertaking of expert monetary assessment of land. For example, a subject of assessment may not assess land plots which it (or its employees) own; or if the customer has family relations with the individual assessor or management of the assessor-legal entity.

Thus, in summary, one may see that reforming land relations in Ukraine and creating effective legal and institutional frameworks has been a rather lengthy and complex process. It took a whole decade to liquidate ineffective patterns of land ownership and use, to introduce the institution of private land ownership, and to develop adequate legal mechanisms for the operation of the land market. However, as mentioned, the creation of the legal infrastructure for property relations assumes the presence of “*a bundle of laws*”. To this end, Ukraine has to make various additional efforts to enhance the present legal and institutional frameworks and to address existing problems and pitfalls. These issues will form the main content of the remaining chapters of this paper.

### 3. SOCIAL AND ECONOMIC SIGNIFICANCE OF LAND REFORMS

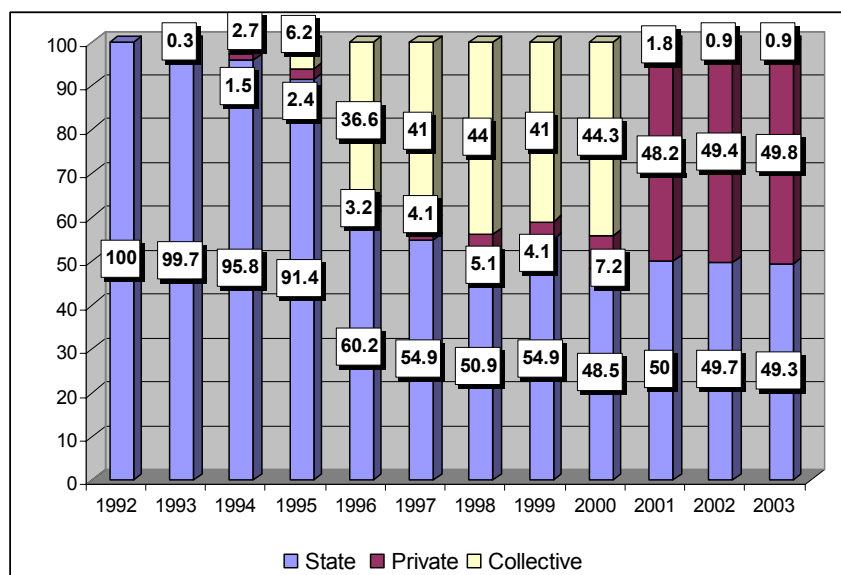
#### 3.1. Transformation in Land Use and Ownership Patterns

The land reforms have become a powerful catalyst for the transformation of the agricultural sector and for Ukraine's socio-economic development as a whole. One of the most significant outcomes is the demonopolization of national land and the introduction of private ownership.

As seen in Figure 1, if at the beginning of the 1990s the state was the exclusive owner of all land, by the mid 1990s this situation had begun to change. By that time, collective and private ownership of land appeared along with the state ownership which undoubtedly remained the dominant form of ownership. One major objective of the land reform was to eliminate the inherited inefficiency of the socialist large-scale farming organizations. This effort was aimed at creating more productive forms of farming. In the mid 1990s, Ukraine's collective and state farms were converted into collective agricultural enterprises (CAE), with land shares issued to 6.7 million affiliated workers and retirees. However, as already discussed in the first section of this paper, the issued share had been immediately leased out to CAEs, with administrative and decision-making process concentrated again in the hands of the former managers of state corporate farms.

Thus, these policies did not result in the creation of large numbers of private farms neither did they bring any meaningful restructuring of state corporative farms.

**Figure 1. Changes in ownership, as a percentage of total land**



Source: State Land Resources Committee.

In 2001, the situation completely changed. This year saw the institutionalization of the private right to land. There was steady growth in the share of the lands in private ownership, mostly due to the restructuring of CAE, caused by the Presidential Decree of 1999. To-date, nearly 11,000 CAEs have been converted into 19,739 new agricultural enterprises of various legal and organizational forms (for example, joint-stock companies, agricultural cooperatives, and private farms) that are in some way based on private land ownership. Over the period 1991-2001, the majority of agricultural land in Ukraine (nearly 30 million hectares out of 42 million) was transferred from state ownership into collective and private ownership.

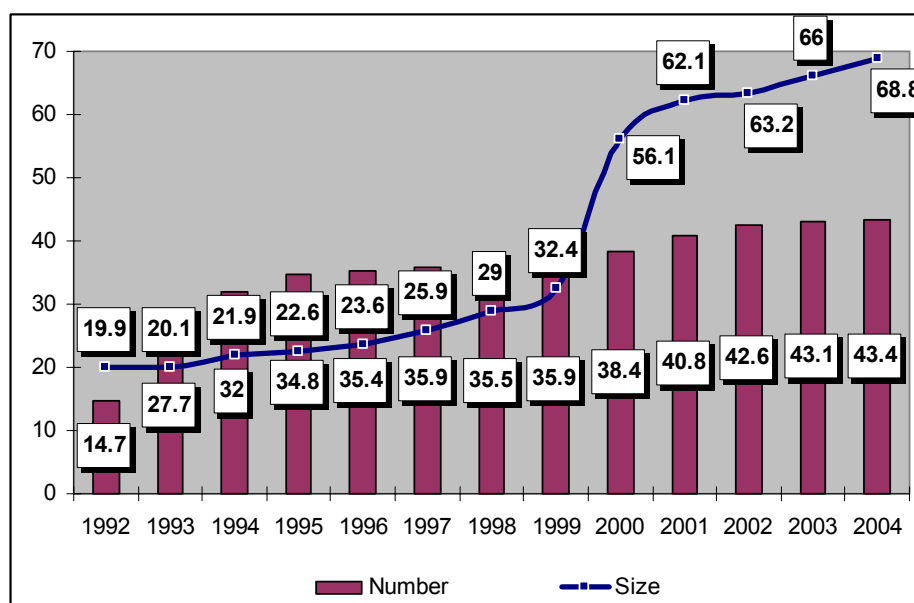
The restructuring of collective agricultural enterprises through the sharing of land and property, the privatization of farm property and fixed assets, and introduction of new methods in farm management have led to significant changes in the nature of property relations based on the right to land private ownership. As a result, over 6.9 million of Ukrainian rural residents obtained basic rights of private ownership in the form of land shares, which could be sold, leased and otherwise transferred, or converted into physical land parcels for private farming.

As of January 1, 2004, 6.9 million had obtained land share certificates, and 3.6 million of this group (53%) have already completed all necessary legal and administrative procedures to formalize their private right to land and obtained Land State Acts. Additionally, 1.8 million of land certificates holders have submitted the necessary documentation to obtain such a State Act. In accordance with the legislation, 50% of works related to the preparation of the State Acts are financed from the state budget, and 50% of the costs have to be born by the applicant. The absence of all the necessary funds, in particular the funds to finance technical works, caused a significant delay in the preparation and issuing of State Acts. Initially, when introducing the State Land Acts policy in 1999, the authorities expected to have all State Acts issued by 2004.

The initial goals of the land reform were two-fold. First, it aimed at denationalizing state lands and restructuring state farms by giving the members more control over the farm's internal resources. Second, the reform sought to stimulate the re-creation of private family farms, liquidated in the years following 1917. Private family farming was expected to allow the rural population to promote their farming skills as well as their creative and innovative talents so as to boost efficiency and productivity in the agricultural sector. To this end, rural residents wanting to establish a private farm were granted lands from the state reserves.

Over the last fifteen years, the number of such farm enterprises has increased from only 80 private family farms operating on commercial basis in 1992 to 43,403 as of January 1, 2004 (figure 2).

**Figure 2. Number and average size of private family farms in Ukraine**



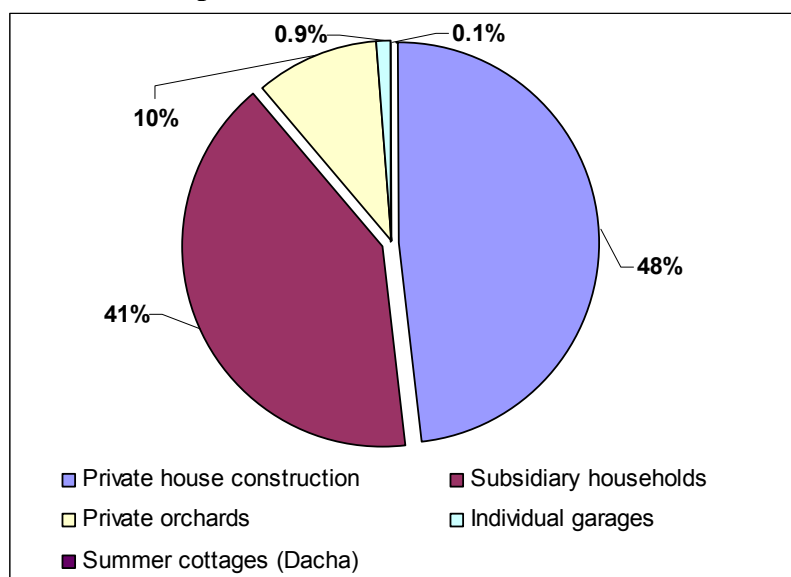
Source: State Statistic Committee of Ukraine

The total land occupied by private family farms now amounts to over 2,986,126 hectares, including 2,736,819 hectares of arable lands. However, the overall share of private farmland remains insignificant, amounting to only approximately 7% of all agricultural land in Ukraine.

As the number of private farms has risen so has the size of private family enterprises. Today, the average size of a private farm is 68.8 hectares, which includes 64 hectares of arable land.

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. As can be seen in Figure 3, 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.

**Figure 3. Privatization of land plots according to specified purposes and as a percentage of total number of privatized land plots**



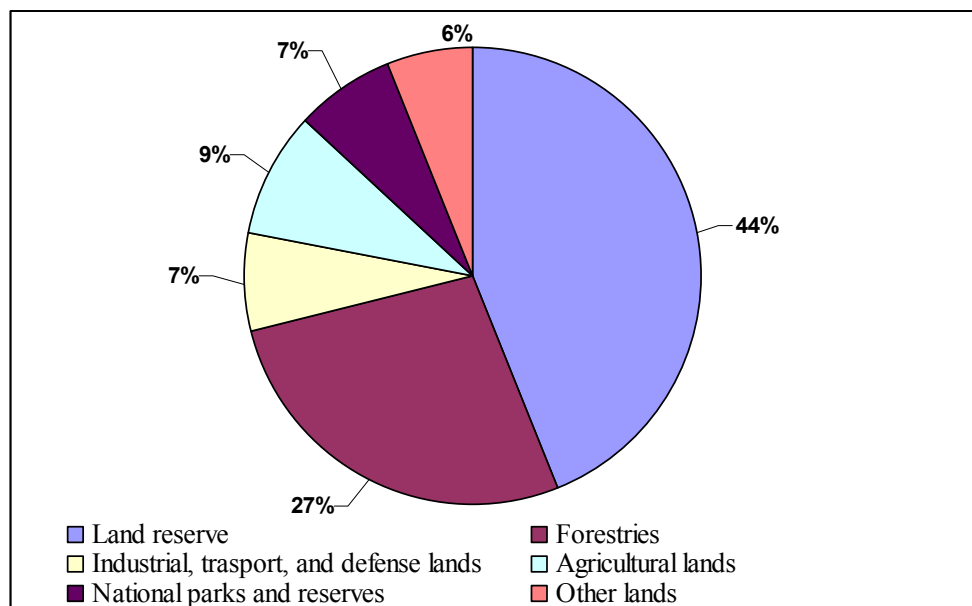
Source: State Land Resources Committee, 2004

As seen from the graph, although the number of plots privatized for private household use ranks second, the total area under such lands totals over 2 million hectares, which makes 58% of the total area privatized for the specified purposes. Individual subsidiary land plots represent a type of small land holding largely operated by the labor of rural residents who, as a rule, are also members of the reformed agricultural enterprises. Some studies show that the majority of such household operators have never been fully employed in this activity (PUHACHOV, 2002). This type of household is a legacy of the Soviet economy, when in the absence of an efficient food distribution system and during the collapse at the beginning of economic and political reforms in the 1990s, private plots played an important stabilizing role in food supply to street markets (*bazaars*) in towns and cities.

In recent years, the rate of commercialization of personal household plots has increased. However, 6.5 million individual subsidiary land plots producing agricultural commodities both for own consumption and marketing outside the household tends to remain very small. The average size of such household plots is 0.31 hectares. Due to the growing significance of production on individual subsidiary plots, the Land Code effective as of January 1, 2002, repealed restrictions concerning sizes of land plots that can be used for running a subsidiary household. However, the land size of most households remains very small, which makes it more challenging for them to maintain rational land use practices. This is also a potential threat of land fragmentation, something which will be elaborated further in the paper.

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. Figure 4 demonstrates, 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.

**Figure 4. The Uses of Land in State Ownership**



Source: State Land Resources Committee, 2004

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 sovkhozes* – 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. According to Seperovich, this also helped safeguard the food security situation in the nation (SEPEROVICH, 2003)

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.

### **3.2. The Role of the Land Market**

The privatization of land and its conversion into a tradable commodity has created a basis for the development of a land market in Ukraine. The institution of an effective and full-fledged land market can bring substantial economic and social benefits. A comprehensive analysis of the literature on land relations demonstrate that the majority of authors are united in the opinion that land markets may become an important means of securing unfettered access to land resources, organizing the efficient allocation of land resources from less to more productive users, and encouraging productivity and investment among land users (DEININGER, 2003).

Land markets also play a crucial role in the transformation of an agricultural based economy into an industrial and service-oriented one. As such an economy develops, land markets facilitates a gradual transition of labor from the agricultural to the non-agricultural sectors since those who wish to leave primary production sell their land rights to those who wish to remain engaged in agriculture. These transformations can be especially instrumental in the Ukrainian economy, where the productivity of farms remains low and the primary production still employs approximately 20% of the national labor force.

Land markets may also facilitate changes within the agricultural sector itself, making it less labor-intensive and more capital-intensive for the size of farms is gradually and voluntarily increased through land purchase and consolidation. Undeveloped or heavily restricted land markets act to slow these processes, delaying important efficiency gains (PROSTERMAN & HANSTAD, 2003).

Land markets also provide the basis for the mortgage of rights in land, which can increase access to the capital that is often critically necessary for productivity-enhancing investments. The ability to use land as collateral for accessing credit can have far-reaching implications not only for households' ability to obtain credit and make indivisible investments but also for the emergence and functioning of rural credit and other factor markets in broader terms.

The presence of an effective land market can be beneficial for national government, local authorities, and self-government bodies. In particular, we can speak about the following benefits:

First, local budgets receive sales revenues from land transactions. In Ukraine, pursuant to the land legislation that defines the separation of state- and communally-owned lands, 90% of funds gained from land plots sales are to be transferred to local budgets and 10% to the state budget. According to the Ministry of Finance, in 2003, the non-agricultural land plots sales revenues to budgets at all levels amounted to over 140 million UAH (approximately 26 million USD). This data also shows that the sale of non-agricultural land parcels in regional centers accounts only for 8% of the total number, but that these sales amounted to more than 40% of the total proceeds. These can be used for resolving the most urgent problems of the territorial communities.

Second, local budgets are provided with a constant source of revenue in the form of land tax. This tax allows the local self-governing bodies to monitor and maintain land quality and for changing tax rates according to the rate of inflation via annual re-appraisal of the objects of real estate, something which is not always possible in the case of land lease agreements.

