



Land Reform in Eastern Europe

Western CIS, Transcaucuses, Balkans, and
EU Accession Countries

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Executive Summary

The former socialist countries of Eastern Europe (that is, Europe east of Germany and west of the Urals, but including all of Russia) began a transition to a market economy in the late 1980's and early 1990's. This paper looks at one aspect of that transition: the transition from state ownership to private ownership of agricultural land and the accompanying transition to a land market for agricultural land.

The countries included in this study have been divided into four groups:

- The Western CIS countries: Belarus, Moldova, Ukraine, and Russia;
- The CIS Transcaucasus: Armenia, Azerbaijan, and Georgia;
- The Balkans: Albania, Macedonia, Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia (Serbia and Montenegro), and the administrative protectorate of Kosovo; and
- The EU accession countries: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

The Western CIS countries, with the exception of Moldova, are still struggling over meaningful private ownership of agricultural land and the right to sell land, to mortgage land, and to employ land to its best use without interference from the State. All of the Western CIS countries are still primarily farming through large collective-style farms with little benefit afforded to individual landowners. Few land transactions are taking place, and the majority of those land transactions that do occur involve leasing back to the collective farms from which the land was allocated or divided. The Western CIS countries, with the exception of Moldova, have lacked the political will to move forward on land reform efforts.

The Transcaucasus countries are leading the CIS in terms of privatization and farm reorganization and are ahead of some of the EU accession states in these areas as well. Each of these countries has the political will to privatize land and move toward a market economy. The Transcaucasus countries plus Moldova devolved some land management responsibility to the local level. In addition, they passed legislation clearly allowing for land transactions.

In the Balkan countries, the rural land markets are not only influenced by economic transition issues, but also by ethnic strife, political instability, and war. The Balkan countries have diverted a great deal of their energy and resources that might have otherwise been directed (at least in part) toward land market development goals to land issues related to the instability and strife.

The EU accession countries have struggled less with the ideology of a market economy than many of the CIS countries, so privatization of land was not disputed. However, in some cases, EU accession countries have chosen to continue support for large collective-style farms, and much less farm break-up has occurred than in Armenia, Azerbaijan, and Georgia. While there are many contributing factors, it does appear that in countries where there is a lack of

independent private farmers, the land market is functioning at a lower level than in countries with a larger number of private farms.

The paper discusses the following issues related to land reform and land market efforts in the Eastern European countries.

1. Land Privatization

In the Western CIS countries, except Moldova, much of the agricultural land has been privatized under a “land share” system, in which a large majority of private owners (former members of the state and collective farm system) still hold their rights in common, with some form of right to partition land in kind (as yet unexercised). In those countries, the right to a land share has little value because there is little chance to exercise meaningful control over that land share.

In the Transcaucasus, land was distributed and farms restructured at the same time. Private farmers have title to their land.

Balkan privatization is advanced, with large state-owned farms and agricultural processing entities representing a small percentage of agricultural land. Future tasks include privatizing the small amount of remaining land, extending the favorable credit and subsidy benefits reserved for state farms to private farmers, and planning for the failure (and break-up) of those large farms and entities that are preserved as private stock companies.

In the EU accession countries, the privatization issues are related to the restitution process primarily. Potential claims of former owners, conflicting laws regarding the restitution process, and unclaimed land have all slowed down the privatization process.

2. State-Owned Land Reserves

During the privatization process, some countries have been slow to privatize state land, and instead lease out that land. Many countries have formally established "land funds," the purposes of which range from consolidation of small plots to assisting family farm development to simply renting land to large former collective or state farms. An ongoing concern with leasing of state-owned land is that it is often leased at very low rent levels, thus undercutting the development of private market rents. In either case, as long as large quantities of agricultural land are available for lease at no cost, or practically no cost, agricultural land will continue to have very little, if any, market value.

3. Farm Restructuring

Lack of farm reorganization is an impediment to market development in the four Western CIS countries and many of the EU accession countries that restituted agricultural land to its former owners. Farm size in a market economy is an economic variable that reflects market signals. Providing a legal and policy framework in which individual farmers can adjust farm size to

respond to market signals is crucial. The policy and legal framework should not only allow, but also encourage farm reorganization into units of whatever size is chosen by farmers.

In the western CIS countries and many of the EU accession countries, land privatization and farm reorganization did not occur together, and even when land was actually demarcated and titled, little farm reorganization occurred. In the western CIS, farmers did not withdraw their land from the collectives, and in the EU accession states many of the new owners were not farmers or even rural residents, and therefore leased their land back to the collective. As mentioned above, the Balkan farms are primarily privatized and farmed individually. Few privatized plots or land shares are farmed as large operations.

4. Land Transactions

Purchase and sale transactions in agricultural land will not occur in the Western CIS countries unless legislation clearly allows such transactions, permission of local bureaucrats is not needed, and procedures for notarization and registration are simple and affordable.

In the rest of the Eastern European countries, the legal framework for land transactions is adequate and the impediments to transactions relate to administrative process and market imperfections. This situation generally holds true for the surveyed Balkan countries. The most common legal restriction is the prohibition on foreign ownership of agricultural land that occurs not just in the Eastern European countries, but in many countries throughout the world.

5. Mortgage

Mortgage of agricultural land cannot occur without secure land rights and a land market. In addition to the need for legislation that allows mortgage of agricultural land, there needs to be legislation allowing for the free transfer of land. Land-based lending will not occur until there is an active agricultural land market and for Russia, Ukraine, and Belarus major changes in legislation and political will would have to occur first.

Once mortgage of agricultural land is a legal right, as it is in the rest of the Eastern European countries, it still needs to be a part of a larger scheme of providing credit to farmers. Few landowners are using land as security for loans in the Eastern European countries. In fact, mortgage lending to any great extent will not occur until: (1) an active land market exists and agricultural land has market value; and (2) foreclosure procedures are reasonably quick and effective.

6. Registration

One of the key measures needed for a fully functioning land market is a system for registering legal rights, so that right holders can be easily identified and have their rights protected.

The Western CIS countries have seriously under-functioning registration systems and need basic legislative assistance to begin with. Effective land registration is (with the notable exception of

Albania) largely not occurring in the surveyed Balkan countries, although the vast majority of agricultural land is privately owned and privately farmed. The Transcaucasus and the EU accession countries are in the process of transforming and bettering their registration systems, but still have problems due to the large number of new owners and the need to reestablish boundaries.

7. Land Consolidation

Land fragmentation is an issue that has been raised in all of the Eastern European countries with the exception of Belarus, Russia, and Ukraine. In the surveyed Balkan countries, fragmentation is seen by some to be a problem in Macedonia, Albania, and Croatia. Post-conflict issues have rendered this a peripheral issue in the other Balkan countries. The EU accession countries are receiving much help from the European Union in relation to consolidation efforts. Many of these programs are a combination of market assisted reform and government intervention at the community level. Because many of the EU countries have a State land fund, there is already a system in place for purchasing and redistributing land.

8. Role of the public and private sector

There are a variety of measures that could be undertaken to help create and strengthen the private sector institutions that participate in and support healthy land markets. More thought should be given as to how to quantitatively ascertain the progress of such programs.

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I. Introduction

The former socialist countries of Eastern Europe (that is, Europe east of Germany and west of the Urals, but including all of Russia) began a transition to a market economy in the late 1980's and early 1990's. This paper looks at one aspect of that transition: the transition from state ownership to private ownership of agricultural land and the accompanying transition to a land market for agricultural land.

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While the Eastern European countries have a shared history of socialism for varying periods of time, there are strong social, economic, and philosophical differences. In addition, the Eastern European reforms have been affected by the individual countries' recent histories from 1989 onward as well as their socialist pasts.

Russia, Ukraine, and Belarus in the Western CIS still do not have a legal and policy framework that adequately allows for private land ownership, private farms, or efficient land transactions. They are still struggling over what the role of the state should be in relation to agricultural land use and productivity. The state has firm control of agricultural land and there is not enough political will to prevail over the former communists who oppose private ownership and sale of agricultural land.

The Transcaucasus, while also a part of the CIS, made very different philosophical choices and quickly privatized agricultural land and restructured farms into small family units. Certainly the difference in size of the countries had some effect on the ability to accomplish reform more quickly, but beyond size, cultural differences and political will for reform had an impact as well.

The history of the Balkan countries has had a major impact on their agricultural sector and land market possibilities. The former Yugoslavia, after a brief experiment with collectivization, had opted for private farming. Then, in 1989, what some see as the first link in a long chain of events took place, forever changing Yugoslavia as it existed then and setting the stage for the creation of the Balkan countries reviewed in this document (with the exception of Albania). In that year, Slobodan Milosevic pushed Serb-favoring changes to the Yugoslavia Constitution through the parliament. Croatia made its bid for independence in 1991. Macedonia followed with its declaration later in that same year. In 1992, Bosnia and Herzegovina followed suit. Serbia, Montenegro, and Kosovo struggled with each other about issues of independence in the late 1990s. The war and political strife accompanying each of these transitions have much complicated the land transition process.

The EU accession states are by some standards the farthest along in terms of land reform and market development. But several of the EU accession countries have resisted and feared change in the agricultural sector and continue to support large, collective-style and failing farms. Of all countries reviewed, Poland's reform was the least traumatic because Poland never collectivized its agriculture, and Poland's land market is the closest to Western European land markets in terms of amount of turnover of land.

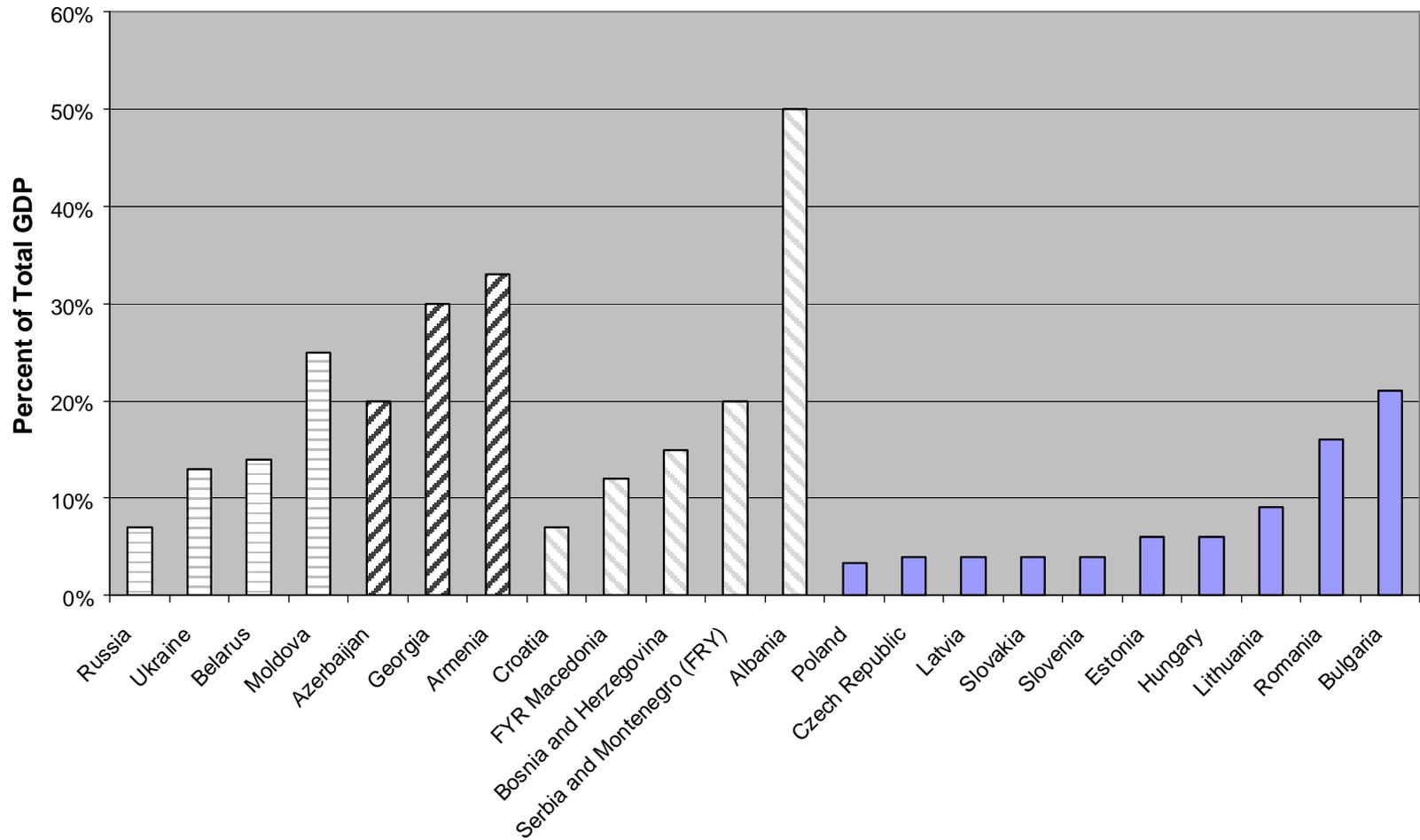
One over-arching consideration in terms of agricultural land reform is the role of agriculture in the economy of the countries reviewed. Of the CIS countries and the Balkans, agriculture contributes more than 10% to the total GDP of each of these countries, with the exception of Russia and Croatia. However, in the EU accession countries, agriculture makes up less than 10% of the total GDP in all countries except Bulgaria and Romania. See figure A.

In view of this, countries like Armenia and Azerbaijan were quite brave to totally restructure their agriculture. On the other hand, with so many people dependent on the agricultural sector, the inefficient collective farms had to be dismantled. In Armenia, agricultural employment reached 41% of total employment in 1999, reflecting a doubling from the late 1980s, and the private sector provides 98.5% of agricultural production (one-third of GDP). In Azerbaijan, the agricultural sector employs one-third of the entire population.¹ In contrast, agriculture's role in Hungary's economy has declined over the last decade in spite of the fact that Hungary has more arable land per capita than most other European countries and the land is relatively fertile and well-suited for agriculture.² Furthermore, Hungary has not significantly transformed its farm sector and collective-style farms are still prevalent.

This paper explores the relative status of the Eastern European countries in relation to land reform. It is divided into four sections, and each section discusses one group of countries -- Section I, the Western CIS; Section II, the CIS Transcaucasus; Section III, the Balkans; and Section IV, the EU accession countries. Within each section the paper discusses the policy and legislative framework for land reform and land market development in those countries, including land privatization, State land reserves, farm restructuring, transactions, and mortgage. Following the discussion of the policy and legislative framework, the administrative framework is discussed, including registration, consolidation programs, land use, and the roles of the public and private sector.

Section V compares and analyzes the status of the land reform and land market in the Eastern European countries and suggests policy options for dealing with some of the issues raised by the paper. Where appropriate the downsides of some of the policy options are mentioned as well.

Agricultural Contribution to GDP (1997 - 2000)



II. CIS Countries: Western CIS States (Belarus, Ukraine, Russia, Moldova)

This and the following section focuses on the principal issues faced by the transition economies of the Western and Trans-Caucasus Commonwealth of Independent States (CIS) as they reform their laws concerning agricultural land tenure relations and land markets, and consider potential approaches for resolving specific problem issues. The Western CIS countries included in this section are Belarus, Ukraine, Russia, and Moldova and the Trans-Caucasus CIS countries included in section II are Georgia, Armenia, and Azerbaijan.

The Western CIS countries differ substantially from the other Eastern European countries in terms of land privatization and development of land markets. The Western CIS countries lag far behind the Eastern European countries preparing for accession and the Trans-Caucasus CIS countries in virtually every aspect of land market development. In fact, with the exception of Moldova and the small-plot sector, the Western CIS countries generally do not have clear and authoritative legislation regarding reorganization of farms or agricultural land transactions, and land markets are virtually non-existent.

A. Policy and Legislative Framework

1. Land Ownership

Of all the CIS countries, only Belarus does not allow private ownership of agricultural land (other than household plots).³ The Belorussian Constitution provides that “[l]and of agricultural designation is located in the ownership of the State.”⁴ However, the 1999 Land Code introduces two exceptions to the general ban: citizens may own (1) up to one hectare of agricultural land in a household plot; and (2) up to 0.25 hectares of agricultural land under and around a private house. This land accounts for approximately 20% of agricultural land.⁵ Land in private ownership may be sold, traded, mortgaged, leased out and bequeathed to heirs.⁶

All other Western CIS countries allow for private ownership of land, but the bundle of rights associated with that ownership varies from country to country, as discussed below.

2. Land Privatization

In the Western CIS countries much of the agricultural land has been privatized under a “land share” system, in which a large majority of private owners (former members of the state and collective farm system) still hold their rights in common, with some form of right to partition land in kind (as yet unexercised).⁷ None of the Western CIS countries restituted land to former owners. The advantage to the land share system is that farm members who had been working on the land received a portion of the land into ownership or with ownership like rights. Of the four Western CIS countries, Belarus is on one end of the spectrum and Moldova the other in terms of privatization of agricultural land.

Land shares do not exist in Belarus, and therefore members of collective and state farms do not have even a theoretical right to a share of land. Rather, if a farmer wants to create a private peasant farm, the local administration can allocate land of the collective farm enterprise or from the state land reserve. Private farmers have use rights to this land but not ownership rights.⁸

On the other end of the spectrum is Moldova, which demarcated, titled, and registered land plots for individual farm members.⁹ With the exception of state research farms and village pastures, all non-forest agricultural land is owned privately. The land of the former collectives was divided among the members and pensioners. Almost all of this land has been demarcated and title certificates have been created. (Some of these title certificates that were created have not been distributed to the owners since the former leaders of the defunct collective farms block full implementation of land privatization.) The garden (household) plots, on the other hand, are not titled and in some villages function more like land shares with actual land used varying from year to year. Approximately 17% of agricultural land in Moldova falls into this category.¹⁰

Ukraine and Russia have privatized land under the land share system, with the exception of household plots, which are fully privatized in the sense that the owner possesses a demarcated parcel. Of the 41.9 million ha. of agricultural land in Ukraine, 26.7 million ha. (64%) have been transferred to the control of 6.5 million individuals, each of whom received a land share certificate.¹¹ The land share certificates are undemarcated but represent a portion of land formerly used by the state farm or collective farm. The majority of those that received land share certificates quickly leased them to the collective farm from which they had received these undemarcated lands and little had changed in terms of their ability to exercise ownership rights.

While land represented by land share certificates is largely controlled by former collective farms, in 2000 the Government of Ukraine began an effort to push the land reform forward by converting land share certificates into title documents to individually demarcated land plots. As of July, 2001 the Government maintains that 1.5 million of the 6.5 million land share certificates have been converted into title documents for land plots.¹²

While Russia has distributed land to former collective and state farm members in the form of land shares, problems persist in terms of exercising ownership like rights over that land. The procedure in Russian law for converting land shares into demarcated land parcels can be difficult to utilize, and offers little in the way of a firm guarantee that the resulting land parcel will be of reasonable quality and in a reasonable location. The legal rules regarding physical demarcation are somewhat unclear, and farms interpret the legislation differently. To physically demarcate parcel boundaries on the ground, in some instances each member of the collective (the number of which might be 600 or more) is required to agree. In other cases, when a land plot is demarcated for allocation, it is located far away from the owner's settlement, and the quality of land is inferior. This procedural problem has contributed to the paucity of land share owners who have chosen to convert their shares into land parcels. Moreover, on some agricultural enterprises land share certificates prepared as far back as 1994 have still not been distributed to the land share owners, but rather languish in the hands of the managers of agricultural enterprises.

3. *State-Owned Land Reserves*

Russia and Ukraine withheld a portion of agricultural land in state ownership when privatizing agricultural land. In Russia, land is held and controlled by the State in local level (*raion*) land redistribution funds.¹³ This land comes from three different sources. First, collective and state farms set aside roughly 10% of their arable land for redistribution to those who wanted to start peasant farms.¹⁴ Second, land that remained after calculation of land shares on agricultural enterprises was transferred into the same land funds.¹⁵ Third, land that is forfeited by peasant farms that have ceased operations, and land withdrawn by local officials for irrational use or non-use, continues to be added to the land funds.

The clear policy behind the federal land-fund legislation was to redistribute land from state and collective farms to peasant farmers. Redistribution of land remaining after distribution of land shares was specifically addressed in a 1991 presidential decree.¹⁶

The *raions* in the agricultural *oblasts* (regions) of the Russian Far East hold large quantities of land in state ownership, available for lease at nominal rates (quoted as anywhere between zero and five rubles per hectare per year). While this may ensure the availability of inexpensive land to many of those desiring to use it, it all but guarantees the retardation of development of a market in private land lease and sale transactions.

In Ukraine, land reform legislation provided that 10% of the arable land used by state and collective farms should be allocated to a "land reserve." The land was to be used to distribute for private farming, subsidiary agricultural production, and to persons not currently engaged in agriculture. An additional 15% of arable land was allocated from state and collective farms for current members of agricultural enterprises to start private farms.¹⁷

In Moldova, where agricultural land is scarce relative to population, there is no agricultural "land fund", but each village was allowed to hold up to 5% of the land for village expansion of the residential area. In some villages this reserve land is being leased out to farmers, and in others the population pressure of new families has already consumed this land. Some villages did not reserve any land, preferring to distribute all of it to the former members of the collective.

4. Farm Restructuring

The Western CIS countries have not significantly broken up the large collective farms. In Russia, about 290,000 private farms exist, although at least half of these farms are no longer currently operating.¹⁸ Private farms account for about 6% of the arable land, but provide only 2% of agricultural output because of a lack of funds and an uneven playing field with most of the government assistance going to the former collective and state farms. Household plots on the other hand, comprise about 7% of the total arable land and yet produce about half of all agricultural output by value.¹⁹ Little meaningful change has occurred on the large state and collective farms in terms of organization and management.

While the process of issuing land share certificates in Ukraine is almost complete, less than 5% of all collective members have actually separated from the larger collective agricultural

enterprises.²⁰ Only 15% of arable land is currently cultivated by the individual sector, which is comprised of household plots and family farms. The number of private farms (excluding household plots) leveled out at 38,000 in 1994. These few farms control only 2% of all arable land and produce about 2% of the agricultural product.²¹

The great majority of collective and state farms were “cosmetically” reorganized into other legal forms. This form of reorganization is said to be cosmetic since management of these farms has remained indistinguishable from the collective farm management style. A central management body mimicking that of the collective is found on 70% of the farms; only 30% reported having a less centralized system with responsibility shifting to a greater extent to the subdivision (“brigade”) level.²² Furthermore, there have been only limited improvements in profitability and efficiency, and yields on the whole have not increased above pre-reform levels.²³

Programs financed by international donors have assisted with restructuring 620 farms out of a total of 16,000 large-scale farms. Grass roots efforts have begun in the form of local initiatives by farm managers and regional authorities toward the goal of restructuring. Such grass roots initiatives have generated about 500 spontaneously restructured farms. Combined, the international donor projects and spontaneously restructured farms represent only 7% of the former collective and state farms.²⁴ However, there is a question of how significant even this limited restructuring has been, since most of these farms remain large-scale farms.

In Belarus, the overall structure of agricultural land²⁵ has remained fixed since 1992, with 84% comprising the socialized sector and 16% making up the individual sector. Currently, the individual sector, represented mainly by household plots, accounts for the vast amount of this land, with private farms accounting for less than 1% of agricultural land in Belarus.²⁶ The absence of genuine, market-oriented restructuring of large farm enterprises is preventing progressive agricultural changes.

The Belarus Civil Code, which was revised in 1999, may have some positive impact on farm reorganization. The Civil Code recognizes three legal forms of business organization (limited-liability joint stock companies, unlimited-liability partnerships, and cooperatives), but does not recognize collective farms or collective agricultural enterprises. The intentional exclusion of this collective form was presumably meant to encourage reorganization (or perhaps the appearance of reorganization). However, the President has rejected proposals from the Ministry of Agriculture for possible options for farm restructuring, and the pertinent provisions of the Civil Code have been in effect suspended. No additional, significant action has been taken to change the legal form of the collective farms.²⁷

For reorganization to occur in Belarus, either the worker’s collective or farm managers can take the decision to reorganize. Management must have support from the general meeting of farm members, but no other formal permission from the State is needed at the inception of reorganization. However, there are no transparent procedures for reorganization. This lack of an adequate legal base is one of the main impediments in farm reorganization in Belarus.²⁸ The most obvious change that has occurred in restructuring is the distribution of collective non-land

property to members in the form of property shares. Paper certificates are given to members entitling them to fractional ownership of the non-land property.²⁹

In spite of the fact that the land of the former collective farms has been demarcated and titled in Moldova, actual farm break-up has been spotty. Although roughly 20% of the former farm members and pensioners have separated from the former collective to form independent farms, the remaining 80% continue to lease their land to the successor of the collective, which is usually registered in the name of one or more of the former leaders of the collective farm. In conservative areas of the country, such as the Gagauzia region of southern Moldova, the privatization of agricultural land has produced virtually no change in the structure of the former collective farms, which simply re-registered in other legal forms.³⁰

As a result, for the majority of rural landowners in Moldova the only change in relations introduced by the land privatization program is that they may cancel their land leases and withdraw their land if they do not receive the rent specified in the contract. In practice it is very difficult to enforce land leases, though some landowners have made use of free legal assistance to insist that the lease terms either be respected or that the land be returned to them.³¹ As a consequence of the widespread lease of agricultural land to the successors of the collectives, Moldovan farms remain very large by European standards, averaging over 500 hectares each. (This is still far less than in Russia, where farms in the cosmetically reorganized collective sector average between 4,000 and 5,000 hectares of arable land each.)

There are several reasons for this lack of farm break-up in Moldova, despite the individual demarcation and titling of the land. First, although former farm members and pensioners have documented rights to shares of the non-land assets of the former collective farm (the so-called “property shares”), in the great majority of cases these assets continue to be used free of charge by the successor enterprise. The de facto ban on distribution of non-land assets – principally tractors and other necessary machinery – has hampered the ability of farm members to withdraw land to establish independent farms. Only in villages where the farm members succeeded in insisting that the former collective be divided into multiple units was the machinery distributed to groups of independent farmers. Second, the arrangement of owned land parcels within the middle of large arable fields greatly restricts the landowner’s use of the parcel. It is very difficult for a landowner whose a parcel is “locked into” the middle of a field to lease it to anyone other than the person or enterprise that controls the surrounding land in that field, since leasing to another farmer would not allow for efficient machinery use. The middle of the field problem also affects farmers’ ability to withdraw their land and farm independently. Rights-of-way for future roads are shown on the map, but are presently planted with crops and do not provide access in practice. The only viable option in such cases is for the landowner to exchange his or her parcel with that of an owner whose parcel borders a road, a process that is allowed by law but as yet used rarely.³²

Third, while immediate family members usually receive contiguous parcels, the requests of other relatives, friends or neighbors to receive parcels that adjoin one another are sometimes ignored. This may happen through the actions of the collective manager, the prospective “leaders” of new

farm enterprises, the mayor, or even the surveyor employed by the program. Moreover, there are other types of intentional impediments by leaders of the former farm.³³

Finally, the unstable economic climate, difficulty in obtaining capital for current operations (and long-term investments), and lack of managerial and marketing experience discourages some would-be farmers from establishing their own farms.

The land privatization process in Moldova nevertheless provides some basis for optimism. Prior to the National Land Program, in many enterprises anywhere from 10 to 40% of households (and in some cases, 100% of households) had already withdrawn land from the collective to start independent farms. Moldovan authorities estimate that the average was probably close to 20%. While most collective farms that participated in the National Land Program did not undergo further major break-up during the initial titling process -- usually, there are only one, two or three resulting corporate farms -- small numbers of individuals continue to withdraw from some large enterprises after the initial titling process. This phenomenon varies greatly by region.

5. *Land Transactions*

a. *Purchase and Sale*

Russia legally recognizes private agricultural land ownership, but buying and selling of land is restricted both by law and in practice. Moldova and Ukraine have no structural barriers to land transactions. Belarus does not allow land transactions for agricultural land.

In spite of the fact that the avenues for obtaining additional land are highly restricted in Belarus, significant numbers of farmers are interested in obtaining more land. Two-thirds of the private farmers included in a 1999 World Bank survey expressed a desire to increase their landholdings. Furthermore, most private farmers support the proposition of being able to fully transact in land; 80% believe that buying and selling of land should be permitted.³⁴

Attitudes of farmers in Russia are similar. Research conducted in the Russian Far East in 1997³⁵ found that in "Red" Amur *Oblast*, officials and farmers alike supported introduction of the right to purchase and sell agricultural land. But in Russia, the legal framework for the purchase and sale of agricultural land has been debated for 10 years by the federal parliament, the State *Duma*, with no decision yet.³⁶

In September 2001, the State *Duma* adopted the Land Code that would liberalize regulation of transactions involving non-agricultural land.³⁷ However, the new Land Code covers the 18.6 million hectares in cities, towns and villages, and 17.4 million hectares of industrial land.³⁸ Chapter 17 of the Russian Civil Code guarantees the right to own land, and clarifies a number of substantive and procedural issues concerning land ownership, but will not become effective until the federal Land Code becomes law.³⁹

With no movement at the federal level, regulation of agricultural land ownership is left to the regional governments. Seventeen regions have passed laws allowing the sale of agriculture land.

However, potential buyers have been reluctant to invest in agricultural land, fearing they may lose their plots if a federal Land Code is passed banning or severely restricting agricultural land sales.⁴⁰

The 7% of arable land that is in the “small plot” category, however (household plots, dacha plots, garden plots), and comprising some 41 million small holdings, has been fully capable of being bought and sold under specific federal legislation adopted in 1992, with implementing rules promulgated in 1993.⁴¹ There have been significant numbers of purchase and sales of such lands since the mid-1990s.

In Ukraine, Article 6 of the Land Code provides that citizens may acquire land through purchase. The Code, however, also provides that a citizen may buy land only for certain purposes: for private farming; for subsidiary farming; for gardening; for *dacha* and garage construction; and for residential construction.

In Moldova, procedures have been established and tested for lease, sale, bequest, exchange, and mortgage of agricultural land. Fees for notarization and registration of agricultural land transactions have been reduced to be more affordable. There are still very few purchase and sale transactions, which is probably the result of the poor economic climate for agriculture and the fact that prospective buyers lack capital to purchase land and have been reluctant to invest in agricultural land.⁴²

b. Lease

Much of the leasing that is occurring in the Western CIS countries is between land share holders and the individual or corporate successors to the former collective farms. Most of the agricultural enterprises underpay (or do not pay at all) the owners of land shares for the use of their land.

In Ukraine, most leases involve the transfer of land shares from individual farm holders to farm enterprises or other individuals. In this form of leasing, paper transactions are made, but the plots of land are not demarcated. When land shares are leased to a farm enterprise, the farm enterprise basically assumes rights to the land (which has always been cultivated by that farm enterprise but is now recorded on the books as a lease of privatized land).⁴³ In effect, this is simply a perpetuation of the situation that existed during under the pre-reform period.

