

GOVERNANCE OF LAND TENURE IN EASTERN EUROPE AND COMMONWEALTH OF INDEPENDENT STATES (CIS)



Dr. Babette Wehrmann

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On behalf of
Federal Ministry
for Economic Cooperation
and Development



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Photographs on the cover

On the left: land fragmentation in Eastern Europe (Babette Wehrmann)

On the right: cotton field in Central Asia (Rural Development Fund, Kyrgyz Republic)

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List of Abbreviations

BMZ	Bundesministerium Für Wirtschaftliche Zusammenarbeit
CIS	Commonwealth of Independent States
EAFRD	European Agricultural Fund for Rural Development
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FDI	Foreign Direct Investment
GCB	Global Corruption Barometer
GTZ	Gesellschaft für Technische Zusammenarbeit
IDP	Internally displaced person
INSPIRE	Infrastructure for Spatial Information in the European Community
IPA	Instrument for Pre-Accession Assistance
IPARD	Instrument for Pre-Accession – Rural Development
SIDA	Swedish International Development Cooperation
TI	Transparency International
USAID	United States Agency for International Development

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1. Introduction

1.1 Introduction to land governance and the voluntary guidelines

FAO and its partners are preparing Voluntary Guidelines to improve the governance of tenure of land and other natural resources. Voluntary guidelines set out principles and internationally accepted standards for responsible practices. They provide a framework that states can use when developing their own strategies, policies, legislation and programmes. They allow government authorities, the private sector, civil society and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

The Voluntary Guidelines are to assist states, civil society and the private sector in improving the governance of tenure, and thus contribute to alleviating hunger and poverty, empowering the poor and vulnerable, enhancing the environment, supporting national and local economic development, and reforming public administration. They are being prepared in partnership with countries, civil society, private sector, UN agencies as well as implementing agencies such as GTZ.

The Voluntary Guidelines are at the initial stage of preparation. In 2010, regional and thematic consultations are held to assess the issues and actions that should be included. The next step will be the drafting of the Voluntary Guidelines, their review through a broad consultative process, and their assessment by FAO member countries and other stakeholders. The focus will then turn to the implementation. For that purpose the preparation of implementation guides is foreseen.

The present study – looking at the land governance situation in Eastern Europe and the Commonwealth of Independent States (CIS) – has been prepared to provide a base for discussion for the regional consultation meetings on the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources. The regional meeting for Eastern Europe took place in Bucharest on March 22nd – 24th 2010. The regional meeting for CIS countries will take place later this year. When referring to CIS countries, these include the current nine official members (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Uzbekistan) as well as Turkmenistan (unofficial associate member) and Ukraine (de facto participating; officially not a member). Eastern Europe includes Baltic States, Central Eastern European countries, Balkan States and Georgia (that withdraw from CIS in 2009).

The objective of the study is to evaluate the current land governance situation in the region and to identify main achievements as well as remaining challenges. Land governance, thereby, includes governing access to land as well as its use. More specifically, “land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed” (Palmer/Fricska/Wehrmann 2009: 9). Hence, the study concentrates on both aspects: access to land (land tenure) and use of land (land use and development).

The study focuses on general trends, key achievements and remaining challenges. It is not the purpose of this study to go into the details of each country.