Third, cities and settlements can enhance their capabilities in obtaining loans. Municipalities can successfully enter capital markets as a way of financing their growing demands. Access to these markets – both for companies and for municipalities – can be determined via their credit rating. An increase in the tax base in the breakdown of revenues can place Ukrainian cities in a leading position in the practice of financing the municipalities' activities. This, in turn, translates into a significant increase in their credit ratings (DEININGER & SARRIS, 2003).



Furthermore, acquiring land in the form of ownership can bring direct advantages for enterprises as well. After obtaining ownership, the owner may improve conditions for expanding investment opportunities. Usually, investors agree to deal only with those enterprises that have land in ownership, not in use (CHAPKO, 2004). If land is not in private ownership, it is rather difficult to persuade an investor to invest their money in this enterprise. In addition, having acquired land in ownership, an owner can contribute its value as an asset to the foundation capital of the enterprise. The latter is one of the principal criteria for obtaining bank loans by the enterprise.

As international experience demonstrates, the value of land always remains stable or keeps growing, in spite of inflationary processes. Land is a unique capital in its ability to maintain its value, and, in contrast to many other assets such as currency, bonds, securities, etc., it tends to increase its value over time. This means that land may potentially become a source of significant wealth for those who own the enterprise. Thus, even for landholders who do not avail themselves of land markets during their lifetime, land markets can identify and confirm the asset value that can be passed to the next generation and thereby has a use as a basis for planning a range of human activities (DEININGER & SARRIS, 2003).

The experience of developed countries persuades that the effectiveness of land markets is not always possible to measure in quantitative terms. It rather is a function of a set of the unique economic, social, historical, and policy features of a particular setting. Nevertheless, the conducted analysis of literature sources persuades that a well-functioning land market can typically be recognized by a number of principles (DEININGER, 2003). They are as follows:

- presence of a meaningful definition of land ownership rights;
- ability to undertake efficient low cost land transactions;
- developed land market infrastructure, which includes, in particular, necessary mechanisms for land registration, mortgaging, and appraisal.

The definition of land ownership rights implies the presence of full land ownership (by individuals and institutions) and specified attributes attached to land and restrictions associated with such ownership (i.e., minimum or maximum size restrictions, boundary demarcation, and others). The definition of the right of land ownership requires the need to determine the relationship between private and communal/collective ownership, and the mechanisms allowing land market participants to make the transition between different forms of land ownership. Alongside the right to land private ownership, effective land markets require that all property rights, including the right of land temporary ownership, are clearly defined.

The scope for land transactions, primarily, assumes the presence of well-defined right to sell, bequest, exchange, or lease land and clearly established legal restrictions on such transactions. They may include such restrictions as minimum lease terms, prohibition of sales to foreigners, change of land purpose use, and some others. These restrictions affect the transaction cost in land markets, and may increase or reduce the efficiency of land transactions.

The development of an effective land market also requires a fully-fledged land market infrastructure. This system includes mortgage mechanisms, land registration systems and cadastre, and land appraisal.

In this paper, we intend to analyze the completeness and effectiveness of land market development in Ukraine in terms of these main provisions. Below, we provide their concise contents.

### 3.3. Land Market and Land Market Infrastructure

#### 3.3.1. Land Transactions of Ownership Rights: Land Sale, Exchange and Inheritance

Today, it is insufficient for a simple recognition of private ownership in land to bring about the development of a desired land market. Private ownership is associated with the existence of a whole regulatory framework of rules to facilitate land transfers and land use. The right to transfer a land parcel, and especially the right to buy and sell it, is generally considered at the core of private ownership. Without these rights, land remains virtually worthless as collateral that can attract productive investment, in turn, preventing market incentives from bringing about those social and economic benefits we discussed before. For these reasons, the transferability of land is especially important in the Ukrainian context.

At present, in Ukraine there are two main ways of transferring land ownership rights. The first is the so-called “*administrative transactions*”, which are based on the decision of a state body or local self-government body and the second one is “*market transactions*”, which are based on civil-law contracts. During 1992-2001, when the majority of land parcels were privatized by citizens free of charge administrative transactions were predominant.

The Land Code envisions that citizens of Ukraine have the right to obtain land parcels for free from the state and communally owned lands for the following purposes and in the following size:

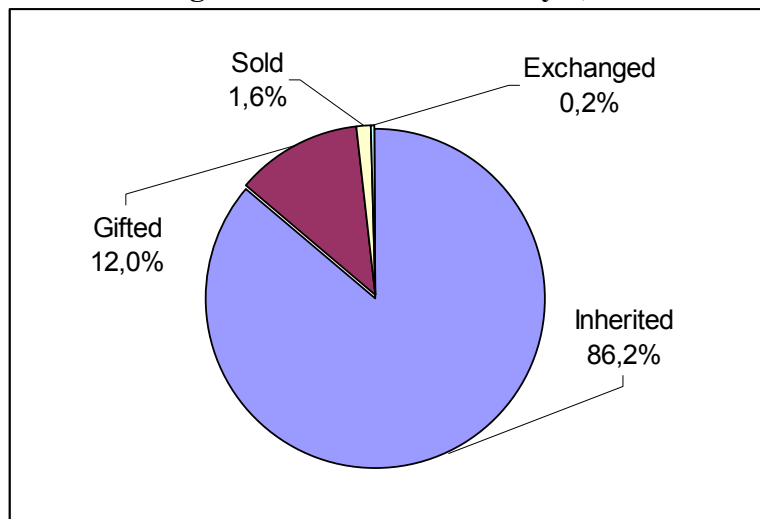
- For private family farms – in the size of an average land share established by local village councils;
- For individual subsidiary land plots – not more than 2.0 hectares;
- For gardening – not more than 0.12 hectares;
- For construction and servicing a residential building, buildings and structures maintenance in villages – not more than 0.25 hectares, in settlements –not more than 0.15 hectares, in cities – not more 0.10 hectares;
- For individual summer house (dacha) construction – not more than 0.10 hectares;
- For individual garage construction – not more than 0.01 hectares.

Today, the state reserve fund is nearly depleted. This means that in the near future administrative land transactions will be reduced to a minimum. At the same time, market land transactions are demonstrating a strong tendency to grow. Under Ukrainian legislation, all land market transactions are categorized into ones that require transfer of ownership rights and those that do not.

The first type of market transactions includes purchase, inheritance/bequest, exchange, and land gift. Land lease, which does not require the permanent change of ownership, represents a land transaction of the second type.

As of January 1, 2004, there were 790,741 notary registered transfers of land parcels. As can be seen in Figure 5, land inheritance transactions make up 86.2% of all transactions involving transfer of the right of ownership. Land gift transactions rank in second place while the share of land that changed ownership through purchase-sale is very insignificant at only 1.6%. At present, such transactions are exclusively concerned non-agricultural lands that usually are being sold in urban territories at the auction basis.

**Figure 5. Structure of land right transfers for land parcels registered by notaries, percentage to the total land right transfers as of January 1, 2004**



*Source: State Land Resources Committee, 2004*

Regardless of this insignificant number of purchase-sale contacts, the rate of such land transactions has been gradually growing. If in 1998 only 167 purchase-sale contracts were concluded, two years later, their number rose to 1,696 contacts, and as of January 1, 2004, over 13,000 land parcels of non-agricultural lands were sold and purchased in the country.

Under Ukrainian law, namely the Land Code, private citizens and domestic legal entities have general rights to purchase land provided that they have appropriate education or working experience. This rule stems from a concern that without the relevant agricultural education or experience owners are unable to ensure the effective use and treatment of agricultural lands.

As to foreign participation in transactions, Ukrainian law prohibits foreign citizens and legal entities from owning agricultural land as well as vacant non-agricultural land located outside the boundaries of a city or settlement. However, these land market participants do have the right to lease such lands. This prohibition was a political compromise to secure support for adoption of the Code. It reflects the concerns of the conservative left who argue that without such a prohibition wealthy foreigners will buy up much of Ukraine's agricultural land base.

In our view, despite the number of progressive norms in the Land Code, one cannot but mention some legal constraints on the creation on agricultural land market. As stated in chapter one, the Transition Provisions of the Land Code prohibit until January 1, 2007 any citizen or legal entity that possesses a land parcel for the use of private family farming and other commodity agricultural production, from selling or in any other way alienating the land parcels or land shares in their possession. The exceptions to this rule are land exchanges, inheritance and the withdrawal of land for public purposes. Additionally, until January 1, 2005, the Land Code prohibits to contribute the value of owned lands or land shares into the statutory fund of agricultural enterprises and business associations.

The role of the moratorium as well as its economic and social implications will be discussed in more detail in the next chapter of the paper. At this stage, it can be said that the moratorium is, of course, a significant impediment to the development of an agricultural land market in Ukraine. We have already set out some of the arguments in favor of creating a land market which allows

land owners to sell or purchase land. This need is also affected by demographic factors, which should be taken into consideration when defining the future of the land sale moratorium.

At present, there are significant social and age distribution differences among land share owners. Nearly one third of land share owners are the elderly (65 year old and older), who cannot be actively involved in agricultural production activities. Another one third comprises retired people and those of pre-retirement age (55-65 year old). Finally, the remaining part comprises people of the working age, who able to work.

As some studies show, when becoming owners of entitled land shares and obtaining the State Act, each of the above specified groups faces the need to resolve various land ownership-related problems (ROLFES, 2003). The members of the first group are more interested in alienation of their land plots via selling and gaining revenues to secure their old-age. This may be a very reasonable decision taking into account a very low life expectancy in Ukraine. The national average life expectancy is 66 years, whereas for male population it is even lower averaging 63 years.

The second group has a prevailing interest in leasing their land plots out to agricultural enterprises and private family farms, which allows them to keep above the poverty level by obtaining lease payments. The third group is more inclined towards independent farming via the establishment of an agricultural enterprise with hired labor or set a private family farm. Thus, this data may be another argument to amend the legislation so that allow citizens to alienate their land through land market transactions.

Ukrainian law also imposes some restrictions on acquisition of privately owned land by physical or legal entities. These restrictions are mostly connected with the designated use of a parcel and the size of an agricultural land parcel. Some such restrictions include:

- A legal entity cannot acquire land which has been designated for subsidiary farming use; only physical persons are allowed to own such parcels.
- A legal entity, except a private family farm, is not allowed to purchase agricultural land parcels.
- A physical person is not allowed to acquire more than 100 hectares of agricultural land.

The last provision is another restriction set by the Transition Provisions of the Land Code. It will remain in force until 2010. The reasons for this limit is to prevent the creation of vast estates by former collective farm managers or the “*nouveaux rich*” as well as to protect the land reform goals of transferring land to millions of individuals.

While the sale and purchase of agricultural land is currently forbidden, the exchange of land parcels is allowed. This serves as a tool for reallocating land resources during the moratorium period. However, the procedures which define this land transaction are complicated and poorly defined leading to non-transparent mechanisms when new owners do not pay land taxes and the parties involved fail to register such exchanges as required by law (KULINICH, 2003).

The other two types of land transactions currently permitted are inheritance and land gift. As shown on Figure 5, presently inheritance is the most prevalent type of transactions, amounting to over 86% of all land transactions involving the transfer 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. Ukrainian legislation provides for inheritance of land by citizens and

legal entities, though foreign citizens and legal entities must dispose of any inherited agricultural land within one year.

### 3.3.2. Land Leasing

In theory, the land sales market is the most effective way of combining efficient transfers of rights with long-term tenure security (DEININGER, 2003). However, in an environment characterized by market imperfection, especially in the credit and insurance market, land rental markets are “*the second best choice*” to ensure an efficient land use. In any case, land rental markets are likely to develop earlier and more rapidly than land sales markets. International experience indicates that efforts aimed at encouraging land rental markets that are combined with the measures to reduce credit and insurance market imperfections are likely to have much greater benefits than an exclusive concentration on land sales markets. Thus, effective markets for transferring land rights for compensation provide a means in the reallocation these rights to the most productive users (DEININGER, 2003).

In Ukraine, land renting has become a versatile means of transferring land from less to more productive producers. Along with addressing land efficiency issues and raising the overall productivity of agricultural production, leasing can be a stepping stone for tenants to expand their agricultural experience and possibly make the transition to the permanent land ownership at a later stage.

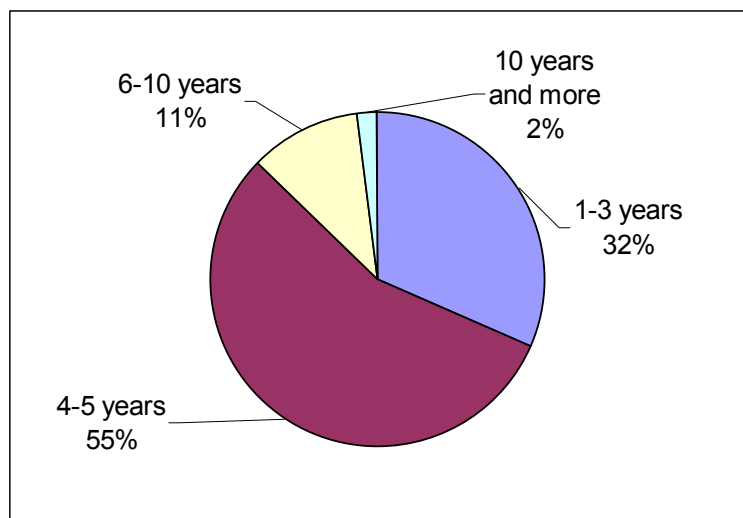
Ukrainian law establishes the following main provisions regarding land rent relations:

- The right to lease land is based on contract, it is limited in time and based on paid possession and use of land for entrepreneurial and other activities.
- Land plots may be leased to citizens and legal entities of Ukraine, foreign citizens and persons without citizenship, foreign legal entities, international associations and organizations and also foreign states.
- A land plot can be leased for short term – not more than 5 years, and for long term – not more than 50 years.
- With the consent of the lessor, a leased land plot or a portion thereof can be transferred by the lessee into the possession and use of another person (subleased).
- Land plots can be leased out by their owners or persons authorized by them to act as their agents.

As mentioned earlier, as a result of the large-scale agricultural land privatization, over 6.8 million former CAE members became landowners. The majority entered into leasehold arrangements with agricultural entities and entrepreneurs. As of January 1, 2004, these owners of land shares concluded 5,235,600 rent contracts, with an area of leased land totaling 20,927,400 hectares.

As seen from Figure 6, at present 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 very insignificant and only amounts to 2% of all contracts.

**Figure 6. Structure of land lease terms, percentage of the total land concluded leases.**



*Source: State Land Resources Committee, 2004*

Long-term leases are not common in Ukraine, which is mostly explained by tenure insecurity. The problem of short-term leases will be discussed later in this paper. At this point, it should be said that leases and the development of a land lease market can be a vehicle for land consolidation. However, land leasing consolidates land in a temporary manner and land use patterns are likely to change because of the temporary nature of leases.

Since land lease contracts tend to be short-term, it is reasonable to assume that there are few incentives for lessees to make long-term investments or even to use rented land effectively. Landowners or long-term lessees are typically concerned about the sustainability of the land as resource that brings a permanent income, the environmental care of land, and protection of soil fertility. The cancellation of the moratorium on land sales may lead to greater consolidation of agricultural land in a more permanent manner, as private farmers purchase land and expand their farm size.

Currently, land lease performs an important social function. In many cases, lease rate payments are the main source of income for rural families. The state statistic shows that the total payments for 2003 land lease contacts were 2,4 billion UAH (455 million USD). Approximately half of this amount was paid to retired peasants. At the same time, some experts argue that the land payment rate remains rather low (SABLUK, 2003). As of January 1, it was 115.2 UAH (21.7 USD) per hectare. At present, this rate is 1.32% of the total value of agricultural land, one hectare being priced at 8,733 UAH (1,648 USD).