However, it is possible for land share owners to transact in land shares, and in turn, adjustments to farm size of private farmers can be made. This is done predominantly through leasing. Originally, the state was the main supplier of leased land, but this is changing as individual leasing increases in popularity.⁴⁴ On the whole, the lease market for land shares is the only type of land market that currently exists in Ukraine. Private farmers who lease in land shares increase their holdings, on average, from 25 ha. to 60 ha. Furthermore, over half the land in private farms is leased. A World Bank survey indicated that from 1997 to 1998, 45% of private farmers reported leasing in land; of which 20% of the 45% reported leasing land from private individuals.⁴⁵

Land in Ukraine is mainly leased for 5 years, but the periods may run from 1 to 10 years. A form of competitive leasing has appeared whereby enterprising individuals lease large blocks of land shares from former collective members and then compete as lessors with the former collective farms. The result is that lessees can obtain sufficient land for a large, commercial farm.⁴⁶ It may, however, be important to distinguish between such leases, which are voluntary and involve a moderately reasonable level of payment to the lessor, from others in which ex-collective farm leaders or others with leverage may extract leases (sometimes of a rather long term) and offer little payment in return.

In Russia, land leasing is more common than buying and selling. Approximately, 33% of private farmer respondents and 24% of farm enterprise managers in a government survey (2000) reported they knew of land leasing transactions.⁴⁷

In Moldova, all titled land can be leased to Moldovan citizens and Moldovan legal entities without restriction. Many leases are now in writing and are for 1-year terms, allowing flexibility to landowners. Still, former leaders of collective farms who now lease in large tracts of land often abuse landowners by refusing to honor lease contract provisions or refusing to allow landowners to withdraw their land. Landowners do not have sufficient information regarding land rights, and cannot conveniently enforce their rights even when they know of them. Some leases are not individual or in writing or are short-term. Consequently, in many villages lease payments have not increased as a result of titling.⁴⁸

6. *Mortgage*

In the Western CIS states, where there are few land owners who are private actors and few land transactions, mortgage of agricultural land is very limited.

In Moldova the Law on Pledge was amended in 1999 to make land mortgage easier. The mechanisms of the Law on Pledge, while not well defined, are sufficient. One amendment provides for simultaneous conclusion of both

With assistance from USAID, Moldova has made some progress in mortgage lending to support development of the real estate market.¹ One pilot program assisted two commercial banks in making 30 mortgage loans worth 274,000 USD to operators of small- and medium-size farms and agribusinesses, helping borrowers to purchase a total of 360 hectares of agricultural land. The other pilot program assisted six rural Savings and Credit Associations to make 31 small loans worth a total of 43,000 USD to farmers to purchase a total of 100 hectares of agricultural land, all in tracts of less than four hectares. These pilot programs provided insight into the problems of using land mortgages to finance the purchase of land (commonly referred to as a "purchase money mortgage" in America). In a modern legal system, the land purchaser can obtain a bank loan to purchase a parcel of land, using the purchased land as security for the loan. Although as of 1999 the Moldovan law allowed this process, Moldovan notaries nevertheless refused to notarize the mortgage agreement until the purchaser/borrower was first registered as the owner of the real estate. Thus, the seller was forced to relinquish title prior to the bank's release of the loan proceeds, leaving the seller exposed. The problem with the notarization of documents was not solved in practice until the rural Savings and Credit Associations, with the assistance of the pilot program, challenged the notaries to notarize both the sale contract and the mortgage simultaneously, as allowed by the 1999 amendments to the Law on Pledge. Moreover, Territorial Cadastre Offices frequently delayed the registration of mortgage agreements without cause, further extending the period of time the seller would have to wait for his or her proceeds. The pilot programs were not continued, and the purchase money mortgage procedure was not widely adopted by Moldovan commercial banks.

sale and purchase agreements and mortgage contracts (a procedural point that was previously unclear), while another amendment defined more precisely a foreclosure procedure on mortgaged land.

The mortgage law in Russia provides that land parcels enterprises, buildings, structures, apartments, and other real estate can be mortgaged, but excludes agricultural land.⁴⁹

Ukraine has no mortgage law, though proposals are being discussed.

The Belarus Civil Code of 1999 relaxed leasing and mortgage restrictions, and leaseholders can now sublease and mortgage their use rights to land.⁵⁰ According to a 1997 presidential decree, certain banks may now accept land plots as collateral. The Belarussian Council of Ministers and the National Bank adopted rules on the mortgaging of land plots to banks as loan security.⁵¹ This seems to apply even to those who merely have use rights on the land. However, the mortgage of lease rights is highly unlikely in a non-market economy.

B. Administrative Framework

1. Land Titling and Registration

The Western CIS countries have all started registering land with the exception of Belarus. Land titling and registration are non-existent in Belarus, creating major barriers to the existence of land markets.⁵²

In Russia, the federal law "On Registration of Rights to Immovable Property and Transactions With It" has been in place since 1998, but its implementation in rural areas has been problematic. This is particularly true regarding land shares. Although there are 12 million land share owners in Russia, most *raion* registration offices refuse to register land share transactions, in part because relevant legislation (the Civil Code and Law on Registration) does not effectively address the unique characteristics of common shared land on agricultural collectives. Moreover, the cost of services for surveying (keeping in mind that a land share must be demarcated on the ground if it is to be leased or otherwise transacted to an individual private farmer, a step not necessary if it is "leased" to the collective enterprise) is unaffordable for most private farmers and owners of land shares.

In Moldova, ownership of all privatized agricultural land was registered at the village level, but the law provides that such land can be the subject of transactions only if it is also registered in the regional registry. As of December 2000, as the result of cooperation between USAID and the World Bank-financed "Cadastre Project," roughly half of all privatized agricultural land was registered in the regional registry.⁵³

In Ukraine, articles 9, 10 and 11 of the Land Code require registration of rights to land. This registration is carried out by the local village councils. It is commonly accepted that the registration process is not meeting the needs of its farmers. A comprehensive law on state

registration is needed, and has been under preparation in the Supreme *Rada*, Ukraine's parliament, for some time.

2. Roles of the Public and Private Sectors

In the Western CIS countries, the relevant administrative framework is primarily in the hands of the State. There is little motivation for the private sector to develop since there is both resistance from entrenched state actors and very little economic motivation with little or no agricultural land market.

In Russia, over the past five years the government has undergone numerous reorganizations and shifts of responsibility over land policy and administration. Currently cadastre activities are the responsibility of the Federal Cadastre Service, registration is controlled by the Ministry of Justice, and land policy is the bailiwick the Ministry of Property Relations. In addition, the Ministry of Agriculture undoubtedly plays its role as well.

One positive private initiative in Russia is legal aid centers in Samara and in Vladimir *Oblasts* focused on private rights to agricultural land and related issues.⁵⁴ The rural population does not know and does not understand their rights to land and other assets, and many rural residents are afraid to complain about violations because they fear they will be punished for attempt to protect their land and other property rights. The two legal aid centers in Russia have been assisting rural citizens to learn about and to exercise these rights.

In Belarus, the administrative framework stifles farming. The government intervenes to correct the effects of what it sees as “inherently unstable” free market forces. Intervention takes the form of implicit taxation on the agricultural sector, and provision of subsidies to mitigate the effect of taxation.⁵⁵ Government controls, fixed price quotas and extensive trade regulations impede reform and prevent the recovery of the agricultural sector.⁵⁶

While both private farms and farm enterprises must operate in a restrictive economic environment in Belarus, private farms do not receive the many subsidies enjoyed by most farm enterprises. Rather than promoting positive conditions for private farmers, the government has tried to impose stricter administrative controls.⁵⁷ According to Presidential Decree No. 193, beginning in April 1998 private farmers were required to enter into contracts with local authorities, agreeing to specific land use conditions, production structures, and production of specified types and amounts of goods for allotment to the State.⁵⁸

The 1999 Land Code further controls private farmers by providing that the State can terminate the farmer's rights if his crop yields are lower than the yields considered “normal” for the region. Moreover, local authorities have the right to dictate cropping patterns to land users, in effect substituting the judgment of state bureaucrats for that of private farmers.⁵⁹

In Moldova, the role of the State in administration of agricultural land has been sharply reduced. Farmers are not required to sell production to the State or to obtain state permission when

altering their production patterns. During 1997 – 2000 village mayors implemented a comprehensive land titling project pursuant to procedures established jointly by the Department of Privatization and State Property Administration (of the Ministry of Economy and Reforms), and the National Agency for Cadastre, Land Resources and Geodesy.⁶⁰ The process of decentralization of the land reform reduced interference from central bureaucracy and allowed citizens to apply pressure to mayors who delayed action. On the other hand, the decentralized process that empowered mayors also allowed unscrupulous mayors to abuse their authority to reward friends with better land and punish enemies with worse land. On the whole, however, the decentralization proved an effective strategy for accelerating and then completing privatization of agricultural land in Moldova.

In the Western CIS, only in Moldova are there the beginnings of an active private sector in land management institutions for agricultural land. The USAID Project to Develop Land and Real Estate Markets provided financial and technical support to establish some 50 new private survey firms to help implement the National Land Program, as well as four private brokerage firms to assist buyers and sellers of real estate to complete land transactions.

The Project originally broke the state monopoly over land surveying by enticing state employees to form private survey firms, promising contracts to implement the land privatization program. The number of firms grew over time as the privatization program grew. Without the participation of the private survey firms, it is highly unlikely that much land privatization could have been completed. With completion of the land privatization program in 2000, many private firms have found other business, including implementation of other donor-financed privatization as well as World Bank contracts and services required by the new real estate market.

There were problems associated with privatization of surveyors as well. Since private surveyors were paid only for work performed and not a daily rate, it was in their interests to work with local farm "leaders" rather than directly with citizens. Working with local farm leaders gave them easy access to a lot of work. Sometimes the result was a local decision making process that did not include adequate citizen participation. In addition, payment-by-the-job meant that some jobs were rushed.

In Moldova, in October 1999, the Project assisted four project staff members (with prior experience in privatizing urban land associated with Moldovan commercial enterprises) to establish four private real estate brokerage firms to serve enterprises interested in privatizing land beneath their enterprises, as well as buyers and sellers of privately owned real estate. The brokerage firms fulfilled an important role in evaluating the activities of private notaries and the public regional real estate registrars. These brokers forced notaries to charge their clients appropriate fees for their services and to accept proper standardized contracts. They also complained to the central registration authorities when regional registrars overcharged buyers and sellers of real estate or otherwise failed to provide registration services. The brokers also informed new landowners of their legal rights and helped them exercise those rights during transactions. They proved to be the only entities that represent the best interests of their clients, the buyers and sellers of real estate, because the client pays their commission and is a source of referral business.

III. CIS Countries: Transcaucasus States (Georgia, Armenia, Azerbaijan)

A. Policy and Legislative Framework

1. *Land Ownership*

In Armenia, Azerbaijan, and Georgia, private ownership of agricultural land is allowed and agricultural land is freely transferable. In all three countries, land from the former collective and state farms was distributed to farm members or rural citizens free of charge or for a very small sum of money.

2. *Land Privatization*

In both Armenia and Azerbaijan, most of the state-owned land was distributed to rural residents, including farm members, whereas in Georgia a portion of land was distributed to rural households for subsistence farming and a portion remained in state ownership for lease to larger, market-focused farms.

In Azerbaijan, the effect was a move toward ruralization, which occurred in the early 1990s as urban residents of rural origin returned to the countryside to exercise their new land rights. The rural population rose from 31% in 1990 to 33% in 1998. The agricultural sector provides livelihood and food security for about 45% of Azeri households and employs one-third of the entire population of Azerbaijan.⁶¹ Based on information from the State Land Committee, as of December 1, 1999 privatization of land in Azerbaijan was 96.1% complete.

In Armenia, the vast majority of agricultural land was privatized during 1991 and 1992. Approximately 70% of all arable land in the country was transferred in ownership to family farms while most of the remainder was leased to farmers, making state and collective farms almost entirely obsolete.⁶² The process of privatization in Armenia had four main characteristics. First, land was distributed only to village residents, superceding any claims of restitution by citizens who previously lost land in the collectivization drive. Second, each family with three or fewer members was granted one unit of land, those with four to six members received two units, and those with seven or more members received three units. Units were calculated by dividing the available village land by the number of entitlements, and calculations were carried out separately for the different types of agricultural land. This resulted in a certain amount of fragmentation as families received several parcels of different kinds of land. Third, a lottery was held to determine the location of family parcels in the village. Fourth, each recipient had to pay for the land received, but the payment was very low and mainly regarded as symbolic. For the first three years there was a moratorium placed on land sales, but after February 1994 it became legal to buy and sell land.⁶³

In Georgia, as of the spring of 2001, the government had transferred approximately 60% of state-owned arable agricultural land in ownership to rural households.⁶⁴

Georgia's land privatization had a two-fold strategy. First a portion of state-owned land was distributed to households for subsistence farming.⁶⁵ During 1992 – 1998 an agricultural "land

reserve fund” of 930,000 hectares of state-owned land was distributed to the ownership of rural households. District authorities leased the remaining state-owned land to persons or legal entities.⁶⁶ The goal was to create both a subsistence sector and a market sector of larger farms.⁶⁷ Of the arable land, using 1999 estimates, 58% had been privatized, 27% was leased out by the State, and 14% was neither leased nor privatized.⁶⁸

3. *State-Owned Land Reserves*

Azerbaijan has only a 5% agricultural land reserve because the country's policy was to distribute most of the arable land to rural residents.

In Armenia, the state land reserve is quite large: estimates range from 15% to one-third of arable land.⁶⁹ The reserve land, which the State currently leases to farmers, is to be sold to private farmers in greater quantities in the future.⁷⁰ However, leasing from the State has been the main way farmers have dealt with small parcel size. A survey carried out in early 1998 found that the average farm size was 1.99 hectares.⁷¹ Approximately 58% of farms are between 0.5 to 2.5 hectares and the median farm size is 1.5 hectares.

The State (through the village councils) is the primary source of leased land and most leases run from one to three years. Among farmers who lease land, 60% lease arable land, 40% lease hay meadows, and 7% lease pastures.⁷² However, because there is simply not much additional arable land to be leased from the State, the majority of land being leased is composed of hay meadows and pastureland.⁷³ Thus far, leasing between individual parties has not yet developed, for the most part because the state land fund is so large and land from the fund is inexpensive and accessible.⁷⁴

In Georgia, the State still owns approximately 40% of arable land. Georgian farmers are able to lease land from the State under a presidential decree.⁷⁵ This decree established that remaining land not scheduled for privatization may be leased to individuals for up to 49 years.⁷⁶ In addition, approximately 825,000 hectares are leased by the State to 46,000 legal entities to create larger, “market” farms. The leasehold is basically free, with only payment of the land tax required.⁷⁷

In both Armenia and Georgia, state-owned agricultural land leased out to private farmers and legal entities overhangs and suppresses the private land market. In Georgia, the state owned land leased to legal entities, virtually free of charge, does not encourage market driven decisions regarding farm size and structure.

4. *Farm Restructuring*

Armenia and Azerbaijan have dismantled former collective and state farms, and their agriculture is now based primarily on family farms. Georgia has a dual system of household farms and larger farms leasing land from the State.

In Azerbaijan, a presidential decree established the State Commission on Agrarian Reform. This commission established regional and local bodies throughout the country to assist in the reform process.⁷⁸ In total, more than 1.3 million hectares of land have been privatized to approximately 817,700 families.⁷⁹ In addition, there are over 620,000 household farms, with an average size of 2.8 hectares and 4 family members. As of January 2001 the private sector produced 97% of agricultural goods in Azerbaijan.

In Armenia, by the end of 1992, over 300,000 new farms had been created.⁸⁰ In 1998 about 99% of the total agricultural output was being produced by private farmers.⁸¹ A survey carried out in early 1998 found that 84% of farm households consisted of one family and most of the remainder consisted of two families, most often comprised of parents and their married children. The average farm size found in the survey was 1.99 hectares.⁸²

In Armenia, the Regional Councils of Peoples' Deputies had the responsibility of implementing the Land Reform Law. Each council formed a special committee of representatives from the agricultural community or village sector. The committee followed a series of steps in the land disbursement process. First, they inventoried the land. Second, they determined the number of eligible families based on their previous land status. (Foreign residents were not eligible to receive land). Third, they calculated the land allotment per family. Fourth, they mapped and categorized the land into different types. Finally, they distributed the land through a lottery system.⁸³ The payment for land was set at a very low level (70% of the "net profit" for two years, calculated on the basis of very lenient standards), and was regarded as symbolic.⁸⁴

In Georgia, farm restructuring has been somewhat more limited due to the emphasis on creating and supporting large leasehold farms (but still 60% to individuals). There are two types of farms: small plots in private ownership; and larger farms, which are often restructured state or collective farms, which hold a ten-year lease on land.⁸⁵ Only about half of the leased land of the larger farms is actually planted.⁸⁶ Even with preferential access to inputs and credit in some cases, larger farms are not necessarily more productive than the small farming units in Georgia.⁸⁷

5. Land Transactions

a. Purchase and Sale

In Armenia, less than 1% of the respondents to a nationwide survey reported buying or selling land.⁸⁸ There are no legal barriers to land transactions.⁸⁹ However, purchase and sale are constrained by the high cadastral value of land fixed by the government, which is well above current market prices, and the need to pay a substantial tax in cash based on the cadastral value when registering transactions.⁹⁰

In Georgia, the Law on Agricultural Land Ownership⁹¹ has been amended making it easier for landowners to more freely sell, mortgage, and lease, and leaseholders to engage in transactions with agricultural land, even while leasing it from the State or private citizens. This law also contains a provision that makes it illegal for a foreign person (physical or legal) to own agricultural land, though such individuals can lease land from the State or private persons.⁹²

Some earlier bureaucratic and technical impediments to private transactions in prior versions of this law have been done away with in subsequent amendments. These impediments included: (1) requirements that landowners obtain special permission from the State prior to selling their privately owned property; (2) price floors that fixed the price below which private landowners could not sell their parcels; (3) and prohibitions on the sales of agricultural land parcels smaller than 5 hectares.⁹³

In Georgia, at least 3,000 agricultural land sales have taken place since the beginning of 2000, although this figure still represents less than 1% of agricultural land holdings and less than 2% of all agricultural households.⁹⁴ While the first stages of privatization seem to have led to a certain amount of fragmentation (due to the fact that households were awarded small parcels of land totaling, on average, 1.25 hectares, but often consisting of 3 to 5 non-contiguous plots),⁹⁵ this problem seems to be diminishing as people use land transactions to consolidate their holdings. Recent land sales have resulted in the consolidation of smaller parcels into larger, more economically feasible farming units, and the frequency of such transactions is increasing each month as farmers become more confident in the registration system.⁹⁶

In Azerbaijan, the Law on Land Markets, which deals with a wide array of different aspects of land markets, specifically states that legal entities and persons of Azerbaijan can participate in the land market as owners, users, mortgage lenders and borrowers, participants of purchase-sale transactions and other transactions like leasing.⁹⁷ The law also establishes that there will be market prices for land rather than fixed prices.⁹⁸ The Land Code prohibits foreigners from buying land.⁹⁹

b. Lease

In the rural areas of Azerbaijan, landowners are successfully leasing land and often receive payment in the form of harvested crops.¹⁰⁰ The Law on Lease of Land establishes that state, municipal, and private land can be leased. Citizens and legal entities of Azerbaijan, and foreigners are allowed to lease land. Leases can be for made for short or long term use, and lease fees may be paid in cash or in kind.¹⁰¹

Many Armenian landowners are leasing land from the State (through the village council) to increase the size of their holdings. Private two-party leasing, on the other hand, is not commonly practiced.¹⁰² A recent survey of 1500 farmers found that leasing from private individuals is infrequent. Only 1% of the respondents reported leasing land to other users. These leases are usually less than one year in length and typically involve the landowner only leasing out half his private holdings. By contrast, 231 respondents (15%) had leased land from the State. Those 231 had a much larger total farm area, averaging 3.21 ha with leased land than those who did not lease in land (1.98 ha).¹⁰³

Most lease terms are from one to three years; however, of the farmers interviewed, 15% reported lease terms longer than 5 years.¹⁰⁴ Lease payments are made primarily in cash. The median rate is approximately 8,000 dram per hectare (\$16 US), which is only somewhat higher than the land tax of 6,700 dram per hectare.¹⁰⁵

In Georgia, farmers are permitted to lease land from the State or private owners. Over 1,000 private agricultural land leases have been recently registered. The bulk of these leasing transactions have involved retired farmers leasing their land to those who may be able to better use it.¹⁰⁶ However, this number is still far smaller than the estimated 46,000 leases of state owned land. State land is much more attractive than private land because the payment is only the land tax.¹⁰⁷

6. *Mortgage*

While mortgage legislation has been passed in the Trans-Caucasus states, few if any mortgage transactions are occurring.

In Azerbaijan, a law on mortgage was passed in August 1998.¹⁰⁸ However, credit resources are few and the price of credit is very high. After a series of bad lending decisions, the state-owned *Agroprom* Bank is being restructured, and no loans are being granted to the rural sector.¹⁰⁹ *Agroprom* is the only bank with rural branches, and no other banks serve farms and agricultural enterprises. The World Bank is promoting initiatives to develop local financial intermediaries such as credit cooperatives to serve rural areas.¹¹⁰

In Georgia, the number of agricultural parcels mortgaged totaled 121 as of March 2001.¹¹¹ Most loans were borrowed to purchase movable property such as seed, fertilizers or equipment. Generally moveable property is used as collateral and land ownership provides additional collateral. Presently, it still seems that many financial institutions are hesitant to make agricultural land loans because of the small size of parcels and their relatively low value.¹¹²

Armenia passed a mortgage law in 1995. However, in a survey of 1,500 households conducted by the World Bank, 84% of people who borrowed money for agriculture in 1997 borrowed from relatives and friends interest free.¹¹³ Of loans given that required collateral (only 14% of loans in 1997), land was not a preferred form of collateral.¹¹⁴ High interest rates and a lack of an adequate land registration system restrict the use of land as collateral.¹¹⁵

B. *Administrative Framework*

1. *Land Titling and Registration*

Land titling has been a topic that both the World Bank and USAID have emphasized in the CIS. In Azerbaijan, land titling has been fairly successful. The total number of land titles to be issued is 790,000. As of 2000, 80% of these land titles have already been issued. The Law on Land Cadastre establishes the legal framework for the regulation of the land cadastre, land monitoring, and land development. The state land cadastre serves as the information center for land use, information on characteristics of land, and economic appraisal of land. Based on this law, there is one single centralized land cadastral documentation system that generates the state land cadastre and legal and technical documents.¹¹⁶ Through help from the World Bank, the State Land Committee also has plans to develop and implement computerized regional cadastre and

land registration systems. There are also expansion plans already underway to create additional services that will include the registration of leases, rights of access and mortgages.¹¹⁷

In Georgia, the government privatized and transferred many land parcels to rural households, but only began to register them in June 1999. Under the Civil Code and Law on Land Registration, formal registration is a necessary requirement for establishing any type of land right.¹¹⁸ Land registration, therefore, is a crucial legal step in the process of land privatization and a significant component in the creation of a functioning land market.¹¹⁹ In spite of the importance of land registration as a fundamental step in the creation of land markets, the Georgian government delayed this process of registration for many years. Land management officials impeded the registration procedure by focusing on the needs of government and local officials instead of focusing on private transactions for individuals. Full ownership of transferred land was drastically restricted for an extended period due to the lack of registration.

A 1999 presidential decree established a framework for the rapid and fairly efficient initial registration of landholdings.¹²⁰ Registration costs the farmers nothing and, the technical and bureaucratic processes were kept to a minimum.¹²¹ In the initial stages of registration, district chiefs who attempted to delay or corrupt the process were reprimanded or dismissed. Since 1999, nearly 1 million parcels of land have been registered and several thousand secondary land transfers between private landowners (over 3,000 sales and 1,000 leases; see discussion above) have taken place.¹²²

The registration process is fairly simple and straightforward. A farmer wishing to register his land must submit three documents at the *raion* registration office: (1) the registration application (which is only one sentence in length); (2) official proof that the State transferred agricultural land to the applicant's household; and (3) and an official sketch of the transferred land.

The second required document -- the official proof of land transfer -- is sometimes difficult to obtain. When land was transferred to private owners, the Georgian government was supposed to provide a "land receive-delivery act" to each new landowner. Unfortunately, many households never received this document. To overcome this hurdle, the presidential decree provides that the registry offices shall accept substitutions of the receive-delivery act. Landowners can prove land ownership on the basis of local land tax or distribution lists if an applicant has not received a receive-delivery act document. Furthermore, the fee that was associated with securing this document is no longer necessary since having a receive-delivery act is no longer a mandatory requirement.¹²³ One other potential problem new landowners have faced was the difficulty of obtaining official sketches of the parcel. However, the decree made it possible to register without having an official government sketch. With some funding from USAID, private local surveyors were hired to prepare parcel sketches now used in the registration process.¹²⁴

In Armenia, the cadastral and titling system is having great difficulty coping with the large number of individual landowners. It is at capacity at 300,000 individual landowners.¹²⁵ Services must be expanded and the system revamped to accommodate the increasing number of landholders. Furthermore, the process of surveying and preparing titles has been markedly slow and inefficient. This has been due primarily to resource constraints and a lack of experience in

cadastral issues. In addition, there are many cases of failure to place survey marks on the surveyed land, making property boundaries unclear. The lack of a centralized institutional framework further hampers the process; three separate agencies presently issue temporary certificates of ownership.

2. *Roles of the Public and Private Sectors*

Many state functions have been transferred to the local level in the Trans-Caucasus CIS states. Unfortunately, few private firms exist that provide services although several are beginning to develop.

In Georgia, the USAID Project to Develop Land Markets in Georgia hired private surveyors to move registration forward with some success. In addition, the Association for Protection of Landowners' Rights (APLR), a non-governmental organization that defends farmers' rights, has assisted with informing the rural population about the registration legislation.¹²⁶ The APLR played a major role in working with the presidential administration to get laws passed, monitoring the status of the reform situation, and has been active in an education campaign to inform farmers of their rights.

In Armenia, there are several real estate companies that deal with sale and purchase of agricultural land, leasing of agricultural land, and valuation of property. In Azerbaijan, there are also a few private real estate agents and surveyor companies.

IV. The Balkan Countries of Albania and the Former Yugoslavia

This section focuses on the current status of agricultural land and land markets in the strife-torn transition economies of the Balkans. The states included in this discussion are Albania, Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia (Serbia and Montenegro), and Macedonia, as well as the administrative protectorate of Kosovo.

Rural land markets in these countries are not only influenced by and a product of the typical transition issues born of the shift from a centrally-planned socialist economy to a market economy, but also by the severe strife and political instability that have accompanied years of ethnic tension and political change and conflict.

None of these countries has escaped the distracting ethnic turmoil and related sapping of energy that might have otherwise been directed toward important development goals. In Macedonia, ongoing political instability and ethnic tension have diverted scarce resources from social and economic agendas.¹²⁷ In Albania, pressure from refugee populations and the collapse of investment schemes have made land market development slower than it otherwise might have been.¹²⁸ In Bosnia and Herzegovina, displacement, refugee, land redistribution, and resettlement challenges abound.¹²⁹ Years of economic decline and political instability have impeded the development and growth of the rural land market in Serbia and Montenegro.¹³⁰ Ongoing war and political instability have left Croatia's economy and land market on rocky

ground¹³¹ and, even by 1999, the Croatian population was still subject to serious human rights violations, high unemployment, and political corruption.¹³²

It is within this difficult context of transition economy challenges being further complicated by the reality of war and turmoil that this section addresses the status of Balkan land markets and what might be done to improve their viability.

A. Policy and Legislative Framework

1. Land Ownership

Private ownership of land is a legal reality in all of the Balkan countries reviewed. In Macedonia, for example, the Constitution of 1991 guarantees the right to own and inherit land (and the right to a free market).¹³³ In Albania, the 1991 Constitution and Law On Land establish the right to private ownership of land.¹³⁴ The Bosnia and Herzegovina Constitution's Article II sets out a fundamental right to property,¹³⁵ and the 1998 Law on Property Relations expressly addresses the ways by which land is acquired.¹³⁶ Article 48 of the 1990 Croatian Constitution broadly provides for private ownership and the right of inheritance.¹³⁷ In Yugoslavia, the 1992 Constitution allows agricultural land to be privately owned, while the State retains power over natural resources.¹³⁸ The right of private ownership in Kosovo is established by Yugoslavian law in force in 1989 that has not been repealed by the Kosovo Special Representative of the UN Secretary-General or been modified or replaced by regulations promulgated by the Special Representative.¹³⁹ Although a Constitutional Framework for Provisional Self-Government and a variety of land-related laws have been so promulgated, it appears that the 1992 Yugoslavian Constitution is the vehicle establishing the basic ownership rights.¹⁴⁰

Despite constitutional proclamations of broad legal rights to private ownership, policy and legislative intentions are undermined in some cases. For example, some new Macedonian legislation is inconsistent with the private ownership guarantee because it imposes restrictions on sale of land, favors social enterprise, and restricts land use.¹⁴¹

Also, in Bosnia and Herzegovina, constitutionally established ownership rights have yet to be fulfilled in many cases because of the stark realities of war and ethnic strife. During the four years of war, over 2 million of the 4.4 million inhabitants of Bosnia and Herzegovina either became refugees or were displaced from their homes.¹⁴² Many of these were rural families residing on agricultural land. On the heels of the 1995 Dayton Peace Accord came Bosnia and Herzegovina's independence from Yugoslavia and the creation of the land ownership rights. However, ethnic distinction and segregation have made it uncomfortable if not impossible for some citizens to return to their old land if they now find themselves the minority in that area. Approximately 600,000 displaced people and refugees have returned to Bosnia and Herzegovina, but only 100,000 have returned to homes where they now find themselves an ethnic minority.¹⁴³

Similarly, in Croatia ownership rights remain unfulfilled because of wartime displacement. Although current law does not directly sanction discriminatory land redistribution, some

minority Serbs still residing in Croatia are unable to reclaim their pre-war land and homes.¹⁴⁴ Commissions have recently been established to facilitate the redistribution of land and property to pre-war owners, but in practice these commissions do little to remove the majority Croats from the property. Problematically, a Law on Areas of Special State Concern remains in force, granting complete possessory rights to occupants after a period of 10 years (see below).¹⁴⁵

2. *Land Privatization and Farm Reorganization*

The status of agricultural land privatization efforts varies amongst these Balkan countries, although their general levels of privatization¹⁴⁶ easily exceed privatization levels in Russia, Ukraine, and Belarus. In Yugoslavia, two million peasants were forced into collective farms in the 1940's. However, the program was cancelled in 1952 because of low output.¹⁴⁷ Throughout the postwar years, the private sector predominated in both amount of land tilled and production.¹⁴⁸ In the 1980's, 82 percent of farmland was still owned by 2.6 million peasant families, on farms of about 9 acres.¹⁴⁹ The social sector in agriculture included large agroindustrial complexes or combines (*agrokombinats*), which also processed the food they produced and dominated the food processing industry. The agricultural social sector also included state farms, owned and operated directly by the State, and general agricultural cooperatives. Most of the farms in the social sector were located in the north, in the Pannonian Plains of Vojvodina and eastern Croatia. All government agricultural investments and subsidies were reserved for state farms and general agricultural cooperatives.¹⁵⁰ More recently, the diverting realities of war and ethnic strife, along with relatively high production volumes on state-owned farms, have worked to delay privatization of remaining agricultural land held by state bodies.

