# COMPLETING THE TRANSITION:

## LITHUANIA NEARS THE END OF ITS LAND RESTITUTION AND REFORM PROGRAMME

**by**

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## INTRODUCTION

Early in 2001, it is expected that the government of Lithuania will declare an end to its program of land reform, having effectively transferred to citizens ownership rights to more than half of its agricultural land and a substantial portion of urban and forest land. Twelve years after it began the task in the days of *perestroika*, Lithuania will be the first of the former Soviet states to complete the transition to a civil law system of landholding.

Land reform has been a strong part of the overall re-structuring of the Lithuanian economy and it has contributed to the gains in living standard that have been achieved since 1994. Like the other former Soviet states, Lithuania suffered strong declines in agricultural and industrial production following independence. But Lithuania has had a fairly speedy recovery. From the low point in 1994, by 1998 its GDP had increased 250 percent, reaching 10,736 million euros. Its citizens had a per capita income of 2,902 euros and wage earners received an average of 238 euros per month. In the regional recession in 1999, per capita income declined to 2,882 euros but wages continued to rise, reaching an average level of 263 euros per month. The progress made by Lithuania in achieving market relations and a stable currency has led to its inclusion in the group of countries in the process of accession to the European Union.

Land reform has transformed the socio-economic base of the country. Today, in the total population of 3.7 million, over 1 million individuals hold ownership rights to parcels of land. Given the demographic structure (children, married couples), almost every family in Lithuania is a landowner. The distribution of owners among use categories of land parcels is as follows:

### Table A. Land Parcels Held in Ownership by Citizens

| Use categories | Parcels |
|---|---|
| Farmland holdings (average 8 hectares) | 221,600 |
| Forest holdings (average 4 hectares) | 43,700 |
| Personal farm plots (1-2 hectares) | 313,900 |
| Garden plots (.12 hectare) | 200,000 |
| House plots (.6 - 1.0 hectares) | 340,000 |

**Note:** These figures are taken from the Jan. 1, 1999 report of the Department of Land Management and Law, Lithuania Ministry of Agriculture)

By the end of 2000, these figures will have grown by another 100-150,000 parcels as the remaining citizen claims for land are satisfied.

Only in the category of urban trade, commercial and industrial land does the number of privately held parcels remain small. This is the result of a Constitutional prohibition on the ownership of land by enterprises and other legal persons, which has been lifted only in 1996. Gradually, enterprises are transforming their leasehold rights into land ownership.

In comparison with its Baltic neighbours, Lithuania has achieved a more efficient process because its programs of land restitution and reform have been less

complicated technically, and because land reform has been tied more closely to other programs of farm reorganization and economic recovery. In comparison with comparably-sized *oblasts* and republics of other former Soviet states, Lithuania's progress has been strong. It has maintained a steady and clearly defined land policy through changes in government and has enjoyed broad popular support for land reform. Its ministries and technical agencies have been able to carry out the tasks of parcel-creation, transfer of legal rights and formation of real property market mechanisms without obstruction or confusion.

Thus, the experience of Lithuania in carrying out land restitution and reform appears to provide many lessons for other former Soviet states, which are seeking to incorporate civil law and modern market practices. Its success can be seen in the growing GDP, stable currency and trade relations, and regularity of domestic economic relations.

## PART I. THE STRUCTURE AND PROCESS OF LAND RESTITUTION AND REFORM

### 1. The Legislative Basis

In 1989 and 1990, the Lithuanian Supreme Soviet was considering the same "*perestroika*" draft laws that were before all the republic soviets -- a revised Land Code, a law On Payment for Land, laws On Peasant Farm Holdings and On Collectives. In 1991, however, when its declaration of independence became effective, Lithuania superseded these reform efforts by declaring the revival of its 1930-era Constitution and civil law. This symbolic action established a new framework of legal principles in which further reforms would take place. Thus, Lithuania clearly set aside the ideology and law of state and collective property and fixed the civil law and its property institutions as the fundamental structure for its economy and social organization.

Within a few weeks after the referendum on independence, the new *Seimas* (parliament) adopted two laws: On the Procedure and Conditions for Restoration of Rights of Ownership to Existing Real Property (the law On Restitution) of July 16, 1991 and the law On Land Reform of July 25, 1991. These laws embodied two fundamental principles: First, farmland, urban land and real property, which had been nationalised in the period 1940-1945, would be given back [restituted] to its former owners (and their descendants) to the extent possible under changed circumstances. Second, other land needed for productive activities, housing and services, would also be given into private ownership and leasehold, as citizens themselves would choose. Taken together, the two laws envisioned a process with four stages:

- First, individuals (their children or grandchildren) who had ownership rights to land in 1940, would be able to claim its return, if it remained substantially unchanged in character.
- Second, if the land had been altered in the intervening years or if the claimant did not want to take back the exact land parcel lost, the claimant could choose another parcel within the same district or in another district (where land was available) or he could claim compensation. Compensation was initially

offered in the form of "vouchers" to be used to acquire ownership to an apartment or shares of a privatising enterprise. Later, part of the compensation was offered in money.

- Third, when restitution claims were satisfied in a given district, other residents in that district could request the ownership of parcels of land that were not claimed by persons with ancestral rights. This land would be allocated without payment up to a certain size (depending on its character and use). Preference was given to those persons who were actually occupying and working the particular land parcel requested.
- Fourth, vacant lands and lands without other claimants could be transferred to citizens from other districts willing to move onto the land and to work and maintain it.
- Fifth, any remaining, unclaimed land would be available for sale and lease to farms, enterprises and individuals (over the amount of land they had received without payment).

With respect to urban land, the allocation of any parcel was to be linked with the ownership of a building on the land. If an old building remained, substantially unchanged since 1940, it could be restituted along with its land. The former owner (or descendants) would acquire the land and building subject to granting leases to other persons occupying and using the building. For parcels built-up after 1940 or with unclaimed older buildings, physical persons who acquired ownership of the buildings in the course of privatising enterprises and housing, could claim ownership of the land under the buildings. Enterprises, which were building owners, could receive only the right of lease of the land, subject to the wording of Art. 47 of the 1992 Constitution. It stated that only a "citizen" could acquire rights of ownership in land and natural resources. This section was amended in July 1996.

## 2. How the Processes of Land Reform and Restitution were Structured

### a. From 1992-1997

Land restitution and land reform required the co-ordinated efforts of several government ministries and the courts, and the creation of efficient, routine procedures for the filing of restitution claims and other requests for land.