1.2 Introduction to land tenure in Eastern Europe and CIS

Land tenure in Eastern Europe (Baltic States, Central Eastern Europe, Balkan States and Georgia) developed quite similarly in most countries of the region and similar to Western Europe. In the early beginnings of settlement open access was slowly replaced by common property. Especially common property on agricultural land lasted until the Middle Ages – common property on pastures even throughout the Middle Ages (commons). With the development of towns, private property received increasing attention. In rural areas, feudalism shaped land ownership during the Middle Ages until enlightenment that resulted in the abolition of serfdom. Whereas in Western European countries many small farmers became owners of their land, the typical agrarian structure in most parts of Eastern Europe remained large estates on which farmers worked as workers. Until the early 20th century individualism had increased in most European countries favouring private ownership of land. At the same time the role of the state in land management gained importance and social responsibility of land/property ownership became a general rule in many countries. For Eastern European countries, the 20th century has been marked by a number of land reforms: redistribution to small farmers, nationalization and/or collectivization and finally re-privatization since the 1990s. Just as ways of expropriation differed greatly in the beginning of the century, the ways of re-privatization are also diverse: restitution, equal redistribution, distribution by auction, land sales etc. In all cases the nationalization of land went hand in hand with the centralization of land management. Re-privatization now involves decentralization to different degrees in most countries of the region. Due to their historical experience of independent statehood and capitalist market economy as well as due to their European political and socio-cultural identity, Eastern European countries right after the end of communism aimed for European reintegration (integration into EU and NATO). Hence, harmonization with EU requirements regarding property ownership, land markets, land administration and management as well as governance has received priority attention since the early 1990s. Although Balkan States have been delayed in their development due to the war in the region, all Eastern European countries are currently following the same general direction towards a market economy and a democracy oriented West/EU/NATO.

Land tenure in CIS region (Western CIS, South Caucasus and Central Asia) differs tremendously. South Caucasus and Western CIS have developed similarly to Eastern European countries since the beginning of the economic transition in the early 1990s (except for Belarus where only limited private ownership rights have been introduced). Central Asia, however, is still marked by mainly state ownership, centralized land administration and management as well as rather authoritarian systems. Whereas all other regions tackled in this study (Baltic States, CEEC, the Balkans, South Caucasus and Western CIS) had at least some tradition of market economy, private agricultural production etc. when regaining their independence in the early 1990s, Central Asian peoples did not. They predominantly lived as nomads until the region became part of the Soviet Union. Sedentarism, agricultural or industrial production in private hands as well as individual ownership of land have been limited to certain eras and areas. More recently during Soviet times, good agricultural land has been used for huge state/collectively owned plantation farms, mainly cotton fields. Hence, while the Eastern European countries, Southern Caucasus countries and Western CIS oriented their development towards democracy and market economy (the system they were familiar with before communism), after the break-up of the Soviet Union, Central Asian countries kept to the political and economic model as well as to the agricultural system of the Soviet period (the system they were most familiar with). There also was a resurgence of the nomadic tradition that was forcibly stopped by the Russians before. The pro-democratic forces that existed at the time of independence were repressed. The new independent Central Asian states based their