In Macedonia, the State has been reluctant to privatize all agricultural land for fear of a reduction in productivity, although state claims as to socially owned farm productivity levels are questionable.¹⁵¹ Nevertheless, between 70 and 85 percent of Macedonian agricultural land is privately owned and is farmed privately.¹⁵² Presuming the former percentage, about 463,000 hectares of arable land are held privately. Non-privatized land is socially owned¹⁵³ and farmed in large *agrokombinats* or by smaller socially owned farms.¹⁵⁴ As the remainder of these socially owned farms are decollectivized, and because agricultural land is designated by law as a public resource, the State retains title to this agricultural land pursuant to the Law for Transformation of Enterprises Which Manage Agricultural Land.¹⁵⁵ Non-land assets are privatized and distributed.¹⁵⁶ The users of the non-land assets as of the date of decollectivization typically obtain contracts for the lease of the land.¹⁵⁷

A push toward privatization of the socially owned agricultural operations began in 1996 but, as of early 1999, only 15 percent of each unit had been transferred to private operators.¹⁵⁸ The average size of arable plots of socially owned land is just over 1,000 hectares. Although varying widely in size, average private farm size is 2.5 to 2.8 hectares.¹⁵⁹

In Bosnia and Herzegovina today, about 94 percent of the agricultural land is privately owned and is farmed privately. Pre-1992 legislation allowed individual holdings only up to a parcel size

of 10 hectares of flat land and up to 15 hectares of hilly land.¹⁶⁰ This legal limit has now been abandoned. About 5 percent of arable land is now held by state farms.¹⁶¹

In Albania, over 94 percent of all land available for distribution had been decollectivized and privatized and was being individually farmed by 1994.¹⁶² Albanian farmers are generally hostile toward collective, cooperative, or associative collaborations.¹⁶³ Albania's land allocation method was primarily one of per capita distribution rather than restitution. Village land commissions were elected to distribute collective farm land in proportion to family size and collective plot use. Small plots were distributed to assure equity among the farmers, encourage crop diversification, and lower the risk of production failure. However, in some cases local officials left land with the then-current users or attempted to restitute property to former owners.¹⁶⁴ State-owned land was initially distributed to state farm workers on a "use only" basis in the same fashion as the collectively farmed land.¹⁶⁵ No ownership rights were given for this land until 1995, when legislation transferred ownership of state agricultural land.¹⁶⁶

In the Federal Republic of Yugoslavia (Serbia and Montenegro), nearly 85 percent of the agricultural land is privatized and is being farmed privately, although large parts of this remain uncultivated or used only part time. This under-use is primarily a result of government intervention via food price controls and market subsidization.¹⁶⁷ The remaining agricultural land is farmed by state agricultural enterprises and cooperatives. These large plots provide a disproportionately large percentage of the total production, with the level of contribution probably attributable to better access to inputs provided by the State. Privatization of this land was curtailed in 1991 and has not resumed.¹⁶⁸

In Croatia, by the early 1990's private farmers accounted for about 60 percent of total agricultural land.¹⁶⁹ By 2000, approximately 83 percent of arable agricultural land was privately owned and in private use.¹⁷⁰ Non-privatized, remaining social sector enterprise land was transferred from social ownership to the State in 1991. For the next 6 years, the government was not legally bound to privatize this land, and few efforts were made to do so. The war obviously contributed to this lack of progress.¹⁷¹ By 1997, the Agricultural Land Act had encouraged the lease or sale of only 10 percent of state land. This is largely attributable to a lack of action on the part of regional commissions that are charged with the primary part of the land leasing.¹⁷² In furtherance of this privatization process, the World Bank has called for the government to lease state land that is subject to unresolved ownership claims, and to sell the remainder. To create the needed legal framework, the Bank has also called for a new law on ownership and property rights and amendments to the cadastre and land registration laws.¹⁷³

3. *State-Owned Land Reserves*

Of the surveyed Balkan countries, only Albania has a state land reserve. This small reserve consists of about 20,000 hectares (of a total 575,400 hectares of arable land). The State began to lease the land to farmers in 1999. District agricultural directors that are governed by the Ministry of Agriculture administer the land.¹⁷⁴

4. *Land Use*

Few agricultural land use laws were identified in the surveyed Balkan countries, and tend to address permitted and non-permitted uses. For example, Albania's Law on the Protection of Fruit Trees prevents the conversion of orchards and vineyards into arable cropland unless permission is obtained from the specified authorities.¹⁷⁵ Such laws can fetter land transactions to the extent that they force landowners to maintain uses that would be untenable to those wishing to purchase or lease the land.

Not surprisingly, some land use policy and legislation has been a product of ethnic tension and strife. For example, the 1995 Croatian Law on the Temporary Takeover and Administration of Specified Property (LTTO) permitted the government to place abandoned land (both residential and agricultural) under state administration, and then assign temporary use of the land to other persons. Although this law was repealed in July 1998, the 1996 Law on Areas of Special State Concern permitted the LTTO temporary use to be granted for up to 10 years, and then provided for a mechanism by which the temporary users could obtain full ownership rights at the end of the 10-year period.¹⁷⁶ This provision was eliminated by amendment in July 2000. However, it is reported that requests can still be submitted for obtaining ownership after 10 years.¹⁷⁷ In practice, both laws were applied to the property of Croatian Serbs that fled during the war. Repeal of LTTO stopped the issuing of decisions giving permission to occupy Croatian Serb land to Bosnian Croat non-owners, but the issued decisions continue to stand until review under a Program for Return. Some agricultural land was assigned to temporary users under LTTO, but there have also been reports of agricultural land being assigned to non-owner users pursuant to the Law on Agricultural Land, which permitted the government to grant use to non-owners of land lying fallow for a period of 1 to 3 years.¹⁷⁸

Anecdotal evidence about the Program for Return indicates that the process of re-acquiring property will be long and difficult. Municipal commissions responsible for addressing property return claims have been biased, discriminatory, obstructionist, and slow. Accordingly, minority Serbs still residing in Croatia are typically unable to reclaim their pre-war land and homes, and they remain at risk of the temporary users being able to obtain full ownership rights after 10 years.¹⁷⁹

5. *Land Transactions*

Land transactions and land markets in the surveyed Balkan countries are frequently sporadic, uncertain, inefficient, and risky.

In Macedonia, inheritance is the primary type of transaction, with purchase and sale also being significant contributor to total transactions. Leases are a distant third source of transactions, although in some regions up to 25 percent of all farmers lease in land, and about 50 percent of all farmers polled are interested in leasing additional land. A lack of access to credit was cited by farmers as the most frequent constraint to leasing in land.¹⁸⁰

The market for land is active but unstable, and has declined in recent years. Unresolved land claims, lack of credit, uncertainty as to broader market conditions, and volatile social and

political environments have all combined to retard the land market. Current legislation and legal processes related to purchase and sale are complex and prompt high transaction costs.¹⁸¹

Albanian land markets have only begun to develop relatively recently because of earlier restrictions on the sale of land. Before 1995, the sale of land was prohibited. However, informal sales were common, which caused titling and registration problems and increased insecurity. The sale of agricultural land did become legal in 1995, but a lack of education and lingering state control impeded market development and landowners' comfort with land transactions for several years. Until 1998, the sale of agricultural land was subject to the conditions of Law no. 7983, which required the seller to offer the land to family, neighboring land owners, ex-owners, and inhabitants of the village before selling to anyone else.¹⁸² Law no. 8337 now streamlines the sale process, allowing property to be sold to any Albanian citizen once a registration, certification, and documentation process has been completed.¹⁸³ Foreign citizens still cannot purchase land, but they may lease cropland for up to 10 years.¹⁸⁴ Current obstacles to a viable Albanian land market include some public uncertainty as to whether land can be properly bought and sold, and a fear of divesting the family of land. As late as 1998, many farmers were not aware that land sales were legal.¹⁸⁵ This has contributed to a lack of sales, leases, and exchanges of land in rural areas.

Another underlying factor impeding the development of a land market in Albania is the lack of security farmers have in their title to land. Early problems with title registration and ongoing disputes as to rightful ownership have impacted selling and investing in land. Because Albania chose not to recognize pre-collectivization land rights, there has been some controversy between "newcomers" and historical owners as to who rightfully owns the land. The government made some compensation efforts to these historical owners in 1995, but interest in recovering family land is still prevalent.¹⁸⁶ Restitution commissions, pursuant to legal mandate that conflicts with the per capita approach to land distribution, have occasionally awarded land to ex-owners when that land had already been allotted to individuals by village land commissions.¹⁸⁷ Additionally, illegal acquisition of land through political or economic influence has been a major source of insecurity for those not having clear title to their land. The resulting insecurity has created some reluctance to invest in or make improvements on the land. Some observers report that investments that have been made are seen predominantly on land that is currently titled to the historical owner.¹⁸⁸ Other more recent observers have noted significant investments being made to land owned by both historical and new owners, as well as by occupants having no title to the land upon which they reside.¹⁸⁹

In Bosnia and Herzegovina, in addition to the typical constraints seen in transition economies, there are at least four other reasons why land transactions are few and why the land market is flat and dysfunctional. First, there was extensive destruction of property during the war. Twenty-five percent of all buildings were damaged or destroyed,¹⁹⁰ and an estimated 10,000 hectares of arable land is left unused because of mine infestation and damage caused by trenches and bombardment.¹⁹¹ Second, the focus on return of property and the related application, hearing, decision, and execution process makes it difficult to establish title to many parcels, and execution of decisions by municipal governments has been slow.¹⁹² Third, the current government (rightfully) will not recognize as legal any land contracts that were made under duress during the

war.¹⁹³ Finally, many displaced property owners who would be in minority status if they were to return to their formerly occupied or owned properties are showing no sign of wanting to return to these places. Of an estimated 1,760,000 pre-war inhabitants who became refugees or displaced persons, only an estimated 100,000 have returned to a pre-war home that is in a municipality where they do not belong to a majority group.¹⁹⁴

In Croatia, a lack of clarity in property laws and delays in making necessary amendments to these laws have impeded the process of developing a functional land market. Property rights remain unclear due to delays in approving new land laws, and there are major inconsistencies between the land registry and the cadastre.¹⁹⁵ Continuing ethnic conflict and land disputes have also taken precedent over governmental focus on updating agricultural land law and focusing on farm productivity.¹⁹⁶

6. Mortgage

Mortgage lending is rare in the surveyed countries. Although all of the countries have laws that would theoretically permit mortgage lending, and no express restrictions were noted, none has the needed support structures (reliable and searchable mortgage registration systems, for example) or support institutions (courts prepared to conduct fair foreclosure proceedings, for example) in place to help mortgage lending thrive.

In Macedonia, the Law of Basic Ownership Relations and the Law on Obligations address mortgage.¹⁹⁷ These laws allow and regulate the right of mortgage, but the lack of development in the land market and lengthy procedures for foreclosure have made mortgages very rare.¹⁹⁸ These few mortgages have historically been recorded in the courts through intabulation books. Unfortunately, these registers are sometimes incomplete and difficult to search conclusively.¹⁹⁹ In addition, no formal rural financial services exist, and rural populations distrust the existing formal banking system. However, there is evidence of informal rural savings.²⁰⁰

In Croatia, there is little if any mortgage lending. A massive program of subsidized credit financed by the government treasury was terminated in 1992. Credit availability as of 2000 was restricted to very small in-kind loans provided by the State Directorate for Strategic Reserves and the Ministry of Agriculture and Forestry, which is developing an Agricultural Development Fund (ADF) to provide interim support to farmers through subsidized credit.²⁰¹

However, the actions of the new Croatian government and the involvement of development banks and NGO's in facilitating new programs for agricultural development look promising. NGO's have been somewhat persuasive in their demands for the government's adoption of the SSAD (Strategy for Sustainable Agricultural Development). The SSAD was adopted in 1995 and intends to provide rural finance and promote regional planning for sustainable integrated development in the agricultural sector.²⁰² A proposed mortgage support program passed final review by the European Bank for Reconstruction in September 2001. The Bank will extend a DM 100 million mortgage financing facility to the largest Croatian bank (PBZ). However, the mortgage credit funding will be directed toward housing loan activities.²⁰³

The Albanian Civil Code provides for mortgage lending,²⁰⁴ and the Immovable Property Registration System provides for registration of mortgages. One source puts the total number of registered mortgages at about 2,700 for 1999 and at 1,900 for the first 6 months of 2000. However, the vast bulk of these mortgages are urban apartment mortgages, and the lending figures include credit obtained through programs financed by international donors as opposed to private capital.²⁰⁵ Moreover, Albanian bankers report that the foreclosure process is uncertain and untested, thus borrowers must demonstrate little risk of default before loans are made.²⁰⁶

B. Administrative Framework

1. Land Titling and Registration

The status of land titling and registration systems is varied but generally nascent and unreliable, with the exception of Albania. Only in Albania is land registration nearing the levels of completion, sophistication, and regularity needed to support or invigorate a viable land market.

In Macedonia, the registration approach would have local cadastre offices register land through *postdoven list* (issued title documents) in a cadastral land registration system.²⁰⁷ The system, which was authorized by a 1986 Law on Land Survey, Cadastre and Registration of Real Estate Rights, was to have recorded the name, size, and location of all land parcels. Progress has been slow. Initial registration of parcels has not been completed, and subsequent transactions have not been recorded.²⁰⁸

Bosnia and Herzegovina have had a framework in place for land titling and registration since the 1930's. This system, implemented by the Austrians, delineates ownership of land and other property, related rights, and mortgages. Although land registers exist across Bosnia and Herzegovina, approximately 30 percent of the registers were destroyed in World War II and many were not replaced. Land registers are updated manually, and many transactions have not been recorded because of political instability and a 15 percent purchase tax on real estate (pushing land transactions into an informal market). In approximately half of the country, the Austrians also implemented a cadastral system for recording real property rights. Under this system, the municipality is in charge of updating land records, but the majority of the funding comes through the State.²⁰⁹ In 1984, this system was updated through the "Law on Land Surveying and the Real Estate Cadastre." Through this law the registration system was partially computerized, and included some secured loans on property.²¹⁰ However, the system was only 10 percent functional in 1999 and the lack of comprehensive registration is still an obstacle to a functional land market.²¹¹

In Kosovo, any surviving titling comes from the Turkish *tapi* system. This system identifies the owner and delineates the property through describing boundaries and neighbors. A survey of Kosovar land, effectively used as cadastral documentation, was completed in 1937 and was carried out primarily by the Kingdom of Serbia, Croatia, and Slovenia²¹². The system was understandably piecemeal and often not used because of the population movements created by ethnic and political conflict.²¹³ Albanian occupants of Kosovo generally did not make use of the *tapi* system, primarily because of illiteracy and high transaction costs. Because of this lack of

participation, ethnic Albanian land rights have been marginalized and disregarded by subsequent political regimes.²¹⁴

While informal land transactions are the most common, the rarely used *tapi* system does remain at the core of the registration system in Kosovo.²¹⁵ Under this system, land and immovable property are apparently fully alienable, with support from a Certificate of Possession, which is issued by the Communal Directorate of Geodesy. Legally, these certificates are proof only of possessory rights, and not ownership rights. However, in practice property is seen as owned by those with possessory documentation.²¹⁶ As these land certificates are necessary for all land transactions, most residents know the boundaries and exact parcel of land they possess.²¹⁷ There has been some overlap of certification, but in large part, the use of land for a certain number of years has given uncontested ownership rights to the occupier of the land.²¹⁸ The requirements for obtaining an official *tapi* are:

1. First obtaining a certificate of possession;
2. Establishing ownership through the Commune Council;
3. Publicizing ownership for 1 to 2 months (presumably to elicit any conflicting claims); and
4. Finally, the court will issue the *tapi* and a copy is sent to the Cadastre Office.²¹⁹

The recent war in Kosovo has been a contributing factor in the lack of registered titles to land.²²⁰ The displacement of minority ethnic groups, a substantial refugee population, and the destruction of government offices and records have made legal land documentation a rarity.²²¹

Croatia has a cadastral and land registration system, both of which are incomplete.²²² The Law on Geodesy and Cadastre and the Law of Land Registers govern the two systems respectively. The land registry records both legal rights and the existence of secured loans, but both records reveal numerous inconsistencies in land rights and ownership. Land registration is administered primarily at a regional level and, as of 1998 was still manually recorded on paper. As of 1997, estimated annual land transfers were 70,000 and registered mortgages numbered 15,000.

In Montenegro, the Real Estate Office drafts laws and regulations for land sales and transactions. The Office also registers changes in real estate rights and maintains the cadastral registry.²²³

Albania is one of the few countries to have created a government agency to focus directly and solely upon land and land market support. The Immovable Property Registration System (IPRS) is an independent agency that reports directly to the Council of Ministers. However, because IPRS is neither a ministry nor subordinate to a ministry, it has not received the needed cooperation from existing ministries and other government agencies (which are subordinate to existing ministries). Observers have recommended that, while IPRS' independent status is admirable and useful, IPRS be elevated in its institutional status. Such elevation would be hoped to aid IPRS in presenting legislation directly to the parliament, resisting external political pressures, and strengthening the functional status of land registration.²²⁴

Albania's IPRS was born of a USAID land registration project that has been active from 1994 through the present date. By November 2000, all 34 planned district registration offices were

open and operating, and it has been estimated that 65 to 80 percent of all properties will have undergone first registration by the end of 2002. As a vital indicator of initial success, the system does capture most subsequent transactions.²²⁵ It is clear that a variety of supporting measures, beyond land registration, will be needed to help create an active land market.²²⁶

2. *Land Consolidation*

Effective use of agricultural land in Macedonia is seen by some as hindered by a serious fragmentation problem that stems from earlier limitations on land use and ownership, inheritance practices, and a long history of informal land market activity. Until 1988, the maximum amount of land a rural inhabitant could own was 10 hectares. There is currently no farm size restriction. Average farm sizes now are 2.5 to 2.8 hectares, and these family farms are typically separated into several non-contiguous parcels. Land scarcity and lack of security have furthered this fragmentation,²²⁷ and land market activity has generally not resulted in consolidation.²²⁸

Macedonia's 1986 Law on Land Use regulates the transfer of privately held agricultural land, and attempts to prevent fragmentation and promote consolidation in several ways. First, a tax (now at 3 percent of the land's market value, but at a higher level when first levied) is levied on agricultural land transfers to discourage them. Second, the law required that a right of first refusal be offered to the users of nearby socially owned land and then to owners of neighboring plots.²²⁹ It is reported that these restrictions were frequently not followed in practice.

This law was amended in 1991 to reduce some of the restrictions on transfers. The amendment did away with the social owner first refusal right, but did retain the first refusal right of neighbors within the cadastral region. This part of the amendment was later deemed unconstitutional because it inequitably favored those in the neighboring area. The 1991 amendments also prohibited the division of land parcels by way of sale, inheritance, or gift.²³⁰

Albania's per capita land allocation methods have resulted in small plots and the fragmentation of land, both in terms of the overall size of land allotments and the number of non-contiguous parcels received by each family.²³¹ Out of the 420 farming cooperatives that existed prior to 1991, approximately 1.5 million parcels have been distributed, resulting in an average plot size of 1 hectare.²³² One three-district survey showed that 57 percent of farmers have 3 to 5 parcels of non-contiguous land, while another 17 percent have 6-10 parcels.²³³

Voluntary consolidation through exchange has been encouraged in Albania, though evidence suggests it was constrained by the then-inadequate land registration system. Consolidation has also taken the forms of farmers agreeing to plant the same crops on adjoining parcels, others (mainly families), working together on combined land parcels, and some formation of production groups. Regarding the latter, a number of multi-family production groups have started, and it is reported that there have been some successes and some failures.²³⁴

There is a heavy reliance by the government in Albania on the evolving land market to alleviate fragmentation problems. The government hopes that consolidation will be fostered now that

sale, lease and mortgage of immovable property has been legalized. However, education on property rights, security of land title, and availability of credit are seen by some as key to facilitating this process. At this point, fragmentation of Albanian agricultural land still seems to be increasing.²³⁵

A recent appraisal for a proposed Albania Agricultural Services Project (to be funded by World Bank credits) concluded that there is a wide-spread belief in government and among many land holders that land consolidation would lead to the establishment of more productive farms and higher rural incomes. Accordingly, the project's land component will include a pilot land consolidation initiative. In the design of this component, a choice was made to test voluntary, market-based mechanisms to foster consolidation through swaps, land sales, or leases, and to eschew proposals to strongly support group-farming initiatives that have little record of success internationally and a negative connotation in the Albanian context.²³⁶

Croatia has supported efforts to increase family farm size. For example, the 1994 Law on Agricultural Land specifies conditions and procedures for granting credit to farmers for use in land consolidation efforts. This law also provides for the protection of agricultural land in case of change of its use.²³⁷ A 1994 Strategy for Sustainable Agricultural Development promoted enlargement of family farms.²³⁸ A 1995 Strategy of Croatian Agricultural Development also encouraged an increase in farm size.²³⁹

3. *Roles of the Public and Private Sectors*

State entities (usually national but sometimes municipal) play the primary land-related administrative roles in all of the surveyed countries. These state agencies frequently have a broader general mission than one of land administration or management. For example, the Macedonian Ministry of Agriculture was historically responsible for administering the cadastral land registration system.²⁴⁰ The same agency also directs administering the transfer or lease of socially owned land to private enterprises (while retaining control and state ownership of that land in the public interest).²⁴¹ In Croatia, the Ministry of Agriculture and Forestry is in charge of implementing and monitoring regulations and laws relating to rural development, agriculture, and agricultural land.²⁴²

The wars and ethnic strife in many of these countries have spawned a number of public agencies that participate in land-related activities. For example, in Bosnia and Herzegovina, the Return and Reconstruction Task Force (RRTF) is responsible for collecting information regarding property ownership, processing claims for restitution, and finding temporary accommodations for displaced persons.²⁴³ In Kosovo, the United Nations Mission has established the Housing and Property Directorate and the Housing and Property Claims Commission. The former has been given exclusive jurisdiction over the most controversial residential property claims, while the latter has been designated to resolve property claims until the Kosovo courts are able to take on the cases.²⁴⁴

Despite the predominance of public sector administrative actors in the land arena, there are a few examples of private sector entities playing important roles in the surveyed Balkan countries.

For example, in Albania, private notaries are a required element in registration of land transactions. These notaries review the transaction documents, including sales or lease contracts, authenticate issued ownership documents, and approve the transaction documents package.²⁴⁵ In Serbia as of 1999, the Center for Advanced Legal Studies had listed a future project as developing a “Model Law on Public Notary Service.”²⁴⁶ Both Albania and Croatia have national organizations of notaries.²⁴⁷ Some observers question the need for at least some of the land-related functions (and related transaction costs) provided by both Albanian notaries and notaries generally.²⁴⁸

Real estate brokers and agents are operating to some extent in all of the surveyed countries. The number of agencies in a particular locale, and the breadth and sophistication of representation and services varies significantly. For example, one guide to real estate agencies in Sarajevo lists fifteen concerns.²⁴⁹ Albania’s real estate community has created the National Real Estate Association of Albania to represent the industry, provide public education, lobby for legislative reform, establish ethical tenets, sponsor training, and publish real estate listings.²⁵⁰ A cursory review of real estate listings on agency web sites in Bosnia and Croatia showed a relatively small stock of available properties, and there were no agricultural parcels listed.²⁵¹ Commission rates for one Croatian agency were 4 percent of the purchase price for brokering a sale, 6 percent of the purchase price for brokering a purchase, one monthly rent amount brokering leases up to three years, and two monthly rent amounts for brokering leases more than three years.²⁵²

IV. EU Accession Countries

A. Policy and Legislative Framework

1. Land Privatization

All of the EU Accession states, except Poland and Hungary, have engaged in some form of restitution of land rights to former owners. These countries can be divided into three categories: (1) those that re-established the ownership rights of individuals whose land had not been expropriated, and also restituted a much smaller portion of land that had been held by the State. (2) countries that compensated former owners, and provided or sold land to former farm workers; and (3) countries that restituted land to former owners only.

a. Re-Established Ownership Rights

The Czech Republic, Slovakia, Poland, and Slovenia did not expropriate all agricultural land during the communist era. Poland and Slovenia continued to operate small private farms throughout the communist rule.

In the Czech Republic, collectivization of agriculture began in 1948. Individual land ownership was not generally abolished, but the use rights were given to the state and cooperative farms, and under pressure many owners simply gave their agricultural land to the State. The land cadastre and registry also stopped registering individual ownership parcels and historic field boundaries

were often eliminated.²⁵³ Prior to commencement of the most recent land reform, 68% of agricultural land was in cooperatives.²⁵⁴ State farms were also important and held about 28% of agricultural land.

In the Czech land reform, collective (cooperative) land did not require transfer of ownership but rather the re-establishment of the primacy of ownership rights over users' rights.²⁵⁵ For state farm land, on the other hand, the reform was based primarily on formal legal restitution to former owners. Former owners of land expropriated by the State were able to reclaim their land or assets in kind, or could receive compensation. All restitution was made from state property and governed by the Land Fund Agency.²⁵⁶

The process of restitution is nearly complete. By 1998, 80% of agricultural land was in private ownership, and more than 90% of restitution cases had been resolved. However, as discussed below, the pattern of use remains largely collective.²⁵⁷ Still awaiting privatization by sale is around 500,000 ha. of state-owned land, which is held in the Land Fund portfolio and presently being rented out.²⁵⁸ One unsettled issue is that of potential groups of claimants (resulting from mass migration) who never were able to request restitution under the 1991 legislation and may yet demand restitution.²⁵⁹

Slovakia's restitution process departed from the Czech process after 1992 when Czechoslovakia was divided. The Slovaks claimed that the agricultural policies of the CSFR had failed to take account of the differing conditions existing between the two republics, and in fact were designed for the Czech Republic. Therefore, by the end of 1992 the land reform had resulted in an average family "farm" size of less than one hectare in Slovakia.²⁶⁰ Thus, as part of preparing for the bifurcation of Czechoslovakia in 1993, Slovak policymakers prepared new agricultural policies.²⁶¹

Slovakia's restitution process recognized two classes of actors. First were the "entitled persons," the intended beneficiaries of restitution. They were citizens of Slovakia who resided permanently in the country and whose land and buildings were physically (not legally) transferred to the State or a legal entity between February 25, 1948 and January 1, 1990. Second were the "liable persons," those people or entities (including the State and legal entities) which possessed the land in question. To receive land through the process, an entitled person had to assert his or her claim to the Land Office and, at the same time, to the liable person in possession of the land in question, if identifiable. These claims had to be made before January 31, 1993. The liable person had 60 days to respond to the "invitation" to return the land in question and conclude a contract on return of the property. Parallel claims made to the same property by two entitled persons were regulated by the Land Law.²⁶²

While Slovakia's restitution process is about two-thirds complete, much land remains in the state land fund.²⁶³ Problems affecting completion include a failure to update ownership records during the socialist years. This has resulted in large numbers of unknown owners, the loss of boundary information, and general confusion and slowness regarding the land registration and restitution process.²⁶⁴ Also, the potential claims of evicted landholders who were ousted after the end of the Second World War further complicate the situation.²⁶⁵

Slovenia's small, owner-operated farms and land institutions (land register and cadastre) largely survived under Yugoslavian communism despite unfavorable regulatory and policy measures, such as constitutional restrictions on maximum farm size.²⁶⁶ While Slovenian agriculture was never effectively collectivized, state farms did hold a small share of agricultural land.

A land restitution process was undertaken in 1991 to compensate landowners whose property was expropriated by the Yugoslav government after World War II.²⁶⁷ Under the 1991 Denationalization Law, former state land used by agriculture companies became state property and was administered by the Fund for Agricultural Land and Forests.²⁶⁸ Claims submitted under the Denationalization Law covered only the relatively small share of state land that was for agricultural use. However, as of April of 2000 only 40% of that land had been restituted due to ongoing disputes and legal complications.²⁶⁹ For example, managers of agricultural enterprises opposed assigning their lands to the Land Fund and refused to do so.²⁷⁰ This problem remains unresolved.²⁷¹

b. Compensation to Former Land Owners and Former Farm Workers

Hungary's post-communist land reform process was based on compensation of former owners, rather than restitution, with landless workers on state farms and cooperatives also receiving small land grants.²⁷² Fifty percent of the country's land area was subject to compensation claims, and over 2.1 million new land units were created during this process.²⁷³

The compensation laws enacted between 1991 and 1997 provided compensation bonds to people who had property confiscated (including land), and to people who had been discriminated against for political and racial reasons.²⁷⁴ Compensation bonds could be used to bid for the land of production cooperatives and state farms at compulsory auctions.²⁷⁵ One-third of cooperative land was purchased with compensation bonds at such auctions. One-third remained in the name of current and retired cooperative members and their rights over the land were established.²⁷⁶ One-third was redistributed to cooperative members who did not own land earlier.²⁷⁷ The compensation process was completed by 1997, and 90% of the land was physically identified.²⁷⁸ Nonetheless, physical distribution of land for collective members has lagged behind.²⁷⁹ The titling of privatized land has also been slow.

In Hungary, the new owners who acquired land for compensation bonds were often not engaged in agriculture and did not live in rural areas. Instead of cultivating the land, they have rented it to corporate farms and individual farmers. Many new owners do not even know exactly where their land parcel is located because of the slow boundary marking and registration of land.²⁸⁰

c. Restitution

Estonia, Latvia, Lithuania, Romania, and Bulgaria restituted land to former owners. In these countries, land had been formally expropriated from its existent owners during the collectivization process. Most of the new owners who received land through restitution did not

farm the land (i.e., did not work on the collectives farming the land) restituted to them. Each of these countries faced a unique set of problems related to their restitution process.

In Estonia (as in Latvia and Lithuania) the land reform process began in 1989. It sought to re-establish pre-World War II farming structures and reconstitute land to pre-1940 property owners and their heirs. Multiple heirs in all of the countries that have chosen to reconstitute land have created a serious co-owner problem, which in many cases further divided the pre-1940 farming structure. The process was complicated due to the large number of claims filed.²⁸¹ Additionally, the rural infrastructure became derelict during communism: new boundaries had to be drawn and roads, electric and water services restructured, all of which dragged out the restitution process.²⁸² Further complicating matters, during the reform process many initial claims were withdrawn when city dwellers realized that farming necessitated moving to the countryside, and taking up what at the time appeared to be an unprofitable enterprise. No functioning land market would allow land recipients to sell the land.