Under a Government Decree of February 1992 On Organizing State Land Management, the responsibility for transferring land parcels was placed in a newly created Department of Land Management. This agency was a subsidiary unit of the Agriculture Ministry but it had jurisdiction over all land, including forest and urban land.

The Department of Land Management was to supervise the work of municipal and country land management boards in 44 rural districts and in 11 cities. The boards, which were appointed by municipal administrations, had the power to receive and make the primary decisions on applications from citizens for restitution, grant, sale or lease of land. Each board had a small staff of from five to nine professionals (surveyors, geodesic and agrarian specialists). The State Land Surveying Institute and the State Geological Survey Institute made technical experts available to assist the projects of

land parcel formation. A group of lawyers, subordinate to the Justice Ministry, reviewed the restitution applications and assisted in creating the legal documentation to transfer ownership of all land parcels.

Registration of land parcels, after the transfer of legal rights took place, was entrusted to the State Cadaster Enterprise, a subordinate unit of the Agriculture Ministry, which was supervised by the Land and Real Property Cadaster Division. The registry offices were found in the 44 rural and 11 municipal districts and the district registry personnel had overlapping supervision by the Enterprise and the municipal boards.

In addition to these agencies, there were several other non-governmental organizations that came to exercise important influence on land policy and the process of restitution and reform. Private services grew up to support individuals making claims for land. Groups of surveyors and other land management specialists formed independent commercial enterprises to assist families in assembling the documentary proofs for restitution and to carry forward their applications in the proper agencies. These professionals were empowered to prepare surveys, plans and other documents for the formation of a land parcel and the description of its character and legal rights. Independent real estate brokers, whose initial work had involved the transfer of apartments, acquired a role assisting land claimants in making arrangements with other persons having rights in the same land. Leases, servitudes and other agreements had to be worked out in order for land and property restitution to take place. Similarly, a new profession of real property appraisers was created to carry out the necessary valuation of land and real property objects.

By paying for these independent services, families and individuals were able to speed up their land applications, not having to wait for assignment of state specialists to their project work. Farm, industrial and trade enterprises also made use of these services to acquire legal agreements for subsidiary rights to land -- leases, rights of use -- from new citizen land owners and from the state.

### b. After 1997

In 1997 the structure of administration of land restitution and reform was changed by new laws and decrees designed to accelerate the processes. These legal acts addressed several substantive problems, which had arisen as impediments to the settlement of many land claims. They also put into place a new organization of administrative competence.

First, responsibility for record-keeping related to land and real property was delegated to a new, independent organization called the State Land Cadaster and Register. This agency joined two units, which had previously been separate -- the State Cadaster Enterprise of the Ministry of Agriculture and the building records agency, called the Bureau of Technical Inventory, under the Ministry of Construction and Architecture. Also incorporated into the new agency were the map-making and data collection responsibilities of the State Land Survey Institute.

Second, a separate Mortgage Registry was created, with the responsibility to register

land and real property mortgages, along with pledges of movable property in secured transactions. This agency was made subordinate to the Ministry of Justice and linked to the Ministry of Finance and the Central Bank.

Third, the former Department of Land Management of the Ministry of Agriculture was expanded, bringing under its direct control the staff of legal experts, who had previously been subordinate to the Ministry of Justice. It received the new name of the Department of Land Management and Law.

## 3. How the Processes of Land Restitution and Reform Worked in Practice

The tasks of determining citizen claims for land, forming land parcels and transferring them into private ownership began in 1993. This activity carried forward the previous "*perestroika*" tasks of inventorying land holdings, transforming them into leaseholds and rights of inheritable use, and creating peasant farm holdings.

Typically, the process of land restitution took place in the following way. A citizen made application for return of land belonging to her father by filing a standard form in the district in which the land was located. She was then required to assemble the proof of her identity as descendent of the former owner and the proof of the location, size and legal rights of possession of the land. In most of the rural districts, assembling the proofs was relatively easy because the land books from the 1940-era still existed. If this was the case, the proofs needed were merely those that would show direct descent from the owner who was noted in the land book.

In a few districts the land books had been lost and in the districts around Vilnius, they had not existed in the standard form (these were part of Poland until 1945). Here assembling proofs was more difficult, as the location, size and former ownership of parcels had to be found in other records. These could include copies of purchase/sale, lease and mortgage agreements, which families had preserved over the years, or documents found in archives of banks and other local and national offices. Ultimately, when sufficient documentary proofs were lacking, a claimant could request the local board to supervise a hearing in which elderly local people would testify as to the situation in 1940.

When all the proofs of location and character of the land parcel and the descent of the claimant to the former owner were assembled, the district land management board made the preliminary judgement approving the restitution. The file was then sent to the Land Management Department, which in turn, transferred it to the legal staff, who would confirm that the proofs were sufficient to meet the laws and regulations. An unfavourable ruling could be appealed by the claimant to the court.

Simultaneously with review of the restitution proofs, the district board staff would prepare the documents forming the land parcel and defining its size, use restrictions and other conditions. Soil, topographical and other environmental features would be noted. This process could be undertaken by a private surveying enterprise, hired by the claimant. For larger farm plots, accurate surveys were made. For house plots and small parcels, only a preliminary sketch plan was necessary. It was understood that, at some later

date, a complete and accurate survey would be done, at which time there might be adjustments in the size and boundaries of the parcel. The parcel boundaries were marked with stakes or stones on the ground.

When the legal proofs of restitution were approved and the preliminary survey and ownership documents were completed, the file would be recombined in the district office and the district board would give their approval and this would be confirmed after review by the central Land Management Department. The new ownership would then be registered in the land registry at the district office.

Generally, in 1994 and 1995, the processing of routine applications for restitution of agricultural parcels was taking from six months to one year.

In many cases a rural land claimant could not receive back the former land parcel because it now lay under a road or buildings or was to be retained in state ownership. Such a claimant was given the opportunity to acquire other land in the same district, or in another district closer to his residence. To accommodate these alternative claims, unclaimed lands in each district had to be set aside. Other unclaimed lands had to be identified for those rural residents who did not have ancestral land claims, but who had the right to request allocation of a land parcel under the law On Land Reform.