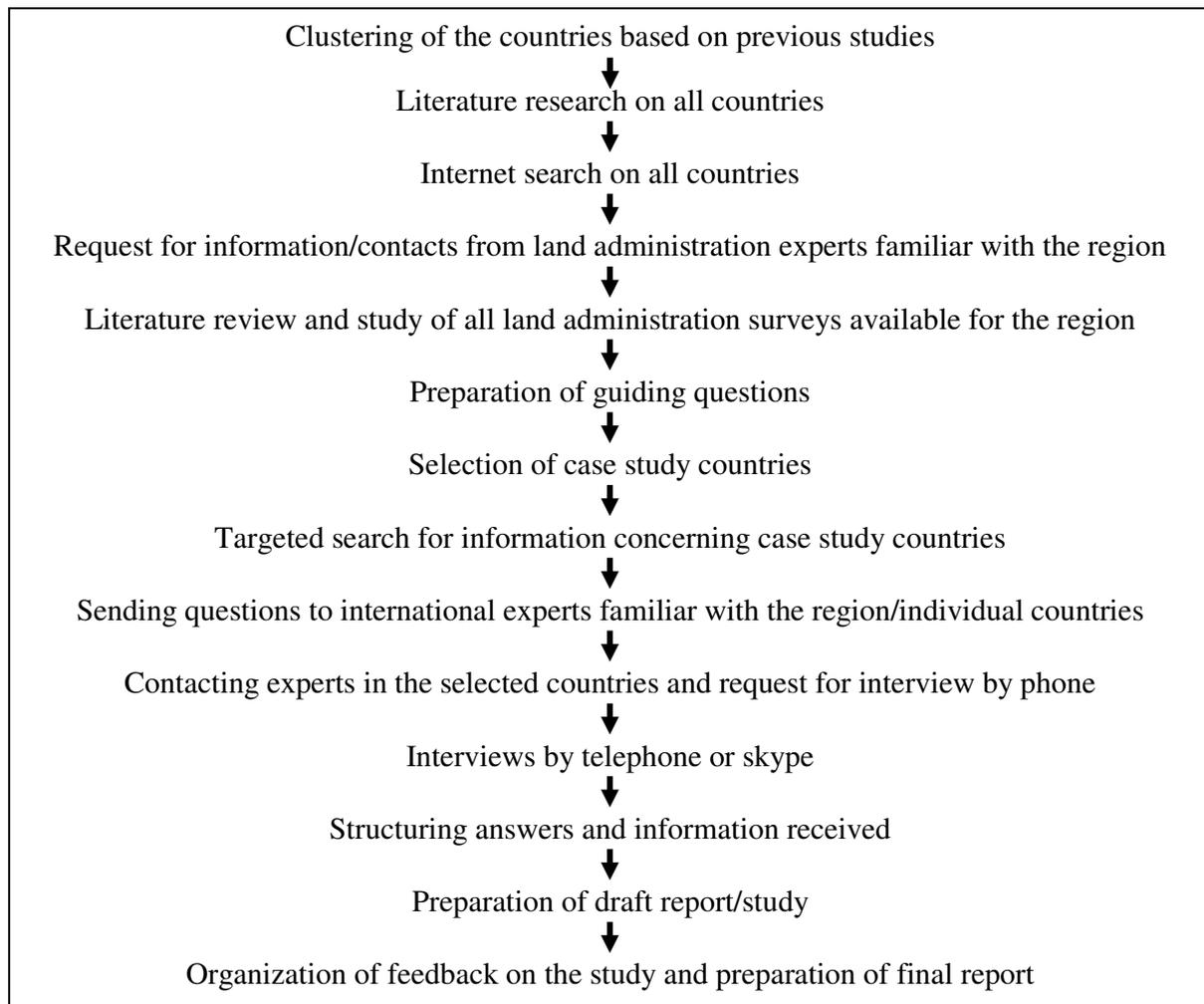
development on a centrally planned economy keeping the structures from the Soviet period. In regard to land tenure and land use this implied state ownership and priority use of land for cotton production. Apart from the negative ecological consequences, the forced and partly exclusive production of cotton led to food shortages and a high dependency on food imports. The average living standard declined. Recently, some changes towards individual land use rights for subsistence agriculture and similar reforms have been considered and are about to be implemented.

1.3 Methodology

The countries' land governance situations have been evaluated in two steps according to two different methodologies. In a first step, countries have been classified according to existing indicators on corruption, transformation, environmental performance and some land related aspects. The results are country groups according to the general governance situation. These country groups have been identified already in an earlier study, the methodology of which is briefly explained under 1.3.1. In a second step which is the core part of this study, the specific land governance situation of each country group is described based on an analysis of those institutions regulating access to and use of land or in other words regulating the land market. For this purpose, an evaluation concept has been developed which is explained under 1.3.2.

The study is based on interviews with national and international experts on land governance, a substantial literature review and personal experience from working in the region in the last 10 years. The literature review considered all countries in the region. The same applies for the interviews with international experts. In addition, interviews with several national experts per country have been done in Lithuania, Georgia, Croatia, Montenegro, Serbia, Kosovo, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan covering all groups of countries – those being more advanced as well as those being less advanced. Interview partners for these country case studies have been selected in a way to represent the different areas of the land market – land registration, land valuation, spatial planning and land management (for guiding questions see A1). All information – from interviews as well as literature and the web – has been crosschecked by triangulation. As most interviewees requested their answers be handled confidentially, quotes are generally documented without reference to a specific country and sources remain anonymous. Fig. 1 summarizes the complete methodology in a flow chart.