Because of this withdrawal of claims, the land restitution process in Estonia has returned only about 25% of the agricultural land to individual owners, while 75% of the land has no claimants or specified previous owners. Moreover, almost 30% of the land is uncultivated and idle.²⁸³

Estonia is now trying to identify and dispose of land unclaimed during the restitution process in order to bring it into productive use and allow it to be taxed. Potential buyers have applied for 52% of this land. The number of applicants is rapidly growing as farmers realize the opportunities and the good terms that are available. However, the Agriculture Ministry prefers to see this land leased on a long-term basis rather than sold outright, due to land speculation concerns. Proposed lease covenants would ensure that land is put to productive use rather than set aside for future profit through speculative re-sale. The covenants would include a clause allowing purchase of the freehold reversion at the end of the lease period at minimal price.²⁸⁴

Latvia restituted land ownership rights on the basis of the old land boundaries, restoring the cadastral parcels to the pattern that existed on July 21, 1940. Cadastral maps and Land Book records from 1924-1940 were used as evidence for restitution.

The transition process had two stages: (1) land use rights (not ownership) were granted to claimants by Land Commissions; and (2) land ownership rights were restituted to former owners or their descendants or users of the land to purchase land, paying in vouchers.²⁸⁵ Decisions regarding the validity of claims to land ownership were made by local Land Commissions,²⁸⁶ only after which a claim can be registered in the Land Book.²⁸⁷ The first stage was completed in 1997, while the second stage started in 1993 and is intended to be completed in 2001.²⁸⁸

Land was restituted exclusively to native Latvians. Non-ethnic Latvians who had been long-term residents in the country were only granted rights to own buildings and flats. The non-native population is very high (46%), most of whom are post-1945 Russian immigrants.²⁸⁹

In Lithuania a restitution law was adopted in 1991. As of January 1999, 63% of agricultural land remained in state ownership and only 37% had been fully privatized.²⁹⁰ However, over half of the state-owned land is leased to family farmers or used as auxiliary plots.²⁹¹

In the restitution claims, former owners were given flexibility in making decisions about farming. For example, former owners could start private farming right away, lease the land to newly created agricultural companies, postpone actual farming for 5 years, or receive compensation.²⁹² As in Hungary, rural inhabitants who did not own land before World War II were given the opportunity to purchase land from the State. Prices were fixed by the government, depending on soil quality and location.²⁹³

Lithuania's restitution process has been slowed down by efforts to be scrupulously fair to restitution claimants. Complex rules and procedures contributed to indecision and gridlock.²⁹⁴

The major problems with Lithuania's restitution process fall into three categories. First, land that was allocated to peasant farmers and private individuals prior to the adoption of the restitution law is now involved in disputes between these people and restitution claimants. Second, the legislation concerning both deadlines and categories of people eligible for restitution changed many times throughout the process. Several different laws, and potentially several versions of the same law, may be applicable depending on the date a restitution claim was submitted. Finally, numerous administrative problems exist, including the use of complex Soviet-era land valuation procedures rather than market values, and the use of Soviet-era land maps rather than ortho-photo maps which are available for 80% of Lithuania's territory.²⁹⁵

In Romania the restitution law passed in February 1991.²⁹⁶ The law liquidated 3,700 collective farms, and returned their lands to the households that had given them up during collectivization. Up to 10 hectares of arable land and one hectare of forest land were returned to each family.²⁹⁷ However, the law did not address the 30% of Romania's agricultural land that was held in state farms.²⁹⁸ The State justified this decision as necessary to ensure food security while the collectives were dismantled.²⁹⁹ As of 1997 up to 50 hectares of arable land and 30 hectares of forest land could be restituted to those who had given their land over for collective farms.³⁰⁰ Regarding state farms, in January 2000 Romania passed a law allowing for restitution of state farm land for the first time, up to 50 hectares of farmland and 10 hectares of forest land per family.³⁰¹ The law states that claimants' original plots should be returned if possible.³⁰² When this is not possible, financial compensation will be paid.³⁰³

While much of the collective farm land was restituted in the 1990's, little progress has been made in disposing of the state farm land.³⁰⁴ As a result, of a total land area subject to restitution of about 9.4 million hectares,³⁰⁵ as of April 1999 about 7.7 million hectares had been restituted to eligible persons. Of the 4.3 million claimants associated with that land, 3.3 million had received their "property title".³⁰⁶

An important component of restitution is the timely registration and issuance of documents certifying private ownership. In Romania, the delays in this process were largely caused by factual disputes over issues such as drawing of boundaries between land parcels, and do not

appear to be primarily the fault of the legal rules. This is in contrast to the situation in Lithuania, where the law itself was the cause of many of the disputes, having given the same land successively to two different groups of claimants. In any event (and despite the existence of up

BULGARIA
Through recent legislative changes, the Government has attempted to increase security of tenure by limiting: (1) the circumstances under which land division plans may be redrawn; and (2) the types of remedies available to new claimants or people who challenge land division plans or land commission decisions.
Land division plans may only be amended to correct obvious factual errors and only pursuant to an order issued by the Minister of Agriculture. By severely limiting the situations in which land division plans may be amended, the law should provide landowners with a relatively high degree of security of title.
With respect to remedies available to new claimants or people challenging land division plans or land commission decisions, legislation limits the remedy that may be awarded, in the event of a challenge to title to a land division parcel, to either an equal amount of land from the municipal land reserve, or a registered compensation voucher, which can be redeemed for land from the State Land Fund.

to 700,000 continuing disputes which may be compared to the universe of up to five million beneficiaries), it is estimated that 75-80% of restitution beneficiaries have their rights registered and have received their documents.³⁰⁷

In Bulgaria, agricultural land was divided into two categories for purposes of restitution. The first category, called “real boundary land,” consisted of parcels, the boundaries of which were not destroyed or could be recreated based on documentation. Parcels

constituting “real boundary land” were generally preserved as separate legal parcels with definable and identifiable boundaries even after expropriation by the State. The goal of the restitution process with respect to “real boundary” parcels was to restore ownership of the actual parcel to the heirs of the former owner.

The second category of land, called “land division land,” consisted of parcels that the State amalgamated into large state and collective farms at the time of expropriation. In the amalgamation process the boundaries of the individual parcels were not preserved and could not be recreated. The goal of the restitution process with respect to “land division land” was to distribute new parcels to those with claims to land in the general vicinity of the state and collective farm land being divided. The parcels resulting from this process were formed based on the number of claims that were made, along with any written evidence or oral testimony presented as to who owned what land. Approximately 75% of the agricultural land eligible for restitution was “land division land,” and 25% was “real boundary land.”

Currently, according to government statistics, 99.13% of the agricultural land eligible for restitution has been restituted. These figures indicate that the restitution process has been virtually completed in the sense that almost all the agricultural land eligible for restitution has been included in a final land division plan. Once a land division plan has been finalized, each landowner covered by the plan is provided with a decision by the local land commission and a sketch of his or her parcel. According to the Government, land commission decisions and sketches have been provided to all owners entitled to them. This means that title to land within these land division plans is relatively secure, subject to exceptions for “real boundary” parcels.

Bulgaria is an example of a country that had many of the problems described in this section. The legislation related to the land restitution was changed repeatedly, causing confusion and difficulties with enforcement. The legislators sought fairness and to this end changed the law and re-drew boundaries causing insecure land tenure. Disputes plagued the restitution process and for every dispute, a landowner was insecure in his land rights. Slowly, Bulgaria perfected its legislation (see accompanying box) so that land owners now have secure title to their land. Nonetheless, because the restitution process has been so lengthy and at times confusing, there is a public perception that title to restituted land will never be final. The laws establishing statutes of limitation on challenges to land division plans have been amended so many times that the average person does not know when a plan is in fact final. Similarly, most people are unaware that legislation has been amended to ensure that in most cases even a successful challenge to a land division plan will not have any effect on titles held by the landowners covered by that plan.

d. No Restitution: Poland

Poland, like Yugoslavia, never collectivized the great bulk of its land during the Communist era, so it has had majority private ownership of agricultural land throughout the period since World War II.³⁰⁸ Seventy five percent of farmland remained in family farms during the Communist era.³⁰⁹

Both physical persons and legal entities in Poland have full rights to own both agricultural and non-agricultural land.³¹⁰ While Poland had less work to do on privatization than many of its neighbors, it still had to privatize the large state farms that occupied one-fifth of Poland's arable land (approximately 3.7 million hectares) during communism.³¹¹ Unlike the other EU accession countries, Poland has not provided for restitution of any land. Since the collapse of communism in 1989, Polish land law has been reformed to further the transition of former state farm land to private ownership, as well as to allow corporate ownership.

While Poland did not reconstitute land, it did begin privatizing its state land. The Agricultural Property Agency (APA) redistributed state-owned agricultural land in the following manner:

- 1) 2.8 million hectares were broken up into smaller farm plots averaging 450 hectares and leased to 6,000 new farms. The new farms employ many former state farm workers, and function more like a miniature state farm than a private family farm;
- 2) 728,000 hectares were sold outright—mostly to family farmers to expand their plots;
- 3) 161,000 hectares were transferred free of charge;
- 4) 330,000 hectares have been redistributed through “management,” “perpetual usufruct,” or “administration;” and
- 5) 616,000 hectares of low-grade land have yet to be privatized, but the APA indicates that the land is not useful.³¹²

Between 1992 and 2000, the APA annually sold about 100,000 hectares of the land in category 1 to the lessees, who had a right of first refusal under the Civil Code.³¹³ At that rate, the land would have been fully privatized after 20-30 years. However, in 2000 this procedure was declared unconstitutional as an infringement on the rights of local governments to own land.³¹⁴

e. Household Plots

In Estonia, the household plot farmers do not have title to their land. Household farms have an average size of four hectares, use one-fourth to one-third of all agricultural land, and are significant producers of potatoes, vegetables, fruit and milk.³¹⁵ For many families these plots are the sole source of subsistence. While their average size is approximately 4 hectares, many of the families live below the poverty line. On the other hand, these plots are highly productive, yielding almost twice as much output per hectare as the average of family farms and enterprises. Giving them title would contribute to increasing their productivity further, and it would contribute to placing low-income families on a self-sustaining path of economic improvement by endowing them with an asset of economic value.³¹⁶

2. State Owned Land Reserves

Continued state ownership of agricultural land remains an issue in several of the EU accession countries, notably Estonia, Lithuania, Poland, Slovakia and Romania. Some countries have been slow to privatize state land, and instead lease out that land. Many countries have formally established "land funds," the purposes of which range from consolidation of small plots to assisting family farm development to simply renting land to large former collective or state farms. An ongoing concern with leasing of state-owned land is that it is often leased at very low rent levels, thus undercutting the development of private market rents.

In Estonia, as much as 75% of the land is still owned by the State, much of it unclaimed and unused. To identify all "free land" suitable for sale to local farmers, as well as to prepare a comprehensive land record for all land in a municipality, a "S" contract was introduced. Such a contract identifies those lands for which restitution has been claimed but the specific land parcels have not yet been located/identified on the ground, or have not been occupied, or registered in the cadastre. The free lands represent lands that were not restituted or for which compensation was paid because the owners were not interested in restitution. In theory, the municipalities can lease these free lands to willing farmers, but in practice the municipalities often do not know where this land is and do not have the capacity or finances to effectively administer the land. The land market is currently frozen for these lands, and they comprise a very high percentage of the total land area.³¹⁷

In Lithuania, only 36.7 percent of agricultural land has been fully privatized: 63.3 percent remains in state ownership. However, over half of this land is leased to family farmers or used by citizens on auxiliary plots. Thus, although some portion of the fully privatized agricultural land is leased to agricultural companies, a clear majority of agricultural land is used on family farms or auxiliary plots.

In Poland, long-term allocations of public land occur through the "right of perpetual usufruct" (RPU). These long-term rights may be granted to natural or legal persons for periods of forty to ninety-nine years, and during the last five years of the allocation, the land user has the option of extending the RPU for an additional term of 40-99 years.³¹⁸ The only ground for denial of the

extension is “important public interest.” A land user holding a RPU on such land is entitled to keep all benefits derived from the land, and any buildings or other structures built on the land belong to the RPU holder.³¹⁹

RPU's are transferable, with transfers becoming valid once they are entered into the Land and Mortgage Register.³²⁰ Property under a RPU may only be sold to the holder of the RPU.³²¹ Some RPU contracts may include a clause that requires the RPU holder to employ the same number of workers as the State did for a given amount of time, and under the same conditions.³²²

Lease rates on APA lands are so low that they may be discouraging privatization of the land. Since the sale price for these lands averages 26-30 times the annual lease payment, so farmers have a disincentive to buy the land outright.³²³ Moreover, the property tax on agricultural land in Poland is relatively high, approximately 9% of average annual production.³²⁴ This creates a tax incentive for leasing APA land rather than buying it outright; the leases include a five-year tax forgiveness.³²⁵

In Romania, the former state farms continue to cultivate approximately 1.8 million hectares of agricultural land. Part of this land is already well along the process toward privatization. The law On Land Resources, in conjunction with the 1994 law On Lease (as amended), provided that people whose land had been taken and placed under the administration of a state farm could choose to be designated as “locators.” If this option was chosen, they could conclude a five year lease with the agricultural company using the land, after which the locator would be issued an ownership document to a land parcel. These five-year leases were largely concluded in 1994 and 1995, so have begun to expire. The 1998 revisions to the law On Land Resources affirmatively state that such leased land, as well as shareholders in agricultural companies, are to receive ownership of the land. This process, once completed, will result in one million hectares of former state farm land being privatized.³²⁶

The remaining 800,000 hectares of former state farm land that remains in state ownership consist of lands that were state property between the world wars, crown land, land under reclamation works, and land that no one was entitled to inherit by law. Discussions are currently underway concerning whether or not to privatize this land. This land represents only about 5% of Romania's agricultural land.³²⁷

In Slovakia, the Minister of Agriculture stated that only 4% of the agricultural land is still owned by the State. State-owned real estate is administered by the Land Fund, a legal entity. The Fund may not use the land itself, but can rent the land for agricultural or forestry purposes, or temporarily for other purposes. Slovakia is not interested in increasing the Fund, and the Fund cannot buy land from other owners. The income from land management belongs to the Fund unless otherwise stated by law. The Fund may rent, exchange, or sell land of private owners who want to sell their land.³²⁸ Slovakia's small fund probably has little effect on the land market.

3. *Farm Restructuring*

Despite significant privatization efforts, agriculture is still dominated by large, collective style farms in many EU accession countries. For such countries restitution was the focus of land reform, and general farm break-up did not accompany the restitution process. Many of those who received land were urban dwellers with no interest in farming, and immediately leased their identified and restored land back to the former collectives. In other cases, such as the Czech Republic and Slovakia, restored land rights were acknowledged as to area but not actually specified as to location, remaining as a “share” of a common landholding utilized by the former collective. Shareholders have entitlements to the land, but these are rarely converted into individualized, private plots. Instead, shareholders either exchange their land entitlement for an equity share in the company (from which they are supposed to receive dividends), or they lease out their land shares.³²⁹ All in all, the restitution process in many countries has not resulted in smaller, viable family farms.

a. Agriculture Dominated by Large Cooperative Farms

In Estonia, while some land has reverted to former owners or their legal heirs as small farm plots, over 70% of state land is still being used by former state and collective farms which have been reorganized as large agricultural companies.³³⁰ The farm sector is marked by these large companies leasing their land from private landowners and the State. Estonia does not allow legal entities to own land. The companies are usually organized as share holding or limited liability companies, or cooperatives. Despite having access to better production facilities, such as machinery and animal herds, their productivity, number and size have been decreasing, and the future of agricultural companies is uncertain.³³¹ Agricultural enterprises play a greater role in animal production (57% milk; 48% beef; 70% pork; 64% eggs) than private farms (15% milk; 11% beef; 7% pork; 3% eggs), but smaller household farms also contribute greatly to this sector (28% milk; 41% beef, 23% pork). Livestock is the primary agricultural sub-sector in Estonia.

In addition to agricultural companies, household farms and family farms also exist. Household farms have an average size of four hectares, use one-fourth to one-third of all agricultural land, and are significant producers of potatoes (61%), vegetables, fruit and milk (28%).³³² Estonia's 22,000 family farms³³³ operate on restituted land with an average size of 28.5 hectares.³³⁴ The amount of land used by family farms has the greatest potential for growth and development.³³⁵

In Hungary, the post-reform agrarian structure is not significantly different from the pre-reform structure. Hungary continues to have many large-scale farms, many small holdings, and very few medium-sized farms.³³⁶ Land concentration has taken place primarily through the lease market, since legal entities are prohibited from owning land.³³⁷ Land concentration is sharply dualistic, as 90% of farming units (small household plots and family farms) control less than 10% of land, while the remaining 10% -- the largest collective and corporate farms -- control about 90% of the land.³³⁸

<p>Hungary has four general farm structures:</p> <ul style="list-style-type: none"> • Large incorporated privately owned farms (land is leased); • Cooperatives operating in a variety of legal forms on privately owned land; • Individual private farms (50,000 – 60,000 full-time family farms greater than five hectares, and 1.2 million part-time farms);and • Household farms or gardens cultivated by about 1 million people. <p>(Taken from: Csaba Csaki, G. Modos, et al, Summary of Hungary Country Case Study (Hungary Annex A, ACE project P2128R)).</p>

In addition, Hungary's trend has been toward supporting large farms with subsidies. While small farms also receive some support, there is an ongoing debate about whether to do so or not. The Ministry of Agriculture gives some subsidies to small farmers based on their size alone. The Ministry's position is that the subsidies are an attempt to maintain people in rural areas.³³⁹

The new farm structure in the Czech Republic includes:

- Transformed cooperatives operating in various forms on privately owned land leased from members (43% of agricultural land, and average holdings of 1,450 ha);
- Privately owned large incorporated farms operating on leased private and state land (32% of agricultural land, with an average size of 690 ha.); and
- Individual private farms using leased land (25% of agricultural land; 25,000 private farmers farming more than 3 ha; average farm size is just over 30 ha).

(TAKEN FROM: CSABA CSAKI, MICHEL DEBATISSE, OSKAR HONISCH, FOOD AND AGRICULTURE IN THE CZECH REPUBLIC 29 (World Bank Technical Paper No. 437, 1999).

As in Hungary, the Czech Republic restitution process resulted in a farm structure dominated by large farming operations operating leased land.³⁴⁰ Pre-transition era land tenure patterns still remain: 90% of farming units (small household plots and family farms) control less than 10% of the land, while the largest 10% (large collective and corporate farms) control about 90% of the land.³⁴¹

The relatively low rate of decollectivization in the Czech Republic has resulted in limited farm profitability, as most large-scale farms and cooperatives have not effectively restructured their assets and operations.³⁴² Many of these enterprises carry large amounts of debt.³⁴³

In Slovakia, near the completion of privatization cooperative farms utilize 50.2% of agricultural land, corporate farms use 26.8%, and private farmers account for only 13.7%.³⁴⁴ In Slovakia, as well as Hungary,

Estonia and Lithuania, a number of state and collective farms have been transformed into more "commercially oriented" corporate farms.³⁴⁵ The average size of a collective farm in Slovakia before 1990 was 2,667 ha. In 1998 it was 1,509 ha. The average size of a state farm pre-1990 was 5,186 ha., and in 1998 was 3,056 ha. The average size of new corporate farms is 1,191 ha. These farm sizes, while smaller than before, are still very large in comparison to farm sizes in Western Europe, or to crop-farming in the U.S. or Canada. Pre-1990 individual farms in Slovakia averaged 0.3 ha., and in 1998 averaged 7.7 ha.³⁴⁶

In addition to a restitution process that did little to encourage breakup of collective-style farms in Slovakia, agricultural subsidies have indicated a support for large farms as well. Nearly 40% of the agricultural budget expenditures for 1998 were direct income subsidies paid per hectare of agricultural land. The better the quality of land, the less money the farmer received. These direct income subsidies are controversial, with questions raised as to whether they actually increase agricultural productivity and whether they are open to abuse. The remaining 60% of the agricultural budget goes to: direct production subsidies to improve milk quality; pay for farm inputs and for rural infrastructure (this category consumes 90% of the remaining 60%); payments to compensate for natural disasters; and buying down interest rates on loans.³⁴⁷

In Bulgaria, farm reorganization and land restitution were intertwined processes. The same law provides both the legal framework for the restitution process and describes the legal framework for farm reorganization. Property shares were distributed in coupon form, which could be used to bid for the non-land property at an auction or could be contributed to the charter capital of the newly formed cooperative for those who chose to remain cooperative members.³⁴⁸

Those who left the cooperatives during the initial reorganization are farming somewhat successfully. Those who chose to remain on the cooperative farm lease their land to the cooperatives and are technically able to withdraw their property share if they choose to start a private farm or otherwise leave the cooperative. However, in practical terms the property share is virtually worthless, and it is very difficult to obtain the necessary credit for purchasing machinery or land.³⁴⁹

By 1998, according to official statistics, at least 42% of all cultivable land in Bulgaria was still being farmed by newly formed cooperatives, 6% by state farms, and 52% by private individual farms.³⁵⁰ However, an official from the Ministry of Agriculture estimated that only 25% of the land was cultivated by private farms and 75% by cooperatives.³⁵¹

The cooperative farms that devolved from the former collective farms are generally failing, often not paying rent for the use of land, not farming much of the land that is available to them, and not able to secure any credit. Cooperative farm members who are not the restituted owners of the land have the most difficulty. In some cases even land granted to them as household plots during the collective period has been taken away without payment to give back to the restituted owner or his heirs.

b. Agriculture Dominated by Private Farms

The remaining EU countries -- Lithuania, Slovenia, Romania, Latvia and Poland -- have a large private farm sector and a much smaller cooperative or state farm sector. In each of the countries, the clear policy of the government has been to encourage and maintain small private farming units.

Lithuania is a “bridge” country because, while it still has large amounts of state-owned land, the land is leased primarily to private farmers. The key factors leading to the relative smallness of the agricultural company sector have been government policy to transfer land (through restitution and leasing of state land) to individuals, coupled with the prohibition in the Constitution on ownership of agricultural land by legal entities.³⁵²

Slovenian agriculture is dominated by small, private farms with an average holding of 4.8 ha. These farms use 92% of the agricultural land and produce three-fourths of the total agricultural output.³⁵³ This flows from the fact that family

Lithuania
<ul style="list-style-type: none"> • Roughly 66% of agricultural land is being used by family farmers or auxiliary plot holders. • Approximately 16% of agricultural land is used by the 1,650 agricultural companies which are the effective successors to the former collectives. Slightly more than half of this 16% is leased from the state, and the rest is leased from private owners. • About 17% of agricultural land is unused, with the remaining used in miscellaneous small categories.

farms were retained as the dominant form of farming in the former Yugoslavia throughout the communist period. The remaining land is used by former state farms which have not yet been privatized, but which were supposed to be privatized in 1998.³⁵⁴

In Romania, roughly 15% of the privately-owned agricultural land has been joined together by its owners and is farmed in large associations averaging a little over 400 hectares in size. The remaining 85% is farmed in small and medium-sized units. When looking at the total agricultural land base, both private and state-owned, about 60% of this base is farmed in privately-owned small and medium-sized units. If state-owned communal pastures are excluded, the figure rises to about 68%.³⁵⁵ The private sector accounts for 63% of crop production and 37% of animal production.³⁵⁶

In Latvia, the pre-reform farm structures were as follows: collective farms operated 54% of agricultural land; state farms 41%; individual farms 5%. In 1998 farm structures were as follows: collective 0%; state farms 1%; new corporate farms 4%; and 95% individual farms.³⁵⁷ More than 90,000 private family farms and 130,000 subsidiary farms have emerged as a result of land reform, and only the most sustainable privatized agricultural joint stock companies continue to operate. Latvia's parliament encouraged and focused on break-up of former collective farms even before the land was privatized.

In Poland, 75% of agricultural land stayed in family farms throughout the communist period and remained privately owned. Nonetheless, the government still has to privatize and redistribute the large state farms that once occupied one-fifth of Poland's arable land, approximately 3.7 million hectares.³⁵⁸

4. Land Transactions

Even though agricultural land is freely transferable in all EU accession countries, land markets generally are under-functioning. Many of the emerging markets are still bogged down by the slowness of the initial privatization and titling of land. Lease of agricultural land is much more common than purchase and sale.

a. Purchase and Sale

Of the ten EU accession countries, only Poland and Lithuania have relatively vibrant land markets.

The agricultural land market in Poland is active and relatively free. The Agricultural Property Agency estimates that approximately two to four percent of farmland is sold each year on the private market—about 500,000 to 1,000,000 hectares annually.³⁵⁹ This is within the range of market activity for agricultural land in the Western European market economies.

In Lithuania, about 4% of all land parcels change ownership annually through market activity.³⁶⁰ The market for agricultural land is the most active in Lithuania, unlike in other EU accession countries, where most market activity is for non-agricultural land.³⁶¹ Agricultural parcels

account for more than 58% of all land parcels transferred in Lithuania per year.³⁶² However, prices of agricultural land on the private market in Lithuania are low. They are estimated to be around 1,500-2,000 litas per hectare (\$375-500 per hectare).³⁶³

For those countries that do not have an active land market, there are several common land market constraints.

i. Restitution

In many cases the restitution process is incomplete. Without title to land, no purchase or sale of land can occur. Land with outstanding or disputed claims is unmarketable as well. In the Czech Republic, the legal infrastructure is well developed to support land markets. Nonetheless, between 1994 and 1999, it is estimated that less than one percent of the total agricultural land was bought and sold.³⁶⁴ The factors impeding land market development include potential outstanding claims of exiled Sudetenland Germans, and high transaction costs in the agricultural land market (caused by loss of boundary data).³⁶⁵ A FAO report has also cited the awaited privatization of state land and seemingly low interest in land investments for the lack of land market activity.³⁶⁶

A study of the functioning of land markets in the Central and Eastern European (CEE) countries from 1997 data revealed that the land markets in Latvia and Slovakia were performing at 20% (in comparison to the EU norm of 100% land market performance) based on specified indicators, including completion of the land restitution process, completion of land titling databases, level of annual title transfers and level of annual mortgages issued.³⁶⁷ The growth of the real property market in Latvia is very slow, specifically for agricultural land.³⁶⁸ Data from 1999 indicated that the Latvian agricultural land market was still “slack.”³⁶⁹ The slow process of land registration is one of the major reasons for the slow land market.³⁷⁰

In Bulgaria, the land restitution process was completed in 2000. Prior to that time, the many claims to land caused insecure land tenure, not only for the land owners themselves, but also for the neighboring land owners. In addition, there was little incentive to sell land, because the land tax was forgiven on restituted land for 5 years. At this time, while land tenure is legally secure, landowners do not have confidence in the security of their rights because the restitution law has changed so many times.

ii. Low Prices for Agricultural Land and Products

In Bulgaria (as in other EU accession countries) product market information is very poor. Bulgarian farmers suffered huge losses several years ago when many farmers planted peppers and flooded the market. In 1998, there was a significant decrease in the price of land because the market for agricultural produce was very poor. Moreover, since land rights are perceived to be insecure, utilizing these rights is seen as involving risk. Therefore, prices for land are discounted to reflect that risk.³⁷¹

In Hungary, land only became alienable in 1996. The demand for agricultural land is weak, thus land prices are unrealistically low and owners withhold land from the market to wait for higher prices before selling. The lack of realistic real estate prices complicates the pricing of mortgage loans and mortgage bonds.³⁷² Current land prices are multiples of the prices sold in the auctions for compensation vouchers, but they still cannot be compared with land prices in the rest of Western Europe, and amount to only one-tenth of those in the neighboring countries.³⁷³ However, in 1999 it was reported that agricultural land had increased in average sale price by 500%.³⁷⁴

Also accounting for downward pressure on land prices in private transactions, in some countries, has been the presence of state land fund land, which is separately discussed in sub-section [B] above.

iii. Restrictions on Foreigners and Legal Entities Owning Land

Most of the EU accession countries prohibit or limit foreign ownership of agricultural land. In Romania, the Constitution explicitly prohibits foreigners and stateless persons from acquiring ownership rights to land. However, the foreign investment legislation states that partly or fully foreign owned companies with Romanian legal entity status may acquire ownership to land in order to carry out their activities, but that the land must be disposed of if the Romanian legal entity liquidates. Thus, a foreign legal entity is able to acquire land for its activities through a Romanian legal entity.