In order to identify these lands, the district office prepared an area land arrangement plan by "layering" several maps. First, where available, the maps of the 1940 landholdings were placed on top of current topographic maps. The former parcels now being claimed for restitution were marked and the unclaimed parcels could then be viewed in relation to current topography. This allowed the first sketches of parcel layout to be made. The same maps could then be compared with contemporary maps of environmental features, areas needing protection, and park or preservation areas required, under law, to remain is state ownership. This analysis would show further limitations on the total amount and location of lands available for alternative claimants and district residents.

After the deadlines for filing restitution claims had passed, the total volume of unclaimed land available for grant to citizens was calculated and decisions could be made about the amounts of land likely to be needed for local residents and claimants for alternative parcels. The drawing of preliminary boundary lines then took place. The district boards had the responsibility to match the various claims and requests for land with the available parcels. Their work was overseen by the central Land Management Department and their individual decisions had to be confirmed both by the staff of lawyers and the central agency reviewers. This supervision helped to insure that decisions were based on the laws and the ministry regulations, which set out the priorities of persons entitled to land and the technical requirements of measurement, size of parcels in relation to land quality, etc. Any citizen whose request for land was denied or who believed that she did not receive land of sufficient quantity or quality under the regulations, was able to appeal to the Minister of Agriculture and to the courts.

There were five significant details in the law and procedures, which contributed to the speed and efficiency of the land restitution and land reform processes.

(1) The administrative units carrying out the technical tasks of land restitution and reform were subordinate to the Ministries of Agriculture and Justice. They were not independent, as is the case with the Land Resources Committees in several former Soviet states. This organizational structure had important practical results. It insured that the processes were supervised by lawyers and economic policy-makers, rather than by land technicians (surveyors, soil scientists, etc.). Thus, the primary concerns in managing the land administration were how to insure legal property rights for citizens and how to insure the effective co-ordination of land restitution and reform with agricultural and industrial re-structuring. The concerns of the land technicians -- exact measurements, creation of the cadaster, GIS mapping and similar problems -- had a subordinate place. It was assumed that technical accuracy could be worked out over time. The priority was to transfer rights of ownership of land and property to citizens and thereby enable them to begin arranging their economic affairs on a market basis.

(2) The structure of policy supervision and administrative organization also reflected the predominance of the component of rural land restitution. It was the policy of the government, all through the decade of the 1990's, quickly to revive agricultural production on the basis of moderate-sized, family land holdings. Thus, the priorities of time, effort and resources were all dedicated to this purpose. Many decisions about urban land were postponed and the system of leasing lands to enterprises and housing organizations was established as a temporary process, to be transformed over a longer period of time. Although this had some effect in limiting new investment in industrial and trade activities, Lithuania made a conscious policy choice in this regard.

(3) Unlike the laws of Latvia and Estonia, the Lithuanian law on restitution did not express the idea that the former owner should gain back exactly the land, which had been lost. Instead, it described a more general right to receive land or compensation, somewhat equivalent to what had been lost. This principle of rough equivalency allowed the programs of restitution and reform to be carried out with great flexibility. The land management officers could make adjustments to accommodate contemporary conditions, and citizens could make choices to accept alternative parcels.

As stated above, a reasonable amount of technical inaccuracy was permitted in the measurement and mapping of the parcels during the initial transfer of rights from the state to the citizen. This allowed large numbers of parcels to be transferred quickly and cheaply. Accurate surveys would be required before a second transfer could take place. Since the secondary transfers would involve a sale, lease, mortgage or the settlement of an inheritance, there would, likely, then be money available out of which to pay for the survey.

(4) The strong focus of the government and the *Seimas* on the issues of land restitution and reform was partly the result of two strong political organizations. The Association of Property Owners represented the citizens who were filing

claims for land restitution. It had local associations in all of the districts and counties of Lithuania and these were united into a national organization, which provided leadership and a sustained "lobbying" effort in the capital. The national Farmers' Association had a broad agenda of issues involving farm reorganization and agricultural prices, but it was also concerned with restitution and the allocation of farm parcels in the process of land reform. It was particularly active in the important farming regions, but worked nationally with the Land and Agriculture Committee of the *Seimas* and with the government ministries.

(5) Private services -- surveyors, real estate brokers, appraisers and lawyers -- also exercised political influence through their national associations. They commented on legislation and ministerial regulations, and their representatives were invited as participants in many policy-related forums, seminars and working groups.

There were, of course, problems and delays encountered in the processes of restitution and reform, despite the political momentum and technical flexibility. These can be seen in the following table, which shows the status of applications in the process on January 1, 1995.

**Table B. Land Restitution and Reform Applications, Jan. 1, 1995 – Stages Completed**

| Land Category | Preliminary Survey | Decisions to Return Land | Sale from State | Conditions Defined | Parcels Registered |
|---|---|---|---|---|---|
| Agricultural | *124,219 | 68,801 | 4,664 | 61,905 | 46,683 |
| Non-Agricultural | 0 | 9,662 | **339,438<br>***52,436 | 0 | 46,186 |
| Collective Gardens | ****0 | 0 | 206,000 | 139,000 | 129,255 |

**Notes:**

* Includes final geodesic surveys taken on 1,172 farm parcels.
** House lots purchased with privatization certificates.
*** House lots sold.
**** Individual gardens within the collectives are not separately surveyed.
The agricultural land parcels registered covered 405,894 hectares. The collective gardens covered 8,781 hectares.

In order to analyse these figures in the 1995 table, they may be compared with the original projections made by the Land Management Department in 1993. At that time, they expected to receive applications for 153,500 full-size farm parcels, 418,000 house lots and 218,000 collective gardens. With this comparison, the priorities and technical flexibility can be seen. The strong focus on the agricultural lands is evident in the number of parcels being processed -- 124,000 out of the 153,000 total. The chart also shows that these were the only category of parcels subject to survey. The interim figures on agricultural parcels also illustrate the major points of delay. Although the process of preliminary survey had progressed rapidly -- 124 thousand out of 153 thousand parcels -

- decisions on restitution and sale of these parcels were reached in only half the applications -- 73 thousand. Once these decisions were made, however, the parcels moved fairly quickly to preparation of their legal documents (in the category "conditions defined"), and then to registration.

There were several reasons for the delays in making initial decisions to return or sell the land.