Figure 1. Overview of the methodology

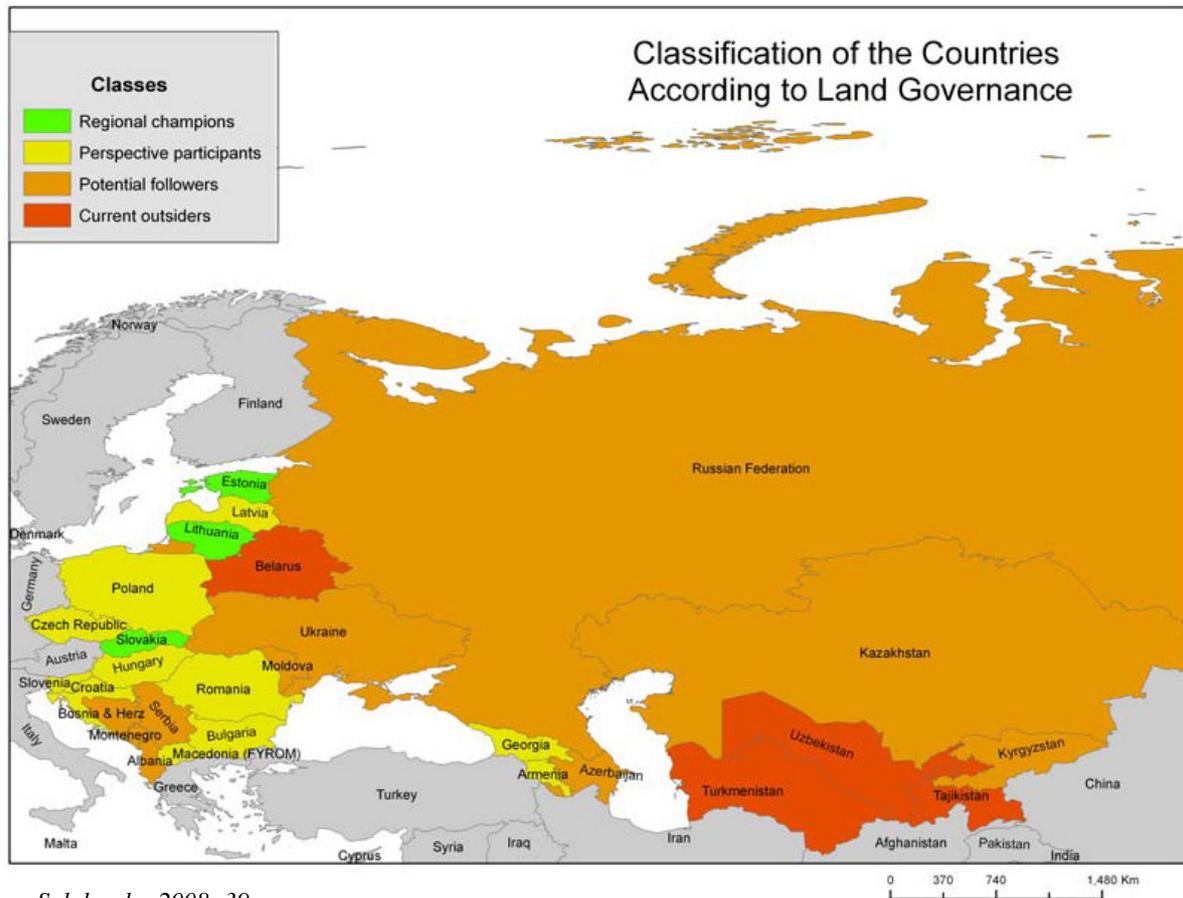


1.3.1 Country classification

The classification of countries is based on the study “Good Governance and Natural Resources in Eastern Europe and CIS Region” prepared by Joseph Salukvadze in 2008. This first study on governance of tenure of land and natural resources in Eastern Europe and the CIS region resulted in a classification/ranking of all countries of the region based on existing internationally recognized governance indicators which are TI Corruption Perception Index (CPI), Bertelsmann Transformation Index (BTI), Doing Business country ranking, Environmental Performance Index (EPI) and a land policy index after Lerman/Csaki/Feder 2004. The following four categories of countries have been identified:

- A. Regional champions,
- B. Prospective participants,
- C. Potential followers,
- D. Current outsiders.