In Estonia, there are limitations on the acquisition of real estate by foreign legal entities and foreign-controlled Estonian legal entities.³⁷⁵ According to the law, real estate may be transferred to foreign legal entities (for production purposes) only by consent of the local governor and, in the case of foreign-controlled Estonian legal entities, on the condition that the branch of a foreign legal entity is registered in Estonia.³⁷⁶ Cooperatives, corporations and other private companies may own non-land assets, but must lease their land resources from individual landowners or the State.³⁷⁷

In Poland, significant administrative limitations remain on the acquisition of agricultural land by foreign physical and legal persons. Foreigners can (and do) lease farmland, but the Polish public and government are much more reluctant to allow sales of land to foreign citizens.³⁷⁸ The Polish government in 1999 applied to the European Commission for a permit to derogate from EU law by instituting an 18-year ban on the purchase of farmland by foreign nationals.³⁷⁹ Poland is wary of a land rush by citizens of Western EU nations who, it is feared, would snap up fertile Polish farmland at prices from one-half to one-fifth the cost of such land in their home countries.³⁸⁰ For example, in the former East Germany, which Poland neighbors, agricultural land averaged about DM 7,000-9,000/hectare (about 15,000-19,000 zlotys/hectare), while land in Poland ranged from around 3,000 to 7,000 zlotys/hectare.³⁸¹

Foreigners must have permission from the Ministry of the Interior before they may buy more than one hectare of agricultural land or 0.4 acres of non-agricultural land.³⁸² These restrictions raise the issue of compliance with the EU Charter's "freedom of establishment" provision, as the

need for Interior approval is *prima facie* discriminatory. However, Article 54(3)(e) of the Charter states that the right of foreigners to acquire farmland must be subject to the objectives of the agricultural policy under Article 39, which take into account the “social structure of agriculture,” the “disparities between the various agricultural regions,” and the need to make adjustments “by degrees.” As Poland moves toward an economic par with its Western neighbors, the fear of a land rush by foreigners should subside, and the restrictions on foreign ownership should be eased.³⁸³

In Hungary, land markets have been slow to develop due in part to legal restraints on land sales to legal persons and foreigners.³⁸⁴ However, as of July of 2001, Hungary agreed during EU Accession negotiations that foreign legal persons will be able to buy arable land, but not until 2011. However, foreign citizens will be able to purchase land only if they have been residents for at least three years, farm for a living, pay taxes and if Hungarian farmers renounce their pre-purchase option.³⁸⁵ Hungary wants to preserve its farmland for Hungarian farmers and rid itself of foreign farmers who illegally bought land after 1994, or have options to do so under contracts hidden behind legal leasing or other deals.³⁸⁶ Hungary also restricts private land owners to holdings of no more than 300 hectares.

iv. Transaction Costs

The land market in Romania started to operate legally only in 1998.³⁸⁷ In practice, the most important impediment to land transactions may be excessive notary fees.³⁸⁸

Another transaction-related issue is that co-owners, neighbors, or lessees of extra-*vilan* agricultural land (agricultural land not in towns) have a pre-emptive right to buy such land if it is offered for sale. The owner of such land offered for sale must notify the local administration, which publicizes the offer to sell for 45 days. Within this time period the pre-emptive rightholders have the opportunity to make an offer to buy the land. The seller must accept the offer if the price is satisfactory. If it is not, the seller may sell the land to anyone. The 1998 law “On the Legal Circulation of Agricultural Land” clarified and narrowed the preemption rules. While pre-emptive rights extend the time for concluding sale transactions, they are not a major impediment to land markets in the Romanian context.³⁸⁹

In Lithuania, high transaction costs are a major problem, especially for transactions involving small amounts of land. The two principal costs are notarial fees and surveying charges.³⁹⁰

In Estonia, the land market is restricted by slow land administration procedures preventing new land owners from actually getting titles for their land.

v. Historical Association with Land

The Slovenian land market is noticeably less active than other CEE countries, such as Hungary, Poland, Czech Republic, Slovak Republic, and Latvia, despite a desire on the part of government leaders to achieve economies of scale by increasing farm size.³⁹¹ The legal infrastructure to support land markets is generally well developed. Slovenes’ historical association with the land

has restrained land markets. The same families have been settled on the land for generations and their small plots are not often offered for sale, despite being underutilized and often farmed part-time.³⁹² Slovenes like to be associated with the land, but are not necessarily interested in active land use.³⁹³ As a result, land leasing has been the primary method for increasing holding size. Again, it will be recalled that land continued to be farmed individually throughout the communist period.

b. Lease

Land leasing is easily the most prevalent type of land transaction in the EU accession countries. The leasing environment is examined here in the context of two important factors. First, in Estonia, Lithuania, and Poland the State continues to own much agricultural land. Its land leasing activities thus impact the entire lease market. Second, in the Czech Republic, Hungary, Slovakia, and Bulgaria, all countries that utilized restitution processes, new land owners are often leasing their land back to the former collective farms. This too has market-wide impacts.

In Poland, private leasing may be undercut by the artificially low rents the APA charges for state-owned land. The APA rates as of 1999 were less than 10% of average annual production.³⁹⁴ However, most APA leases do not directly compete with private leasing, as they concern large tracts of land in the north and west where family farms are rare. However, APA leasing of smaller plots in the south does occur, and may have a negative impact on private leasing transactions there.³⁹⁵

Both Polish nationals and foreigners have the right to lease agricultural and non-agricultural land. Until 2000, under the Civil Code lessees with lease lengths of 3 years or more had a right of first refusal to buy the land they leased. The land had to be sold through a competitive bidding process, however.³⁹⁶ This provision was challenged in the courts, and was found unconstitutional.

In Estonia, while many restituted land owners lease their land to the cooperative farms, most of the leased land is still leased from the State, since the land privatization is not completed.³⁹⁷ Nevertheless, leases are widely used to start or expand farms. In addition, consolidation of land holdings has taken place through the lease market both for large and small farms.³⁹⁸

In Lithuania, the State is the dominant supplier of land to the lease market. At present, the rental of private land makes up about 6% of the total lease market.³⁹⁹ State land makes up the balance, and over half of it is leased to family farmers and individuals rather than large cooperative farms. One problem with the State's dominant role is that its lease rates are low, and specifically much lower than private lease rates.⁴⁰⁰ These low rates may be undercutting the development of a lease market for private land, though the intent behind the low rates is to keep land under production.

In the Czech Republic, both corporate and collective farms use leased land almost exclusively. Larger private farms also lease a significant amount of land, but most leases are only short to medium term, as mandated by law.⁴⁰¹ Rental rates are low, typically less than 1% of the official

value of agricultural land. In areas where land is of lesser quality these rents barely cover the land tax.⁴⁰² These lease agreements between the undismantled cooperative farms and the actual landowners are argued to have staved off land use fragmentation.⁴⁰³ However, this may not be a viable long-term solution due to the high transaction costs for short-term leases. Moreover, these large cooperatives are relatively unproductive.⁴⁰⁴ One might see it as a dilemma: the lessors mostly live in urban areas and have no interest in farming themselves, and substantial state subsidies prop up the large cooperatives, probably distorting the agricultural sector in ways that keep more efficient and competitive lessees (and potentially buyers) of land from emerging.

In Hungary, the land lease market is well developed and is one of the primary ways farms have consolidated holdings, with a significant proportion of land being concentrated into very large holdings. A 1998 PHARE/ACE survey in Hungary reported that the land leasing market has been dynamic over the past years. Among surveyed households, 16% leased land to others, and 8% leased land from others.⁴⁰⁵ Other surveys conducted by the World Bank and Phare/ACE have also shown that individual farms with leased land are significantly larger than farms using only their own land.⁴⁰⁶ The lease system is imperfect too however, and may not promote long-term investment in farms.⁴⁰⁷ Many of the leases are short-term. The minimum lease term is not regulated by the law, and in 95% of cases, the lease is for less than 5 years. While short-term leases do not encourage long-term investment, Hungary's agriculture is still dominated by large cooperatives, and short-term leases allow landowners the flexibility of leasing to more productive farms or selling their land as the market improves. Long-term leases at artificially low rentals to inefficient successors to collective farms would probably be a near-worst-case scenario for virtually any of the countries dealt with in the present report.

In Slovakia, a strong and competitive lease market has developed.⁴⁰⁸ The biggest utilizers of this market, however, are not individual farmers seeking to consolidate or increase their holdings, but cooperatives, companies and farm entrepreneurs who are hunting for well-placed consolidated holdings.⁴⁰⁹ The specific factors that make the lease market in Slovakia stronger and more competitive than in the neighboring Czech Republic (if indeed this is the case) might warrant closer farm-level exploration.

In Bulgaria an active lease market exists, although most leases have been annual, due to uncertain land tenure security for those whose land has not yet been restituted. Leases that are for less than four years are called rental agreements and do not fall under the protection of the lease law. Generally rental agreements are written and re-signed every year and are not notarized or registered.

The Land Lease Law requires written, notarized leases to be registered with the land commissions.⁴¹⁰ A lease cannot be for less than 4 years or more than 50.⁴¹¹ The maximum amount of land that can be leased in is 600 hectares. The lease payment can be made in money or in-kind. The lessee has a preemptive right to purchase leased land.

Private farmers generally lease land from pensioners, urban dwellers, or cooperative farms. Although members of an agricultural cooperative and restituted owners own their own land and can withdraw this land at any time, they typically contribute the lease right to the cooperatives.

It is therefore the cooperatives, not individual members, who lease out land to private farmers. By leasing from cooperatives, private farmers are able to get contiguous plots of land and able to make one agreement rather than dozens. The leases are generally for one year (rental agreements). It would be difficult for a cooperative to lease land for longer periods because cooperative members can withdraw their land at any time. Private farmer lessees generally pay higher rents to lessors than cooperative farm lessees.

Government officials and farmers alike agree that many lessors, including restituted owners, who are renting to cooperative farms receive nothing in return.⁴¹² Cooperatives do not pay rent when prices are low in order to avoid losses. Other cooperatives decide at the general meeting to buy machinery instead of paying rent to owners for their land. Of those cooperatives that are paying rent, the rent is quite small.

Slovenia does not fall into either of these patterns (state land-fund leasing or leasing by restituted owners), because its agriculture is dominated by small private farms. Here the market appears to be working in that the number of households owning land has decreased, while total area farmed has increased.⁴¹³ More specifically, farm structure is shifting to favor larger sized farms. The number of households farming an area of land larger than 5 ha. has increased at the "expense" of smaller farms and these changes, particularly for farms in the category of 10-20 ha., are occurring through increased land leasing as well as through household purchase of previously non-cultivated small plots.⁴¹⁴ More than 50% of household farms larger than 10 ha. lease in land, except pensioners, who lease out more land than they lease in.⁴¹⁵

In Romania, the lease market for agricultural land is significantly developed, and both oral and written contracts occur. Romania's agriculture, like Slovenia's, is dominated by small private farms. Lessors are often urban residents or pensioners, with pensioners often holding back 0.5 to 2.0 hectares to farm for household consumption. Lease terms range from 1 to 5 years.⁴¹⁶ Rents paid typically range from 10-30% of the crop, which suggests quite a vigorous and competitive lease market. Leasing is particularly important since a high percentage of rural land owners live in the towns, and thus do not cultivate most or all of their land personally.

The most significant lease restriction is the requirement that lessees who are natural persons must be Romanian citizens. Additionally, lessees which are legal entities must be "of Romanian nationality" and have a representative office in Romania.

The restriction on foreigners leasing in land is more onerous than a restriction on sale of land to foreigners, primarily because lease arrangements do not have the definitive results of a sale, if the lease is not of a long-term nature.

Another limiting restriction is that a lessee who is a physical person must have agricultural education, agricultural experience, or hold a certificate issued by the Ministry of Agriculture that testifies to the lessee's knowledge. This requirement adds a level of complexity to the lease transaction process, since the lessor must somehow determine that the lessee meets the standard. This requirement also manifests a lack of confidence in the workings of the market, which is

premised upon private actors undertaking endeavors in which they believe they will be successful.

5. Mortgage

All of the EU accession countries have quite limited land-based lending. The primary reason for this is that the market for land is reasonably new and under-performing in most countries. In some countries, land titles are not clear or secure. In others, land prices are very low. This section looks more closely at the impediments to mortgage.

a. Lack of Clear Ownership Rights

The restitution process that occurred in many of the EU accession countries placed title to agricultural land in a state of limbo for long periods of time. Without clear and defensible title, the land market could not develop and the mortgage of agricultural land was impossible. While in many countries this situation has changed in the last few years, bank perception that titles are insecure continues.

One example is Bulgaria, where the restitution process was chaotic and ever changing. Even after the restitution was completed, banks continued to hold the perception that until all land disputes are finally resolved, restitution will not be complete, and it will not be safe to use land as collateral. Even when the Supreme Court issued a decision that the land commission decisions and notarized titles have equal legal value, banks continued to state that the main obstacle to using agricultural land as collateral was that only 24% of restituted owners had notarized titles.⁴¹⁷

b. Incomplete, Conflicting, or Unreliable Mortgage Legislation and Infrastructure

Several EU accession countries do not have separate mortgage laws, but instead have mortgage rules within the Civil Code, Code of Civil Procedure, the Commercial Code, and Laws on Contracts. As these separate laws are amended to meet the needs of a market economy, the foreclosure rules and priorities are often conflicting.

In the Czech Republic, mortgages were traditionally governed by the Czech Civil Code, as well as other laws and regulations set forth for establishing a mortgage and registering it in the cadastre.⁴¹⁸ The 1991 Commercial Code also dealt with securing liens, mortgages, and encumbrances. Some of these provisions created controversy with regard to whether public sales or other forms of foreclosure were possible under the Commercial Code. As a result, on January 1, 2001, changes to the Czech Civil Code regarding mortgage liens took effect and the section of the law that deals with mortgages has been entirely rewritten.⁴¹⁹

These changes reflect how the Czech Republic chose to balance the interests of the creditors and debtors:⁴²⁰

- More precise definition of what property or rights can be encumbered;
- Tax liens go into effect only after the owner's appeal rights are exhausted – correcting previous problem where banks unwittingly placed a mortgage lien on property that already had a lien for unpaid taxes, unknown to the landowners;
- In a bankruptcy proceeding, taxes and costs of bankruptcy are given special priority;
- Certain arrangements between mortgagor and mortgagee are now null and void (for example a foreclosure in a different manner than that provided by law is null and void);
- If secured debt is not paid, the lien creditor may foreclose the lien by sale of collateral under court supervision, or in a public auction; and
- The amended law also grants the lien debtor the ability to contest foreclosure within one month of auction or sale of collateral.

Mortgage law and practice in Poland suffers from several weaknesses. First, foreclosure procedures cannot be worked out contractually, but must go through the slow and expensive court process.⁴²¹ Second, on the practical front many farmers disapprove of bank foreclosures and refuse to buy their neighbors' land at foreclosure auctions.⁴²² A third problem is the extreme delays in registration of mortgages. In order to be considered valid under the Civil Code, a mortgage must be recorded in the land register (*księga wieczysta*).⁴²³ This process can take between 6 weeks and 6 months.⁴²⁴ During the interim, of course, the borrower cannot access the loan money and the bank has no registered rights on the land. To deal with this problem, independent insurance companies have begun to guaranty the bank's security interest between notarization and registration, for a fee of about one percent of the loan amount.⁴²⁵

In 1997 the Polish Parliament sought to improve the mortgage system by passing a law "On Letters of Hypothecation and Mortgage Banks."⁴²⁶ The new law moved the order of priority for mortgages from sixth behind other creditors to third, behind only foreclosure costs and alimony claims.⁴²⁷ It also, less positively, limited the mortgage loan to 60% of the value of the mortgaged real estate.⁴²⁸ This limitation applies only to mortgage banks, however -- regular commercial banks can lend up to 80%.

In Romania, certain technical amendments to the mortgage law might help, for example, lengthening the maximum period of time for bank ownership of land. The 1999 limit was one year with a possible one year extension.⁴²⁹ Countries transitioning to market economies sometimes prevent banks from owning agricultural land, especially as a result of a foreclosure, for fear that banks will become large landowners and engage in land speculation. Rules such as these are often too restrictive and have the effect of discouraging mortgage lending. In Romania, the 1998 Banking Law forbids bank ownership of land, except for bank offices and for land "acquired as a result of the execution of the bank's claims," i.e. foreclosure, in which case the land must be disposed of within one year absent exceptional circumstances. Given the weak land market, perhaps an extension for banks would be beneficial.

In Bulgaria, the Contracts and Obligations Act provides that registration of a mortgage is effective for only 10 years. A registration may be renewed, but if it is renewed after the 10-year term expires, it loses its priority to any encumbrances registered in the meantime. The 10-year limit stems from the fact that Bulgaria's mortgage registration system is not parcel-based;

mortgages are registered in chronological order in mortgage registration books. Because these books are not indexed according to parcel number, it is necessary to search all the books to determine whether a mortgage exists with respect to a certain property. The 10-year limit was an attempt to limit the time period for which a search was necessary. Once the new parcel-based registration system is implemented (see discussion at IV.B.1) there will no longer be a rationale for the 10-year limit, and the law should be changed so that registration is effective until a mortgage is terminated. This 10-year limit makes it difficult for banks to make long-term loans based on mortgage.⁴³⁰

Another common complaint of creditors in Bulgaria is that prices paid at public sales rarely reach the true market value of the property. One of the main reasons given for low sales prices is that sales are not adequately advertised. Sale notices are typically posted outside the office of the execution judge and on the property itself, but the law does not require broader publication in newspapers.⁴³¹

c. Weak Land Values, and Bank Attitudes Toward Agricultural Land

Mortgage lending in Hungary may have been slowed by bank attitudes.⁴³² Hungarian banks were initially reluctant to lend against land and overwhelmingly preferred houses and personal possessions as collateral. During the transition period, banks required very high levels of collateral and banks also would not accept land as collateral if its size was unsuitable and not considered economically viable.⁴³³

Moreover, in Hungary 80% of land is leased.⁴³⁴ The lessee may not encumber the land with a lien, so mortgage credit to farmers is restricted to the 20% of land that is owned by the operator. However, even if mortgage of the right to lease land was possible, the common short lease terms of 3-5 years increase the difficulties for developing a mortgage credit system based on lease.⁴³⁵ Also, in many cases, one lessee operates on the land of several owners. Pledging the land related to less than one economic unit causes problems, especially if the parcels provided as collateral by the owners do not form one closed unit in territory and the land value does not represent sufficient security for the creditor. The value of such collateral to a bank is highly questionable.⁴³⁶

In Lithuania, access to credit for the agricultural sector has been very limited and complicated.⁴³⁷ The Agriculture Bank, a state-owned bank, has remained the primary source for rural credit.⁴³⁸ High transaction costs associated with lack of information and experience, as well as the absence of sufficient and reliable land titles, are significant reasons for bank reluctance to provide rural financing, especially for long term investments.⁴³⁹

d. Inability of Legal Entities (Banks) to Own Land

In Estonia, Lithuania, and Hungary mortgage lending is at an early state of development and is severely constrained by the restriction on land ownership by legal entities, since banks are less willing to take land as collateral if they cannot take ownership of the land in foreclosure proceedings if there is an inadequate bid, or no bid.⁴⁴⁰ At a minimum, this would probably lead

banks only to lend on the security of agricultural land which is clearly marketable and has value well in excess of the loan amount, so that sale to a third party at an acceptable price at a foreclosure auction would be virtually assured.

e. Under-Capitalized Banking Sector

In Slovenia credit services have been slow to develop, while land prices approach the highest levels in Europe and are high compared to the land profitability prospects.⁴⁴¹ Land markets in Slovenia have been hampered by the lack of a mortgage banking infrastructure. The central problem is the inability of the financial sector to engage in true, long term secured lending because the sector is under-capitalized and cannot afford to have money lent out for extended periods of time.⁴⁴²

In Slovenia, there are no laws, statutes or regulations that specifically deal with mortgage banking services or protecting consumers.⁴⁴³ There is legislation defining mortgage loans and legislation regarding bonds, but these two features are not linked by legislation regarding mortgage banking.⁴⁴⁴ Thus, banks are not in a position to assure long term sources for financing their mortgage credits through bundling mortgage loans and refinancing on a secondary market. Banks use mortgage as collateral for the corporate sector, and some individuals receive mortgage loans for housing.⁴⁴⁵ However, these loans generally mature within 10 years or less, and loans with maturity over 20 years do not exist.⁴⁴⁶

In Bulgaria, the banking sector crashed in 1996. Following this crash, the lending environment has been difficult, and banks have required high-value collateral. Currently, banks have relatively high liquidity because they have worked to reduce losses by keeping assets in liquid investments rather than loans. Loans have been restricted, in part, in order to make banks as appealing as possible to potential private investors.⁴⁴⁷

f. Limited Reach of Guarantee Funds

While many of the EU accession countries have mortgage guarantee funds, mortgages and credits to the private sector continue to lag, and usually only one lending institution deals with such guarantee funds. Guarantee programs encourage at least limited mortgage financing, but are often criticized for functioning like income subsidies and simply sustaining inefficient farm structures and distorting the agricultural credit market. Where guarantees do exist, there need to be appropriate limits and risk sharing, as well as focus on who will receive these guarantees.

In Hungary, the Land Credit Bank Company is the only bank dealing with land mortgage credits in the country.⁴⁴⁸ At the end of 1998, 51% of arable land constituting 16% of the total credit guarantee value was found in its portfolio. Eighty three percent of its agents who offered the collateral were private persons.⁴⁴⁹

In Latvia, a 1998 assessment of rural finance found that the private banking system was operational and was serving farms and agro-food businesses.⁴⁵⁰ Government credit programs

had been established to deal with the “high risk” agricultural sector, including the State Land and Mortgage Bank.⁴⁵¹

Despite some development in this arena, the involvement of commercial banks in providing farm credits is still limited and so is the assistance offered by credit programs, which have reached only a few better-off farmers.⁴⁵² There is, therefore, still a shortage of both short-term and long-term credit for agricultural producers in Latvia. Long-term interest rates fluctuate between 25-40%.⁴⁵³

In Slovakia, no bank has a license for long-term mortgages of more than five years. The only options are loans of three to five years with interest rates of 19-20%.⁴⁵⁴ The State Support Fund had been offering soft loans for land purchase, but only a few had been taken out as of 1997.⁴⁵⁵

In Romania, in 1994 the Guarantee Fund for Rural Credit was established with the assistance of a ECU 9 million contribution from the European Union under the PHARE program.⁴⁵⁶ The shareholders are four commercial banks: Agricultural Bank; Romanian Commercial Bank; Romanian Bank for Development; and Bankcoop. The fund provides guarantees only for loans provided by these banks and are only for medium and long-term loans to the private sector.⁴⁵⁷ The fund guarantees up to 60% of the loan value plus interest.⁴⁵⁸

Despite these programs, the state agricultural sector is still the main recipient of credit. The Agricultural Bank lent 85% of its short-term credit and 73% of its medium and long-term credit to the state sector.⁴⁵⁹ Many of these agricultural loans, provided under government mandated programs, are not performing. This is especially true with the passing of a law in 1996 which provides defaulting borrowers with unrestricted access to fresh loans and for rescheduling of bad debts in 1997 and 1998.⁴⁶⁰ Hence, to the extent that the government does not honor its guarantees with respect to these non-performing loans, the recognition of these losses is just being delayed to a future budgetary period.⁴⁶¹

B. Administrative Framework

Government land administrative programs in the EU accession countries generally consist of land registration, land appraisal and tax administration, land use planning, and in some cases consolidation programs.

1. Land Registration

A great deal of focus has been placed on registration in EU accession countries by donors. For this reason, in many if not most countries the registration system is in place and functioning reasonably well. There are several key registration issues that have been handled better by some countries than others. A discussion of these issues follow.

a. Lack of a Unified Registration System

The Czech Republic has a relatively solid system of land registration, titling and cadastral registration. In 1992, a new cadastre law was adopted and the land cadastre and land registry were united into a single instrument.⁴⁶² Some of the goals of the 1992-1993 cadastral reform were to facilitate land transactions, define boundaries, create the ability to use the registry as a tax tool and provide easy access of information to the public.⁴⁶³ Modernization of the cadastral system, including digitization of owner's folios and maps, has also been undertaken in partnership with international development agencies under the rubric "The Conception of Digitization of the Cadastre," a project being funded through 2006.

In Hungary in 1972 the land registration and cadastral system were changed into a single land registration system, which consists of titles and boundary descriptions. Since 1991, the system has been under the authority of a Department within the Ministry of Agriculture, and is administered through a national network of Land Offices.

By contrast, Estonia's land administration system is bifurcated into a land (legal) register and a cadastral register. Land registration is based on the German legal system, and all real properties are to be registered with basic data on ownership and other rights in land, including mortgages.⁴⁶⁴ Cadastral registration has been significantly reformed by the Law on Land Cadastre.⁴⁶⁵ For each parcel a cadastral map, cadastral index, map of restrictions, map of land use, map of land quality, and land valuation are made.⁴⁶⁶ Land valuation is regulated by the National Land Board, but is actually conducted by licensed land valuers.⁴⁶⁷ All land valuation assessments are public.⁴⁶⁸ International support has been vital for the reorganization of the land administration system, including a PHARE loan project, as well as other international assistance from the FAO and World Bank.⁴⁶⁹

Slovenia also has a bifurcated system, which has been in place for several centuries. Both the Land Register and the Cadastre Register are in need of modernization in order to support the free functioning of land markets. Currently, the Land Register records the relationships between people, objects, and rights, while the completely separate Land Cadastre records physical boundaries and land usage and forms the basis for property descriptions and tax assessments.⁴⁷⁰

This bifurcated system is basically working, but has some inefficiencies and problems. For example, the Land Register is totally manual,⁴⁷¹ problems exist with titling in areas still undergoing land reform,⁴⁷² the cadastre component suffers from more severe accuracy problems than the Land Register, and there is inadequate sharing of information between the registers.⁴⁷³ In addition, land cadastre problems are exacerbated by the lack of institutional responsibility for land valuation. Valuation commissions were established in response to a specific government act, yet there is no authority for the update, maintenance or renewal of any valuation data.⁴⁷⁴

In Lithuania, the 1996 Law on the Real Property Register is basically adequate. Registration is carried out by the "State Land Cadastre and Register." However, there is one emerging problem in that there is now a separate Mortgage Registry, maintained in the courts by the Ministry of Justice. In addition, there is discussion as to whether the registration process will be further fragmented by turning over registration of other encumbrances or servitudes to the Ministry of Justice.⁴⁷⁵

In Bulgaria, the law On Cadastre and Property Registration was adopted in April 2000. The law created a new agency to implement the cadastral aspects of the law. The new Cadastral Agency took over the existing regional cadastral offices, which had few staff (only sixty-six), few and poor quality premises, and very little facilities or equipment.⁴⁷⁶ Registration of legal rights to land is handled by the entry judges under the Ministry of Justice. Transactions of rights to immovable property must be notarized.⁴⁷⁷ Although the notaries are private, the fee schedule is set by law.

In addition, decisions of the land commissions (equivalent of notarized title if accompanied by a map) are registered with the commissions, and the commissions also keeps a file of encumbrances on each parcel of land. In many regions, there is little communication between the entry judges and the land commissions.

Romania, due to its history of being divided between the Austro-Hungarian and Ottoman empires, has two different registration systems currently in use.⁴⁷⁸ These are the "land book" system and the "inscription-transcription" system. The 1996 law On Cadastre and Real Estate Publicity, the primary legal act dealing with land registration, contemplates use of the land book system throughout Romania, and outlines the procedure for switching over from the inscription-transcription system. Rights under the latter system, however, are protected under this law until each particular jurisdiction is ready to make the change. (There will be 170 land book offices, under each of the 170 local court offices.)

A potential problem is that the land book offices have little capacity to gather information; they rely on the local units of the National Office of Cadastre, Geodesy, and Cartography for all information upon which registration decisions are made.⁴⁷⁹ Unless these cadastre units are exceptionally responsive to requests from the land book offices, the land book offices may not be able to carry out registration activities in a timely manner. Unfortunately, these local cadastre units are required to accomplish a myriad of cadastre-related activities, and thus it is possible that their most important task, supplying information to protect legal rights, will not receive the needed attention and resources.

In Latvia, according to the existing laws all properties must be registered in the Cadastral Register, but it is not mandatory to register them in the juridical registry. Ownership rights to land occur upon the decision on privatization or restitution of ownership, but the owner has not right to perform transactions if the property is not registered in the Land Book (juridical registry).⁴⁸⁰ Whereas registration in the cadastre has been virtually complete for several years, only 45% of land has been registered in the Juridical Registry.⁴⁸¹

b. Land Taxes and Registration

Estonia's land tax has played a detrimental role in completing cadastral registration. Presently, if an owner arranges for a survey and registers ownership, he must pay those fees and must also commence paying land tax. However, if the owner does not register ownership in the cadastre, the State pays the land tax, a significant incentive not to register land. The World Bank has

recommended that all land owners (registered and non-registered) pay the tax, but municipalities have resisted. As a compromise, Estonia plans to establish a deadline by which cadastral registration must take place. After this deadline, unregistered land will be considered state land and can be sold or leased to people who want to make use of it.⁴⁸² Estonia is one of only a few countries where real estate taxes are applied solely to land, and buildings and other improvements to land are not taxed.⁴⁸³

In Slovakia, the transfer tax on a transaction is from 4-20% of the price or valuation of the property, discouraging registration of land transactions.⁴⁸⁴

c. Slowness of New Registration Systems

Hungary's land registration system is fundamentally sound. However, it has faced challenges during computerization and digital modernization of the system and due to the vast increase in the number of new parcels through the Land Compensation program. The average lag time between possession of land and issuance of titles was about 18 months at one point.⁴⁸⁵

In Poland the registration system is fundamentally sound, but extremely slow.⁴⁸⁶ This has probably contributed to an estimated 30-40% of land in Poland being unregistered, though unregistered rights remain valid. At this point, registration is "sporadic"; when a transaction involving unregistered land begins, the notary must apply to open a registration volume on the plot. Even this sporadic registration is slow and subject to much complaint. Delays range from a few months in the countryside to as much as two years in Warsaw. A judge must make the entries, the land and mortgage registers are kept by approximately 300 different district courts, and the system is seriously under-funded and understaffed. Legal registration of previously unregistered land involves examination of notarial documents, documents held by the rights-claimant, and materials kept in the separate offices of the land and building register. Registration in Poland is not prohibitively expensive, but the fees do not go back into the registry system.

d. Lack of a Clear Statement as to the Legal Effect of Registration

In Romania, the land book system is, in theory, supposed to provide conclusive evidence of ownership and other registered rights. However, the description of the land book in the law raises the possibility that the rights inscribed in the land book can be annulled in the future by court judgment. In addition, some rights, such as successions and rights obtained through court judgment, are enforceable even if not inscribed in the land book. These exceptions make it difficult for third parties to rely on the land book, since inscribed rights can be overturned, or non-inscribed rights may be enforceable.⁴⁸⁷

2. Consolidation

Restitution of agricultural land has created small land plots and spatially dispersed land in many countries. These countries have struggled with how to encourage land consolidation without over-interfering with the market. State involvement is often not welcomed because countries in transition are moving away from State involvement in agricultural land. At the same time, very

small or dispersed land holdings can make it difficult to reach a level of livelihood seen in Western Europe. Below is a description of how several countries have dealt with their desire for land consolidation.

In the Czech Republic, the Land Consolidation Act determines administration of land consolidation and creation and function of Land Offices. The law determines in details the object, forms, participants and procedures of land consolidation. There are two forms of land consolidation described by the law (both voluntary depending on the consent of the landowners): simple land consolidation (to create compact land units in shorter time); and complex land consolidation. While simple consolidation involves marking boundaries of several original lots, complex land consolidation usually involves whole cadastral units and must respect the requirements of production and environmental and landscape formations. The costs of the land consolidation are paid by the State.⁴⁸⁸

The Slovenian Agricultural Land Act (October 1996) regulates use, protection, sale and lease of land. The Act supports the goal of increasing farm size by granting preferences to tenants, neighbors and the Land Fund in farm sales.⁴⁸⁹

The Land Fund acts as a market trader and promotes land consolidation through sale and lease.⁴⁹⁰ The Land Fund, which is made up of state land not yet restituted, leases 22,000 hectares to small private farmers and 50 large enterprises. Where small units are held by the land fund, and the land ownership pattern is complex, the small units will stay in the hands of the State unless a buyer comes forward. Where the restitution process results in the fragmentation of a larger land unit, then the Land Fund will purchase the small piece from the new owner if the new owner desires. The Fund will then add the land to its own stock, thus preserving a larger continuous unit. The Land Fund also buys odd shaped parcels, parcels difficult to access, and will even buy land adjacent to an existing farm, at the request of the farmer, and then lease the land to him or her. However, at the present time, the amount of land sold to the Land Fund is very small.⁴⁹¹

Furthermore, while restrictions on the maximum size of private landholdings were abolished in 1991, current agricultural land units over 5 hectares must be conveyed as a whole unit and cannot be subdivided.⁴⁹² Some have argued that the existing land tax system does not support land sales, and that low land taxes have encouraged land ownership to the detriment of land sales.⁴⁹³ It may be questioned, however, whether land taxation is either an appropriate or an effective instrument to encourage land sales. Land taxes that would be at a high enough level to have an impact on land sales have rarely, if ever, been seen in global practice. It is possible that such taxes if actually levied, would cause widespread economic harm to farmers and rural communities, and might actually bring about a series of undesirable impacts, such as distress sales at low prices, sales to non-farmers who have the financial resources to hold the land for speculative purposes only, and loss of prime agricultural land to non-agricultural uses that might be more profitable but in many ways less desirable.