First, many citizens with ancestral claims to rural land now resided in cities and had to decide whether they would forego their fathers' farms in distant districts, if they could receive small parcels closer to their urban homes. In the agricultural and forest districts, this had the advantage of increasing the amounts of land available for subdivision among the active farmers and forestry workers. Larger parcels could be created and boundaries set in ways that were most compatible with modern methods of cultivation and environmental conditions (topography, drainage, etc.). Obviously, in the districts on the outskirts of cities, problems arose in trying to accommodate these alternative claims and to balance them against the interests of the local persons, living and working on the land. It is not surprising that large numbers of unsettled and disputed land claims occurred in these "suburban" areas.

Second, many people delayed their applications, waiting until firm decisions were made about the amounts and types of compensation. At first, monetary compensation was not allowed; only vouchers. But there was sustained political pressure to authorise monetary compensation. Thus, many people filed their claims -- to meet the legal deadlines -- but then hesitated and dragged out the process of presenting their proofs, in order to gain time to see whether it would be more advantageous to relinquish their claim for money and vouchers. The administrative agencies tried to impose deadlines and reject unfulfilled applications but it was not possible to make these sanctions effective.

Third, other delays were the result of disputes within families. In particular, this occurred where a former owner had several children or grandchildren. Some remained in the rural area and wanted restitution of the full ancestral lands; others were now city-residents and wanted to be bought out of their claims, or given alternative parcels. It became necessary to subdivide some former holdings or set up buy out arrangements.

Fourth, some points of delay shown in the interim figures were the result of limits in the capacity of the administrative agencies to move the files along. In some districts, the land management boards were more cautious and less flexible in approving proofs and identifying lands available for allocation. Partly, this was the result of technicians who were fearful of being inexact. Partly, it was the result of local leaders (often former collective farm managers) who hoped to retain control of significant amounts of land. In other districts, questions arose about the fairness of the land arrangement and the balance between local residents and persons from outside the district.

Finally, in the period between the decision to return or sell land and the registration of a parcel, delays occurred in the process of reaching agreements between the new landowners and other persons who had rights to occupy or use parts of the land. This

involved the negotiation and drawing up of servitudes, the shifting boundary lines and the negotiation of lease rights for buildings or housing units on the land.

Despite the problems, the record of land transfers and land registry entries for the full period -- 1993 to 1999 -- shows fairly steady progress and by the end of the period nearly the full number of restitution claims and land requests, anticipated at the beginning, have been fulfilled.

**Table C. Numbers of Land Parcels Granted to Citizens by Restitution, Allocation, Sale and Lease.**

| Category of Use | 1/1/94 | 1/1/95 | 1/1/99 |
|---|---|---|---|
| Farm and Forest | 47,000 | 73,460 | 221,630<br>43,760 |
| Subsistence farm | 0 | 0 | 313,920 |
| Garden | 116,000 | 206,000 | 206,000 |
| House plot | 46,000 | 139.430 | 172,070 |

**Table D. Numbers of Parcels Registered**

| Category of Use | 1/1/94 | 1/1/95 | 1/1/99 |
|---|---|---|---|
| Farm and Forest | 29,000 | 46,680 | *286,756<br>40,924 |
| Subsistence farm | 0 | 0 | ** |
| Garden | 104,000 | 127,250 | 190,872 |
| House plot | 32,000 | 46,180 | ***148,867 |

**Notes:**

* The farm category includes parcels owned by state farms and leased by farm enterprises.
**No figures given for the category of subsistence farms.
***In 1999, this number is given for the category of "non-agricultural" land.

## 4. Solidifying Legal Rights to Ownership and Forming the Land Market.

While the process of creating land parcels and transferring ownership rights to citizens was underway, it was necessary to build the "legal infrastructure" by which the new land rights could be protected and made to function effectively in market relations. This involved both legislative actions and practical, administrative tasks.

### a. The Law On Land of 1994

The law On Land of 1994 established the legal basis for effective land ownership. First, it provided a clear definition of the elements of "ownership" which persons receiving land in restitution or by grant or purchase would enjoy. Second, it set forth the list of permitted civil law transactions, which citizens would be free to carry out among themselves. Third, it limited the power of government agencies to "withdraw" land from ownership.

It was necessary in the land law to specify the elements of ownership and the permissible transactions in land, because at the time, Lithuania lacked a modern civil code. The law On Land set the elements of ownership in two lists. The "rights of landowners" appeared in Article 7, as follow:

- To sell, devise, donate, mortgage, exchange or lease the land and to grant others temporary rights to occupy and use the land;
- To occupy and use the land for any business not prohibited by law, and compatible with its defined purpose of use, and to construct any buildings allowed by planning and the laws;
- To establish servitudes for others on the land;
- To make application to change the designated use of the land and to seek changes in any restrictions placed on the land by law, planning or in the documents transferring the land initially;
- To apply to the courts for protection or compensation against violations of its ownership rights;
- In the course of farming, to make use of water and natural resources found on or under the land (but not for commercial sale); in accordance with environmental and other laws governing mineral use;
- To dispose of any produce grown on the land and to use the income without restriction.

The corresponding responsibilities of landowners were set forth in Article 9 of the law On Land. These were:

- To use the land in accordance with its defined purpose and with any special conditions imposed in the documents transferring ownership or required by environmental laws and regulations;
- To implement measures required by laws for the protection of the environment, soil and natural resources;
- To comply with any laws and regulations regarding the exploitation of water, minerals or other uses of the land;
- To refrain from violating the rights of neighbouring landholders;
- To permit appropriate activities related to surveying, geodesic mapping and prospecting for mineral resources, with appropriate compensation for any damages.

The law On Land made it clear that owners would be free to engage in any permitted civil law transaction disposing of the land or rights on it, in direct relations with other citizens. All such transactions would be subject to registration and to rules requiring proper legal forms and notary signature. Transactions, which would result in the subdivision or consolidation of land parcels, were made subject to territorial planning procedures. With respect to leases and mortgages, landowners were permitted to undertake transactions with enterprises and other legal persons. Banks were permitted to take ownership of land in foreclosure, with the understanding that it would subsequently be sold to a citizen. After the Constitution was amended in1996, enterprises and legal persons could take ownership of land in direct transactions with

citizens. The 1994 law On Land removed prohibitions on the transfer of agricultural land into the ownership of persons who were not trained farmers or rural residents; however, such persons were required to give the land in lease to a farm enterprise or an independent farmer if they could not work the land themselves.