Thus, entrusting the land in temporary ownership in return for lease payments makes good economic sense. Currently, the majority of land leasees are with big enterprises although private landowners also have the option of leasing their land to individuals who are actively engaged in farming and seek to increase their holdings. While private individuals may provide a better rent payment, leasing is generally with the reformed agricultural enterprises which are regarded as a more reliable source of lease payments (SABLUK, 2003).

### 3.3.3. Land Mortgage and the System of Land Registration and Assessment

Alongside the provisions for land market transactions, the marketability of land rights is a critical prerequisite for the development of land market institutions. The development of land mortgages is one element of this process. Farming requires external crediting for both short-term and long-term purposes. Agricultural production usually involves long periods of negative cash flow—this occurs during land preparation, planting, cultivation, and harvest—then followed by a peak period of positive cash flow—after harvest periods.

Today, many farm enterprises in Ukraine do not have the liquid resources necessary to cover many variable costs. Moreover, the establishment or expansion of farming operations requires large outlays for capital assets such as land, machinery, livestock, and buildings. These capital outlays are slow maturing investments that provide returns over a period of years. In these conditions, there is a great need for attracting bank loans.

To-date, agricultural credit remains one of the least developed sectors in Ukraine's financial market. One reason for this situation is the legal impossibility of using agricultural land as collateral. Some mortgage specialists argue that based on the normative price of a hectare of agricultural land the volume of Ukraine agricultural mortgage market priced at 141 billion UAH (26.6 billion USD). This amount would suffice to update agricultural enterprises' working capitals and would allow farmers to increase their production outputs (CHAPKO, 2004).

As specified in chapter one, Ukraine has already made the first step to set a legal framework for the development of an agricultural land mortgage market. The Land Code and the law "*On Mortgages*" define the specifics of use of immovable property in credit and economic relations. These laws allow legal and physical entities to use a wide variety of immovable property as collateral: agricultural and non-agricultural land parcels; houses, premises, apartments, or part of a house; summer houses (dachas), garages, or subsistence buildings; an enterprise or its structural subdivision; and other property classified as real estate under Ukrainian legislation.

In general, the Ukrainian mortgage law can be called rather progressive, which incorporates the best western experience and the experience of neighboring countries. In particular, it ensures the right of mortgagor, which includes: possess and use collateral in accordance with its designation; obtain income from the collateral; execute prior principal obligations if such execution does not contradict the essence of said obligations; transfer collateral to a later hypothecation; transfer the title to principal and hypothecation obligations to a new owner with notarized written consent of the mortgagee; and rent out collateral or allow it to be used without charge by a third party with notarized written consent of the mortgagee. The mortgagor may also conclude secondary mortgages, unless the mortgage agreement states otherwise.

However, the current moratorium on land sales makes impossible to use agricultural lands as collateral. Along with that, the law restricts the aims for which agricultural land can be pledged. Specifically, it says that agricultural land can be mortgaged only for buying additional land, machinery, and inputs, and for expenditures related to land protection and development.

Another restriction imposed on land mortgage operations concerns foreclosure. The Code states that foreclosure on land plots designated for commodity agricultural production shall be permitted only in the case when the owners of such plots have no other property on which foreclosure is possible. This clause in the law intends to provide special protection for farmers, which in the condition of an undeveloped mortgage market may be necessary or even

appropriate. This protection was a compromise to meet all, and on many occasions, opposing political views.

However, imposing such a strict prohibition on foreclosure can lead to the situation when lenders see little value in agricultural land as an object of collateral and thus this provision may eventually have a more detrimental effect for farmers rather than lenders.

The further development of a mortgage market, as well as agricultural land market as a whole, depends on a number of other factors. One is the introduction of a sound registration system. The formation of an effective registration and cadastre system is a safeguard for land ownership, which is instrumental for speeding up land market transactions and generally for advancing land relations in the nation as a whole. Along with this, an effective registration system performs a number of other important functions. In particular, it is instrumental in:

- raising the level of state guarantees over immovable property;
- creating of a efficient system of taxation of immovable property and enhancing the effectiveness of taxation policy;
- promoting creditor's security and development of investing activities;
- allowing authorities to monitor the flow of market of immovable property.

In accordance with certain studies in countries with transitional economies, in order to encourage the development of real estate markets, the cadastre and registration system has to possess the following basic attributes: It has to provide accurate information, render reliable and fast services at low cost, and to be simple to understand for the general public (PAGIOLA, 1999).

There are two main types of land registration systems: "*registration of title*" and "*registration of deed*". In the title registration system, legally-recognized rights to land arise when those rights are entered (registered) into the land records system (the registry) which is maintained by the designated authority. The register records "*a final, complete, and current judgment*", i.e. it shows the actual state of ownership and lists all encumbrances (easements, liens, mortgages, leases, covenants, and the like) to which that title is subject, rather than just providing evidence of ownership (PAGIOLA, 1999). In this case, the state typically guarantees and insures the accuracy of the information in the title registry.

In contrast to the system of title registration, the registration of deed, a written conveyance of land from the grantor to the recipient, is the legal process that gives rise to rights to land. The recording of a deed at the local records office provides notice of rights to land, but it does not give rise to rights in the same way as the title registration system. The deed registration system is used in the United States, while title registration systems are the norm throughout Europe, Australia, and most of Canada.

The majority of land administration specialists agree that the registration of titles is superior to all present systems of title protection based upon registration of deeds land recordation (PROSTERMAN and HANSTAD, 2003). Title registration makes land titles more reliable, and is simpler, more logical, and less costly. For these reasons, land registration systems that do not provide conclusive evidence of title can impede the land registration process.

When adopting the Land Code of 1990, Ukraine opted for the title registration approach. However, the Ukrainian land registration legislation is still under development, and in the meantime has failed to address many key legal issues, such as establishing a standardized system, or has it done in a rudimentary manner. Pursuant to the new Land Code, ownership rights to land come into effect once a formal title document is issued and undergoes state



registration. Lease rights come into effect once the lease contract is concluded and registered. However, these regulations do not concern the transactions concluded before the Code's adoption. This means that pre-existing rights remain unprotected.

Currently, there is no uniform system of registration of the rights in immovable property in Ukraine.. Registration is conducted by villages, settlement and town local councils (registration of the rights to ownership of land, the right to use land and land lease agreements) and executive councils of local councils (registration of purchase-sale agreements on residential houses, etc.). Under this system, only the legal succession documents and certain technical and economic characteristics of real estate are registered. The actual legal status of property is not verified, nor changes with land property are recorded in the system.

In addition, land and buildings are not registered in a unified manner and there is no centralized storage of land registration information. Instead, a departmental approach to land right registration prevails. In addition to these difficulties, at present the general public has no access to the database containing registered land rights.

Finally, the development of a full-fledged land market depends directly on effective land appraisal mechanisms. The appraisal of land allows land market participants and state authorities to address a number of important issues such as:

- determination of the land tax;
- determination of the rental for land parcels in state and communal ownership;
- determination of state duty in the course of exchange, inheritance or gifting of land parcels under the law;
- determination of certain losses in the agricultural and foresting industry;
- determination of the investment contribution to the completion of an investment project for land improvements;
- determination of the price of land parcels in state and communal ownership, in case they are part of the statutory fund of an agricultural enterprise;
- monitoring of the price of land parcels and the associated rights to use land parcels in the course of accounting, as prescribed by the legislation of Ukraine;

In countries with a developed and effectively functioning land markets, the practice of agricultural land appraisal usually includes three main components: determination of soil values, economic land appraisal, and pecuniary land appraisal. While not offering a detailed description of these components nevertheless, we should mention that each fulfills its particular objectives. The information obtained from the soil value determination, for example, is part of the state land cadastre and provides the grounds to carry out the economic appraisal of agricultural land and determine the environmental suitability of the soil for crop growing and, in the course of determination various losses in the agricultural and foresting industry.

The information obtained from the economic appraisal of land offers a basis for carrying out the normative pecuniary appraisal of land parcels, analyzing the efficiency of land use compared to other natural resources and determination of the economic suitability of agricultural land for crop growth. The pecuniary appraisal is a primary tool to carry out land market transactions since it provides the monetary value of agricultural lands.

The recently adopted land appraisal legislation in Ukraine is based on the above mentioned provisions. It incorporates the three aforementioned components to ensure an objective land appraisal. However, in the conditions of the land moratorium, the proposed land appraisal procedures are unable to use a market element in the appraisal, and in particular, the market

value of agricultural lands. This situation explains the fact that currently there are significant discrepancies between normative-officially defined prices by the Cabinet of Ministers of Ukraine-and actual prices. This drawback and a number of others will be considered in the next section of this paper.

## **4. MAIN CHALLENGES AND CAVEATS IN LAND MARKET DEVELOPMENT**

### **4.1. The Moratorium on the Sale of Agricultural Land**

The private right to land assumes landowners' rights to maintain, possess, and dispose the land at their will. The imposition of restrictions on land transferability, either temporary or permanent ones, makes this right incomplete and may create substantial impediments to the development of an efficient full-fledged land market. As argued earlier, land sale and purchase can become a direct means for land reallocations that ensures the flow of resources from less efficient to more efficient users and, which in turn, may create the grounds for rises overall efficiency in agricultural production.

The Constitution of Ukraine and the Ukrainian land law clearly authorize the private ownership of land by citizens and legal entities. Nevertheless, the 2001 Land Code imposed a moratorium on all agricultural land sales. According to Kobylanskyi, the moratorium was a political compromise to obtain support from conservative political circles (KOBLYANSKYI, 2001). Their argument was that under non-transparent procedures and at artificially low prices agricultural land, once subject to sale, would immediately end up into the hands of large land latifundiums.

In Ukraine with its relatively long history of state monopoly on land resources, it could be argued that a temporary moratorium could be partially justified from economic and social perspectives. Psychologically, people needed a delay period to adjust to the new reality before making an irrevocable decision to sell their land. The delay could allow new landowners to acquire better knowledge of their asset and thus prevent the quick undervalued sell-offs that can characterize environments where markets work imperfectly. The previous experience of mass privatization of state property, when many recipients did not recognize the long-term value of the new asset and rapidly sold them to obtain cash, might be another argument in favor of the moratorium (PUHACHEV, 2004)<sup>2</sup>.

An additional argument in favor of the moratorium was that the delay could provide the country with the time needed to create a regulatory system under which the land market can function, i.e. to develop and adopt the necessary laws that are envisioned by the Land Code (laws on land cadastre, land market, and a number of others).

Indeed as a policy measure the moratorium may be both effective and justifiable as a one-off action introduced for a short period. At present, under pressure from both communist and nationalists lobbies, the Ukrainian Parliament intends to expand the moratorium till 2010. These plans are creating a round of new debates concerning the consequences of prolonging the moratorium on land sales.

One principal argument put forward by proponents of moratorium prolongation is the fact that almost half of the land share owners have not obtained the State Act. As stated earlier, 47% of rural residents have not exchanged their land share certificates for State Acts. Until now the Ukrainian government has not done its best to create all the necessary conditions for an effective transparent land market in rural areas and therefore it would be ill advised to consider lifting the ban prematurely.

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<sup>2</sup> Interview with Mykola Puhachov, senior research fellow at the Ukraine Agricultural Policy for Human Development Project of the United Nations Development Program.

Nevertheless, even taking into consideration these aforementioned arguments as fair and legitimate, it would argue that the prolongation of the moratorium will have a number of negative effects.

First, the prohibition of land sales can be regarded as the most direct and onerous impediment to the private right, which transgresses the provision of the Constitution and the spirit of the reforms that have been conducted in Ukraine for the last decade.

Second, if land cannot be sold and purchased legally, the land market cannot function to its full extent. This statement is shared by the majority of land market experts, and this is an official position of the State Committee on Land Resources of Ukraine (ZMUTSKI, 2003). Land sale and purchase transactions are prerequisites for growth in investments in the agricultural sector, and in particular, for the development of an agricultural mortgage market and long-term crediting.

Third, the right to sell land can allow for consolidation on a more permanent basis and thereby to promote more productive land use. Nowadays, short-term land lease do not create any stimulus for leasees to maintain soil fertility. This, in turn, can lead to serious environmental issues such as soil erosion and degradation.

Finally, the established land moratorium may have detrimental social effects. As mentioned, a significant portion of the rural population that obtained land share certificates is elderly or of pre-retirement age, who are not able to work at land. The sale of their land shares could provide them with the needed means for living as an addition for their meager pensions.

The experience of other transition countries shows that a moratorium on land sales is an extreme policy measure of a temporary character. It does not always bring the expected results. At the beginning of the reform process the Bulgarian law prohibited citizens who received land from a state or municipal land fund from transferring that land for a ten year period. The three Baltic countries also initially had five-year moratoria on agricultural land sales. However, when later having recognized that such prohibitions were slowing down the reform process, governments of these countries cancelled such a moratorium. Similarly, the Moldovan constitutional court invalidated a six-year moratorium on sales of agricultural land (GIOVARELLI and BLEDSOE, 2001).

Additionally, it should be said that countries with developed market economies have no blanket prohibitions on agricultural land sales. On the contrary, one of the reasons that agricultural productivity in these countries are so high is because the market mechanism allows for the transfer of land to more productive users, while at the same time enabling the seller to sell his/her land for an amount that often allows him/her to recoup investment expenditures in the land (DEININGER, 2003).

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.

The restraint also fails to recognize that buyers of agricultural land have a strong self-interest in treating land effectively, since they face directly all negative outcomes and financial risk of imprudent land management. In the market economy, private producers rather than government

decide themselves if they are capable of conducting profitable farming or if they need to acquire additional knowledge and skills to run a farming business.

In addition to the aforementioned restrictions, the Ukrainian land law requires that land be used in accordance with its designated purpose. Citizens can own land parcels for uses designated in the Land Code of Ukraine, namely: for private farming, residential construction and the servicing of housing, dachas and for garage construction, gardening, and subsidiary farming activities. The above list of designated uses is strict and is not subject to wide interpretation. These strict designated land use policies impede the transfer of land from one category into another.

#### **4.2. Inflexible Land Use Regulations**

Effective land use regulations require a balancing of public interests and needs with private rights. To the regret of many land specialists and practitioners, Ukraine has inherited the legacy of a socialist state with a strong planning economy with an omnipresent role for state bodies. It has failed to ensure a reasonable balance between private and public interests (PIKALOV, 2004)<sup>3</sup>. The adopted land legislation, and in particular the Land Code (Section II, Article 2), do not clearly define the limits of state regulation of private land use and provide the state too much power to terminate private land rights.

This primarily concerns the state power to acquire privately owned land for public purposes, to control the land purpose use and the rational, scientifically sound application of agronomic practices. Such state power established regulatory constraints, which are overly broad and have a restrictive character. They may present a significant threat to private tenure security.

Furthermore, although the Land Code contains numerous provisions to prevent negative effects of detrimental land management, it does not clearly delineate the problems to be regulated by state agencies and the cases to be addressed on a voluntary basis and at the discretion of private owners. Land erosion and soil degradation issues are some examples of such cases. This ambiguity almost certainly leads to over-regulation of land relations, and casts doubts on the strong intentions voiced by the Ukrainian authorities to develop a land market.

The primary authority that defines state power to withdraw privately owned land for public purposes is the Constitution of Ukraine. Article 41 states that no person shall be deprived of the right of ownership except pursuant to reasons of social necessity, following procedures established by law and through the prior and complete reimbursement of the land's value. The forced alienation of private property with subsequent complete reimbursement of their value shall only be allowed under conditions of martial law or state of emergency.