The World Bank has recommended that Slovenia: (1) use land taxation to encourage land consolidation; (2) restructure the state land agency to actively support land consolidation by buying, holding and reselling land to improve farm structure; (3) complete a land register as soon

as possible; (4) support long term leases; (5) introduce a retirement scheme; and (6) support transfer of land from less competitive to prosperous farms.⁴⁹⁴ At least several of these points, however, (some of the possible applications of (1), (4), and (6)), might involve measures of market interference that could end by doing more harm than good.

The Hungarian and German Ministries of Agriculture have also initiated a cooperative project, the joint German-Hungarian Land Reorganization Consolidation Project (TAMA), to improve agricultural productivity by improving the accessibility, size and configuration of fields.⁴⁹⁵ The project will support legal regulations and technical aspects of land reorganization and consolidation. The project also features a land-exchange service for landowners.⁴⁹⁶ Hungary also suspends the transfer tax when voluntary consolidation occurs.⁴⁹⁷

In order to address some of the problems created by Hungary's land reform process, legislation to hasten consolidation has been proposed for the last several years, but has not yet passed. These include:

- The Act on Land Consolidation, which foresees the introduction of a system for rearranging non-viable farm holdings.
- A draft amendment to the Land Law creating a National Land Fund and eliminating the illegal acquisition of land by foreign private people and legal entities.⁴⁹⁸ The Land Fund would allow state intervention into land and leasehold market by economic means, with the intention of decreasing the shortage of farmlands by buying up parcels of non-agricultural owners at real market prices.⁴⁹⁹ A continuous land accumulation by the Fund would serve the requirements of land consolidation, allocate land to young proficient farmers on privileged terms, and assist in establishing projects for specialized production.⁵⁰⁰

Latvia, along with Slovakia and the Czech Republic have instituted a land improvement and reparcelling effort, backed by the EU, scheduled for 2002-2006.⁵⁰¹ The EU has identified the following primary challenges: the high number of co-owner shares; the incomplete land register; and the physical inaccessibility of some plots.⁵⁰² Eligible investments will include: the preparation of necessary documentation; preparation and implementation of land use projects (such as marking out the division plan, surveys and earthworks); and the building of access roads.⁵⁰³

In Romania, the farmers themselves have dealt with land fragmentation. The average plot size is two to three hectares, sometimes divided into 3 to 5 plots.⁵⁰⁴ Fifty percent of the land is owned by people outside of the agricultural sector.⁵⁰⁵ Many plots are not being cultivated at all.⁵⁰⁶ Litigation concerning parcel location and soil quality has arisen.⁵⁰⁷ After the difficulty of attempting to individually farm fragmented plots, it appears that a significant number of farmers are opting for some kind of larger association.⁵⁰⁸ The formation of family associations to some degree has helped overcome the fragmentation problem.⁵⁰⁹ However, these association agreements have, in effect, reintroduced some of the difficulties of cooperative ownership and have resulted in a weakened sense of security in ownership that has translated into restricted investments in the land.⁵¹⁰ Leasing agreements have been suggested as an alternative to these association relations that would likely foster a stronger sense of security and thus more

investment.⁵¹¹ The active but informal leasing market has resulted in some consolidation of farms with highly fragmented land ownership.⁵¹²

3. *Land Use Planning*

Many of the EU accession countries have a policy of government involvement in conversion of agricultural land to non-agricultural use. Conversion often falls outside of the ordinary land use planning process, and requires extra steps and expenses.

Land use planning in Poland falls under the 1994 law On Spatial Development. Under the law, if the spatial development plan zones a particular plot as agricultural, and that use has been approved by the village-level administrative body (*gmina*), then the land must be rezoned before it may be put to a non-agricultural use.⁵¹³ The change in zoning requires a many-step process that can take as much or little time as the local *gmina* desires.⁵¹⁴ The law also provides that when the beneficiary of such a zoning change then sells the affected land, the *gmina* can impose a fee of up to 30% of the increase in the value of the land resulting from the change in zoning.⁵¹⁵ Where a change in zoning *decreases* the value of land, the government must compensate the owner for the diminution.⁵¹⁶

In Lithuania, certain legal issues arise when a landowner wants to change the use of his or her parcel from agriculture use to non-agricultural use. If a town-planning document designates land as available for non-agricultural purposes, then the conversion can be simply made. Otherwise, change in the town plan must be obtained under a rather complicated procedure. In addition, a special compensation must be paid based on a multiple of the difference in profitability between the land as used for agriculture, and the land as used for non-agricultural purposes (i.e., a number of years of expected profit for the change must be surrendered up-front). Such conversions of land are rare, especially since land usually can be found which is already properly designated.⁵¹⁷

In Romania, the law On Land Resources requires holders of agricultural land to cultivate the land, to protect the land, and not to actively degrade the land. Moreover, to convert agricultural land to non-agricultural uses, the law requires that such conversion be approved by the Ministry of Agriculture and Food. Locally developed land use plans also play a role. In addition, the law imposes a heavy tax on land that is converted. The tax, ranges from two times to four times the sale price depending on soil quality.⁵¹⁸

4. *Cohesive Land Policy and Administration*

In the EU accession countries land policy is often not consistent and administration of land policy is frequently fragmented at the national and local level.

In Estonia, land reform has necessitated a major overhaul of the land administration system created during the Soviet period.⁵¹⁹ While some elements of the land administration system have been privatized (land valuation and surveying), for the most part the system remains governmental. Several different government authorities are responsible for land administration, including the Ministries of Environment, Interior, and Justice. The most important government

agency is the National Land Board (under the Ministry of Environment), which operates the land cadastre and the local cadastre offices.⁵²⁰ The National Land Board also organizes cartography and geodesic activities, as well as land management decisions and international support.⁵²¹ However, local governments undertake activities such as land restitution and privatization are.⁵²²

In Slovenia, lack of a cohesive land policy infrastructure has thwarted land markets. Land administration is decentralized and all decisions are initially undertaken locally.⁵²³ Furthermore, there is no central body overseeing land policy,⁵²⁴ currently there are at least nine different institutional entities responsible for land policy and administration.⁵²⁵ Despite these shortcomings, the need for efficient land policy has been acknowledged and the technical infrastructure is in the process of being upgraded.⁵²⁶

Latvia also appears to have limited planning or coordination of land policy.⁵²⁷ Instead, many institutions are responsible for various aspects of reform without a centralized or coherent plan or agency to coordinate these activities.⁵²⁸

5. Private Sector Development

Private land market services are beginning to develop in the EU accession countries. Some real estate agencies exist, as well as surveyors, and land valuers. Often these services grow out of the urban land markets, and urban land makes up most of the business of private companies.

In Slovakia and Bulgaria valuation and financial services are still underdeveloped, and information about finance and markets is not effectively publicized or exchanged.⁵²⁹ Even in 2000 it was conceded that Slovakia has little information on the status or the development of agricultural land markets because of an absence of functional statistical research and information networks.⁵³⁰

In Bulgaria, although there is limited demand for purchasing agricultural land, there appears to be great interest in selling and exchanging land and buildings of all types. Anecdotally, real estate agents estimated that the ratio of would-be sellers to buyers is 90/10 for agricultural land. However, while there are many real estate agencies (40 in Plovdiv), there is virtually no information exchange between real estate agents in separate regions.⁵³¹ In Slovenia as well, there is no mechanism to bring buyers, seller and financing tools together, so knowledge of saleable plots is held locally and not widely disseminated. This lack of information will hinder the exchange market as well as the purchase and sale market.⁵³²

V. Analysis and Policy Options

A. Introduction

This section briefly summarizes the broad observations made for each of the country groups and presents the various policy issues and options that fall out of the conclusions. The issues are organized around the topical subdivisions that were contained within each country group section.

Where the issue applies only to specific countries or regions, those countries or regions are noted.

B. Observations Summary

1. *Western CIS Countries (Belarus, Ukraine, Russia, Moldova)*

The Western CIS countries, with the exception of Moldova, are still struggling over meaningful private ownership of agricultural land and the right to sell land, to mortgage land, and to use land to its best use without interference from the State.

All of the Western CIS countries are still primarily farming as large collective farms with little benefit afforded to individual landowners. Except for Moldova, few purchase and sale transactions are taking place, and the majority of those land transactions that do occur even in Moldova, involve leasing back to the barely altered successors of the collective farms from which the land was allocated or divided.

For these countries, with the exception of Moldova, there is effectively no political will for reform, even though the farmers themselves are interested in a land market and land ownership. Recommendations suggested for the Western CIS countries are meaningful only to the extent the political situation in particular countries comes to allow it.

2. *CIS Countries: Trans-Caucasus States (Georgia, Armenia, Azerbaijan)*

Azerbaijan, Armenia, and Georgia are leading the CIS in terms of privatization and farm reorganization and are ahead of some of the EU accession states in these areas. The Trans-Caucasus plus Moldova are also much further along in terms of land market legislation and development of a land market. These countries share several common factors. First, and most importantly, each of these countries has the political will to privatize land and move toward a market economy. All four countries devolved some land management responsibility to the local level. In addition, they passed legislation clearly allowing for land transactions. Armenia and Azerbaijan prioritized privatization and farm break-up and accomplished them simultaneously, while Georgia accomplished both to a significant degree.

Now that the basic legislative framework has been developed and implemented, the second stage of privatization must be implemented. This includes further development of the registration systems, privatization of at least a portion of the state land funds, development of private market services (surveying, real estate agents, valuation), and public information on land transactions and land markets.

Before such programs are developed, field research needs to be conducted to determine what is currently happening on the ground (outside of the donor programs) and what effect privatization of the land fund will have on the poor and on consolidation efforts.

3. *Balkan Countries*

The rural land markets in these countries are not only influenced by economic transition issues, but also by ethnic strife, political instability, and war. None of the surveyed countries has avoided the sapping of energy and resources that might have otherwise been directed (at least in part) toward land market development goals.

In some ways (land registration infrastructure, potential for transactions, supportive legal milieu, private sector support, and others), Albania leads in the kinds of reforms that could help to create a vibrant land and mortgage market. This relatively progressive status might be attributable to Albania's relative freedom from sustained armed conflict within its borders over the past ten years (although the collapse of financial pyramid schemes in early 1997 triggered severe social unrest that led to more than 1,500 deaths, widespread destruction of property, and a 7 percent drop in GDP).

As all of the surveyed countries except Albania were Yugoslav republics during the post-war years when collectivization was attempted and then abandoned, privatization and private farming has been and remains in an advanced state. However, some socially owned and state owned farms remain.

4. *EU Accession Countries*

The EU accession countries have struggled less with the ideology of a market economy than many of the CIS countries, so privatization of land was not disputed. However, in some cases, EU accession countries have chosen to continue support for large collective-style farms, and much less farm break-up has occurred in such cases than in Armenia, Azerbaijan, and Georgia. While there are many contributing factors, it does appear that in countries where independent private farmers are not the dominant sector, the land market is functioning at a lower level than in countries with a larger number of private farms. Poland and Lithuania, for example, have an active land market, while Hungary, the Czech Republic, Bulgaria, Slovakia, and Latvia less so.

C. *Policy Options and Recommendations*

As always, some policy options are more difficult or more expensive than others to implement. Some are difficult to monitor. Others require high levels of cooperation between agencies, ministries, and even governments. Field interviewing and data collection is needed in some countries to identify existing conditions and to confirm descriptions of situations. Several ideas about how to improve agricultural land markets and mortgage lending follow.

1. *Land Privatization*

The term "land privatization" has been used to describe a wide range of processes in Eastern European countries. Full privatization includes a transfer, from the state or collective to private parties, of rights to separately demarcated parcels of land, which are the functional equivalent of full ownership. These rights include: permanent or long-term rights of possession; freedom to decide on the use of a land plot, subject to reasonable land use regulation; and freedom to sell,

lease, bequeath and mortgage the land. In the Western CIS countries, many of these rights do not accompany the privatization of land. For these countries, meaningful privatization must be a first step.

In the EU accession countries, the privatization issues are related to the restitution process primarily. Potential claims of former owners, conflicting laws regarding the restitution process, and unclaimed land have all slowed down the privatization process.

a. Issue: Limited ability to choose to farm independently or with neighbors

In Russia and Ukraine, while land is privatized in the sense that land shares have been issued, citizens enjoy few of the rights normally associated with land ownership. At most, citizens enjoy the rather abstract right to demand demarcation of an agricultural parcel. Individuals rarely exercise such rights, in part because the individual is likely to receive the very worst land, in terms of quality and location. Even in Moldova, where land was demarcated and landowners enjoy rights normally associated with land ownership, it is difficult for owners to exercise full rights to arable land located in the middle of large fields. In addition, in all four countries, the former leadership of the defunct collective farms continues to exercise largely unchecked power, making it difficult for land owners (and land share owners) to exercise their rights.

Policy Options:

- Develop legislation that clearly identifies a system for equitable and transparent demarcation of land of average quality and location when one or more families chooses to farm independent from the former collective or state farm. (Russia, Ukraine, Belarus)
- Clarify current legislation so that consensus of the whole farm is not required for withdrawal of land and assets from the farm. (Russia)
- Sanction local administrators and farm managers who do not follow the procedural rules or who otherwise obstruct individuals who want to withdraw their land and assets. (Russia, Ukraine, Moldova, Belarus)
- Establish legal aid centers wherever possible to provide free, legal advocacy for members of large farms who want to withdraw their land share and non-land property share and farm privately. Legal aid centers provide both education and advocacy and are an inexpensive but effective tool. For the most part, donors or the government must support legal aid because farmers are generally unable to pay for such services at the time they are needed. (Russia, Ukraine, Moldova, Belarus)
- Develop education programs regarding land rights at the village level. Intensively train local leaders who are reformers so that they can continue as informal advocates throughout the reform process. Education programs that provide blanket information are necessary but not sufficient. Local advocates must be trained and educated so that ongoing assistance will be

available. A weekly or monthly newspaper can provide on-going information. (Russia, Ukraine, Moldova, Belarus)

b. Issue: Members of farms or sometimes restituted owners who received their land in the middle of the field with no access to roads or infrastructure have little choice but to lease their land back to the former collective farm.

Policy Options

- Adopt a rule that every group of farmers who want to withdraw their land is presented the option of obtaining contiguous arable land, some part of which borders an existing road. Some study would be required to determine the minimum number of land shares to qualify for edge-of-field access (if there is no minimum requirement as to number of land shares, the rule becomes impossible to fulfill unless, of course, plots can be reshaped). This could be done by determining, on average, how many parcels on a field border an existing road, and then calculating some minimum group size to use as a standard.
- Streamline and promote the practice of exchanging parcels. Provide free or reduced cost notarization (where it is required) and registration for land exchanges.
- Develop a program to design, demarcate, contract, and register right-of-way easements where possible. This process could be expensive and time consuming, especially if farm leaders oppose break-up, which in many cases will be true.
- Be sure to adopt the necessary rules prospectively, where demarcation of land shares into land parcels is expected but has not yet occurred (Ukraine).
- Consider a consolidation pilot project that focuses on groups of landowners that want to exchange, sell, or lease land within a particular farm.

c. Issue: Potential claims of “real” owners overhang the restitution process

With the restitution process, there is always the possibility that individuals or groups of individuals will present clear and indisputable claims to land they formerly held and that is now in someone else’s ownership.

Policy Options:

- Develop a legal rule that provides that after a specific cut-off date, all such claims will be compensated with land from the state land reserves or with monetary compensation, even if the previous owner has clear title to land. This has already been done in many of the EU accession countries, and represents an application of the almost universally accepted legal principle of “repose” or of a “period of limitations,” under which claims that are not asserted are lost or (as we suggest here) are at least subject to more limited recompense.

- Hold back a portion of the land reserves for a period of time in areas where such new claims are more likely to occur.

d. Issue: Where conflicts exist regarding rights to land, boundary disputes, or disputes regarding rights of heirs, the restitution and registration process has been very slow

Policy Options:

- Disputes might be heard by specialized or expert judges. Expert judges who were assigned to deal only with land restitution cases could expedite the process. Many of the judges are unfamiliar with the complicated restitution laws and with related provisions in other laws, such as the inheritance laws.
- Specially train judges or other mediators who deal with restitution claims.
- For conflicting-law issues (Lithuania) make available a portion of land in exchange for the actual claimed land and provide incentives for voluntarily accepting that land.

e. Issue: In Estonia where there is a large quantity of unclaimed land, outright sale might encourage land speculation, keeping land out of production

Policy Options:

- As the Ministry of Agriculture suggests, provide long-term leases with covenants requiring productive use and allowing for purchase at a minimal price after the lease term is complete.
- One could also allow lessees who had made long-term investments on the land at or above a specified level per hectare to exercise their purchase option earlier, for example, after five years.
- Privatize land but heavily tax transactions on sale of that land within a period of time (1-5 years).

f. Issue: In Estonia household plot owners do not have title to their land.

Policy Options:

- Provide holders of household plots with full ownership title to their plots at no charge for surveying, titling, or registering. Those costs should be borne by the State.

2. State-Owned Land Reserves

During the privatization process, many countries chose to hold back an amount of land in state ownership. Some countries created a Land Fund where state land was held in reserve and leased out to private farmers or large collective-style farms. Other countries held back land for the specific purpose of leasing it out to former collective or state farms to create “market-sized” farms (Hungary, Georgia).

In either case, as long as large quantities of agricultural land are available for lease at no cost, or practically no cost, agricultural land will continue to have very little, if any, market value. A land market can assist in the creation of wealth in rural areas. Unless land has some commercial value, land share owners will find it difficult to exit the farming sector. This may be especially important for pensioners and for people wishing to migrate to urban settings. Without real land privatization and the development of a functioning land market to facilitate the movement of agricultural land from inefficient to efficient users, obsolete farms will continue to sit on large tracts of land and production will continue to stagnate.

a. Issue: Several countries have quite large state-owned land reserves that may overhang the private lease and sale market for agricultural land.

Russia, Ukraine, and Belarus have large amounts of land still owned by the State and held in reserve that is readily available and inexpensive or free. In these Western CIS countries, where parcels of land are large enough to establish private farms, the State does not need to be involved in land consolidation efforts and does not need to hold land back for this purpose.

However, large state land reserves do exist in smaller countries with less arable land (Armenia, Lithuania) and are now the primary way that land plots are enlarged and consolidated. This process should be examined closely and considered when selling state land.

Policy Options

- Review the effect of the State Land Fund on the private lease market.
- Distinguish arable land from hayfields and pastures in the land fund. Consider continued state ownership and local leases (including possible limited-access group use and other options, where appropriate) for pastureland.
- Adopt legislation that requires the sale of at least a portion of state land that takes into account the following concerns:
 - Determine the overarching policy regarding the land fund.
 - All current leases of the land fund, if there are term leases, must be honored.
 - Consider a small set-aside for pensioners, the disabled, and the unemployed who are using the land at little to no cost and relying on it for subsistence farming.
 - Land that is of highest value and has the most bidders should be sold first.
 - Sale of land from the State Land Fund should be open and transparent, preferably at public auction with enough notice to local villagers.

- Consider equity of distribution and develop regulations regarding who can bid and who has priority. Different procedures may be developed for areas with large amounts of unused agricultural land than are developed for areas with a scarcity of agricultural land. General rules providing priority rights for the sale of agricultural land can be appropriate because they can further certain government policies (giving local residents the first opportunity to acquire land rights; limiting how much land can be sold to one person or household, encouraging consolidation) and at the same time are easy to administer and do not result in ongoing impediments for the private land market. Require joint titling for husbands and wives.
- Alternatively develop a program for leasing land with the option to purchase, or sell land to current lessees (again with possible limits, such as size limits).
- Alternatively continue to lease out state land as a mechanism of encouraging consolidation of land plots. If state land remains in state ownership, leases should be at market value and impediments to private leases and land transactions should be eliminated. The leasing procedure must be open and transparent.

b. Issue: Where land has been held back from privatization and leased to larger legal entities at a very low cost, the private lease and sale market suffer and some of this land remains unused. (Hungary, Czech Republic, Georgia)

Policy Options:

- Speed-up privatization of state land. In countries with declining real agricultural prices, a large portion of land remains unused. Privatization procedure may have to be accompanied by incentives. Privatization should occur at public auction, and land plots sold should have access to roads and infrastructure.
- Special thought should be given to how to deal with state land being used by legal entities. In some cases, legal entities own the buildings and machinery associated with state land, but do not own the land. If this state land is sold at auction, the owners of the land might be different than the owners of the improvements to that land. While this would be a difficult situation, it does not make sense to simply turn over this land to the farm, if the farm is unproductive with little change in management style. A plan for bankruptcy and restructuring, possibly including break-up into smaller units, of such legal entities may be necessary.

3. Farm Restructuring

Individual or family farms are the dominant organizational form in agriculture in developed market economies. Collective farms occupy a very small percentage of the world's arable land outside of the former Soviet Union and Eastern Europe. Indeed, collective farms are virtually non-existent in other industrialized countries.⁵³³ Where collective farms do exist outside market

economies, their formation was almost always non-voluntary and their continued existence is often contingent on government subsidies of state monopolies in factor or output markets.⁵³⁴

Lack of farm reorganization is an impediment to market development in the four Western CIS countries and many of the EU accession countries that restituted agricultural land to its former owners. Farm size in a market economy is an economic variable that reflects market signals. Providing a legal and policy framework in which individual farmers can adjust farm size to respond to market signals is crucial. The policy and legal framework should not only allow, but also encourage farm reorganization into units of whatever size is chosen by farmers and private farms should receive equal, if not preferential access to credit.⁵³⁵

In the Western CIS countries and many of the EU accession countries land privatization and farm reorganization did not occur together, and even when land was actually demarcated and titled, little farm reorganization occurred. In the Western CIS, farmers did not withdraw their land from the collectives (see privatization recommendations), and in the EU accession states many of the new owners were not farmers or even rural residents, and therefore leased their land back to the collective.

In countries where successful farm reorganization has occurred, there has been political will to at least create a level playing field if not encourage private farms, and often there have been local government committees, supported by the federal government but made-up of specialists, government authorities (elected if possible) and community leaders that assist villages with privatization and farm reorganization (Armenia, Azerbaijan).

a. Issue: Federal and local governments continue to support and encourage collectively-operated agricultural enterprises, even those that are insolvent, with subsidies.

In Russia, the continued existence of many large, collectively-operated agricultural enterprises can be attributed, in part, to continued support from the federal and local governments. As support to agriculture from the federal government has declined, support by regional governments increased. Also, Russian agriculture continues to be indirectly subsidized by the government policy of providing soft loans to farms, meaning that the loans are typically written off at some future date.⁵³⁶ These soft loans go almost exclusively to large, “cosmetically” reorganized farms. In Moldova direct and indirect subsidies were substantial during the period 1994 to 1996. State and collective farms were permitted to generate large payment arrears (amounting to more than 2 billion Moldovan lei, nearly 20% of GDP) to the state budget and state controlled companies.⁵³⁷ In Hungary and Slovakia, the majority of subsidies have gone to support the larger collectively-operated farms.

The disadvantages of withdrawing subsidies to the remaining large farms include possible production decreases early in the process, social impacts created by the failure of new enterprises, near-term economic impacts created by the failure of new enterprises, and near-term impacts to upstream and downstream agro-businesses that either are created during the privatization process or are in existence at the time of privatization.

Policy options:

- Eliminate or reduce subsidies to large, inefficient collective style farms.
- Encourage break-up of insolvent collective style farms by agreeing that state and local government will forgive debt on the condition of voluntary breakup. (Russia, Ukraine, Moldova, Belarus)
- Enforce bankruptcy laws for heavily indebted cooperative farms. (EU accession countries)
- Provide subsidies only to solvent farms that meet certain pre-determined, open and transparent criteria.
- Provide donor support for programs that finance smaller, more productive farm units that have devolved from the former system.
- Provide government support to small farms in the form of inputs and credits to level the playing field and allow the optimal farm size to develop through market mechanisms. Especially given that preferential treatment for large farms has continued, it may be that preferential treatment for small farms for some period of time is now desirable, and even necessary, if the playing field is to be truly leveled.
- In Macedonia, the Federal Republic of Yugoslavia, Croatia, and Bosnia and Herzegovina, consider the credit and labor market concessions that were provided to the *agrokombinats*, and ensure that resulting private farmers are not left without these benefits.
- Where newly privatized farms are converted to companies, develop a secondary market for their shares.
- Where these companies are likely to fail because of the withdrawal of concessionary inputs (in Croatia, for example), establish adequate exit policies so as to accelerate post-privatization break-up.
- Prioritize family farms for leases of state land rather than large, cooperative farms.
- Require that land taxes are paid by all owners, including restituted owners who have not taken possession of their land, whether it is registered in the cadastre or not. This is particularly relevant for Estonia. Requiring payment of land taxes will encourage owners who are city residents to make decisions about their land and not just lease it back to the former cooperatives at little to no cost. The cooperatives will stop being subsidized by this land, and the land will enter the market. At the same time, land taxes should not be so high as to be burdensome on the average family farm.

b. Issue: Without local level support for farm break-up, recalcitrant farm bosses and local administrators can and have impeded the process of farm break-up and individual withdrawal of land. (Russia, Ukraine, Moldova, Belarus)

Policy Options:

- Establish local committees to work with farms that are interested in reorganization or individuals who are interested in leaving a farm. Former collective and state farm bosses are generally powerful in the local community and can prevent withdrawal of land and non-land assets from the large farms with no clear consequence. Local committees can offer on-the-ground support and information and education about the process. These committees can create a powerful alternative to the resistance of a farm boss. In the transcaucas states where farm reorganization has occurred, local committees have played a major role. In addition, such committees indicate political will at the center.
- Provide legal assistance and public education at the village or *raion* level. (Russia, Ukraine, Moldova, Belarus)

c. Issue: When restituted owners are not responsible for paying the land tax, they often lease their land to the collective at very low rates until a tax is imposed.

Policy Options:

- Encourage the break-up of large, inefficient farms by placing pressure on them in the form of taxing former owners, thus discouraging no-cost leases, and requiring market lease rates for state land. The downside to this pressure is that many very poor rural households rely on these cooperatives for their livelihoods.

4. Land Transactions

a. Purchase and Sale

Purchase and sale transactions in agricultural land will not occur in the Western CIS countries unless legislation clearly allows such transactions, permission of local bureaucrats is not needed, and procedures for notarization and registration are simple and affordable. With the exception of Moldova, where registered land transactions are not uncommon, anecdotal evidence indicates that purchase and sale transactions do occur to a limited extent, but they are unrecorded and therefore not secure. (An exception is transactions in small plots in Russia.) Some of the surveyed Balkan countries also lack a supportive legal milieu and have gaps in and signs of poor craftsmanship of their land-related legal frameworks.

In the rest of the Eastern European countries, the legal framework for land transactions is adequate and the impediments to transactions relate to administrative process and market

imperfections (see recommendations under administrative framework, state land reserves, farm restructuring, and mortgage). The most common legal restriction is the prohibition on foreign ownership of agricultural land which occurs not just in the Eastern European countries, but in many countries throughout the world.⁵³⁸ If the issues of privatization, farm restructuring, registration, and taxation are resolved, the lag in the land markets will progressively disappear. This has been true in Poland and Lithuania and to some extent Estonia.

i. Issue: Legislation allowing the purchase and sale of agricultural land is non-existent or unclear. (Russia, Balkans)

Policy options

- In Russia, the Duma must specifically allow the purchase and sale of agricultural land, even if restrictions (e.g., no sale to foreigners, substantial tax on early resale) are attached to it.
- In the Balkans, technical assistance should focus on basic land codes, transactions laws (purchase/sale, leasing, inheritance, and others), registration and cadastre laws, and mortgage laws and regulations.

ii. Issue: In Armenia, fixed prices set by the government are much higher than current market prices and impede the purchase and sale of land.

Policy Options

- Legislatively eliminate price floors and fixed prices. Both Georgia and Azerbaijan have done so and, in Georgia there has been an increase in land sales.

iii. Issue: In the EU accession states, the status of the restitution process is often unclear to market actors, and the assumption is that land tenure is insecure.

Policy Options

- If the necessary legal framework does exist, initiate a public information campaign clarifying that restitutions have been completed and that tenure is secure. Also clarify what is necessary for a valid title. The public, banks and lending institutions, and private real estate agents should be informed and educated about the status of the restitution process.

b. Exchange

In the Balkans, the most critical transaction is not purchase and sale or lease, but rather exchange of land, which is needed to expedite the settlement of displaced persons. In some of the surveyed Balkan states, post-war resettlement and repatriation challenges have been inhibited by difficulties facing those who would become or remain a minority within their previous home area. In Croatia, minority Serbs have faced discriminatory laws, courts, and communities during

their attempts to return and reclaim property. At least as of early 1999, fewer than half of the Serbs in Croatia had been able to return to their pre-war homes.⁵³⁹ Housing commissions in place to facilitate the return of minorities to their property have been characterized as sluggish, corrupt, and ineffective.⁵⁴⁰ Similar difficulties have been encountered in Bosnia and Herzegovina, where only 100,000 of 1.76 million displaced persons have been able to return to their pre-war homes if they are now in a minority at those home areas.⁵⁴¹

In Bosnia and Herzegovina, land swaps have been done by way of contracts and then later registered in the local cadastre.⁵⁴² Lawyers create these contracts, and they are reported to have fixed fee schedules for the service. The courts have generally recognized these land swaps. While some government programs sanctioning land swaps based on minority status may not be acceptable because government sanctioned ethnic tension was at the heart of the Balkan conflicts, more regulated, transparent, monitored, and (thereby) equitable programs might be a possible policy solution. In any event, it seems clear that many of those cast out of an area through ethnic cleansing are not likely to return to their pre-war homes.⁵⁴³

Land exchanges have been used around the world to achieve a variety of public purposes, and the precedent of facilitating them is in place. Land consolidation programs frequently envision land exchanges as a way to create larger parcels. Exchange programs have been used to facilitate the movement of larger, more consolidated populations as well. For example, land exchange programs have been used in the Philippines specifically to deal with the problem of squatting and facilitate secure settlement.⁵⁴⁴ Local governments have encouraged and made possible the acquisition of occupied land through land swapping, land exchange, and direct purchase of settlements and land occupied by squatters.⁵⁴⁵ In the United States, trades of public land for sought-after private land are made in accordance with the Federal Land Policy and Management Act (FLPMA) and regulations set forth by the Bureau of Land Management.⁵⁴⁶ The primary regulatory requirements for these swaps are that public interest is well served and that the land exchanged be of equal value determined by an unbiased market appraisal.⁵⁴⁷

However, disadvantages to increasing formal land exchanges might include the potential for capture of the process and resulting ethnic discrimination, the high transaction costs created by cross-state cooperation, the diversion of resources from other needs (such as registration, privatization, or restitution), and the danger of supporting transactions made under duress.

i. Issue: Within several of the surveyed Balkan countries, repatriation and resettlement of displaced persons are subject to land-related processes that are cumbersome, not transparent, and, in some cases, discriminatory.