In order to make effective the provision of the Constitution that land ownership was "inviolable," the 1994 law On Land removed the power of state agencies to "withdraw" land from private owners based on their failure to use the land or on violations of the land use designation and conditions of use. Henceforth, such violations would be subject only to regulatory sanctions. Violators could be fined and even jailed for repeated violations; but the land would not be confiscated. This change provided the essential security of long-term land tenure, which was necessary if land was to serve as the basis of long-term investment and as collateral for mortgage loans.

### b. Creation of the Land Rights Registry

In a decree issued in April 1992 (No. 316) On the State Land Cadaster (with Elements of Real Property), the government of Lithuania first foresaw the creation of a real property rights registry, as a component of an elaborate land management cadaster. This concept was subsequently abandoned when public officials became more familiar with the role and processes of land registry in other European countries. The later laws and regulations defined a civil law property registry, which had as its main purpose the protection of the rights of landholders and the accurate preservation of information with legal significance in civil law and market transactions. The concept of an integrated cadaster, to be used as a tool of land management, diminished in importance.

The first registry system was established in 1993-1994, with assistance from UNFAO, Swedesurvey and the World Bank. In each of the 44 rural and 11 city land management board offices, a simple computerised registry was established. The essential information of legal significance was placed into the system when each land parcel was formed and its ownership clarified in the documents of transfer. Simultaneously, the same information about state-owned parcels was systematically registered, as well.

The registration system rested upon a basic identification code, and each new land parcel received a unique number, identifying its region, district, sub-district and location within a mapped area. These numbers would allow the land rights registry to be linked to the cadasters for other purposes.

Within the registry data bank, the legal information encompassed the identity of the owner of the land, the pertinent documentation defining its size and character (which could be retrieved from the land board archives), any conditions and subsidiary legal rights (leases, servitudes, rights of use) held by other persons. Any subsequent civil law transactions, which would give rights in the land to other persons or extinguish those of existing right holders, was subject to registration.

The registry system was designed to produce, upon request for any party interested in the land, a certificate identifying all holders of rights on the date of the request. This certificate would be recognised as legally defining the ownership and rights and could

be used in any court of administrative process to protect those rights from claims of others. If an error were to be found in the registry data bank, the registry system was to provide an insurance fund out of which damages could be paid to any person who suffered injury because of the error.

Three aspects of this registry were of particular importance in making it effective. First, it was a simple system. The amount of data recorded for each land parcel was the minimum necessary to provide an accurate certificate of ownership and land rights. Other data, which various agencies might consider useful, had to be collected and kept in separate systems and was not allowed to intermingle with the legal data. This was done to minimise errors.

Second, the system was created "from the ground up." While the central Land Management Department in the Ministry gave supervisory assistance to the local offices and set the basic rules and the standard forms, each office had full responsibility for its own management. Given the variety of urban, agricultural and forest districts, the volume and types of registry documents that were predominant varied from district to district. Thus, the offices had to work out themselves the practical problems of administrative activity, setting priorities for their work and serving the citizens in the locality. When a number of months had gone by and certain district offices appeared to have found effective solutions to various problems, the office managers came together to share experience and begin the process of setting standard methods of operation.

Similarly, while it was intended that, over time, the data from the district offices would be integrated into regional data banks and a national data bank, this process of integration was delayed for several years, while the practical job of effectively registering at the district offices was worked out. The delay proved helpful, because in the interim, methods of data system integration, through e-mail and internet, were perfected, making the creation of a multi-layer system much less expensive than initially anticipated.

### c. Creation of the Land Market

The law On Land was scheduled to take effect on July 1, 1994. On that date, citizens began buying and selling land, pledging it for mortgages, bequeathing and donating it. In order to be prepared, in the months preceding July, the various interested groups -- land management offices, registry staffs, notaries, lawyers, judges, real property brokers, bankers and others -- met together in a series of working groups and seminars to discuss the practical problems and to be prepared with standard legal forms and approaches. This co-operative preparatory work, which was assisted by the international donors, helped to insure a smooth transition. This can be seen in the following table, which records the transactions that took place in the first six months, from July 1 to December 31, 1994.

## Table E. Land Transactions, July 1 to December 31, 1994

| | Total Transactions | Sales | Inheritance | Gifts | Exchange | Mortgage |
|---|---|---|---|---|---|---|
| All Lands | 12,445 | 8,475 | 1,676 | 1,954 | 15 | 665 |
| Agricultural | 1,447 | 71 | 983 | 396 | 2 | 472 |
| House Lots | 5,579 | *4,366 | 340 | 848 | 0 | 104 |
| Gardens | 5,061 | 3,994 | 348 | 706 | 13 | 80 |
| Forestlands | 4 | 0 | 4 | 0 | 0 | 2 |
| Other Lands | 52 | **44 | 0 | 0 | 0 | 0 |

**Notes:**

* Includes 1,296 house lots with buildings.
** Includes 20 industrial lots with buildings.

These figures are significant in showing several important aspects of market formation.

First, when compared to the total number of registered parcels reported for Jan. 1, 1995, the numbers of transactions are a significant percent of the total. Of the 46,600 agricultural parcels registered, the 1,447 transactions are equal to three percent. Of the 46,100 house lots registered, the 5,579 transactions are over 10 percent. And the garden parcel transactions are almost four percent. In the countries of Western Europe, about two to four percent of parcels change hands each year. Thus, it appears that a "normal" market began to develop almost immediately. The large number of housing transactions either represented the release of suppressed demand for housing, or sales of a number of house lots that were not previously registered. (Almost 350,000 house lots had been transferred into ownership, but not yet registered on January 1, 1995.)

Of particular significance was the number of mortgages. These took place despite the fact that, in 1994, Lithuania had not put into effect a modern Mortgage Law. The legal basis for these were the provisions "On Pledges" of the Soviet-era Civil Code and the simple language in the April 1994 law On Land which stated only that land parcels could be subject to mortgage. It appears that banks were willing to begin making mortgages, based upon the security of tenure afforded in the law On Land, even though other details of mortgage practice (including foreclosure) were not worked out.