Although the Constitution provides general mechanisms for the protection of private landowners, such as requiring full compensation before ownership rights are withdrawn, it does not elaborate on the concept of "*social necessity*". The land legislation, which was adopted at a later stage in the land reforms, significantly amended the strong constitutional language. The Land Code, in particular, permits state acquisition of private land for purposes that go beyond "*social necessity*". It legitimizes state acquisition for so-called "*public purposes*", which include: for the use by other private parties, for agricultural production, for residential construction, and for industrial enterprises and other non-agricultural needs.

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<sup>3</sup> Interview with Eduard Pikalov, legal advisor at the Agribusiness Development Project of the International Finance Corporation.

Thus, the authority of government bodies in Ukraine to use sovereign power to terminate private land rights is too broad, expansive and too easily invoked. The law does not adequately define the essential public needs that justify the use of the significant power and does not specify the mechanisms that ensure a fair compensation for expropriated land ownership.

Another constraint on land use is the requirement that land plots are used for their designated purposes and that any transaction with such land is in strict accordance with the purpose classification. Any violation of these purpose/classification use rules can result in the voiding of the transaction and even depriving the owner of the right to continued ownership of the land. The Land Code provides that the classification of privately owned land can be changed at the request of the owner in accordance with a special government procedure. However, though this procedure has been developed it is not yet been officially adopted.

Many land relations practitioners tend to think that the issue of agricultural land re-classification is unlikely to be addressed in the near future. The conservative wing of the Ukrainian parliament (the communists and the agrarian lobbies that represent big former state farms) and the Ministry of Agricultural Policy are strong opponents of the right to convert agricultural to other purposes (KOBLYANSKYI, 2002). This inability of the Ukrainian government to facilitate agricultural land conversion complicates even more the issue of degraded and low-productive lands.

This prohibition fails to recognize changing needs of agricultural operations and rural communities and slows down appropriate non-agricultural growth and development. It does not factor and balance a variety of competing factors such as urbanization pressure, changes in the national demographic makeup, population density, number of arable lands per capita, and food security issues.

Today the Ukrainian agricultural sector employs 13% of the national work force, which is well above than in developed countries. Further more, at present the share of agricultural land totals over 80% in the national land resources. This intensive agricultural production leads to a number of significant environmental problems, which will be further elaborated in this section. Thus, on many occasions this inflexible land use regulations may prevent landowners from using land for best possible economic activities and profit from it.

As mentioned earlier, Ukrainian laws define land as a national wealth which has to be treated rationally and protected from potential harms that are caused by unsound production activities. In particular, the Constitution includes the principle that the use of private land property shall not lead to the deterioration of the environmental situation and natural characteristics of soils. The Land Code also requires that private landowners farm their land in compliance with sound ecological and soil protection practices. It also says that they must cultivate their land continuously, without a break of more than one year in active farming. If these conditions are not met, the land can be taken away from its rightful owner by administrative actions of local authorities.

These administrative sanctions leading to land confiscation is a breach of the constitutional rights of private ownership on land and do not go in line with market mechanisms of land management. The requirements that land has to be used "rationally", and owners have to raise soil quality/productivity are an example of land use requirement that is worded too broadly in terms of the obligation it imposes. They are too broad since they do not provide any standards or definitions of "*rational land management*". They are overly restrictive since they intend to address in a strict administrative manner, problems whose resolutions are in the best interests of the landowners themselves. The cost of soil degradation is usually absorbed by farmers

themselves through their overall production costs. State interference in private agricultural production to ensure the proper soil quality management is regarded as unnecessary and undesirable (DEININGER, 2003).

Finally, the law mandates that farmland has to be continuously used, in case of its idling beyond a certain period it can be confiscated. This provision reflects a subtle distrust of market forces, and a belief that state regulatory agencies can exercise better judgment over the use of land than private right-holders. While it may be agronomical or economically sensible for a farmer to leave a portion of his/her land temporarily fallow or idle, the threats of fines and confiscation can impede private parties from making such a decision. Under such conditions there is a threat that decision-makers at state regulatory bodies such as local departments of agriculture will resort to old soviet methods of the collective agricultural production while dictating private farmers what they have to produce and in which quantity.

Along with its restrictive character and the vague language of numerous provisions, Ukrainian legislation tends to impose very severe penalties in the case of land mismanagement, including the termination of land rights, and do this in a very quick manner. The Land Code contains a 60-day regime of orders to correct a violation, after which administrative sanctions may follow. If the problem is not corrected, then the procedure of private rights termination may be invoked. Unlike other countries, Ukrainian law does not proceed from the position that termination of private property rights should occur only after all alternative penalties have been exhaustively pursued.

As pointed out by some experts, this termination is “*a ready to hand penalty*” for a whole myriad of land legislation violations, including some minor ones. Arguably, it stems from a subjectivist approach and ingrained in many state policymakers skepticism to trust the private sector to properly use and manage land (YANOV, 2003). Besides, the law does not provide for all mechanisms that would ensure a faire compensation for the loss of terminated rights.

This lack of clarity and the restrictive character of the Ukrainian law create fruitful grounds for state bureaucracies to assert undue regulatory authorities, which is a detriment of private land rights. The vaguely worded regulatory requirements may result in arbitrary enforcements applied by national and local officials. As a result, they may entail some reluctance and distrust of individuals to risk acquiring private land rights in anticipation of possible arbitrary enforcement. 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.

### **4.3. The Threats of Land Fragmentation and its Consequences**

While it is undoubtedly a great stride in transforming land relations, the break up of the state monopoly of land ownership and the transfer of land parcels into private hands, may entail a potential issue of land fragmentation. As a result of the land reforms the number of landowners

has dramatically increased. The lands of 11,000 collective agricultural enterprises were divided into nearly 7 million land parcels. The average size of a parcel is 4 hectares, and in the western regions, which have a scarcity of spare land, the average parcel size is even smaller at 1.2 hectares.

Alongside, 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 an additional living. The size of such a household is extremely small, averaging 0.31 hectares. This makes very problematic to these households to farm their land in accordance with the rules of rational agronomic practices.

Thus, the breaking up of land, although generally a positive process, caused a number of new problems. One of these is the problem of private land ownership formalization. To obtain officially the State Act on land private ownership, each parcel should be properly surveyed and registered by specialists such as surveyors, notaries, and lawyers. This process has proved to be both time-consuming and fairly expensive, and may become a real burden for small households.

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.

An excessive land fragmentation also acts as an impediment to attract investment resources for agricultural activities. Besides, the inability of many individual household owners to conduct commercial production and their over reliance on “*subsistence agriculture*” may ultimately lead to out-migration and the abandonment of farmland, especially in areas which are distant to markets (FAO, LAND TENURE STUDIES, 2003).

In general, the Ukrainian land law does not encourage a superfluous break up of lands into small land parcels. As a rule, land shares are allocated in the form of one land parcel. However, upon request of the owner, he/she may receive land in two parcels, each having a different agricultural designation. For example, one parcel could be designated as arable crop land, and the other for orchard, hayfield or pasture.

One way to deal with the land fragmentation issue is to encourage further reallocation of land, which will lead to its consolidation, will promote more efficient land use, and will, ultimately, facilitate land market development. Land consolidation occurring through different means, the legal mechanisms of the land market begin to function (e.g., lease contracts, transfer of rights to land through inheritance, gifts, etc.).

The adoption in 2001 of the new Land Code represents significant progress in establishing the legal base under which private citizens and legal entities may consolidate agricultural lands. The Land Code permits consolidation by means of lease; however, it limits the land in the private ownership of physical persons by 100 hectares. This is a temporary provision will remain in force till 2010.

The experience of many countries with transitional economy shows that once property rights of private individuals are established, there is a tendency to use the land more effectively (FAO, LAND TENURE STUDIES, 2003). Consequently, this initial fragmentation of land ownership will result in the consolidation of land into the hands of individuals most capable of using it



productively to create wealth. Landowners tend to consolidate land in order to invest their capital in the most profitable way, and to transfer their rights to land if they cannot use it in a profitable manner.

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.

#### **4.4. 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 (PUGACHEV, 2004).

The monopolistic position of these new enterprises has had a negative effect on the lease payment rates. Despite the Ukrainian government's numerous attempts to increase the amount of lease payments via administrative methods, rural residents lease their land parcels to the former CAE for 1-2% of their total value. This is lower as compared with land lease payments paid by private family which average 3-5% of the leased land parcel value. Thus, one of the key tasks in rural land reforms remains the need to break the monopoly on the land parcels leasing established by the former CAE.

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. The Ukrainian land legislation limits the maximum land lease period to 50 years, and so far has failed to make feasible longer-term contracts. This situation has a rather detrimental effect on current land use practices.

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. The practice shows that landowners or long-term lessees are more inclined to be concern about sustainability of their land as a resource that brings them a permanent income; they tend to conduct more environmentally friendly farming, and protect soil fertility (PROSTERMAN and HANSTAD, 2001).

As the share of agricultural production in GDP is gradually being reduced and more non-farm income opportunities emerge, more and more farm households, especially those with low agricultural skills, will be taking up non-agricultural employment. Unless the markets for land rental work well, this is likely to lead to the issue of land under-utilization.

The conducted literature analysis shows that many scholars on land relations are inclined to think that in comparison with the land sale market rental markets are more likely to experience problems of investment disincentives and productive inefficiency (DEININGER, 2003). Ukraine follows this case as well (PUCACHEV, 2004). Tenants who do not have the comprehensive property rights to land tend to exert less effort in making investments or ensuring long-term

sustainability unless leases are sufficiently long and there are compensation mechanisms for any improvements at the end of the rental term.

As some land market practitioners argue, presently, the land rental market in Ukraine is associated with lack of transparency, high administrative costs, and rent seeking practices. The need to renew and register periodically short-term contacts provides incentives for local authorities to engage in rent seeking activities. This, in turn, substantially increases the costs of such transactions (MERKULOVA, 2004)<sup>4</sup>.

#### **4.5. Incomplete and Inconsistent Legal and Institutional Frameworks**

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

These institutions try to expand their access to state funds and international credits provided to speed up land reforms. For example, the State Land Resources Committee and the Ministry of Justice of Ukraine adopt different approaches in the development of a national registry and cadastre system, which was supported by a World Bank's loan. The Committee and the Ministry have developed their own versions of the relevant underpinnings and prescribed their agencies a supervisory role in the land administration process. As a result of this conflict and these state institutions' lobbying activities in the policymaking process, Ukraine still lacks a clear-cut strategy for the development of state registry and cadastre systems.

This conflict of interests in decision-making process has a negative effect on the whole legal framework governing land relations. It is characterized by numerous inconsistencies and many provisions inhibit the development of the land market. 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.

The Land Code envisioned the adaptation of approximately 30 new laws and normative documents. They have to specify and make fully operational some provisions and clauses of the Code. In particular, according to the Code, 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*", and a number of others. The majority of these documents is either undeveloped or remain on the stage of their agreement with various state bodies responsible for land and agrarian reforms.

Another problem lies in the Land Code itself. Although the Land Code has resolved many previous inconsistencies in the land law, it created some new ones. For example, article 81 of the Land Code which defines the private land ownership rights of Ukrainian legal entities and physical persons, is formulated in such a way that NGOs, religious organizations, and those who use land for non-commercial activities have no right to own land. Many of such inconsistencies,

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<sup>4</sup> Interview with Olena Mirkulova, legal specialist at the Ukraine Agribusiness Development Project of the International Finance Corporation.

though being introduced not deliberately, exist because of the tendency of state institutions to over-draft laws and regulatory acts (KULINICH, 2004)<sup>5</sup>.

Speaking about the drawbacks of the Ukrainian land law, it is necessary to say about its inconsistency with international law, and in particular, with the land law of developed countries. A fundamental difference lies in a different treatment of agricultural lands as market commodity. In countries of the European Union and North America land is a fully marketable commodity, which can be sold and purchased. In Ukraine, the law imposed the moratorium on these kinds of land market transactions, which inhibits investments, including foreign ones, into the agricultural sector.

There are also some other differences, which makes the Ukrainian land legislation stand apart. For example, until recently the Ukrainian land legislation has regarded land plots separately from buildings and improvements. This means the ownership of a construction on a land plot does not automatically imply the ownership of land.

Along with the all above said, until now the process of registration of different land transactions (i.e., land right inheritance, land gift and exchange) remain unified. This makes it more challenging to track down all changes with ownership of land property. These are a number of other differences that do not support Ukraine's intentions to integrate into the European community and may become an impediment on the road to attracting foreign investments into the country.

#### **4.6. Irrational Land Use Practices and Environmental Issues**

When initiated in the early 1990s, one of the land reform goals was to prevent any further deterioration of the ecological conditions in Ukraine and achieve an environmental balance. However, as the practice of the last decade has shown, the land reform has been carried out without factoring ecological consequences, and on many occasions even ignoring them (SEMENA, 2002).

As mentioned before, all agricultural lands of the former CAEs were shared among the members of these enterprises. As a result, virtually all such lands, including degraded land and the land that had to be withdrawn from production use, was distributed to the former CAE members. This process had various negative effects on the ecological state of agricultural lands. Currently 14.8 % of the total surface area of agricultural land is affected by erosion, 1.5 % is subject to redundant water, and over 4% became salinized and brackish land. By Ukrainian specialists' calculations, over 4.8 million hectares of degraded and low-productive agricultural lands have to be withdrawn from active agricultural production for land treatment works (TRETIAK, 2003).

The restructuring of the sector of collective enterprises, the active development of private family farming and agricultural subsidiary activities have led to the creation of numerous landowners: 19,739 new agricultural enterprises, 43,403 private family farms, and over 6.5 million subsidiary plots. Agricultural practices in many enterprises have a distinctively extensive character, when increased output is achieved mostly due to an expansion of arable land instead of the growth of yields. The following figures are very illustrative of the significant pressure that is put on agricultural lands: Presently, arable lands account for nearly 80% of all agricultural lands in Ukraine. This number is even higher in private family farms, where the ratio of arable lands to

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<sup>5</sup> Interview with Pavlo Kulinich, senior legal advisor at the Ukraine Land Titling Initiative Project administered by the United States Agency for International Development.

land devoted to crop production and fruit and vegetable cultivation amounts to 93% of the total farm area.

According to Tretiak, the ratios of arable land, natural pasturelands, and forested areas are unbalanced, something negative impact on the stability of the agricultural landscape. (TRETIK, 2003). As a result, the quality of agricultural lands has significantly deteriorated. For the last decade the average content of humus in the soils of Ukraine has fallen from 3.5% to 3.2%. Every year 11 million tones of humus, 0.5 million tons of nitrogen, 0.4 million tons of phosphorus and 0.7 million tons of potassium are washed away together with soil. The extensive agricultural practices have led to a significant decrease in the soil's fertility, the loss of its lumpy-granular structure which has a, water permeability, and aeration capacities due to its over-consolidation, which has negative environmental implications.

Along with the extensive and sometimes harmful agricultural activities of the new numerous landowners, the practice of short-term land leasing is another factor that does not stimulate leasees to adhere to sustainable agronomic practices such as agricultural crop rotations. This leads to a gradual degradation of soil productive qualities.

#### **4.7. Undeveloped Land Market Infrastructure**

The introduction of the private right to land alone does not lead itself to the development of a properly functioning land market. In order for the latter to occur, it is necessary to develop all of the necessary elements of the land market infrastructure, in particular, the presence of land mortgage and land registry institutions land appraisers, lawyers, and real estate brokers. Presently, the poorly developed land market institutions in Ukraine is arguably the consequence of delays with formalizing the right to private landownership and the earlier discussed restrictions in the land legislation.