Figure 2. Classification of Eastern European and CIS countries according to land governance



Salukvadze 2008: 39

In the present paper the current land governance situation has been evaluated separately for Eastern Europe and CIS. Within both regions each of the country groups also has been evaluated separately. In Eastern Europe only categories A, B and C have been identified, in CIS categories B, C and D.

Table 1. Overview on Eastern European countries

Category	Countries
A	Estonia, Lithuania, Slovakia.
B	Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Latvia, Macedonia, Poland, Romania, Slovenia.
C	Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, Serbia.

*Remark: Kosovo was not yet included in the previous study done in 2008 as no indicators were available on an international level – Kosovo claimed its independence only in 2008. As the country shows many similarities with the surrounding other former Yugoslav countries, it is included in country C group.

Table 2. Overview on CIS countries

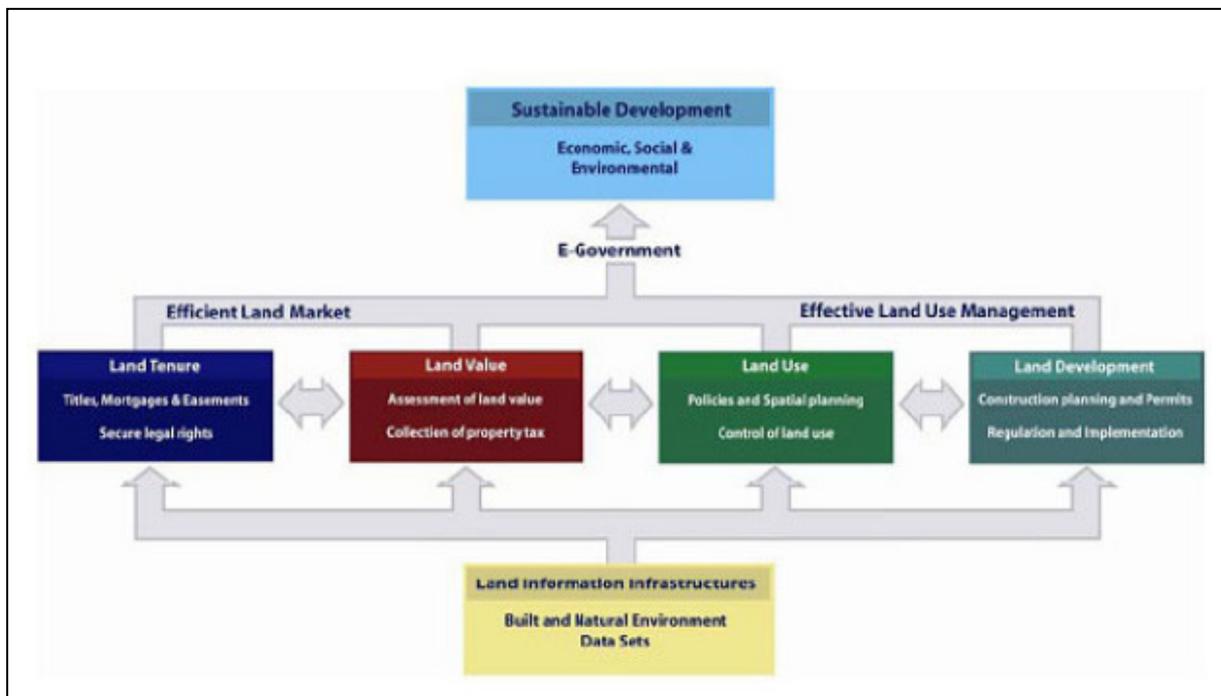
Category	Countries
B	Armenia.
C	Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Ukraine.
D	Belarus, Tajikistan, Turkmenistan, Uzbekistan.