## PART II. SOME SPECIFIC ASPECTS OF LITHUANIA'S LAND REFORM AND LAND MARKET

Since the effective date of the law On Land, numerous refinements have taken place in the process of land restitution and reform and in the evolution of the land market. These can best be understood by discussion of specific aspects

### 1. Ownership and Leasehold

A key feature of the Lithuania land laws and processes has involved the balanced use of ownership and leasehold in making land available to citizens and enterprises. In other former Soviet states, ideology has tended to colour the question of ownership and leasehold. Estonia, for example, has discouraged the use of leases. In contrast, many *oblasts* of the Russian Federation have refused to grant ownership and rely exclusively on leases. In Lithuania, both forms have been used without preference or prejudice, and the choice of one or another has been related to the character of the "business deal" involved in the land transfer or to the particular situation of the family or individual claiming the land. Leases have been used, most often, in three situations: First, individuals and families (particularly pensioners) who have claimed back their ancestral farms, but do not possess the skills or ability to work the land, have been able to give it in lease to farm enterprises or neighbouring farmers -- allowing the consolidation of parcels for more efficient farming. Second, leases have been extensively used to solve the problems of relations between persons receiving land ownership and persons with occupancy rights in buildings on the land.

Third, leases have been used for the transfer of control of urban lands under industrial complexes and multi-family housing. In these circumstances, the lease could be seen as a temporary measure, allowing effective control to pass while better legal relations are being developed. Until 1996, leasing was the only way in which to grant civil law control of land by an enterprise or organization -- because of the prohibition in Article 47 of the Constitution. Since this has been removed, enterprises and organizations can now own land. But many of them are still undergoing re-organization and change. They are vacating obsolete buildings, replacing equipment and re-designing the layout of the their operations. By leasing, the enterprise more cheaply can control its present landholdings and more easily dispose of unneeded lands or gain other lands as it re-structures. Similarly, with urban housing, it is necessary to work out viable "condominium" organizations to maintain the housing and the land. These will eventually allow an effective form of common ownership. As expected, the volume of land leased from the state to enterprises and organizations remains high, but is declining.

**Table F. Agricultural Land Leased from the State**

| Date | By State Farms and Agricultural Enterprises | By Legal and Natural Persons |
|---|---|---|
| Jan. 1, 1995 | 1,085,200 | 993,300 |
| Jan. 1, 1996 | 799,700 | 865,700 |
| Jan. 1, 1997 | 651,800 | 873,300 |
| Jan. 1, 1998 | 505,100 | 924,500 |
| Jan. 1, 1999 | 356,200 | 770,700 |

**Note:**

For comparison, agricultural land owned by citizens has grown from 378,600 hectares on Jan. 1, 1995 to 1,445,800 hectares on Jan. 1, 1999.

## 2. Mortgages.

As seen in the figures on initial market development in Table E, above, the mortgage market grew spontaneously as the free market in land sales became organized.

A law On Mortgage had first been adopted in October, 1992, but it did not take effect because its implementing decrees were not enacted. Disagreements among the ministries about the size and powers of a "mortgage agency" prevented its implementation. Thus, mortgage lending began in 1994, with only the incomplete legislative basis of the Civil Code provisions On Pledges and the law On Land. The debate about the administrative processes for registering mortgages and providing methods of foreclosure continued for several more years. Despite this, by mid-1998, ten-year mortgages for housing were widely available and long term loans for business enterprises stood at over $275 million.

Agricultural lending received a small boost in 1996 when the government concluded an agreement with the World Bank, in which $30 million was made available for agricultural re-adjustment. Part of these funds were directed into the rural credit institutions, allowing some loans to be made for improving farm infrastructure and buildings. Some of these were secured by mortgage of the land.

When the Mortgage Law was finally adopted in 1998, it provided for a separate registry system, which combined real property mortgages with security agreements on movable property. The administration of the registry, and of an administrative procedure for foreclosure, was placed under the jurisdiction of the Ministry of Justice. During 1998 and 1999, the registry has been receiving between 1,000 and 1,500 new real property mortgage agreements for filing each month.

The system provides for a dual review of each agreement, first by the filing clerk, who receives the document and promptly enters it into the dated and timed index. The document is transferred to an administrative law judge, who also thoroughly reviews it for its form, content and conformance with all legal requirements. Once reviewed, it is entered into the registry and certified as effective. At this point the information is

transmitted to the State Land Cadaster and Registry for entry into the Real Property Registry.

The registration and certification enables the mortgage holder (the bank or institution) to secure the services of the mortgage agency, should it become necessary to foreclose because of default. The mortgage agency, upon application by the bank, issues notices of delinquency, with a 30-day time to cure. After thirty days, upon application by the bank, notice of foreclosure is issued to the debtor and to all subordinate holders of claims. Foreclosure hearings are held before the administrative law judges and sale of the property by auction is arranged by them.

By March 31, 2000, the Mortgage Registry was reporting that there were 28,400 outstanding mortgages in its files. This was a smaller number than were recorded in mid-1998 (before the economic decline) but the numbers of filings were rising since mid-1999. In total, these mortgages secured real property valued at over 7.6 billion *litas* (almost $2 billion).

For the entire period of existence of the Mortgage Agency -- April 1998 to March 2000 -- over 56,000 mortgages and secured transactions have been registered. The categories are shown in the following table.

**Table G. Numbers of Mortgages Registered by Category of Property Secured (April 1998 to March 2000)**

| Category | Number of mortgages |
|---|---|
| Apartments | 25,784 |
| Buildings | 14,636 |
| Land parcels | 4,827 |
| Construction | 3,334 |
| Other premises | 2,310 |

Of this total, the number of mortgages, which have been subject to forced collection are 960 before April, 1998 and 735 after April, 1998. Of these the properties sold in foreclosure have totalled 748 and 370.

## 3. Land Registry, Mortgage Registry and the Cadaster

As discussed above, the land rights registry was initially created as a simple, computerised system in the 44 rural and 11 district offices. Since 1994, efforts have been made to more fully integrate these offices into a national registry system and to link the land rights registry with other data banks concerning real property and the environmental and regulatory characteristics of land.

It took several years, until 1997, to work out the fundamental national legislation on the Land Registry. The delay was due to strong disagreements among the various agencies with data collection responsibilities. First, there was considerable debate about whether the land registry should continue to be subordinate to the Ministry of Agriculture or whether it should be transferred to the Ministry of Justice. This debate

involved the question of whether the system needed primary supervision of land managers, or whether it essentially involved questions of legal rights, in which case supervision by judges and lawyers should be required. Obviously during the transition period, the primary tasks related to the incorporation into the registry of new parcels being formed and transferred. Linkage to the land management boards helped to insure an efficient process. Over time, however, the land management tasks would diminish and secondary transactions would become the largest volume of new filings. Thus, the trend in the evolution of the system has been to move it toward a separate structure of land information.