The need to create a developed land mortgage market is hastened by farmers' needs to attract external financial resources to cover their variable costs and expand their production. Although Ukraine has passed a law "*On Mortgages*" that lays the ground for agricultural mortgaging, the current moratorium on land sales prevents these lands being used as collateral. However, as many land experts argue, even if this moratorium is lifted up, there are other constraints that impede the development of a sound agricultural land mortgage market (CHAPKO, SEPEROVICH, PUHACHEV, 2004)<sup>6</sup>.

Many representatives of the agricultural crediting institutions argue that, at present, the commercial banks and the other lenders are not ready to use agricultural land as collateral. The real market value of agricultural lands is yet to be defined and the foreclosure procedures do not guarantee that a lender can obtain the pledged land in the case of default. Many commercial lenders maintain that in order for them to move into mortgage lending and offer credits at reasonable interest there is a need to introduce special incentives and guarantees (NAHORNIY, 2004)<sup>7</sup>. Guarantees from the state to compensate agricultural loan defaults when the law does not permit foreclosures are one example of such incentives. However, taking in account the scarcity of state funds, it looks very unlikely that the government will be ready to allot the funds for such purposes.

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<sup>6</sup> Interview with Inna Chapko, Mykola Puhachov, and Natalia Seperovich, research fellows at the Ukraine Agricultural Policy for Human Development Project of the United Nations Development Program.

<sup>7</sup> Interview with Ivan Nahorniy, Vice President of NADRA Bank.

It is necessary to say that even if the moratorium is cancelled, overly restrictive rules protecting mortgagors and fears of possible long periods between credit defaults and foreclosure sales will prompt credit market operators could charge high interest rates to cover associated risks. In this case, such loans will be expensive and inaccessible for farmers. Besides, many financial market insiders argue than today many banks are very reluctant to use agricultural lands for the purposes of long-term crediting, which does not allow for substantial reduction of the interest rate on such loans as compared to other loans' interest rate (VARODI, NAHORNIY, CHAPKO, 2004)<sup>8</sup>.

The establishment of a state mortgage bank could be one solution to address the agricultural mortgage problem. However, regardless of the fact that the bill "*On State Mortgage Bank*" has been developed, many agree that there is a long way to go to establish such an institution (NAGORNIY, 2004). Today there is no consensus about the status and functions of such an institution. Besides, as earlier mentioned, it hardly possible that the government will find enough funds to finance state mortgage bank programs.

Another problem relevant to agricultural mortgaging is the existence of various contradictions in the law. Both the Land Code and the law "*On Mortgages*" provide the groundwork for agricultural mortgage operations. However, the laws define differently the purpose of agricultural mortgage and establish different rules to initiate land forecloses. This consistence may provoke arbitrary applications of the mortgage law.

The development of a sound land market infrastructure is impossible without a strong land registration system, which has to secure 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.

The experience of other countries shows that inconsistencies or unnecessary delays in the land registration process become a serious impediment to land market development. Slow registration and titling in the Baltic countries (related to the difficulties in the restitution process) has been identified as one of the two biggest obstacles that constrain the development of a well-functioning land market (GIOVARELLI and BLEDSOE, 2001).

The present land registration system in Ukraine is rudimentary and problematic and does not provide for the protection of owners' rights. Currently, local village councils are responsible for the land registration process and all land transactions are recorded in so- called "*register books*". There are a number of such registration books, which are as follows:

- Register Book of State Acts on the Right of Ownership to Land;
- Register Book of State Acts on the Right to Permanent Land Use;
- Register Book of State Acts on the Right to Temporary Land Use (Including Lease Terms); and
- State Register Book of Land Lease Agreements.

Thus, 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. This means if a person needs to know the legal status of a land parcel,

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<sup>8</sup> Interview with Oksana Varodi, rural credit specialist at the Ukraine Agribusiness Development Project of the International Finance Corporation.

he/she needs not only to search this information in different registration books, but also to know the chronology of the land parcel transactions.

Presently, the registration process of landownership and the property located on this land parcel is carried out separately by two different institutions: local village councils and bureaus of technical inventories. This leads to the situation when different registers of various types of rights to immovable property are incompatible and may lead to legal conflict. For examples, in the case of land mortgage, based on the register book system, the lender obtains information about a land parcel, but not about the constructions located on this plot. This incomplete data may cause serious difficulties in alienation of this land in case of its foreclosure.

It is not difficult to predict that as the land market develops, and more land entries are introduced in the register books, it will be even more problematic for the land register system to carry out its functions in the proper way.

In order to overhaul the present land registration process and introduce a uniform land registration system, there is need to pass the laws “*On Land Registration*” and “*On the State Land Cadastre*”. The new Land Code of 2001 did not address the land registry process. Though it referred to the registration carried out through the land books, it defined the registration system in the context of cadastral activities, and introduced no changes to make this system more efficient.

The lack of legal underpinnings to regulate the land registration process is partially explained by an on-going institutional conflict between the State Land Resources Committee and the Ministry of Justice, which have competing objectives in the land administrative system. The government has responded so far slowly and inefficiently in resolving this institutional competition, and has made no concrete steps to create a single unit with responsibility for the design and implementation of a land administration system (YANOV, 2003).

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.

#### **4.8. Absence of State Information Campaign and Education Programs**

One of the goals of the land reforms in Ukraine is to create a strong class of private landowners. (DANILENKO, 2002). Supposedly, the presence of these landowners will ensure the irrevocability of the initiated social and economic changes in land relations. Unfortunately, current landowners do not always take an active part in shaping land reforms and do not demonstrate enough support for the introduction of the new forms of ownership.

In our opinion, 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. As some sociological surveys demonstrate, today there are numerous prejudices and stereotypes among rural residents regarding private land ownership and the right to sell agricultural lands (IFC, 2002). 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.

In the situation of government inaction to make stakeholders more informed about their rights and obligations, this task could become an agenda for NGOs. However, the non-governmental organization sector remains weak and lacks the needed funds. Present private associations related to land sales and landowners rights are in their infancy, and need greater support and guidance. In recent years there have been a number of projects aimed at advancing rural residents' awareness on land rights. However, the majority of such institutions are funded through international organizations (the United State Agency for International Development, the World Bank, European Union TACIS Program, and other donors organizations). This makes them more financially vulnerable, which, in turn negatively affects their sustainability.

The aforementioned problems are also rooted in the specifics of the policymaking process in Ukraine. This is characterized by the absence of a policy evaluation stage. Only on very rare occasions does the Ukrainian government apply to local constituencies for feedback on a policy initiative. This makes it practically impossible to fine tune and correct implemented policy programs. With no feedback obtained from local constituencies, the government cannot influence public and to shape this opinion in favor of a private land market.

## **5. The Development of Land Relations at the Regional Level: Empirical Results**

### **5.1. Survey Methodology, Objectives, and Goals**

The land reform has brought about significant economic, social and institutional changes in Ukraine. Notwithstanding the existing impediments discussed in previous chapters, the reorganization of the corporate farm sector and the introduction of the right to private land ownership had a significant impact on the attitudes and expectations of land relations participants: private family farmers, members of reformed agricultural enterprises and rural residents as a whole. In order to study the specifics of the development of the land market at regional level and obtain empirical evidence concerning the arguments and reasoning provided in the previous chapters, a field survey was conducted.

The survey had the following objectives:

- Obtain first-hand data on the results of land reforms in Ukraine.
- Investigate the scope of and significance of particular outcomes of the land reforms, including existing challenges and barriers in the development of the land market.
- Develop a better understanding of how land relations issues differ between private family farmers and employees from reformed agricultural enterprises.
- To provide data that could then be incorporated in the development of policy recommendations.

The sample consisted of 400 respondents, of whom 293 were managers of private family farms and 107 were employees of reformed agricultural enterprises. The latter included not only those directly involved into farming, but also workers of social institutions such school, hospitals, kindergartens that are kept on the books of the reformed farms. In this way, the survey respondent base was widened to collected information from agricultural producers and the wider rural population. The survey sample structure corresponds to the share of these respondents (private family farmers and agricultural workers from reformed enterprises) in the general population.

The survey is nationwide, covering all regions of Ukraine represented by the following oblasts: Kherson (South), Zhytomyr (North), Donetsk (East), Ivano-Frankivsk (West) and Poltava (Center). The survey was conducted by means of face-to-face interviews, on the basis of semi-structured questionnaire with both closed and open-ended questions. Based on data from the State Statistical Committee regarding the quantities of the surveyed types of agricultural enterprises as of June 1, 2004, the sample error is  $\pm 4,9\%$ .

Before analyzing specific survey data, it is necessary to say that this survey reveals significant differences between private family farms and reformed enterprises. This, in particular, concerns the formalization of private land ownership, land use and land lease practices, farmers' attitudes towards futures prospects of land market development and some other issues.

This can be explained by the existing organizational, socio-economic, and institutional differences of these two categories of respondents. As mentioned earlier, private family farms and agricultural enterprises were assigned different roles in the course of the land reform. On some occasions, lands relations and agribusiness operations of these two types of farms are regulated by different legal regimes. Although individual household plot owners are part of the land relations in the rural areas, the survey did not consider them as a given organizational entity since the majority of household owners are members of reformed agricultural enterprises. In this case, the survey could end up with an overlap in survey participants.



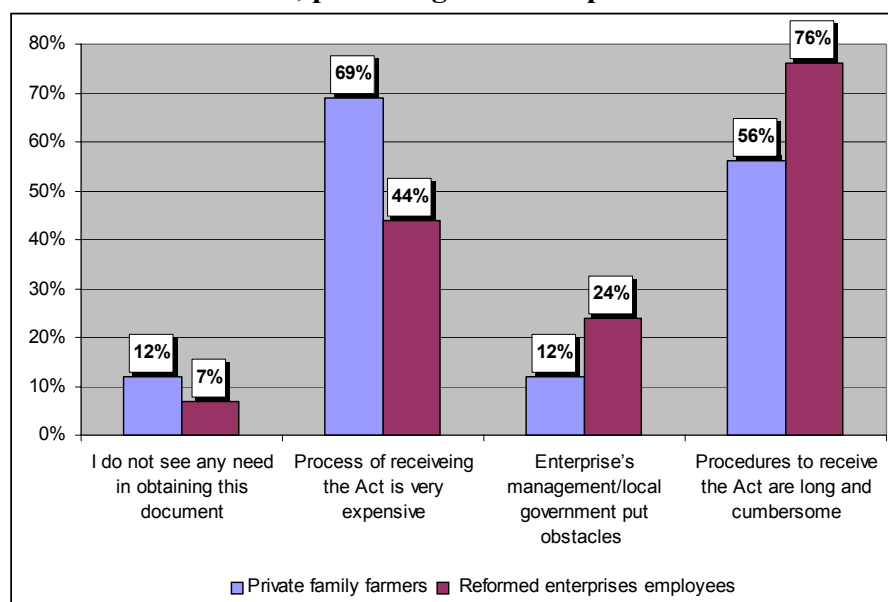
## 5.2. Problems in the Formalization of Private Land Ownership

The survey data shows that almost half (46%) of the respondents have already exchanged their land share certificates for State Land Acts (SLA). This figure corresponds closely to national statistics that claim over half of rural residents have obtained land certificates. In addition to the 46% who obtained final land certificates, 4% of the survey participants declared that they had submitted the necessary documents for obtaining such an act.

The majority of those who have not received SLA are private family farmers. If 89% of the surveyed members of reformed enterprises have already become the certified owner of their land, the share of such owners among private framers is three times lower. Only 25% of the latter have exchanged their land certificates for SLA and 51% reported that they planned to do it in the nearest future. The share of those who have not exchanged land share certificates for SLA and who do not plan to do it is insignificant and does not exceed 2% of surveyed private farms.

What is preventing rural residents from receiving SLA? In respondents' opinion, the primary reason is the rather expensive process of receiving the act (figure 7). This is mentioned by 69% of private family farmers and 44% of reformed farms employees. Title conversion costs vary from 30 USD to as much as 100 USD. This means that the total costs for a family where each spouse would like to receive their own copy of the act will cost twice as much. Along with this, act registration fees to be paid at local department of land resources are additional costs that rural residents are expected to bear.

**Figure 7. Principal reasons of rural residents' unwillingness to exchange land share certificates for State Land Act, percentage of all responses**



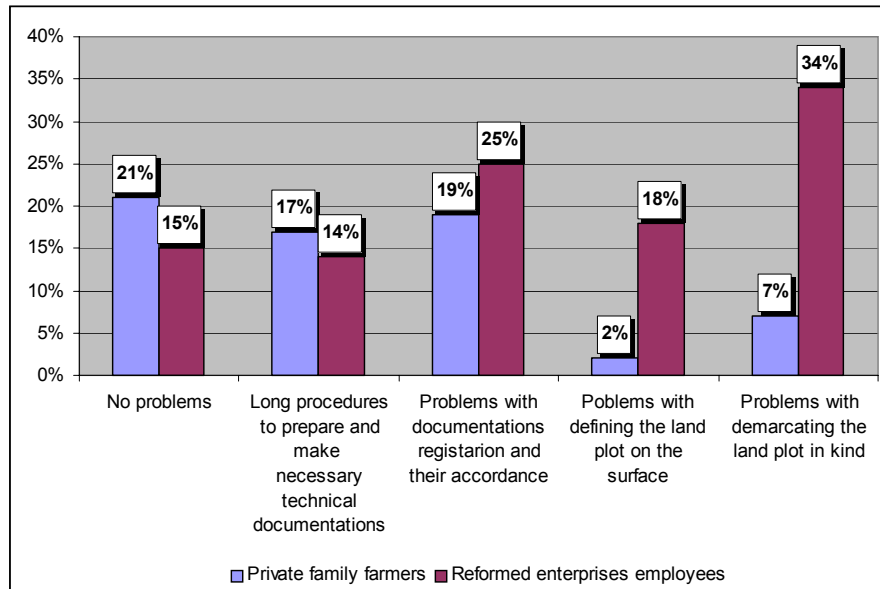
Long and cumbersome procedures are given as the second main reason why the Ukrainian rural population might be discouraged from exchanging land share certificates for land acts. 56% of private family farmers and 76% of enterprises employees mentioned this reason. The length of the procedure to receive the act may be up to seven months. Such a lengthy process is also explained by the fact that local authorities create additional impediments, requiring rural residents to submit some extra paperwork, or bluntly refuse to accept documents on the grounds that they are incorrectly compiled. 12% of private family farmers and 24% of reformed enterprises employees admitted that they had faced this problem. The latter tend to face this

problem not only on the part of local authorities (local state administrations, department of land resources, and some other state bodies), but also on the part of the management of the agricultural enterprise.

As seen in the above figure, the share respondents that do not see any need for SLA is rather low, constituting only 12% of family farmers and 7% from enterprise workers. As will be explained in more detail later, some rural residents have little understanding of the Ukrainian land legislation and do not appreciate all the benefits that come with the exchange of land certificates for land acts. This is supported by data which indicates that around 5% of respondents do not see any significant difference between the certificate and the act, offering further support to the argument stated in chapter 3 concerning the need to conduct a land reform information campaign to raise rural residents' legal awareness and address their knowledge gaps.

As stated earlier in the paper, the exchange of land certificates for land acts is regarded as an important administrative procedure to formalize the right to private land ownership. However, there are a number of reasons that make this process fairly problematic. This survey tries to highlight some of the problems that have surfaced in the process of distributing SLA. In the respondents' opinion, the long procedures to prepare and make the necessary technical documents, problems with documentation registration rank as the two most important obstacles preventing rural populations from their exchanging land certificates for land acts (figure 8). As some respondents mentioned, in order to obtain a land act they have to apply to as many as eight different regulatory bodies. This makes the process of formalizing private ownership time consuming, opaque, and encourages rent seeking activities on the part of state officials.