1.3.2 Evaluation concept

Evaluating land governance means analyzing the rules, processes and structures through which decisions are made about access to land and its use as well as the manner in which decisions are implemented and enforced (see 1.1). Hence, the regulation of land tenure and land value (defining access to land) as well as land use and land development (defining the use of land) needs to be examined (see fig. 3 and tab. 3).

According to Enemark and van der Molen (2006), the regulation of land tenure and land value is important for an efficient land market while the regulation of land use and land development is necessary for an effective land use management. All four areas are based on data sets and spatial data infrastructure. In an ideal situation they are linked by e-government and will lead to an economically, socially and environmentally sustainable development (see fig. 3).

Figure 3. Key aspects of the land market 1



Source: Enemark/v.d.Molen 2006

This idea corresponds to an earlier land market model by the author (Wehrmann 2005 and 2006) that distinguishes between approaches constituting the land market, supporting the land market and regulating the land market (see tab. 3). Approaches constituting the land market include all institutions and tools to secure legal rights over land, i.e. land reform, privatization, restitution, land registration, cadastre and public land management. Approaches supporting the land market focus on land valuation. Approaches to regulate the land market are those

dealing with land use and development, i.e. spatial planning, land consolidation, land readjustment, land banking, permitting, land use control etc.

Table 3. Key aspects of the land market 2

Land Tenure	<ul style="list-style-type: none"> • privatization, restitution... • land registration, cadastre • public land management 	Constituting the land market by securing legal rights
Land Value	<ul style="list-style-type: none"> • land valuation 	Supporting the land market
Land Use and Development	<ul style="list-style-type: none"> • spatial planning • land consolidation • land readjustment • land banking • permitting • land use control, sanctions 	Regulating the land market (providing for sustainable and efficient land use)

Source: Wehrmann 2005 (simplified)

All of these land market institutions and tools can be evaluated in regard to political will, legal frame, rules and procedures, technology and implementation. Implementation refers to capacity, efficiency, transparency, accountability, equity and fairness, public participation and effectiveness. Each of these five aspects provides useful information on the land governance situation and can be evaluated separately.

Table 4. Key aspects of the land market 3

	Political will	Legal frame	Rules and Procedures	Technology	Implementation
Property rights					
Land registration					
Public land management					
Land valuation					
Spatial planning					
Land management					
Construction permits and control					

Source: Wehrmann 2005 (modified)

The evaluation in this paper distinguishes between four situations:

- Very good conditions (+++)
- Good conditions (++)
- Basic conditions (+)
- Conditions insufficient (-)

In the following, only legal frame, rules and procedures, technology and implementation are considered. The estimation of the existing political will would be a) too subjective and b) differs significantly among different institutions and different individuals in each country. Hence, in regard to the political will only a very general estimation can be given. Based on the interviews and my own experience, I would rate the political will in A countries very good, in B countries varying from basic to very good, in C countries from insufficient to good and in D countries from insufficient to basic.

2. Evaluation of land governance in Eastern European countries by country groups

2.1 Evaluation of A countries

The land governance situation in Estonia, Lithuania and Slovakia is very advanced. Especially the rules, processes and structures through which decisions are made about **access to land** as well as the manner in which the decisions are implemented and enforced are very progressive. In comparison to B and C countries, land reform is quite advanced leaving mainly some urban areas to be finished. Especially the Baltic nations (including Latvia) made privatization and restitution of property rights a prime objective immediately after their independence in the early 1990s.

Land registration is very advanced. Lithuania has one of the most modern if not THE most modern web-based multi-purpose cadastre in the world serving the public and private sectors. Transparency, accountability and efficiency are high. This has been reflected by the Doing Business Report 2009 that ranked Lithuania 4th in regard to registering property. Estonia's digital land register made it to the finals of the European E-Government Awards in 2009. Slovakia has been among the top ten countries in Doing Business 2009.