The July 1997 Decree (No. 742) establishing the State Land Cadaster and Register transferred under one agency responsibilities for four different tasks. The land rights registry and the real property (buildings) registry are combined into the single Registry of Real Property Rights. The cadaster, kept separately, now includes both environmental information and valuation information. Data from the two systems can be linked by the common unique land parcel identifier numbers. The Registry of Real Property Rights carries the guarantee of legal protection and insurance against errors. The cadaster is used for purposes of planning, taxation, policy and regulatory formation.

The Ministries of the Environment and Agriculture exercise dual oversight of the State Land Cadaster and Registry, but generally, it functions independently.

The Mortgage Registry has been kept separate and under the supervision of the Ministry of Justice. This results in some duplication -- since mortgages involving land and buildings must be registered in the Real Property Rights Registry subsequent to their inclusion in the Mortgage Registry. However, the unity of mortgage administration with registration appears to satisfy the needs of the lending community and helps to provide an added level of security, supporting mortgage investments, despite the many remaining weaknesses in the financial sectors of the country. No significant problems have yet arisen resulting from the need to transfer information from one registry to another.

With respect to information on land values, the cadaster now contains only a recording of the market value at which a land parcel, building or combined real property has been sold or appraised in the process of initial transfer. Lithuania has ended the practice of assigning a "normative" value. There is a sufficiently lively land and property market from which appraised values can be determined, using the normal methods of property appraisal seen in other market countries.

## 4. Environmental considerations

Environmental considerations influenced both the broad decisions to retain in state ownership several categories of land and individual decisions to restitute and grant individual land parcels to citizens, subject to conditions limiting their use. This dual environmental regime was the result of several pieces of legislation.

First, the law On Environmental Protection and the law On National Parks created four national parks and authorised the creation of 30 regional parks, which together,

encompassed over 2 million hectares of forest, agricultural and other open lands. The boundaries of the national parks were set in the legislation. The regional park boundaries have been set by a co-operative process in which initial boundaries were, first, proposed by the Land Survey Institute and then negotiated with the regional and District Land Management Boards. Within each park, lands are classified in four ways:

- Lands retained for preservation of natural resources and species, for which no active uses are permitted;
- Lands on which limited activities of recreation, tourism and research are permitted compatible with preservation of natural, historic and archaeological resources;
- Lands on which limited agricultural, forestry and grazing uses are permitted compatible with preservation strategies;
- Lands, which may be sold or leased to private farm and forest enterprises for productive uses, with limiting conditions.

Outside of the parks, other lands are subject to a system of classification, pursuant to Decree of May 1992 On Special Conditions of Land and Forest Use. This decree notes 47 different categories of land, measured by conditions of soil, topography, hydrology, mineral resources, plant and animal habitats. This system of classification is used to determine the designated uses of land parcels and any limiting conditions on use, when they are first created and transferred into ownership or lease. It was also anticipated that, on the basis of the land classification system, a network of linked environmentally protected lands might be created. This might include buffer zones along river and stream systems and limited use areas on watershed slopes. It might also include limitations to protect the habitats and ranges of wildlife.

The attempt to create an elaborate system of environmentally limited lands has been a source of delay in the processes of restitution and reform. The state did not possess the resources to undertake all of the scientific study and detailed land mapping that would have been necessary to create the network. Neither were the environmental agency officers certain that there were sufficient legal administrative tools to make the use conditions enforceable. In particular, there has been fear that the provisions of the Constitution, proclaiming ownership rights to be "inviolable" would mean that, once land has been granted in ownership, future environmental restrictions could not be imposed. Thus, there has been a great reluctance to allow restitution and grant of ownership rights to land in areas thought to have special environmental needs. In particular, the process of granting forestland ownership rights has proceeded much more slowly than with any other category of land. Forestlands are under the jurisdiction of the Ministry of the Environment.

## 5. Lands on the urban periphery

The major unresolved area of land restitution and reform involves the lands on the periphery of the major cities. The problem is most pronounced in the case of Vilnius, the capital, and can be recognised in the following comparative figures, taken from the 1999 report of the Department of Land Management and Law.

**Table H. Areas of Land Transferred to Private Ownership in Various Categories in Sample Regions, Jan. 1, 1999 (hectares)**

| Category | All Lithuania | Vilnius | Kaunas | Panevizius |
|---|---|---|---|---|
| Total area | 6,530,023 | 965,096 | 816,973 | 788,044 |
| Private land | 1,651,477 | 125,899 | 238,110 | 254,563 |
| Percent private | 25.2% | 13.0% | 29.1% | 32.3% |
| | | | | |
| All agricultural land | 2,945,290 | 411,610 | 460,075 | 484,974 |
| Private agriculture land | 1,433,527 | 98,809 | 209,543 | 221,891 |
| Percent private Agriculture | 48.7% | 24.0% | 45.5% | 45.7% |

Vilnius region has significantly lower levels of land in private ownership than the region with the second large city, Kaunas and the primarily agricultural region of Panevizius. This is particularly the case with respect to agricultural land holdings, which constitute the category in which the transfer of land parcels to citizens has occurred.

There appear to be three reasons for the low level of land transfer in the capital region. First, the Vilnius region was part of Poland in the period 1919-1940. Thus, the historic pattern of land holdings did not match the system of moderate-sized farm holdings that in place in the rest of the country. Further, the system of land books was not well developed, thus, restitution claims have been few and hard to prove. Second, many city dwellers have sought alternative land parcels in the nearby region, as a alternative to their restitution claims in more distant regions. This competition for suburban land has made it difficult for the land management specialists to balance the needs for viable sized holdings, for satisfaction of land requests by local residents and accommodation of the persons seeking alternative land plots. Third, and most important, the city officials have asserted the authority to retain large areas of the suburban territory as "reserves" for future urban expansion. They oppose any transfer of land ownership in these areas, arguing that this would make it impossible, or very expensive, in the future to recover the land for urban development.

Today, the city administrations lack tools of effective infrastructure financing and they are still burdened with laws On Territorial Planning and On Urban Development, which were adopted during the Soviet era. Planning practice and development regulation have not kept pace with the evolution of market relations in land and real property. The community of urban planners does not trust that market transactions will effectively bring open land into urban use. They fear that the city will be prohibited from taking private land at reasonable cost for new roads and infrastructure systems and they resist the creation of a system of urban development in which private parties will initiate the acquisition of open lands directly for new housing or industry.