**Figure 8. The main problems with receiving Land State Act, percentage to all responses**



On the whole, problems such as defining the land plot on surface and demarcating its real borders remain more typical for land owners at reformed agricultural enterprises. Their cause can be explained by two principal factors. First, there is a lack of facilities and technical services that would allow landowners to conduct the necessary work to define precisely and demarcate his/her land. Second, many workers from reformed enterprises failed to allocate his/her land property on surface as a single unit of land. As a result, the process of converting land share certificates into

land acts is becoming more expensive, and is increasingly accompanied by numerous conflicts concerning neighboring land use.

It is interesting to note that 21% of private farmers and 15% of surveyed workers at agricultural enterprises said that they had had no problems while receiving the state act. This may mean that these respondents do not regard either the lengthy process or the relatively high costs of this process as substantial impediments.

### 5.3. Land Use and Land Lease Practices at Surveyed Farms

In this paper, the author has argued that the Ukrainian land legislation does not clearly define the limits of state regulation of private land use and provides the state with too much power to terminate private land rights. In particular, the Land Code requires that land be used in accordance with its designated purpose and yet the list of designated uses is strict and not amenable to flexible interpretation. The author has also argued that on many occasions these regulations may prevent landowners from using land for the best possible economic activities and to profit from it. At the same time, the findings of this survey reveal that the majority of surveyed respondents do not have any strong intentions to change the use of their land. In practice, this issue may not be such a serious stumbling block in current land relations.

**Figure 9. Respondent’s intentions regarding possible changes to the use of their land plot**

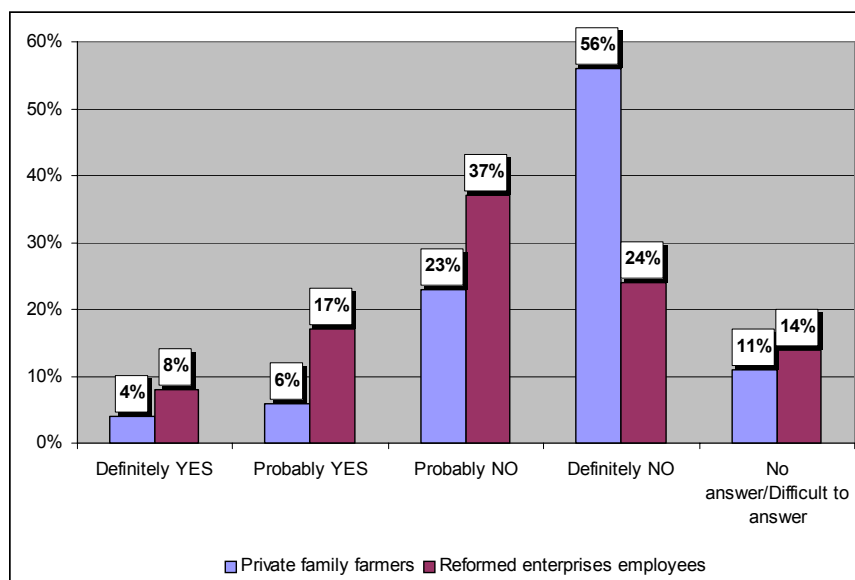


Figure 9 shows that 79% of family farmers and 61% of agricultural enterprises employees either do not intend or are strongly against any change of the land purpose use. In our opinion, this can be explained by two primary reasons. First, the overwhelming majority of private family farms run their own farming business and many workers at agricultural enterprises lease their lands either to the same enterprises or private farms. Naturally, in this situation the respondents do not consider any possible change of land purpose use as a palatable option.

On the one hand, one should not discount the importance of rural conservatism and a certain inertia that exists among rural residents. The author assumes that this very fact does not allow many of rural residents to think “outside the box” and to explore new opportunities in running their businesses in a new way. In those cases when respondents are inclined to alter their land plots purpose use, they are guided primarily by two reasons, the first being the need to reduce the

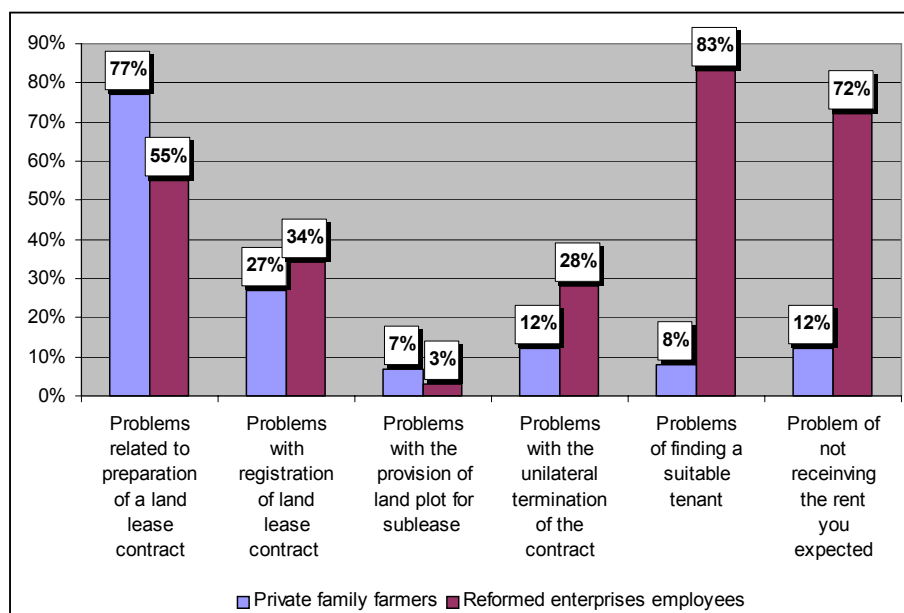
land tax through laying pastures and hayfields and the need to erect constructions on the land plot.

One whole section of the present survey was devoted to issues of land lease relations. In a situation when Ukraine does not have a fully fledged land sale market, land renting has become a versatile alternative means of transferring land from less to more productive producers. At the same time, the present land lease market has a number of deficiencies such as monopoly positions of the reformed agricultural enterprises and the prevalence of short-term lease contacts. In the course of the study, we aimed at defining respondents' attitudes towards the aforementioned problems and their insights as regards the future development of this part of the land market.

First, it is necessary to say that the percentage of the surveyed rural residents who have faced problems related to land leasing stands at 27% (26% of private family farmers and 29% of workers at agricultural enterprises). At first glance, this percentage appears to be not very significant and may give an impression that the majority of rural residents do not have any significant land-rent related issues. However, land-rent issues may vary in their magnitude and have various contents. This means that even if many rural residents have faced land leasing issues only less than a third of them consider these issues to be a serious problem.

When analyzing concrete problems in land rent relations, it becomes evident that they differ between the two main categories of respondents (figure 10). For example, a problem such as finding a suitable tenant and the problem of not receiving the expected land rent tend to be more typical for reformed enterprises employees. The latter lease their land plots to other members of their enterprise, which, as stated before, take a monopolistic position on the market of land lease pushing rent payments down. On many occasions workers from agricultural enterprises have limited opportunities to lease out their land to other entities. As practice shows, many private farms are ready to pay high rent fees in comparison with the reformed agricultural enterprises; however, the factor of geographic remoteness of available lands prevents them from doing this.

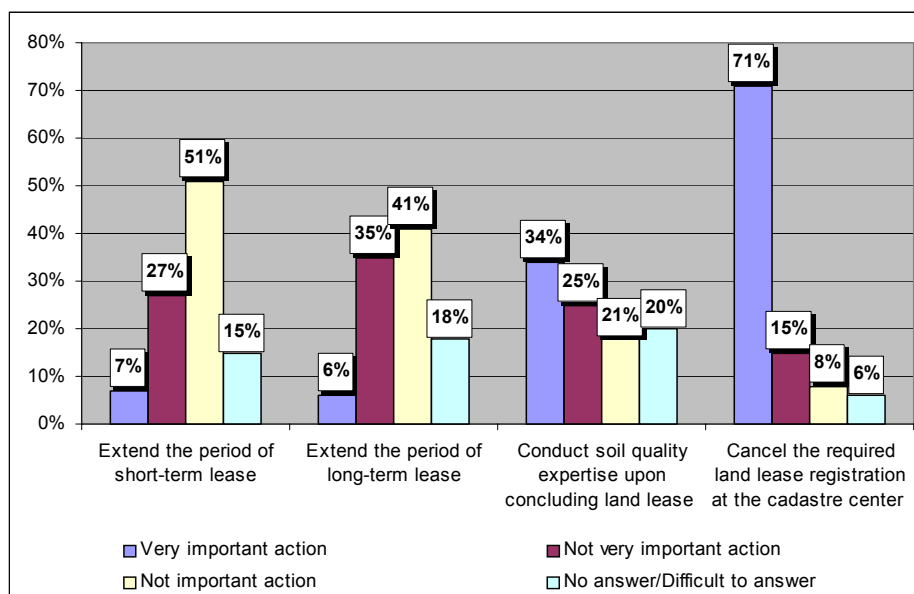
**Figure 10. Main problems related to land leasing and percentage of respondents who have faced them.**



The other two problems worth mentioning are land lease contract preparation/conclusion of and its subsequent registration. The problem of preparation/conclusion of a land lease contract was especially acute for 77% of surveyed private family farmers and 55% of agricultural enterprises employees. These problems are mostly caused by a rather long and, on many occasions, expensive process of land contact preparation and registration. In addition, there are many inconsistencies in legislation, which makes this process complicated. As described earlier, there are numerous provisions in the Law *“On Land Lease”* (№ 1211-IV, November 2003), the **Commercial Code** of Ukraine (№436-IV, January 2003) and certain other normative documents that contradict each other.

In the course of the survey, we asked respondents to express their opinion on various regulatory mechanisms aimed at harmonizing land lease relations. We also asked respondents to rank their answers in terms of urgency. Figure 11 presents the results.

**Figure 11. Importance of various regulatory mechanisms in land lease relations, percentage to all responses**



A large proportion of respondents support the cancellation of the required land lease registration at the cadastre center. A total of 71 % of survey participants (78% of private family farms and 63% of reformed enterprises employees) rank this policy measure as important and think it will be instrumental in improving land lease relations in Ukraine. This strong support is explained by the fact that registration fees are 70 USD per contract.

Among other policy measures, respondents highlight the importance of soil quality expertise upon land lease conclusion<sup>9</sup>. If 34% of all those surveyed consider this measure important, the percentage of farmers’ responses is even higher: 41%. This latter category thinks that such expertise allows land users to define more objectively the real value of the rented land. On the other hand, the issue of soil quality expertise remains open since it is unresolved who will actually bear its costs: the lessor, lessee, or regulatory agencies. This might explain the fact that almost a quarter of the respondents considered this issue as difficult to answer.

<sup>9</sup> The soil quality expertise is a text of soil’ chemical and physical characteristics of that define crop yields and its other productive qualities.

The two other proposed options—extension of the period of short-term lease and long-term lease—did not obtain any substantial support among the respondents. Many of them (51% in the first case and 41%—in the second one) consider these as unimportant actions. This view is shared equally amongst both private family farmer and workers from reformed enterprises.

In chapter three, the author argued that prevalence of short-term lease contacts is detrimental for establishing strong patterns of efficient land use. To address this issue, the paper considers a possibility to extend the period of short-term land lease. At present, the maximum period of short-term lease is limited to five years. Interestingly enough, the obtained data demonstrates that currently the majority of those who answered the question on land lease are disinclined to lease/lease out land for a period over five years. Approximately two-thirds of workers from agricultural enterprises (64%) and 27% of private farmers would prefer to lease land plots for between three-five years. At the same time, 47% of farmers and 14% of agricultural employees are ready to lease land property for the period from five to ten years.

To understand this difference in responses between the two categories, it is necessary to bear in mind that private farmers usually are land lessees, where the others tend to lease their land out. In the conditions when land rents are the subject of constant renegotiation and the regulatory environment is changeable, land market participants do not risk to conclude land contracts for terms exceeding ten years. Nevertheless, it is necessary to say that one tenth of those surveyed were ready to conclude such a contract for a period of 10-20 years. Short-term contract exceeding 10 years are usually concluded with property that is in the state ownership.

The argument above is relevant to the issue of long-term leasing. There is no surprise that over a third (38%) of surveyed employees at agricultural enterprises see no need for such a lease. However, private family farmers are more enthusiastic about long term leasing: 39% reckon that 10-20 years is an optimal period for such leasing, whereas an even bigger percentage (41%) is ready to conclude a long term lease contract for the period of 20-50 years. We can assume that this data signals that regardless of the instability of the regulatory environment, some private family farmers still prefer to use their land on a long term basis and make investments in their operations.

#### **5.4. Land Disputes and Conflicts**

Inconsistent and incomplete land legislation provokes numerous land relations disputes/conflicts. On the other hand, the absence of developed mediation procedures makes this issue more problematic. One of the tasks of this survey was to define the character and frequency of such conflicts. As survey findings show, land owners tend to have disputes concerning neighboring land uses, land title recognition, loss recovery and other disputes. Analyzing the data, one may see that in the responses of the two categories of respondents there is no significant difference between different types of land disputes and their frequency.

Let us consider in detail what kind of land use disputes and how frequently rural resident tend to face them. To this end, we divided disputes into two main categories: disputes with land users/owners who are legal entities (reformed agricultural enterprises, big agri-industrial corporation and others) and disputes with physical entities (individual land user and owners of land certificates and state acts). This division is made consciously to differentiate the main types of entities involved in land relation, and particularly in land leasing.

Due to the problem with land plot borders demarcation, land owners and users consciously or by mistake plough up or harvest their neighbor's land and crops. This is an example of

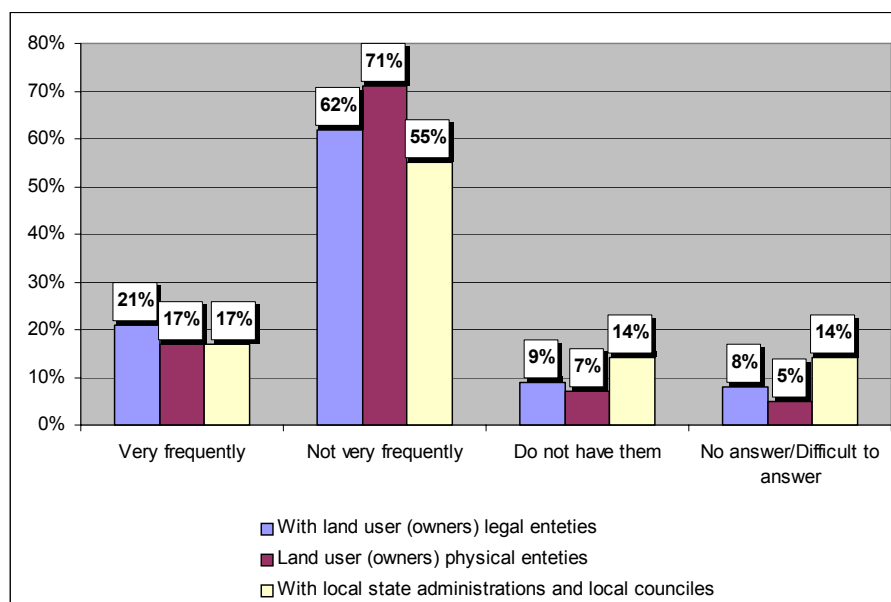
neighborhood disputes. It is necessary to note that although the Ukrainian Land Code has established the institute of servitudes which regulate the practice of neighborhood land use; up to date they have not become an effective regulatory mechanism to address such disputes.