Policy Options

- Create programs to facilitate, carefully promote, regulate, and monitor land exchanges. While past exchanges made under duress should not be recognized as being valid, many beneficial land swaps have been occurring informally.⁵⁴⁸

- In any event, create systems that bring equitable exchanges that have occurred in the past into formal land administration frameworks.
- Consider the inclusion of unutilized public lands within the pool of land available for exchange.

c. Lease

Land leasing policy is somewhat complex in the Transcaucasus and the EU accession countries. On the one hand, much of the land that is leased is state owned, and there is a desire to privatize this land and get it into the market. If the land is not privatized, there is a desire for long-term leases, which would allow for at least the possibility of mortgage and would provide tenure security and the desire to improve the land. State land is easy to locate, and easy to access, and therefore is used a great deal to expand or consolidate small-holdings.

On the other hand, this state land is often used to rectify a failure to make correct restitution and, privatizing it or providing long-term leases to others would eliminate or greatly reduce this function.

Land that is privately owned is often leased back to the cooperative from which it came at little to no cost. This land is already privatized but essentially has little to no value to those who received it. Policies must be considered that would encourage more productive use of this land.

These issues are discussed at length in other sections. See administrative framework (taxation and consolidation), state land reserves, and farm restructuring.

In the Western CIS countries, the primary issue regarding land leasing is lack of information. Farmers often do not know what their choices are, or do not know how to exercise their choices regarding their land and their land shares.

i. Issue: For a lease market to thrive, farmers must understand their right to lease out their land shares and receive payment for those shares. (Russia, Ukraine)

Policy Options:

- Accelerate the development of the land share lease market through a public information campaign designed to inform land share owners of their rights and the benefits of entering into different types of land share transactions. Such a campaign could also provide information about sale prices and rents being paid in the countryside, so that land share owners can be informed participants in the land share lease markets. Land share owners would receive further assistance and education through targeted programs of legal assistance.

5. Mortgage

Mortgage of agricultural land cannot occur without secure land rights and a land market. In addition to the need for legislation that allows mortgage of agricultural land, there needs to be legislation allowing for the free transfer of land. Land-based lending will not occur until there is an active agricultural land market, and for Russia, Ukraine, and Belarus major changes in legislation and political will would have to occur first.

Once mortgage of agricultural land is a legal right, as it is in the rest of the Eastern European (EE) countries, it still needs to be a part of a larger scheme of providing credit to farmers. Few landowners are using land as security for loans in the EE countries. In fact, mortgage lending to any great extent will not occur until: (1) an active land market exists and agricultural land has market value; and (2) foreclosure procedures are reasonably quick and effective. Laws to create mortgagability will not have the positive effects anticipated unless other conditions enabling farmers to take advantage of mortgagability are first satisfied. In addition to secure land tenure and the existence of a rural land market, these conditions include willing lenders; terms farmers find attractive; support services that can help ensure success in agricultural innovation; a political and legal situation that permits foreclosure if necessary; and prices for produce that permit recovery of costs of an investment.⁵⁴⁹

a. Issue: Legislation allowing mortgage of agricultural land does not exist or the legislation forbids the mortgage of agricultural land. (Russia, Ukraine, Belarus)

Policy options:

- Pass legislation allowing agricultural land to be used as collateral for a loan. Reasonably limit restrictions on foreclosure of agricultural land.
- Once legislation allows land based lending, consider pilot projects to understand and eliminate problems with the mortgage system.

b. Issue: Land-based lending is limited because agricultural land is not valuable due to a slow land market.

Policy Options:

- Establish and encourage credit cooperatives. While credit cooperatives are only a starting place and are not capable of fully funding the agricultural sector, they have been successful for at least short-term loans in some Eastern European countries. Moreover, credit cooperatives can help farmers establish a track record for repaying loans.
- Provide support or incentives to lenders who provide agricultural credit.
- The State could assist mortgage lending by selecting banks through a competitive process that would serve rural producers and budget support and tax relief to these banks.

- Consider state guarantee programs. State guarantees for mortgages on agricultural land could encourage mortgage lending. State guarantee programs exist in the Czech Republic, Latvia, Poland, Hungary and Slovakia, for example. However, in the Balkans, most mortgage credit support programs funded by international donors or by borrowing countries are directed toward urban residential mortgages and not agricultural land.⁵⁵⁰ The risk with state guarantee programs is that the payback rate is often very low because either the banks or the farmers do not bear enough risk. If such a state guarantee program is implemented, the guarantee should not reach 100%, and both the banks and farmers should share an adequate risk for credits.
- Evaluate existing mortgage legislation and interview bankers and farmers to determine legal and practical impediments to mortgage of agricultural land.

c. Issue: Incomplete or conflicting mortgage legislation and poor performance of land institutions affect the desire of lending institutions to use land as collateral.

Policy Options:

- To deal with the problem of slow registration of mortgages, encourage independent insurance companies to guaranty the banks' security interest between notarization and registration, for a small fee (1% of the loan amount has been typical in Poland).
- Make consistent the priority of mortgages in all legislation including the Commercial Code, the Bankruptcy Code, the Banking Law, and the Mortgage legislation.
- Allow banks to hold land for a period of time (at least 2 years⁵⁵¹, and perhaps longer, if there is not yet an active landmarket) if the land does not sell for the unpaid value of the loan at auction.

6. Registration

One of the key measures needed for a fully functioning land market is a system for registering legal rights, so that right holders can be easily identified and have their rights protected. Poor registration systems can constrain:

- **Mortgage lending and the general extension of credit:** Ability to obtain credit is reduced when land is undocumented.⁵⁵² Secure title enables creditors to loan money with less risk, and titled land provides reliable collateral.⁵⁵³ For land to be reliably used as collateral, the rights to the land must be clearly defined, consistently and openly documented, and easily and securely transferable.⁵⁵⁴ The high risk levels and transaction costs created by unregistered land clearly impede the extension of credit.
- **Land Transactions:** The ability to sell or lease land is reduced when title is not securely held by the landholder. Limiting transactions can also limit the availability of credit, and may

foster informal transactions that only increase the difficulty of ascertaining the actual owner.⁵⁵⁵ Land exchange transaction costs are also lower in those countries that have clear land rights.⁵⁵⁶

- **Long Term Improvements:** Tenure security influences landholders' willingness to make investments and improvements to the land.⁵⁵⁷ Farmers are more willing to improve the land through irrigation, mulching, fertilization, and other means when they have some level of tenure security (whether formal or informal).⁵⁵⁸ Studies in Brazil, Ghana, and China have shown that, with greater tenure security, landholders are more willing to make improvements and long-term investments in the land.⁵⁵⁹

However, land registration and other land market supporting measures are costly. From early 1994 through 2001, USAID spent over \$15 million on the Albanian Land Market Action Plan, in a small country of 3.5 million people. The World Bank and EU Phare have also made contributions to the effort.

The Western CIS countries, except for Moldova, have seriously under-functioning registration systems and need basic legislative assistance to begin with. Effective land registration is (with the notable exception of Albania) largely not occurring in the surveyed Balkan countries, although the vast majority of agricultural land is privately owned and privately farmed. The Transcaucasus and the EU accession countries are in the process of transforming and bettering their registration systems, but still have problems due to the large number of new owners and the need to reestablish boundaries.

a. Issue: Inadequate legislation or lack of legislation regarding which rights should be registered impedes the land market.

Policy Options:

- Develop, enact, and implement legislation regarding registration of land titles. (Ukraine, Belarus).
- In Macedonia, Bosnia and Herzegovina, Kosovo, Croatia, and the Federal Republic of Yugoslavia, where outdated, inappropriate, or never-completely-implemented registration laws exist, develop, enact, and implement new registration legislation.
- Clarify in Russian legislation that land share transactions must be registered, and ensure a streamlined process for doing so. Amend the Civil Code and Law on Registration to account for the peculiarities of joint shared property of large agricultural collectives.
- Design registration programs to recognize the high costs associated with 100 percent capture and effectiveness. Substantial gains in land market viability can be made with less-than-universal registration.

- Do a careful review of the steps in the present registration process, streamlining, eliminating unnecessary documents, and setting reasonable time-bound requirements for official actions through revised regulations whenever possible.

b. Issue: Distribution of land share certificates is incomplete, and registration cannot occur without at least a land share certificate.

Policy Options:

- Distribute land share certificates to all Russian land share holders. To do so, the issue of whether or not land should be demarcated must be decided. Without demarcation, land share certificate distribution should involve very moderate cost. However, land shares have very little value since withdrawal of land shares can be difficult and land has a low value at this time.

c. Issue: Unclear rules about which agency has responsibility for registration of land and buildings leads to overlap, confusion, and extra costs. For example, Armenia does not have a centralized institutional framework for registration, and three separate agencies issue temporary certificates of ownership. Moreover, important information is not shared among actors.

Policy Options:

- Establish one agency that is responsible for registration and provide that agency with resources and support. Eliminate all conflicting legislation regarding powers and duties of registration. (Belarus, Russia) However, the process of centralizing administration is very political with many entrenched interests involved. The single-agency issue can bog down legislation interminably.
- Every legal interest in land that is to be registered should be registered in one accessible place, whatever that place is. (In Lithuania for example, the Mortgage Registry should not be a separate registry.)
- Mandate information sharing among registration actors, most especially the land committees dealing with restitution and the registration agency or judges.

d. Issue: Surveying and title preparation are slow due to lack of resources and lack of experience.

Policy Options:

- Donor assistance in establishing new private survey firms. In Moldova, private survey firms reduced the costs of privatization and transactions, and at the same time were able to quickly and efficiently provide services. However, private surveyors that are paid only for work performed, may rush jobs or prioritize large landowners over smaller owners.

- Donor assisted training for surveyors and land cadastre workers.

e. Issue: The current owner-based system in Armenia provides one land title for multiple land holdings.

Policy Options:

- Assess the cost, confusion, and time of moving from an owner-based titling system to a parcel-based system to eventually speed up the system and make it easier for landowners to conduct land transactions. While the end result may be a faster system, the transition could be very costly and could in the short-term further slow-down the already overwhelmed system.

f. Issue: Lack of land tax or a high transaction tax can discourage registration of land.

In Armenia, a high tax must be paid in cash based on the fixed value of land when a transaction is registered.

Policy Options:

- Require all owners to pay a modest land tax whether or not they have registered their land (i.e., not just on registered land). Special circumstances of poverty or age can be exempted from these assessments.
- Eliminate the transaction tax, or at least replace it with a much lower tax keyed to be a very small percentage of realistic estimates of actual market values of land. In the early stages of market development any substantial transaction tax will discourage transactions, discourage registration of transactions, and discourage information about the real cost of land. Such a provision could be temporary until the land market is in full swing.

7. Land Consolidation

Traditional consolidation projects have been criticized as too slow and too expensive. However, with new tools such as the technology of spatial data infrastructure (GIS, LIS etc.) land use planning can be discussed more easily and comprehensively. On the other hand, as of yet, there are few examples of successful consolidation projects.

An alternative to the traditional consolidation procedures would be market-assisted consolidation, in which for example a legal rule would be established stating that very small plots cannot be divided and then transferred through sale or inheritance or divorce. However, legal rules such as these often infringe on custom and individual choice, especially in terms of inheritance rules and can be unpopular because they are seen as inequitable within the family.

Moreover, division through sale represents a market-based choice which, it may be rather persuasively argued, should not be overridden by administrative means.

Land fragmentation is an issue that has been raised in all of the EE countries with the exception of Belarus, Russia, and Ukraine. The EU accession states are receiving much help from the European Union in relation to consolidation efforts. Many of these programs are a combination of market assisted reform and government intervention at the community level. Because many of the EU countries have a state land fund, there is already a system in place for purchasing and redistributing land.

a. Issue: Privatization has affected the size and shape of many parcels of land in the EE countries. Privatized parcels are often non-adjacent and sometimes not in the community where the new owner now lives.

Policy Options:

- In restitution countries the State could offer to purchase land from urban residents who are non-users of land, or purchase could be more narrowly focused on pensioners at market prices. Redistribution of this land should be carefully planned, quickly executed, and transparently carried out.
- Consider using a portion of State land fund land that already exists for purposes of consolidation and makes such a policy goal part of the privatization process for this land.
- Prohibit subdividing land that is within a certain size range. However, there may be strong counter-arguments to applying such a restriction both in the case of non-market transfers through inheritance and gift, (custom, expectation, equity) and in the case of land sales (market decisions should prevail).
- Work to foresee and plan for the impacts of transfer-limiting measures and other results that influence land markets. One approach to assessing such impacts is to craft a simple land market impact assessment that briefly lists the anticipated impact, outlines the possible scope and effect, and proposes restrictions to the proposed measures and mitigating counter-measures.
- Encourage land exchanges by eliminating the cost of the two transactions.
- Establish a land exchange program, providing country-wide information on land available for exchange or sale.
- Eliminate the transfer tax for transactions that lead to consolidation.
- Establish pilot projects in communities where voluntary land consolidation is highly desired and feasible.

Some problems with these consolidation techniques include:

- Reductions in transfer tax revenues
- Exclusion of smaller players from the land market
- A limitation on transactions facilitated by real estate market service providers (agents, brokers, appraisers, notaries, lawyers, and others)
- Fewer candidates for lower value mortgage lending
- Pushing transactions into an informal market and eliminating registration within formal systems
- Excluding heirs from the agricultural sector and pushing population toward off-farm employment
- A general chilling of the broader market

In general, it may be concluded that non-voluntary measures aimed at consolidation or against subdivision of land holding should be viewed with great caution.

8. *Land Use Planning*

There are two primary issues related to conversion of agricultural land to non-agricultural uses. First, there is concern that, without guidelines for conversion, development will be scattered throughout the urban-rural fringe. Most often, agricultural land is subject to conversion to non-agricultural uses when it comes within a community's potential zone of expansion. Conversion occurs characteristically on land nearest the city, but because competition for land at the immediate urban fringe increases its purchase price, development costs there are substantial. Thus, speculators and developers are attracted to more distant farmland that carries a smaller price tag and provides greater profit.⁵⁶⁰ Second, countries with little arable land per capita may be concerned about protecting farmland to assure future food supplies.

a. Issue: Conversion of Agricultural land to non-agricultural use is strictly prohibited.

Policy Options:

- Develop land use planning, zoning, and use-permitting regulations that reasonably promote the policy of preserving agricultural land and uses without prohibiting non-agricultural use outright. These may include non-exclusive agricultural zoning approaches, creation of transferable development rights, and other measures. A neutral agency (not a government agency that itself engages in sales or other distributions of land) should administer land use regulations.
- To the extent that legal prohibitions on converting some agricultural lands to non-agricultural use do exist, do not apply the prohibition or apply more flexible regimes to areas designated as urban, urbanizing, or peri--urban.

- Craft tax regulations that serve to encourage (or at least do not penalize) farmers for agricultural uses. Avoid land taxes that value peri-urban agricultural land as though it were an industrial park or an apartment complex.
- Establish districting opportunities whereby members can avail themselves of member benefits in exchange for commitments to keep land under cultivation or otherwise in agricultural use.
- Promote the development of appropriate industry, infrastructure, and social service delivery in agricultural/rural areas as a means of retaining agricultural populations and preserving agricultural uses.

9. *Role of the Public and Private Sector*

There are a variety of measures that could be undertaken to help create and strengthen the private sector institutions that participate in and support healthy land markets. A disadvantage to these types of support measures is the difficulty in quantitatively ascertaining progress.

- Generally create a regulatory environment (by way of tax, licensing, liability, certification, and other laws) that nurtures these private sector institutions.
- Help to create the educational and professional capacities for property appraisal, survey, land use planning, legal services, and the like.
- Assist real estate agents and brokers in the creation of their industry so as to help establish and maintain the private flow of real property demand and supply information.
- Assist credit provider associations with the transition to servicing agricultural borrowers.
- Conduct and sponsor public education about land markets and the private-sector institutions that support them.

In the Western CIS countries, the first step must include the political will for the State to delegate certain functions to the private sector and away from the State.

a. Issue: In the Western CIS countries, land administration functions related to agricultural land are still held primarily by the federal government and not by local or private institutions.

These functions include (with some exceptions for Moldova), surveying, titling, registration of rights, land use planning, valuation, market information, and sometimes crop planning. This over-centralization is a legacy of the former Soviet Union.

Policy options:

- Decentralize land functions and devolve functions to the local level whenever possible. Monitor whether the decentralized process that empowers local institutions also allows unscrupulous local leaders to abuse their authority to reward friends and punish enemies.

- Consider delegating all land registration functions to the *oblast* government, providing only that they comply with the Civil Code and the Law on Registration. Land Registries in many large countries (the US, Canada, and Australia) are regulated at the provincial/state level.
- Eliminate government interference in crop planning, land use, except for environmental concerns, and production controls. (Belarus)

b. Issue: In some of the EU accession countries private surveyors, real estate agents, and valuers need to be encouraged, and land market information must be widely disseminated.

Policy Options:

- Encourage the development of private surveyors, valuers, and market information.
- As a first step, regional ministry offices and/or extension offices could keep track of prices for leasing and selling agricultural land. The prices should be available free of charge to whomever is interested. However, such a service could interfere with private real estate agents when they begin to be active in the agricultural land market.

¹ FAO, *Special Report FAO/WWP Crop and Food Supply Assessment Mission to Azerbaijan 2*, <http://www.fao.org/giews/english/alertes/1999/SRAZERB1.htm>

² Csaba Csaki and Zvi Lerman, *Land Reform and Farm Restructuring in Hungary during the 1990s*, in LAND REFORM IN THE FORMER SOVIET UNION AND EASTERN EUROPE 224-261 (Stephen K. Wegren, ed., 1998).

³ CSABA CSAKI, ZVI LERMAN, AND SERGEY SOTNIKOV, FARM RESTRUCTURING IN BELARUS 15 (World Bank Technical Paper No. 475, 2000). [hereinafter FARM RESTRUCTURING].

⁴ CONSTITUTION OF BELARUS art. 13, sec. 9.

⁵ FARM RESTRUCTURING, *supra* note 3, at 15.

⁶ *Id.* at 17.

⁷ If no right to separately partition in kind existed, the form of ownership would be more properly regarded as group rather than private ownership.

⁸ FARM RESTRUCTURING, *supra* note 3, at 17-18.

⁹ The portion of Moldova that is east of the Dniester River (Transnistria) declared itself independent of Moldova and does not recognize many of Moldova's laws. In this region the land remains owned by the state and used by the collective.

¹⁰ USAID/BOOZ ALLEN & HAMILTON, PROJECT TO DEVELOP LAND AND REAL ESTATE MARKETS IN MOLDOVA: END OF CONTRACT REPORT (December 31, 2000). [hereinafter BOOZ ALLEN].

¹¹ Decree of the President of Ukraine No. 372/2001 "On Main Trends for Land Reform in Ukraine for 2001 -- 2005" (May 30, 2001).

¹² Personal communication between Leonard Rolfes, Jr. (RDI attorney) and the State Land Committee of Ukraine (July 12, 2001).

¹³ The "raion" is an administrative unit below the *oblast* (province) level.

¹⁴ RDI researchers who conducted field research in the early 1990's found that the land set aside was often the worst-quality land. The actual land legislation at the time required agricultural land "not being cultivated" or "not used for one year" or "used inefficiently" to be taken by the soviet of people's deputies and redistributed to new peasant farmers. RSFSR Law on Land Reform (November 23, 1990), art. 14 (the Law on Land Reform was repealed by Presidential Decree No. 2287 (December 24, 1993); RSFSR Law on the Peasant Farm (December 27, 1990, as amended January 5, 1991), art. 6 (Article 6 of the Law on the Peasant Farm was repealed by Presidential Decree No. 2287); Land Code of the RSFSR (April 25, 1991), arts. 23, 39, and 60 (Articles 23 and 39 were repealed by Presidential Decree No. 2287).

¹⁵ Presidential Decree of the RSFSR No. 323, "On Urgent Measures for Implementation of Land Reform in the RSFSR" (December 27, 1991) sec. 5.

¹⁶ *Id.*

¹⁷ Timothy Ash, *Land and Agricultural Reform in Ukraine*, in LAND REFORM IN THE FORMER SOVIET UNION AND IN EASTERN EUROPE 62-86, 67 (Stephen K. Wegren, ed., 1998). [hereinafter LAND REFORM].

¹⁸ Economic Research Department, *United States Department of Agriculture*, (visited March 8, 2001), <<http://www.ers.usda.gov>>.

¹⁹ *Id.*

²⁰ The World Bank, *Ukraine Rural Policy Matrix*, (visited July 16, 2001) <<http://wbln0018.worldbank.org/ECA/ecssdext.nsf/pages/rpm.ukraine>>.

²¹ ZVI LERMAN & CSABA CSAKI, *UKRAINE: REVIEW OF FARM RESTRUCTURING EXPERIENCES 1* (World Bank Technical Paper No. 459, 2000). [hereinafter LERMAN & CSAKI].

²² *Id.* at 20.

²³ *Id.* at ix.

²⁴ *Id.* at xi.

²⁵ *Id.* at 4. The total agricultural land figure includes 9.3 million hectares of which 6.3 million hectares is arable land.

²⁶ FARM RESTRUCTURING, *supra* note 3, at 4.

²⁷ *Id.* at 22.

²⁸ *Id.* at 19-20.

²⁹ *Id.* at xi.

³⁰ BOOZ ALLEN, *supra* note 10.

³¹ In 2000, a series of legal aid centers was established throughout rural Moldova as part of the USAID Project to Develop Land and Real Estate Markets. The centers currently operate under supervision of the “Rural Service” NGO in Chisinau. Operating with few resources, the centers have had great success in enforcing lease contracts and helping landowners to withdraw their land from lessees who refuse to honor lease terms.

³² BOOZ ALLEN, *supra* note 10.

³³ *Id.*

³⁴ FARM RESTRUCTURING, *supra* note 3, at 50.

³⁵ BRADLEY J. ROEM & RENEE GIOVARELLI, *AGRARIAN REFORM IN THE RUSSIAN FAR EAST* (Rural Development Institute Report on Foreign Aid and Development No. 95, 1997).

³⁶ Decree No. 1767 attempts to set such a framework- but which has been of limited use (1) because it’s only a presidential decree and (2) even if that were sufficient, a Land Code that would undercut it had been pending since at least 1996 and impeding any market potential.

³⁷ Lyudmila Alexandrova & Diana Rudakova, *Duma Ends Spring Session by Adopting Land Code*, TASS (July 14, 2001).

³⁸ *Business in Russian Regions: State Duma Approves Land Bill*, SIORIA BUSINESS NETWORK, *citing* MOSCOW TIMES, June 25, 2001 (visited September 15, 2001) <<http://www.siora.ru/english/news/2001/6/2520print.htm>>.

³⁹ Adrian Moore, *Brick by Brick: Land Ownership Vote Moves Process Along*, MOSCOW TIMES, February 6, 2001, available in LEXIS, News Library, International-Russia File.

⁴⁰ Yevgenia Borisova, *Duma Takes Up Kremlin's Land Bill*, MOSCOW TIMES, June 15, 2001, available in LEXIS, News Library, International-Russia File.

⁴¹ Law of the Russian Federation No. 4196-1, "On the Rights of Citizens of the Russian Federation To Acquire as Private Property and To Sell Tracts of Land To Conduct Private Subsidiary Farming and Dacha Economies, Horticulture, and Private Housing Construction, (December 23 1992); Resolution of the Russian Government No. 503, "On Adoption of the Procedure in Buying-Selling of Land Plots by Russian Citizens, (May 30, 1993).

⁴² BOOZ ALLEN, *supra* note 10

⁴³ LERMAN & CSAKI, *supra* note 21, at xiv.

⁴⁴ *Id.* at ix.

⁴⁵ *Id.* at xiv-xv.

⁴⁶ *Id.* at xv.

⁴⁷ Zvi Lerman, *A Decade of Land Reform and Farm Restructuring: What Russia Can Learn From the World Experience*, (2001) (visited on September 17, 2001) <<http://departments.agri.huji.ac.il/economics/lerman-article3.pdf>>.

⁴⁸ BOOZ ALLEN, *supra* note 10.

⁴⁹ Law of the Russian Federation "On Hypothecation (Pledge of Immovable Property)," (July, 1998).

⁵⁰ FARM RESTRUCTURING, *supra* note 3 at 18.

⁵¹ *Belarus adopts regulations for accepting land as collateral for loans*, BBC MONITORING FORMER SOVIET UNION – ECONOMIC, March 19, 2000.

⁵² CSABA CSAKI & ACHIM FOCK, THE AGRARIAN ECONOMIES OF CENTRAL AND EASTERN EUROPE AND THE COMMONWEALTH OF INDEPENDENT STATES 105 (ECSSD Working Paper No. 13, 1999). [hereinafter CSAKI & FOCK].

⁵³ BOOZ ALLEN, *supra* note 10.

⁵⁴ These legal aid centers were started in 1996-1998 by Rural Development Institute with funding by USAID, and are currently supported by private foundations in the United States.

⁵⁵ FARM RESTRUCTURING, *supra* note 3, at 7.

⁵⁶ *Id.* at xvi.

⁵⁷ *Id.*

⁵⁸ *Id.* at 24.

⁵⁹ *Id.* at 18.

⁶⁰ *Provisional Instructions on Preparing Land Arrangement Projects*, December 9, 1997; *Provisional Instruction on Filling Out, Issuance and Maintenance for the Title Certificates Confirming Landholders' Rights* (December 9, 1997). The provisions, which were developed with the technical assistance of the USAID-financed Project to Develop Land and Real Estate Markets, provide detailed instruction on the process of measuring land, calculating each member's share of land, and physically demarcating individual parcels.

⁶¹ FAO, *Special Report FAO/WWP Crop and Food Supply Assessment Mission to Azerbaijan 2*, <<http://www.fao.org/giews/english/alertes/1999/SRAZERB1.htm>>

⁶² ZVI LERMAN & ASTGHIK MIRZAKHANIAN, *PRIVATE AGRICULTURE IN ARMENIA* 7 (2001). [hereinafter LERMAN & MIRZAKHANIAN].

⁶³ *Id.*

⁶⁴ Robert Cemovich, *Privatization and Registration of Agricultural Land in Georgia*, 17 *POST-SOVIET AFFAIRS* 81, 83 (2001). This law has been passed yet and it is unclear how the land will be privatized (to individuals or to the farms that are using the land).

⁶⁵ Resolution of Cabinet of Ministers of Georgia No. 48, January 1992.

⁶⁶ FAO Global Information and Early Warning System on Food and Agriculture, Georgia (1999) (visited Sept. 17, 2001) <<http://www.fao.org/WAICENT/faoinfo/economic/giews/english/alertes/1999/SGIO12.htm>>. [hereinafter FAO Early Warning].

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ LERMAN & MIRZAKHANIAN, *supra* note 62, at 69.

⁷⁸ CSAKI & FOCK, *supra* note 52, at 96.

⁷¹ LERMAN & MIRZAKHANIAN, *supra* note 62, at 2-3.

⁷² *Id.* at 18.

⁷³ *Id.* at 70.

⁷⁴ *Id.* at 16.

⁷⁵ Decree of the President of the Republic of Georgia No. 446 "On the Rule of Leasing State-Owned Agricultural Land" (August 2, 1998).

⁷⁶ Cemovich, *supra* note 64, at 84.

⁷⁷ FAO Early Warning, *supra* note 66.

⁷⁸ Dr. Ashraf A. Shikhaliev, FAO, *Azerbaijan*, (visited on July 10, 2001) <<http://www.fao.org/regional/seur/public1/Azerbaij.htm>>.

⁷⁹ Trend News Agency, *More than 1.3m Hectares of Land Privatized in Azerbaijan*, BBC MONITORING INTERNATIONAL REPORTS, (March 29, 2001).

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- ⁸⁰ *The Armenian Agricultural Sector*, (visited on July 3, 2001)
<http://www.planetnoah.com/coun_p/armenian_agricultural_sector.htm>.
- ⁸¹ LERMAN AND MIRZAKHANIAN, *supra* note 62, at 8.
- ⁸² *Id.* at 2-3.
- ⁸³ GANZALO PASTOR & AMER BISAT, INTERNATIONAL MONETARY FUND, *ARMENIA: REFORM AND GROWTH IN AGRICULTURE* 7-8 (1993).
- ⁸⁴ LERMAN & MIRZAKHANIAN, *supra* note 62, at 7.
- ⁸⁵ FAO Early Warning System, *supra* note 66.
- ⁸⁶ *Id.*
- ⁸⁷ *Id.*
- ⁸⁸ LERMAN & MIRZAKHANIAN, *supra* note 62 at 2-3.
- ⁸⁹ Zvi Lerman, *From Common Heritage to Divergence: Why the Transition Countries are Drifting Apart by Measure of Agricultural Performance*, 82 *AMERICAN JOURNAL OF AGRICULTURAL ECONOMICS* 2 (2000).
- ⁹⁰ SPECIAL REPORT FAO/WFP CROP AND FOOD SUPPLY ASSESSMENT MISSION TO ARMENIA 5 October 2000(www.fao.org)
- ⁹¹ Law of Georgia No. 389-IIS “On Agricultural Land Ownership” (June 14, 2000).
- ⁹² Cemovich, *supra* note 64, at 84.
- ⁹³ *Id.* at 94.
- ⁹⁴ Georgian law states that registration of land must take place in order to validate a real estate transaction. Article 59 of the Civil Code states that a real estate transaction will be invalid if it is conducted in a manner contrary to the law, which requires registration of property. Article 183 of the Civil Code requires real estate transaction documents to be written, notarized and registered for the sale to be legally valid. *Id.* at 86.
- ⁹⁵ Jaba Ebanoidze, *Land Policy Group Update*, (visited on June 29 2001)
<<http://www2.worldbank.org/hm/hmlandpolicy/0167.html>>.
- ⁹⁶ Cemovich, *supra* note 64, at 94.
- ⁹⁷ Law of Georgia No. 665-1G “Land Market Law” (May 7, 1999).
- ⁹⁸ Amin Ismailov, *Legal Aspects of Land Reform in Azerbaijan*, in *COUNTRY STUDIES: REAL ESTATE PRIVATIZATION IN SELECTED EASTERN EUROPEAN AND EURASIAN COUNTRIES* 7-8, (2001).
- ⁹⁹ *Id.* at 2-3.
- ¹⁰⁰ ASIAN DEVELOPMENT BANK, *ECONOMIC REPORT AND INTERIM OPERATIONAL STRATEGY FOR AZERBAIJAN* VOL. 1, 1, (2000).