This is a common problem in all of the post-Soviet states. It is well understood that, in the transformation of lands from agricultural and open uses to urban development, the value of land significantly increases in normal market conditions. This phenomenon

appears to offer great rewards to speculators and city and regional officers fear that a small number of persons or enterprises will gain control of large tracts of land in these areas, thwarting the main purpose of land restitution and reform -- that is, to establish citizens as small and moderate-scale rural land holders. The state and municipalities also are, at present, unable to share in the gain in value of land through taxation or assessment. Thus, the best strategy is seen to be to retain the land in state ownership and thereby preserve the state share through its ability to raise rents.

## PART III. THE SITUATION TODAY.

### 1. Land Ownership on January 1, 1999

The most recent full report on land ownership and other land holding in Lithuania is the report of the Department of Land Management and Law, which records the status of all land parcels on January 1, 1999. It illustrates the progress that has been made in fulfilling the fundamental purposes of land restitution and reform.

The processes of land restitution and land reform in Lithuania have transformed the rural landscape and re-structured rural society. For example, on January 1, 1999, in the Panevizius region over 32,500 citizens were holders of farm plots with an average of 6.3 hectares, and another 35,500 citizens held subsistence farm plots with an average of 2.3 hectares. The total rural population of the region is about 180,000. Thus, the 68,000 rural landowners amount to 37 percent of the population. Panevizius is among the major agricultural production areas of Lithuania.

A similar indicator of the significance of land ownership can be seen in the statistics on the amounts of land. Again, in the Panevizius district, a total of 484,974 hectares has been classified as agricultural land in the cadaster. Of this, 221,891 hectares are held in private ownership by the citizens. This amounts to 45.7% of all agricultural land. Overall in Lithuania, the level of private agricultural land ownership is even higher. In the report of the Department of Land Management and Law, for Jan. 1, 1999, 1.433 million of the total 2.945 million hectares of agricultural land is shown in private ownership. This is 48.7% of agricultural land.

The full picture of agricultural land holding by citizens and enterprises in Lithuania today can be seen in the following chart, from the Land Management and Law Department Report.

**Table I. Agricultural Land Holding on January 1, 1999.**

| Category | Hectares | Owners | Percent |
|---|---|---|---|
| Total | 3,940,870 | | 100.0 |
| Private farm holdings | 1,433,005 | 221,631 | 36.9 |
| Subsistence farm holdings | 684,932 | 313,921 | 17.3 |
| Garden plots | 21,444 | 206,000 | 0.5 |
| State farms | 23,067 | | 0.6 |
| Leased by natural persons | 750,278 | | 19.0 |
| Used by legal persons | 353,800 | | 8.9 |
| Unused (state-ownership) | 674,344 | | 17.1 |

In broad terms, the figures show the fulfilment of the Lithuanian land policy. The country's agricultural production now primarily rests upon a basis of small family farms, averaging about 7.5 hectares overall. Over 220,000 farmers are in control of these farm holdings and the process of their re-consolidation on a co-operative basis has been underway for several years. Now in most areas of the country, associations of small farmers are the leading producers of agricultural products, for domestic consumption and export. Some of these associations are loosely joined through contractual and informal sharing agreements. Others are tightly joined, with leases and "corporate" share ownership of equipment, livestock and trademarks. The remaining small number of state farms control a very small part of the land, only 23,000 hectares overall. The remaining large portion of agricultural land is leased from the state by natural persons (generally to supplement their moderate-sized ownership parcels). Over 750,000 hectares are shown under these leases on January 1, 1999. Farm enterprises lease another 353,800 hectares.

By contrast, urban land held by private owners is relatively low. The Jan. 1, 1999 figures show an overall urban land stock of 185,600 hectares, of which 29,400 hectares are in private ownership (15.8%). This is only slightly higher in the capital city, Vilnius where private owners hold 5,800 hectares out of a total of 34,850 hectares (16.6%). These figures are gradually rising as industrial and trade enterprises and housing organizations complete their re-organizations and begin to take ownership of their land.

**Table J. Non-Agricultural Land Holding on January 1, 1999**

| Category | Hectares | Owners |
|---|---|---|
| Private house plots | 28,520 | 172,073 |
| State-owned housing land | 60,488 | 276,618* |
| Other urban land:<br>Private<br>State-owned | <br>1,196<br>272,817 | -?- |

## 2. Land Markets in 1999

It was reported that, in 1999 almost 14,000 transactions involving the change in ownership of agricultural parcels took place in Lithuania. These parcels totalled approximately 33,000 hectares; thus, it appears that transfers of small parcels -- gardens and subsistence plots were predominant in the market. This represented a turnover of about 2.7% of the 577,000 registered agricultural and forest parcels.

During the same year, 1,800 urban land parcels changed hands in the five largest cities, with about 500 transactions in Vilnius and 400 in Kaunas. This represented a turnover of 1.2% of the 150,000 registered household plots. The price per square meter of urban land was, on average, 40 euros in Vilnius and 25 euros in Kaunas, with an average house plot size of 1,000 to 1,500 meters.

## CONCLUSIONS

Lithuania has moved steadily toward the formation of land markets and the recognition of full civil law rights of land ownership, leasehold and other forms of tenure. This appears to have been the result of its consistent and non-ideological land policy and the willingness of the management of the land programs to be flexible in carrying out the various tasks of land parcel formation, definition of rights and transfer of land to citizens. In part, Lithuania experienced a smooth transition in land relations because the land questions were not related to other social and political issues. Unlike its Baltic neighbours and some other former Soviet states, the population of Lithuania is fairly homogenous and its minority language groups were not viewed as threatening by citizens generally. Similarly, its political groups have not been strongly factional and ideological differences are not wide.

Most important, however, the Lithuanian leadership and people have had a fairly clear vision about the social and economic structure, which they wished to obtain. In large part, this vision was shaped by the historic success of the country during the 1919-1930 period, when it enjoyed economic prosperity based on moderate-scale farming. This ideal, reinforced by the social teachings of the Catholic Church, allowed the leadership to fix its practical programs of land restitution and reform within the context of a compelling social and political message. The citizens, therefore, have generally accepted the programs in a co-operative and optimistic manner.

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