Analysis of the data demonstrates that the biggest share of respondents, almost half of them, stated that they had land related conflicts on an infrequent basis. The share of private family farmers who have these disputes is somewhat higher than those of employees at reformed enterprises. For example, if 49% of the latter said that they had disputes with users/owners who are legal entities, 54% of private farmers reported that they had disputes on an infrequent basis.

The next group of land disputes includes those of land title recognition, loss recovery, and land transactions. We broke these conflicts into a number of categories: conflicts with legal entities (both land owners and lessees), individual owners and users, and local state administrations and councils. Speaking about the frequency of such disputes, one can see that the majority of respondents said that they had encountered them on an infrequent basis (figure 12). At the same time, the share of private farmers' responses in the total number is higher. If 54% of agricultural enterprises employees reported that they had infrequent conflicts with legal entities, the percentage of private family farmers amounted to 67%.

In our opinion, this difference in responses can be explained by two main factors. First, private farmers tend to participate in land relations more actively than workers at reformed enterprises. This, in particular, concerns land lease relations. As a result, they face these disputes more frequently. Second, we assume that agricultural enterprises may not disclose the real number of disputes, which is mostly explained by their certain fears to face reprimand from their managers and local officials.

**Figure 12. How frequently respondents encounter land dispute of land title recognition, loss recover, and land transactions, percentage to all responses**



What ways do respondents choose to solve land disputes? It would be logical obvious to admit that rural residents might appeal to court institutions, and first of all, to common courts<sup>10</sup>.

<sup>10</sup> Common courts are the courts where individuals represent one party in the litigation process. They include: local district courts, courts of appeal, cassation courts, and the Supreme Court of Ukraine.

However, the survey data demonstrates that almost half (49%) try to solve these disputes on their own negotiating the problem directly with the other party/parties. The share of private family farms that adopt this method is even higher and amounts to 58%. This is mostly explained by the fact that private family farmers, who as a rule are managers of their enterprise, tend to rely more on their own resources than workers at agricultural enterprises do. Another 17% of respondents, while solving a dispute, would prefer to solicit advice of their friends, and 26% would appeal to government bodies.

The share of those who would prefer to have land related conflicts solved in court, and in particular at common law courts, is rather low. Only 8% of private family farmers and 22% of agricultural enterprises workers consider courts a possible option in solving the land dispute. This low trust in the state court system is rooted in ineffective litigation procedures and poorly staffed courts. The court litigation process tends to be a fairly lengthy and expensive one while court personnel, on many occasions, fail to follow the impartiality principle and side with one of the parties.

### **5.5. Legal Awareness of Rural Residents and Their Attitude to the Right to Sale Farm Lands**

As already mentioned, the ability of rural residents to properly exercise and protect their rights, and possibility to avoid or effectively solve land dispute to a large extent depends on how well farmers know the terms and procedures for obtaining rights to land. In view of that, a separate section of the survey was aimed at finding out how aware respondents are of regulatory acts underpinning land relations, and consequently, what is their perception of these regulations.

In 2003, a series of land related laws were introduced. These are the following key laws (including by not limited to): new Civil and Commercial Codes of Ukraine (№ 435-IV, January of 2003, and №436-IV, January of 2003,), the Law of Ukraine *“On Private Household Farm”* (№742-IV, March of 2003), the Law of Ukraine *“On Mortgage”* (№ 898-IV, June of 2003), the Law of Ukraine *“On the Procedure of Allocation on the Surface of Land Plots to Owners of Land Shares”* (№ 899-IV, June of 2003), Law of Ukraine *“On Private Farm”* (№973-IV, June of 2003), new version of the Law of Ukraine *“Rent of Land”* (№1211-IV, October of 2003), and the Law of Ukraine *“On Assessment of Land”* (№1378-IV, December of 2003).

As may be noted from Table 1, respondents demonstrated high level of awareness of legislative acts regulating land, economic, and social relations in the agrarian area. Specifically, private family farmers are better informed about the laws “On Private Farm” and “On Personal Household Farm”, while workers from reformed enterprises pay more attention to the Laws “On Rent of Land”, “On Mortgage”, and “On the Procedure of Allocation on the Surface of Land Plots to Owners of Land Shares”. One explanation for the differing responses might be the specific needs and methods of operating the enterprises and the farms represented by the mentioned respondents.



**Table 1. Respondents’ awareness concerning the adoption of various land related laws and perceptions of impact on farmers’ activities, in percentage of total number of respondents.**

	Do respondents know about the adoption of the following laws?		What do they perceive will be the impact of these laws on their activities?			
	Yes	No	Negative	Positive	No impact at all	Difficult to answer
Law of Ukraine “On Private Farm”	89%	11%	6%	31%	60%	3%
Law of Ukraine “On Personal Household Farm”	88%	12%	5%	29%	59%	14%
Law of Ukraine “On the Procedure of Allocation on the Surface of Land Plots to Owners of Land Shares”	90%	10%	11%	33%	47%	9%
Law of Ukraine “On Land Rent”	86%	14%	11%	34%	44%	11%
Law of Ukraine “On Mortgage”	77%	23%	11%	25%	52%	12%

While the survey demonstrated a high level of respondents’ awareness of the adopted legislative acts, evaluation of their impact appeared rather reserved. Respondents perceived the new version of the Law “On Rent of Land” most positively by 34% of the sample. The Law of Ukraine “On Mortgage” was rated the lowest and because the effect of this law in agrarian area is very limited due to the moratorium for purchase and sale of farm lands.

Laws of Ukraine "On Personal Household Farm", "On Private Farm" and "On the Procedure of Allocation on the Surface of Land Plots to Land Share Owners" were rated by respondents as having medium importance. They received 29%, 31% and 33% of votes, respectively.

As already said, positive impact of the Law "On Mortgage" was assessed lowest by the respondents (25%). One may assume that despite its lowest rank, this assessment of this Law's impact may be considered high. This may demonstrate respondents' optimistic expectations regarding its effect once the moratorium is lifted. It is the Law "On Mortgage" which is expected to ensure a wide and sustainable financing of agriculture through the provision of long-term loans to low-risk agribusinesses and by securing borrower's liabilities with mortgage of land.

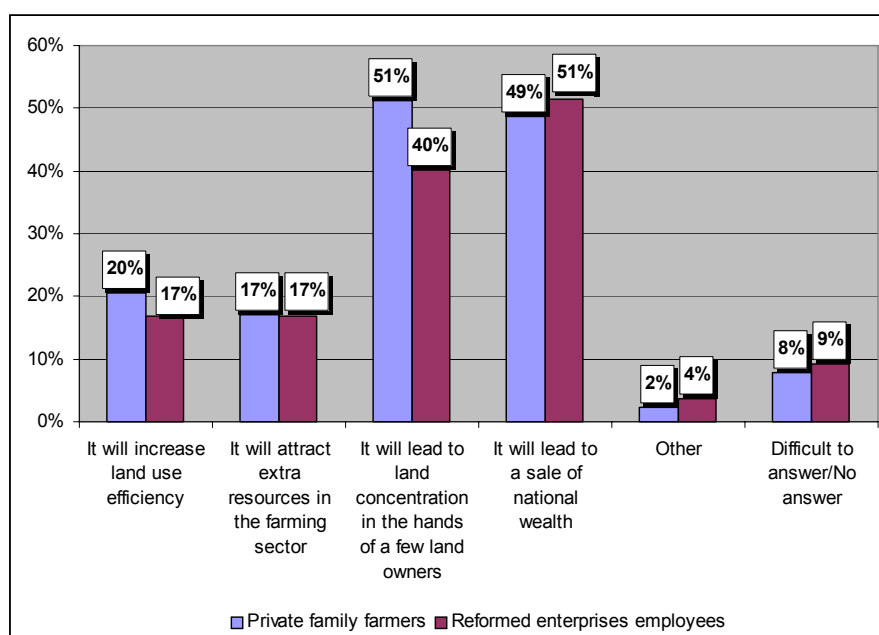
As argued earlier, the new Land Code of Ukraine made a big stride in advancing land relations in Ukraine. That is why the author dedicated a separate question to find out how familiar rural residents are with this document and what is their attitude towards the main Code’s provisions. First of all, the majority of respondents said that they were familiar with the Code and had read through some of the most important of its provisions. Percentage of such respondents amounted to 68% among private family farms and 46% among agricultural enterprises employees.

At the same, over a third of employees (38%) said that they had studied intently the Code. This is almost two times higher that the percentage of private family farmers (19%). Their more active participation in land market transactions (land lease, inheritance, land exchange, etc.) can be an explanation why employees are more motivated to study the main land law in detail.

In the course of the survey, we also intended to study respondents' attitude regarding prospects of implementing in Ukraine a fully fledged market of farm lands, which remains one of the most contentious issues. As can be seen in Figure 13, almost half of the general sample (41% of private family framers and 51% of employees from reformed enterprises) think that the introduction of the right to sell land will result in the sale out (squandering)of the national wealth, while the other 46% (51% of private family framers and 40% of employees from reformed enterprises) believe that it will lead to concentration of land in hands of a small group of so called latifundists.

Interestingly enough, both categories of respondents voiced their unease regarding the possible introduction of the right to land sales. The share of respondents who think that this right will raise land use efficiency and/or will attract extra resources in the faming sector is twice as small as those who are of the opposite opinion. These responses reflect the struggle of opinions, expressed by different political forces in their long-standing discussion of the need (or unacceptability) of implementing the land market and evaluation of benefits (or damage) of such solution.

**Figure 13. Respondents' attitude toward the introduction of the right to land sales, percentage of total number of survey respondents.**



What would be the main reasons of rural residents' unease regarding unrestricted land sales? It is possible to assume that respondents perceive negative outcomes of privatization and asset redistribution in the sector of industrial enterprises conducted in the mid 1990s as a projection to land relations. That times many these enterprises are ended up in the hands of few oligarchic groups

The impact of the stated factors is exacerbated by the low legal awareness and, as a result, failure to consider certain specific features of the Ukrainian land legislation preventing possible negative outcomes of the introduction of a free land market. Today, the Land Code contains a number of provisions to minimize the risks of certain negative consequences. We can speak here about the legal requirement of the land purpose use, the limited area of farm lands that may be owned by one person, the ban on foreign ownership of farm lands or by individuals without

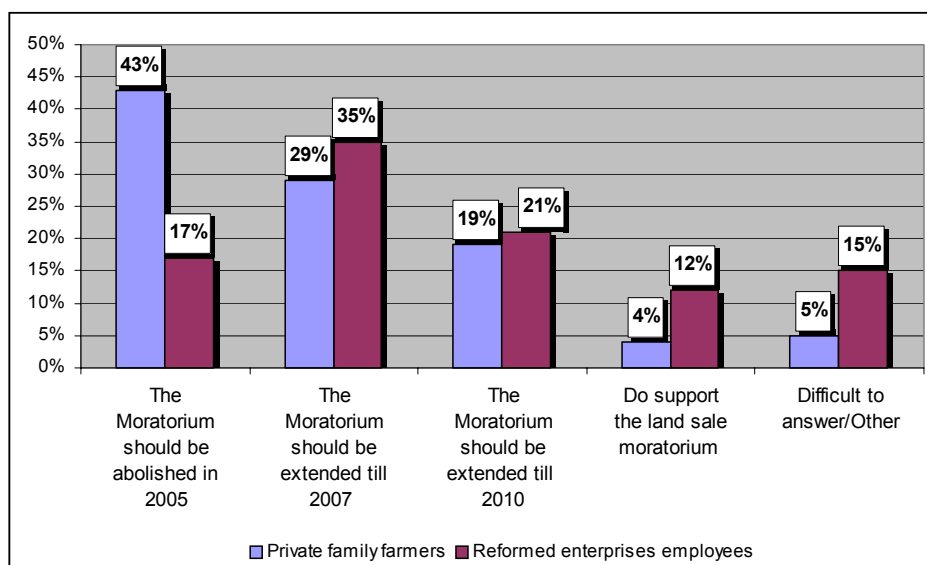
citizenship and some other. Such “preventive” measures may be further improved and reinforced.

At the same time, we argue that rural residents’ apprehensions on the possible negative consequences of the right to buy and sell land are not deep rooted, and are based on some of the reasons specified above. This is also evidenced by the survey data. One of the questions asked: “Are you in support of the moratorium for sale of farmlands?” As seen in figure 14, only a small share of those surveyed (4% of private family farms and 12% of workers at agricultural enterprises) stated their unflinching support of the land moratorium. At first glance, this data may look confusing since it does not correspond to the responses given to the previous question. However, we would like to claim that this discrepancy may serve as an additional proof of the contradictoriness of the policy of the blunt ban on land sales.

Analyzing respondents’ attitude toward the land moratorium, one cannot but mention differences between private farmers and employees’ responses. In the opinion of over two thirds (72%) of surveyed private farmers, even if not abolished in 2005 as initially foreseen in the Land Code, the land sale ban should be cancelled in 2007. Cancellation of this moratorium would allow these landowners to acquire needed land plots in their private ownership.

Almost one tenth of the employees from agricultural enterprises is of the opinion that the moratorium should not be cancelled at all, whereas only 4% of private farmers are proponents of this position. What deserves attention is the rather high share of respondents (15% among workers from the agricultural enterprises) who had a hard time defining their stand on the land sale moratorium. We think this data reflects once again the existing dogmas about the possible negative prospects of land market development in the condition of free farm land sales.

**Figure 14. Respondents’ attitude toward the moratorium for sale of farmlands, percentage to all respondents.**



## 5.6. Land Reform Successes and Failures, Tasks for the Future

As already said, when initiated in the early 1990s, land reforms aimed at advancing legal, economic, and social relations in rural areas. In particular, the reform sought to create a class of private landowners for whom land would be an important source of income. In the course of the

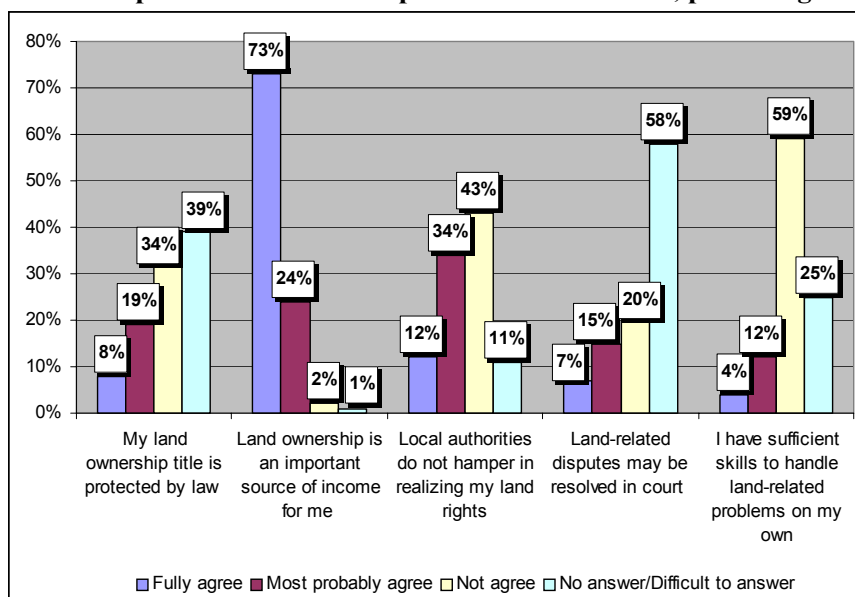
survey, we intended to find out rural residents' opinion about the main reform achievements and tasks for the future.

Today, land has become an important source of living for many residents, which is an important positive outcome of the land reform. This is reported by 73% of respondents (figure 15). They can farm their land for meeting their own needs and for commodity production, they can lease this land out, and ultimately when the land sales ban is lifted, they will be able to sell their land. Undoubtedly, land privatization and the creation of a new class of private land owners has become a powerful tool in combating poverty in rural areas.