¹⁰¹ Ismailov, *supra* note 98, at 1-2.

¹⁰² LERMAN & MIRZAKHANIAN, *supra* note 62, at 16.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Cemovich, *supra* note 64, at 94.

¹⁰⁷ FAO Early Warning, *supra* note 66.

¹⁰⁸ CSAKI & FOCK, *supra* note 52, at 99.

¹⁰⁹ ASIAN DEVELOPMENT BANK, ECONOMIC REPORT AND INTERIM OPERATIONAL STRATEGY FOR AZERBAIJAN, Vol. 2: Sector Review and Appendixes 6 (December, 2000). [hereinafter ADB, Vol. 2].

¹¹⁰ *Id.* at 9.

¹¹¹ Jaba Ebanoidze, *Land Policy Group Update*, (visited June 29, 2001) <<http://www2.worldbank.org/hm/hmlandpolicy/0167.html>>.

¹¹² Cemovich, *supra* note 64, at 94.

¹¹³ LERMAN & MIRZAKHANIAN, *supra* note 62, at 52.

¹¹⁴ *Id.* at 52-53. Precious metals and stones represented 68% of collateral used; machinery and equipment 13%; animals 12%; houses 7%; land 7%; and harvests in the field 5%.

¹¹⁵ CSAKI & FOCK, *supra* note 52, at 96.

¹¹⁶ Ismailov, *supra* note 98, at 4-5.

¹¹⁷ ADB Vol. 2, *supra* note 109, at 6.

¹¹⁸ As stated in Article 9 of the Law on Land Registration, fines and penalties are imposed on a landowner if he intentionally fails to register his land. Article 2.4 of the same law establishes that the landowner is legally obligated to register documents regarding land ownership if he wants full rights associated with land ownership. He is restricted from conducting land transactions until his parcel is officially registered. Law of Georgia No. 490-IS "Land Registration," (November 14, 1996); Cemovich, *supra* note 64, at 86.

¹¹⁹ Cemovich, *supra* note 64, at 84-85.

¹²⁰ Decree of the President of the Republic of Georgia No. 327 "On Urgent Measures for the Initial Registration of Agricultural Land Ownership Rights and Issuance of Registration Certificates to Citizens of Georgia," (May 16, 1999).

¹²¹ Cemovich, *supra* note 64, at 89.

¹²² *Id.* at 81. Registration was a part of a USAID project run by Booz-Allen.

¹²³ *Id.* at 90.

¹²⁴ *Id.* at 91.

¹²⁵ LERMAN & MIRZAKHANIAN, *supra* note 62, at 2.

¹²⁶ Cemovich, *supra* note 64, at 95.

¹²⁷ *Worldwide Refugee Information - Country Report: Macedonia* (visited July 12, 2001) <<http://www.refugees.org/world/countryrpt/europe/macedonia.htm>>.

¹²⁸ See DAVID BLEDSOE & RICHARD GAYNOR, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, EVALUATION OF THE ALBANIAN LAND MARKET PROJECT, (2000). [hereinafter BLEDSOE & GAYNOR].

¹²⁹ LAUREL ROSE ET AL., GTZ, LAND TENURE ISSUES IN POST-CONFLICT COUNTRIES: THE CASE OF BOSNIA AND HERZEGOVINA 6. (1999). [hereinafter ROSE ET AL.].

¹³⁰ BBC News, *Country Profile: Yugoslavia*, (visited July 13, 2001) <http://news.bbc.co.uk/1/hi/english/world/europe/country_profiles/>.

¹³¹ HUMAN RIGHTS WATCH, INT'L, *Croatia, Second Class Citizens; the Serbs of Croatia*, March 1999, vol. 11, no. 3(d), <<http://www.hrw.org/reports/1999/croatia>> [hereinafter *Second Class Citizens*]. See also HUMAN RIGHTS WATCH, INT'L, *Resolution of Property Disputes and the Right to Return* (1997) <<http://www.hrw.org/reports/1997/croatia/Croatia-03.htm>>.

¹³² BBC News, *Country Profile: Croatia*, (visited July 30, 2001) <http://news.bbc.co.uk/1/hi/english/world/europe/newsid_1097000/1097128.stm>.

¹³³ CONSTITUTION OF MACEDONIA, art. 30 and art. 55 (1991).

¹³⁴ CONSTITUTION OF ALBANIA, art. 11 (1991). Law of Albania No. 7501, "On the Land," (1991).

¹³⁵ CONSTITUTION OF BOSNIA AND HERZEGOVINA, art II, (1995).

¹³⁶ Law of Bosnia and Herzegovina, "On Property Relations," (1998).

¹³⁷ CONSTITUTION OF CROATIA, art. 48 (1990).

¹³⁸ CONSTITUTION OF YUGOSLAVIA, art. 73 (1992).

¹³⁹ Regulation of the Government of Kosovo No. 1999/24 "On the Law Applicable in Kosovo."

¹⁴⁰ CONSTITUTION OF YUGOSLAVIA, art. 73 (1992).

¹⁴¹ JOLYNE MELMED-SANJAK, ET AL., LAND TENURE CENTER, *Project for the Analysis of Land Tenure and Agricultural Productivity in the Republic of Macedonia* 7 (Oct. 1998) [hereinafter MELMED-SANJAK, ET AL.].

¹⁴² REFIK M. NUMIC, UNFAO, *Country Report of National Experience in Reforms and Adjustment: Bosnia and Herzegovina* (1997).

¹⁴³ ROSE ET AL, *supra* note 129, at 6.

¹⁴⁴ See *Second Class Citizens*, *supra* note 131.

¹⁴⁵ *Id.*

¹⁴⁶ In this context, privatization means both individual ownership and cultivation in individual farming units. This definition is used to distinguish the situation from one where land shares have been issued but the land continues to be farmed in large farms that combine the land represented by many land shares.

¹⁴⁷ Steven W. Sowards, *Twenty-Five Lectures on Modern Balkan History, Lecture 23: Social and Economic Change in the Balkans* (visited July 5, 2000) <<http://www.lib.msu.edu/sowards/balkan/lect23.htm>>.

¹⁴⁸ Library of Congress, *Yugoslavia: A Country Study* (1990) <<http://memory.loc.gov/frd/cs/yutoc.html>>.

¹⁴⁹ Sowards, *supra* note 147.

¹⁵⁰ *Yugoslavia: A Country Study*, *supra* note 148.

¹⁵¹ MELMED-SANJAK, ET AL, *supra* note 141, at 93.

¹⁵² Freedom House, *Nations in Transit: Privatization 4.00/7* (visited December 14, 2000) <http://www.freedomhouse.org/research/nitransit/2000/macedonia/macedonia_el.htm>. [hereinafter Freedom House].

¹⁵³ Social ownership denotes ownership by the citizens of the state and management of the land by the state.

¹⁵⁴ MELMED-SANJAK, ET AL, *supra* note 141, at 93.

¹⁵⁵ *Id.* at 24-26.

¹⁵⁶ Freedom House, *supra* note 152.

¹⁵⁷ MELMED-SANJAK, ET AL, *supra* note 141, at 24-26.

¹⁵⁸ World Bank Group, *FYR Macedonia Rural Sector Information*, (visited July 11, 2001) <<http://wbln0018.worldbank.org/ECA/ecssdext.nsf/pages/rpm.macedonia>>.

¹⁵⁹ MELMED-SANJAK, ET AL, *supra* note 141, at 5.

¹⁶⁰ *Id.* at 27.

¹⁶¹ World Bank Group, *Bosnia and Herzegovina Rural Sector Information* (visited July 10, 2001) <<http://wbn0018.worldbank.org/ECA/ecssdext.nsf/pages/rpm.BOSNIA%20AND%20HERZEGOVINA>>. *See also* ROSE ET AL, *supra* note 129.

¹⁶² *See* Law of Albania No. 7501 “On Land” (1991); Law of Albania No. 7512, “Law for Sanctioning and Protection of Private Property, Free Initiative of Independent Private Activities, and Privatization,” (1991). Some agro-processing still remains in the form of state owned enterprises. *See* World Bank Group, *Albania, Country Facts*, (visited October 1, 2001) <<http://wbln0018.worldbank.org/ECA/ecssdext.nsf/pages/rpm.albania>>.

¹⁶³ Peter C. Bloch, *Picking up the Pieces: Consolidation of Albania's Radical Land Reform*, in *LAND REFORM*, *supra* note 17, at 196.

¹⁶⁴ SHARIF LUSHO & DHIMITER PAPA, *LAND FRAGMENTATION AND CONSOLIDATION IN ALBANIA* 11 (Land Tenure Center Working Paper No. 25, 1998).

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- ¹⁶⁵ Bloch, *supra* note 163, at 193-4.
- ¹⁶⁶ Law of Albania No. 8053, "For Transferring Ownership of Agricultural Land Without Compensation" (1995).
- ¹⁶⁷ FRY Investment Profile 2001, Business Forum London 22-24, at 14 (April 2001).
- ¹⁶⁸ FAO World Food Program, *Crop and Food Supply Assessment Mission to the Federal Republic of Yugoslavia (Serbia and Montenegro)* 1-2 (visited July, 1999)
<<http://www.fao.org/WAICENT/faoinfo/economic/giews/english/alertes/1999/srmcd996.htm>>.
- ¹⁶⁹ World Bank Group, *Croatia Rural Sector Information* (visited July 16, 2001)
<<http://wbln0018.worldbank.org/ECA/ecssdext.nsf/pages/rpm.croatia>>. [hereinafter WB: Croatia].
- ¹⁷⁰ Croatian Chamber of Economy, Agriculture, Food Industry, and Forestry Department (visited Sept. 17, 2001)
<<http://www.hgk.hr/komora/eng/eng.htm>>.
- ¹⁷¹ WB: Croatia, *supra* note 169. See also MIROSLAV BOZIC, UN/FAO, *Country Report Of National Experience In Reforms And Adjustment: Croatia* 1 (1997).
- ¹⁷² BOZIC, *supra* note 171, at 5.
- ¹⁷³ WB: Croatia, *supra* note 169.
- ¹⁷⁴ Interview with Arban Molla, (Director, Agricultural Programme Office, Albanian Ministry of Agriculture and Food, Tirana, Albania) (November, 2000).
- ¹⁷⁵ Law of Albania, "On the Protection of Fruit Trees," (1995).
- ¹⁷⁶ *Second Class Citizens*, *supra* note 131.
- ¹⁷⁷ UN HIGH COMMISSIONER FOR REFUGEES, *Cross Border Returns Between Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia in the Context of the Dayton Peace Accords* 6 (May 2001). [hereinafter *Cross Border Returns*].
- ¹⁷⁸ *Second Class Citizens*, *supra* note 131.
- ¹⁷⁹ *Id.* See also *Cross Border Returns*, *supra* note 177.
- ¹⁸⁰ See MELMED-SANJAK, ET AL, *supra* note, 141, at 44-47
- ¹⁸¹ A new land use law was being drafted as of 1998. The basic law regarding land ownership and mortgages was written in 1980 and updated in 1990. The Law on Obligations regulates contracts for the sale, lease, and transfer of land, while the Law on Succession (1973) regulates interstate and testate inheritance rights. MELMED-SANJAK, ET AL, *supra* note 141, at 47-48
- ¹⁸² Law of Albania No. 7983 "On Buying and Selling Agricultural Land, Meadows and Pastures," art. 6 (1995).
- ¹⁸³ Law of Albania No. 8337. "On the Ownership of Agricultural and Forestry Land, Pastures and Meadows" (1998).
- ¹⁸⁴ Law of Albania No. 8318. "On Renting of Agricultural Land, Forestry Land, Pastures and Meadows" (1998).

¹⁸⁵ LUSHO & PAPA, *supra* note 164, at 16, 23.

¹⁸⁶ *Id.* at 11.

¹⁸⁷ A. JAZOJ, ET AL., ALBANIAN LAND MARKET ACTION PLAN: PURPOSES, ACHIEVEMENTS, LESSONS, (Land Tenure Center Working Paper No. 1, Albania Series, 1997).

¹⁸⁸ Harold Lemel, *A Glimpse of Change in Albania's Post-Communist Countryside*, 38 QUARTERLY JOURNAL OF INTERNATIONAL AGRICULTURE (ZEITSCHRIFT FUR AUSLANDISCHE LANDWIRTSCHAFT) 28 (1999).

¹⁸⁹ See BLEDSOE & GAYNOR, *supra* note 128.

¹⁹⁰ ROSE ET AL, *supra* note 129, at 11.

¹⁹¹ International Committee of the Red Cross, *The Silent Menace: Landmines in Bosnia and Herzegovina* 31 (visited October 1, 2001)
<<http://www.icrc.org/irceng.nsf/c1256212004ce24e4125621200524882/96edfd07b9257e21412565cd004c8851?OpenDocument>>.

¹⁹² ROSE ET AL., *supra* note 129, at 11.

¹⁹³ *Id.* at 6, 15.

¹⁹⁴ *Id.*

¹⁹⁵ WB: Croatia, *supra* note 169.

¹⁹⁶ *Second Class Citizens, supra* note 131.

¹⁹⁷ Law of Macedonia, “Law of Basic Ownership Relations,” art. 61 and “Law on Obligations,” art. 969 & 989.

¹⁹⁸ UN/FAO, International Land Tenure School and High-Level Technical Seminar, *Chapter 4: Experiences from Southeastern Europe* 6, SD Dimensions (Dec 2000). [hereinafter *Southeastern Europe*].

¹⁹⁹ *Id.* at 5.

²⁰⁰ WB: Croatia, *supra* note 169.

²⁰¹ *Id.*

²⁰² BOZIC, *supra* note 171, at 11.

²⁰³ EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, *Proposed Mortgage Facility to Privredna Banka Zagreb for Financing of Housing Loan Operations in Croatia* (April 27, 1998)
<<http://www.ebrd.com/english/opera/pressrel/pr1998/20apr27.htm>>.

²⁰⁴ LIDA STAMO AND NORMAN J. SINGER, ALBANIAN IMMOVEABLE PROPERTY REGISTRATION SYSTEM: REVIEW OF LEGISLATION 5-6 (Land Tenure Center Working Paper No. 7, 1997).

²⁰⁵ KATHRINE KELM, PETRIT HARASANI, AND DAVID STANFIELD, LAND PRIVATIZATION IN ALBANIA, at 15 (Land Tenure Center, December 2000).

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- ²²⁴ BLEDSOE and GAYNOR, *supra* note 128, at 13-14.
- ²²⁵ *Id.* at 3, 6.
- ²²⁶ *Id.* at 28-37.
- ²²⁷ Macedonia, *supra* note 141, at 1-2
- ²²⁸ *Id.* at 4

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- ²²⁹ Again, social ownership denotes ownership by the citizens of the state and management of the land by the state. In this case, the right of first refusal would be extended to the state to accept or reject on behalf of the citizens.
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- ²³¹ Bloch, *supra* note 163, at 189-207.
- ²³² *Id.*
- ²³³ LUSHO & PAPA, *supra* note 164, at 9.
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- ²³⁵ *Id.* at 24.
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³⁵⁹ *Id.* at 126. Estimates of the average price for agricultural land sold in private transactions in Poland ranged from around 3,000 zlotys/hectare (\$790/hectare) to 7,000 zlotys/hectare (\$1,850/hectare). By comparison, it was estimated that agricultural land in the western region of Germany sells for an average price of DM 15,000/hectare (about 32,000 zlotys/hectare), while such land in the eastern region of Germany sells for DM 7,000-9,000/hectare (about 15,000-19,000 zlotys/hectare).

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⁴³⁴ Varhegyi, *supra* note 372.

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ THE WORLD BANK COUNTRY STUDY, LITHUANIA, AN OPPORTUNITY FOR ECONOMIC SUCCESS, VOL 2: ANALYTIC BACKGROUND, 155 (1998).

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ Meyers and Kazlauskienė, *supra* note 281, at 104.

⁴⁴¹ CSAKI AND FOCK, *supra* note 52, at 89.

⁴⁴² Organization for Economic Cooperation and Development OECD, *Workshop on Housing Finance in Transition Economies, June 19-20, 2000* (visited August 7, 2001), <<http://www.oecd.org/daf/financial-affairs/non-members/housing%20finance/slovenianote.pdf>>.

⁴⁴³ *Slovenia 1999: Country commercial Guide – (FY– 1999)*, (visited July 2, 2001) <http://www.state.gov/www/about_state/business/com_guide/1999/europe/slovenia99-07.html>.

⁴⁴⁴ OECD Housing Finance, *supra* note 442.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ Rural Finance Policy Note, : Banking on Farmers and Rural Entrepreneurs, prepared for the World Bank by Kenneth Peoples of the Peoples Group, Ltd, USA. (1999).

⁴⁴⁸ Tanka, *supra* note 373.

⁴⁴⁹ Swinnen & Gow, *supra* note 433, at 5.

⁴⁵⁰ CSAKI AND FOCK, *supra* note 52.

⁴⁵¹ Andres Miglavs, *Country Report of National Experience in Reforms and Adjustments: Latvia* (visited June 29, 2001) <<http://www.fao.org/regional/seur/public1/latvia.htm>>.

⁴⁵² EUROPEAN COMMISSION, AGRICULTURAL SITUATION AND PROSPECTS IN THE CENTRAL AND EASTERN EUROPEAN COUNTRIES: LATVIA (Directorate General for Agriculture Working Document DG VI, 1998).

⁴⁵³ *Id.*

⁴⁵⁴ P. Bielek, J. Valis, T. Bogaerts, ACE Project P2128R, *Country Case Studies: Slovak Republic Annex A*, (1998).

⁴⁵⁵ Dr. Geijza Blaas, *Country Report of National Experience in Reforms and Adjustment: Slovakia 1997*, (visited June 29, 2001) <<http://www.fao.org/regional/seur/public/slovakia.htm>>.

⁴⁵⁶ Swinnen & Gow, *supra* note 433.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.* This is due to a combination of the incomplete and slow land reform, and to some extent the negative attitude of Romanian farmers to borrowing. In a World Bank survey of private farmers, 65.9% of Romanian farmers indicated that they did not wish to borrow credit and 66.2% were unwilling to provide land as collateral.

⁴⁶¹ *Id.*

⁴⁶² CSAKI ET AL, *supra* note 255, at 31.

⁴⁶³ Pesl, *Five Years of Cadastral Reform in the Czech Republic*, (visited August 2, 2001) <<http://www.sli.unimeib.edu/au.fig7/brighton98/comm7papers/lts50-pesl.html>>.

⁴⁶⁴ Maido Pajo, *Land Tenure Experiences in Estonia* (April 1997) (visited July 6, 2001) <http://www.fao.org/sd/lrdirect/forum/ltfo0006.htm>.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ Udovc, Dale and Baldwin, *supra* note 391.

⁴⁷¹ *Id.* at 12. The author of this report argues that the manual system results in long delays and inaccurate owner records. This is, however, by no means an inevitable result of “manual” systems, which were in use in all developed countries until quite recent times, and functioned satisfactorily. Cost-benefit assessments are clearly needed for each case (including the issue of whether rural land records should remain “manual” longer than urban land records.)

⁴⁷² *Id.* at 9.

⁴⁷³ *Id.* at 13.

⁴⁷⁴ *Id.*

⁴⁷⁵ Prosterman and Rolfes, *supra* note 291.

⁴⁷⁶ AIDE MEMOIRE, *supra* note 284.

⁴⁷⁷ Bulgaria Law on Obligations and Contracts, Art. 18 (1951, as amended 1993).

⁴⁷⁸ Prosterman and Rolfes, *supra* note 291.

⁴⁷⁹ *Id.*

⁴⁸⁰ Vitolds Kvetkovskis and Edvins Kapostins, The State Land Service of Latvia, *The Legal Ways of Privatization in Latvia* (visited June 26, 2001) <<http://www.wisc.edu/lc/live/bas eur991124.pdf>>.

⁴⁸¹ European Commission Directorate-General for Agriculture, *Latvia: Agriculture and Enlargement 1999*, (visited September 26, 2001) <<http://europa.eu.int/comm/agriculture/external/enlarge/countries/files/latvia.pdf>>.

⁴⁸² Pajo, *supra* note 464.

⁴⁸³ *Land Lines: Land Policy in Estonia: Establishing New Valuation and Taxation Programs*, (September 1995, Volume 7, Number 5—Visited July 6, 2001) <<http://www.lincolninst.edu/landline/1995/september/estonia.html>>.

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- ⁴⁸⁴ Bielek, Valis, Bogaerts, *supra* note 454.
- ⁴⁸⁵ *Land Registration in Hungary* (visited August 1, 2001) <<http://lazarus.elte.hu/gb/rep95/11.htm>>.
- ⁴⁸⁶ Prosterman and Rolfes, *supra* note 291, at 129-130.
- ⁴⁸⁷ *Id.*
- ⁴⁸⁸ *Land Consolidation Act No 284 (1991)*, on Land Consolidation and on Land Offices
- ⁴⁸⁹ Csaki and Fock, *supra* note 52, at 89.
- ⁴⁹⁰ Udovc, Dale, and Baldwin, *supra* note 391, at 11.
- ⁴⁹¹ *Id.* at 15.
- ⁴⁹² *Id.*
- ⁴⁹³ Csaki and Fock, *supra* note 52, at 89.
- ⁴⁹⁴ *Id.*
- ⁴⁹⁵ *German-Hungarian Land Reorganization Consolidation (TAMA) Project*, (visited August 1, 2001) <<http://www.lazarus.elte.hu/gb/rep95/43.htm>>.
- ⁴⁹⁶ *Id.*
- ⁴⁹⁷ Dale and Baldwin, *supra* note 253, at 95.
- ⁴⁹⁸ TANIC, *supra* note 266.
- ⁴⁹⁹ Tanka, *supra* note 373.
- ⁵⁰⁰ *Id.*
- ⁵⁰¹ COMMISSION OF THE EUROPEAN COMMUNITIES, REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS (2000).
- ⁵⁰² *Id.*
- ⁵⁰³ REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 2000.
- ⁵⁰⁴ WORLD BANK, “The Romanian Chapter” (1999).
- ⁵⁰⁵ Swinnen & Gow, *supra* note 433.
- ⁵⁰⁶ NICOLAE, *supra* note 300.
- ⁵⁰⁷ *Id.*
- ⁵⁰⁸ *Id.*

⁵⁰⁹ Swinnen & Gow, *supra* note 433.

⁵¹⁰ NICOLAE, *supra* note 300.

⁵¹¹ *Id.*

⁵¹² EU ENLARGEMENT: THE CHALLENGE OF AGRICULTURE, EUROPEAN REPORT (December 11, 1999). and *Summary Presentation on Rural Land Market Development in Romania* by Roy Prosterman and Jennifer Duncan for World Bank, July 7, 1999.

⁵¹³ Prosterman and Rolfes, *supra* note 291, at 125.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ Pajo, *supra* note 464.

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ Udovc, Dale, and Baldwin, *supra* note 391, at 12.

⁵²⁴ A. UDOVC, B. LIPEJ, A ZICHY, R. BALDWIN, SLOVENIA ANNEX A, SUMMARY OF SLOVENIA COUNTRY CASE STUDY, 3 (ACE project P2128R).

⁵²⁵ The author notes that: (1) the Supreme Court is responsible through 44 county courts for the operation and upkeep of the land registry offices; (2) Surveying and Mapping Authority of Slovenia (SMA) is responsible for the maintenance of the cadastre through 46 district offices, as well as for all geographic information matters; (3) Ministry of Environment and Planning is responsible for planning at state level; (4) Ministry of Justice is responsible for legal matters concerning land register, (5) Ministry of Agriculture is responsible for agricultural land valuation, land consolidation, activities of the Land Fund, and monitoring and approval of agricultural land sales; (6) Finance Ministry is responsible for taxation, (7) Municipalities are responsible for the issuance and management of building and land use permits; (8) Valuation Commission is appointed by parliament to create valuation services; and (9) Restitution Commissions are locally appointed to make decisions regarding restitution claims.

⁵²⁶ Udovc, Lipej, Zichy, Baldwin *supra* note 524 at 3.

⁵²⁷ Ziemele & Dale, ACE Project P2128R, Annex A – Country Studies: Latvia (1998) at 4.

⁵²⁸ *Id.* (ACE Project: Latvia)

⁵²⁹ Dale and Baldwin, *supra* note 253.

⁵³⁰ MINISTRY OF AGRICULTURE OF THE SLOVAK REPUBLIC, REPORT ON AGRICULTURE AND FOOD SECTOR IN THE SLOVAK REPUBLIC 2000 (GREEN REPORT), (November 2000), <<http://www.mpsr.sk/english/kok/zs/food2000.pdf>>.

⁵³¹ GIOVARELLI, *supra* note 348

⁵³² Udovc, Dale, and Baldwin, *supra* note 391 at 16.

⁵³³ For a discussion of the infrequency of collective farms in industrialized countries, see KLAUS DEININGER, COOPERATIVES AND THE BREAK-UP OF LARGE MECHANIZED FARMS: THEORETICAL PERSPECTIVES AND EMPIRICAL EVIDENCE 19 (World Bank Discussion Paper #218, 1993). The empirical evidence indicates that collective farms are typically inefficient. A study of the experience with collective farms in Israel, Ethiopia, Nicaragua, Cuba, Peru, China, and Vietnam drew three main conclusions. First, collectivization of small farms was always associated with productivity losses. Second, cooperative forms of production established as a consequence of the takeover of large farms were not efficient. Third, reversal of collectivization facilitated gains in production and efficiency in a number of instances.

⁵³⁴ FREDERIC PRYOR, THE RED AND THE GREEN: THE RISE AND FALL OF COLLECTIVIZED AGRICULTURE IN MARXIST REGIMES 216-217 (1992). In Asia, collectivized farming was virtually ended in China in the early 1980s and in Vietnam in the late 1980s; only North Korea remains collectivized.

⁵³⁵ Since the collective farming sector was generally heavily subsidized, and still reflects the existence of past subsidies in many ways even when subsidies have been reduced (for example, in machinery, buildings, and other long-term investments) it can be argued that a “level playing field” would require preferential access to credit for start-up private farms. This was done in Russia in 1992-93, at which time the great majority of private farms were begun.

⁵³⁶ Economic Research Service, Russia: Policy, US Department of Agriculture, (updated March 8, 2001) (visited on September 17, 2001) <<http://www.ers.usda.gov/briefing/Russia/policies.htm#subsidies>>

⁵³⁷ MATHEW GORTON, AGRICULTURAL LAND REFORM IN MOLDOVA, 9 (INTAS Research Project on Agri-food Industry Restructuring in Ukraine and Moldova (AFIRUM) Working Paper No.1, 2000).

⁵³⁸ STEPHEN HODGSON & CORMAC CULLINAN, FOOD AND AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS, A COMPARATIVE SURVEY OF LEGAL AND ADMINISTRATIVE MEASURES TO RESTRICT, REGULATE, OR BENEFIT FROM THE OWNERSHIP OR USE OF LAND BY FOREIGNERS, (1995).

⁵³⁹ *Croatia, Second Class Citizens: the Serbs of Croatia*, March 1999, vol. 11, no. 3(d) (visited on August 29, 2001) <<http://www.hrw.org/reports/1999/croatia/>>.

⁵⁴⁰ *Id.* at 17.

⁵⁴¹ Laurel Rose, Joachim Thomas, and Julie Tumler, *Land Tenure Issues in Post-Conflict Countries: the Case of Bosnia and Herzegovina*, GTZ, at 10, 15-16.

⁵⁴² *Id.* at 12.

⁵⁴³ Balkan Returns: An Overview of Refugee Returns and Minority Repatriation, United States Institute of Peace, (Dec 1999) <<http://www.usip.org/oc/sr/sr991221/sr991221.html>>.

⁵⁴⁴ ANICIA C. SAYOS, ROSS Q. QUISO AND ROSARIO G. MANASAN, LOCAL EFFORTS IN HOUSING PROVISION, (Philippine Institute for Development Studies Discussion Paper Series No. 98-44, 1998). Available at <<http://dirp4.pids.gov.ph/ris/pdf/pidsdps9844.pdf>>.

⁵⁴⁵ *Id.* at 7.

⁵⁴⁶ Federal Land Policy and Management Act of 1976 (43 USC sec. 1701, 1761-1771)

⁵⁴⁷ *Land Exchange Criteria for the Great Divide RMP*, (visited on August 29, 2001)
<http://www.wy.blm.gov/minerals/lands/Lxcriteria2_4.pdf>.

⁵⁴⁸ ROSE ET AL, *supra* note 129, at 15, 17.

⁵⁴⁹ John Bruce, *Do Indigenous Tenure Systems Constrain Agricultural Development?*, in LAND IN AFRICAN AGRARIAN SYSTEMS 44 (Thomas Bassett & Donald Crummey eds., 1993).

⁵⁵⁰ European Bank for Reconstruction and Development, Proposed Mortgage Facility to Privredna Banka Zagreb for Financing of Housing Loan Operations in Croatia (viewed September 10, 2001)
<<http://www.ebrd.com/english/opera/pressrel/pr1998/20apr27.htm>>.

⁵⁵¹ In the U.S. the period is five years, and may be extended by a federal court for up to a further three years.

⁵⁵² KLAUS DEININGER AND GERSHON FEDER, LAND INSTITUTIONS AND LAND MARKETS, 11 (World Bank: Policy Research Working Paper No. 2014, 1998).

⁵⁵³ *Id.*

⁵⁵⁴ Antonio Salazar, P. Brandao and Gershon Feder, *Conceptualizing Land Markets and Property Rights*, in REGULATORY POLICIES AND REFORM: A COMPARATIVE PERSPECTIVE 191-209 (Claudio Frischtak, ed. 1995).

⁵⁵⁵ *Id.*

⁵⁵⁶ Johan F. M. Swinnen, *Ten Years of Transition in Central and Eastern European Agriculture*, at 6 (Oct 2000).

⁵⁵⁷ Deininger and Feder, *supra* note 552, at 11.

⁵⁵⁸ FRANK F.K. BYANUGISHA, THE EFFECTS OF LAND REGISTRATION ON FINANCIAL DEVELOPMENT AND ECONOMIC GROWTH: A THEORETICAL AND CONCEPTUAL FRAMEWORK, 8 (World Bank Working Paper No. 2240, 1999).

⁵⁵⁹ Deininger and Feder, *supra* note 552, at 11.

⁵⁶⁰ Duncan, *Agriculture as a Resource: Statewide Land Use Programs for the Preservation of Farmland*, 14 Ecology L.Q. 401, 403.