However, it also appears that not all the reform goals have been achieved. The complex and on many occasions, contradictory land legislation coupled with an ineffective court system have not allowed land owners to state with confidence that their land title is protected by law. Only 7% of surveyed private family farms and 12% of agricultural enterprise employees consider their land title is fully protected by law, whereas over a third take a diametrically opposite point of view. Litigation in state courts have not been an important mechanism for solving land-related disputes: Only 7% of respondents consider state courts a very instrumental institution in conflict resolution. In this situation, land relations participants either have to conduct negotiations on their own or apply for assistance to non-state mediation organization.

Local authorities, whose activities include providing assistance to rural residents to help minimize the negative dimensions of land reforms, on many occasions, create other additional impediments to realizing landowners' land rights to land title. Unfortunately, while 12% of those surveyed think that local authorities do not hamper them in realizing their land rights, 43% are of the opposite opinion.

**Figure 15. Respondents' opinion about some aspects of land relations, percentage to all respondents**

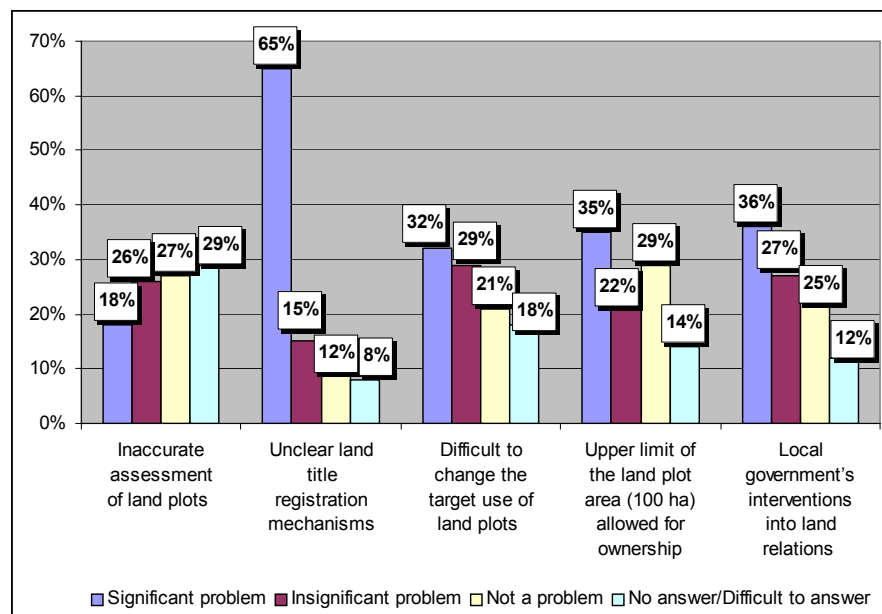


As the data demonstrates, the previous information and legal awareness campaigns have failed to achieve their objective: Only 4% of rural residents believe that they have sufficient skills and knowledge to handle land-related problems on their own. This gives the ground for possible manipulations and abuse in land relations.

To understand the main deficiencies and bottlenecks of the land reform, we asked respondents to rank the problems they face in land relations. As seen from figure 16, the problem of unclear

land title registration mechanisms was named as a significant problem. This is opinion was shared by 66% of private family farmers and 59% of workers from reformed enterprises. As many land experts have argued, the new unified system of land title registration that was introduced in 2004 is both complicated and expensive and failed to address all previously existing problems (MERKULOVA, PIKALOV)<sup>11</sup>.

**Figure 16. Major problems hampering the development of land relations, percentage to all respondents**

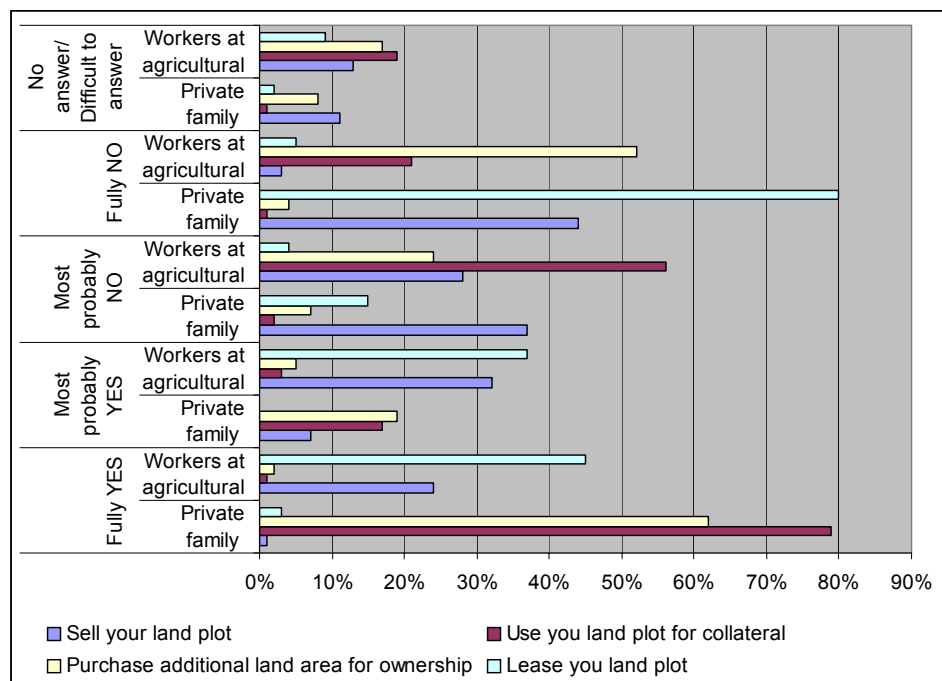


Both family farmers and workers in agricultural enterprises express strong opinions concerning local government's interventions into land relation: Over a third of them call the practice of local authorities' meddling in land relations a big problem. What concerns the issues of complexity to change the target use of land plots and restrictions of the upper limits of the land area (100 ha) allowed for ownership, the respondents expressed different opinions. These issues are more urgent for private family farmers, who are more inclined to diversify their business activities and expand their farm land areas. For example, in the first case, 42% of family farmers reckon the procedures to change the target land use are a significant problem (15% of workers at agricultural enterprises hold this opinion). A similar situation arises with the imposed restriction on land ownership: 47% of farmers against 13% of workers at agricultural enterprises deem this issue as a significant problem in land relations.

One of the arguments expressed by opponents of the land moratorium is that lifting of the moratorium will inevitably lead to a large scale land sales out by low/reduced prices. To verify this hypothesis and find out about some other rural residents' intentions, we asked respondents a question: "What do you plan to do with you land property?" Let us consider in detail some of these intentions and the degree of rural residents' readiness to have these plans realized (figure 17).

<sup>11</sup> Interview with with Olena Mirkulova, legal specialist, and Eduard Pikalov, legal advisor, at the Ukraine Agribusiness Development Project of the International Finance Corporation.

**Figure 17. What rural residents plan to do in the nearest future, percentage to all respondents**



The issue of special interest was to find out how strong rural residents’ intentions to sell their land plot if they were provided such a right. As the data shows, private farmers and members of agricultural enterprises express different degree of readiness to sell their lands. If only 8% of farmers either strongly intend or consider a possibility of selling their land, over 54% of workers express such intentions. We assume that these differences can be explained by the following reasons. First, farmers are owners of their own business, and their decision of selling their productive land means they strongly intend to move out of farming activities. However, such a decision taken by a worker at an agricultural enterprise does not mean that the enterprise is about to terminate its activity.

Second, although we do not know the average age of survey respondents, we can rely on the already used sources of national statistics and assume that the majority of these categories of respondents are retired people and people of pre-pension age. Naturally, many would like to sell their land plots to obtain cash, which would be an extra source of income and larger than what they currently receive by way of land lease fees. Although the author is a strong proponent of a free land market in Ukraine, at the same time, it cannot be denied that a large number of land plots that are dumped on the market may well have a detrimental effect on the market price.

Whilst not rejecting the aforementioned arguments, even with some strongly voiced intentions of selling their land ownership, the author is of an opinion that in general Ukrainians tend to exhibit certain conservatism when having to take a real decision rather than a hypothetical one. Besides, many experts question the availability of sufficient number of buyers, who are able and ready to pay for land property even at reduced prices.<sup>12</sup>

<sup>12</sup> This opinion is voiced by many experts whom we have already cited in the paper.

There are some other clear differences in the responses of these two categories of rural residents. Private family farmers having strong intentions to expand their business activities, express higher readiness to purchase additional land area in their ownership and to use their land as collateral. Respectively, a total of 62% and 79% of these respondents reported that they had such plans. This in turn suggests that private family farms have become a sustainable class of land owners, with optimistic expectations about their future and, as a result, the future of land market developments in Ukraine.

## **6. CONCLUSION AND RECOMMENDATIONS**

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 sovkhozes – 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.

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.

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 tool 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 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”.

Thus, 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.

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.

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**LAND RELATIONS SURVEY QUESTIONNAIRE**

**1. Have you exchanged your Land Share Certificate for the State Act (Land Ownership Title)?**

ONE ANSWER

- Yes, I have ..... 1
- No, I haven't yet, but I plan to do it in the nearest future ..... 2
- I have not and do not plan to exchange it ..... 3
- Other (SPECIFY).....  .....4
- No answer/Difficult to answer..... 5

**2. If you have not exchanged the Land Share Certificate for the State Act Land Ownership Title, can you explain why? CHECK ALL APPLICABLE ANSWERS**

- I don't see particular value in this document, because it does not differ from the Land Share Certificate ..... 1
- I would like to receive the State Act, however, the related expenses make it unaffordable for me ..... 2
- I cannot receive the Act, because my enterprise's management/local government put obstacles ..... 3
- Procedures to receive the Act are long and cumbersome..... 4
- Other (SPECIFY).....  ..... 5
- No answer/Difficult to answer..... 6

**3. If yes, did you face any problems while receiving your State Act Is this how the new title it referred to? CHECK ALL APPLICABLE ANSWERS**

- No problems ..... 1
- Procedures to prepare and make land organization an use documentations are long ..... 2
- Problems with preparation and submitting of relevant documents one?..... 3
- Problems with demarcating land plot in kind... ..... 4
- Other (SPECIFY) .....  ..... 5
- No answer/Difficult to answer..... 6

**4. Are you planning to change the purpose use of your land plot? ONE ANSWER**

- Definitely YES ..... 1
- Probably YES ..... 2
- Probably NO same again? ..... 3
- Definitely NO..... 4
- Other (SPECIFY).....  ..... 5
- No answer/Difficult to answer..... 6

**5. If you are planning or already changed the target use of your land plot, what are the reasons? CHECK ALL APPLICABLE ANSWERS**

- Reduce land payments ..... 1
- Need to erect constructions on the land plot..... 2
- Plant perennials..... 3
- Other (SPECIFY).....  ..... 4
- Answer/Difficult to answer..... 5



**6. How, in your opinion, land lease relationship could be improved? CHECK ALL APPLICABLE ANSWERS**

- Extend the period of short-term lease ..... 1
- Extend the period of long-term lease ..... 2
- Conduct soil quality expertise upon concluding land lease ..... 3
- Cancel the required land lease respiration what is this? ..... 4
- Other (SPECIFY).....  ..... 5
- Answer/Difficult to answer..... 6

**7. Could you rate the following major problems hampering the development of land relations in Ukraine?**

	Significant problem	Insignificant problem	Not a problem at all	Difficult to answer
Inaccurate assessment of land plots	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Lack of a land title registration mechanism	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Difficult to change the target use of land plots	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Upper limit of the land plot area (100 ha) allowed for ownership	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Local government's intervention into land relations	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>

**8. Do you agree with the following statements?**

	Totally agree	Rather agree	Do not agree	Difficult to answer
My land ownership title is protected by law	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Land ownership is an important source of income for me	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Local authorities do not hamper in realizing my land rights	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
Land-related disputes may be resolved in court	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
I have sufficient skills to handle land-related problems on my own	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>

**9. Do you have any plans in the near future to:**

	Definitely YES	Probably YES	Probably NO	Definitely NO	Difficult to answer
Sell your land plot	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Use you land plot for collateral	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Purchase additional land area for ownership	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Lease you land plot	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

**10. What would the period you intend to lease your land? ONE ANSWER**

	Short-term lease	Long term lease
Until 1 year	1 <input type="checkbox"/>	2 <input type="checkbox"/>
1-3 years	1 <input type="checkbox"/>	2 <input type="checkbox"/>
3-5 years	1 <input type="checkbox"/>	2 <input type="checkbox"/>
5-10 years	1 <input type="checkbox"/>	2 <input type="checkbox"/>
10-20 years	1 <input type="checkbox"/>	2 <input type="checkbox"/>
20-50 years	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Over 50 years	1 <input type="checkbox"/>	2 <input type="checkbox"/>
Difficult to answer	1 <input type="checkbox"/>	2 <input type="checkbox"/>

**11. Have you ever faced problems related to leasing land? If yes, what kind of problems were they? CHECK ALL APPLICABLE ANSWERS**

- No, I have not ..... 1
- Problems related to preparation of a land lease contract ..... 2
- Problems with registration of land lease contract ..... 3
- Problems with the provision of land plot for sublease ..... 4
- Problems with the unilateral termination of the contract..... 5
- Problem of finding a suitable tenant..... 6
- Problem of not receiving the rent you expected..... 7
- Other (SPECIFY)  8
- Answer/Difficult to answer ..... 9

**12. How familiar are you with the provisions of the new Land Code adopted in 2001? ONE ANSWER**

- We were not aware that the new Land Code had been adopted in 2001 ..... 1
- We were aware it had been adopted, but we do not know its main provisions ..... 2
- We are not aware of how the new Code is different from the old one ..... 3
- I read through some most important provisions of the Code..... 4
- I intentionally studied all provisions of the Land Code..... 5
- Other (SPECIFY)  6
- Answer/Difficult to answer..... 7

**13. Are you in support of the moratorium for sale of farmlands? ONE ANSWER**

- The Moratorium should be abolished in 2005, as was provided for in the Land Code ..... 1
- The Moratorium should be extended till 2007 ..... 2
- The Moratorium should be extended till 2010..... 3
- Do not support the land sale moratorium ..... 4
- Other (SPECIFY).....  ..... 5
- No answer/Difficult to answer..... 6

**14. Could you, please, express your attitude towards sale and purchase of land plots, which may become possible in 2005 under the new Land Code? TWO ANSWERS**

- This will help to use land more effectively ..... 1
- This will attract additional capital flows into agrarian sector ..... 2
- This will result in concentration of land plots in hands of a few large owners ..... 3
- This will result in sale of the national wealth ..... 4
- Other (SPECIFY).....  ..... 5
- Answer/Difficult to answer.....  ..... 6

**15. Do you sometimes need to handle controversies (conflicts) with regard to land relations and farming activities? If yes, in what way do you deal with them ? ALL APPLICABLE ANSWERS**

- No, I don't face them ..... 1
- I try to handle controversies on my own by peaceful negotiations directly with the other party without intermediaries ..... 2
- Ask for advice of people we both know (intermediary) and come to consensus..... 3
- Appealed to bodies of executive power or local governance authorities..... 4
- Applied to a court of arbitration ..... 5
- File a claim with a court of common jurisdiction ..... 6

**16. Please, define you status**

- Head/Family member of private family farm..... 1
- Hired worker at private family farm..... 2
- Manager of reformed agricultural enterprise ..... 3
- Staff member of reformed agricultural enterprise..... 4
- Others ..... 5