Table 5. Evaluation of A countries – Eastern Europe

	Legal frame	Rules and Procedures	Technology	Implementation
Property rights	+++	+++	+++	++
Land registration	+++	+++	+++	+++
Public land management	+++	++	++	++
Land valuation	+++	+++	+++	++
Spatial planning	++	+	++	+
Land management	++	++	++	++
Construction permits and control	++	+	+	+

Public land management receives a lot of attention. Clear concepts exist on how to manage public land. Implementation of them has partly started. Other approaches such as the Lithuanian Land Fund, which oversees proper management of state-owned land have been initiated and will be implemented in the near future.

The Baltic nations have been the first of the transitional countries to introduce value-based taxation of real property with the objective to stimulate real estate markets and to capture tax revenues for improved public services. Hence, they have taken significant steps towards a uniform and equitable value-based assessment. The individual land valuation approaches differ as do the property taxation systems, e.g. Estonia taxing land only (market value), Lithuania taxing land (normative value) and building (market value). Lithuania introduced mass valuation, Estonia refers to value maps. Whereas Lithuania values land and buildings annually, Estonia did the last reassessment in 2001. Slovakia also introduced land valuation using coefficients recognizing location and accessibility.

The rules, processes and structures through which decisions are made about **use of land** as well as the manner in which the decisions are implemented and enforced are less developed than those regulating access to land. Spatial planning procedures are often described as lengthy and complicated. Not all areas are covered by land use plans. Priority of public interest over private interest is not guaranteed in all cases/procedures. Governments are currently

reconsidering spatial development and spatial planning. In Lithuania a new edition of the Law on Territorial Planning is foreseen.

Land readjustment and land consolidation depend on functioning spatial planning systems as well as available funds. Currently, both factors are limiting the implementation of land management activities. The new generation of EU rural development programs might be a chance to improve the situation (see 2.4.3). Compared to B and C countries, land management is, however, much more advanced. Slovakia for instance has already invested significantly in land consolidation.

Land governance is very much about accountability, equity and fairness. This behaviour is often promoted in codes of conduct or codes of ethics. In this regard, recent developments in Lithuania need to be highlighted: the application of codes of ethics there is evolving rapidly and their adoption and implementation is becoming more and more effective (see box 1).

Box 1. Codes of ethics in Lithuania

Lithuania recently introduced a number of codes of conduct:

- a) For politicians: Code of Conduct for State Politicians (*Valstybės Politikų elgesio kodeksas*). The Code was approved by the Law No. X-816 dated 19 September 2006 (see http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=287040 for the English translation);
- b) For public officials (incl. judges): codes of ethics have been adopted for judges, notaries, prosecutors, customs officers of Lithuanian Republic, etc. There are also codes which would fall in between the public and private sectors, like, for example, codes of ethics for university employees like the Code of Ethics of Professors of Kaunas University of Technology.
- c) There also is a special governmental resolution approving the Rules on Ethics of the Activity of the Civil Servants and a special Law on Adjustment of Public and Private Interests in the Civil Service. These legal acts are binding for all civil servants in Lithuania (see: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=362800).
- d) The main body supervising ethics of public officials is the Chief Official Ethics Commission of Lithuania. Its activity is regulated by the Law on the Chief Official Ethics Commission (see: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=331396).
- e) Separate professions, such as judges, for example, have their own bodies supervising ethics of its members. In case of judges it is the Ethics and Disciplinary Commission for Judges, which decides disciplinary cases for judges.
- f) As regards private professionals, a variety of codes of conduct exist in different areas. However, as relates to the governance of land tenure and administration, no specific codes for the private professionals are adopted, though all private professionals are obliged to follow certain legal rules regulating their activities.

Strictness of implementation of codes of ethics varies from one area to another, but non-compliance with some codes may have hard consequences for a respective member of the profession. For example, in the case of attorneys, the Court of Honour of Attorneys may deprive an attorney of his/her license (or apply other sanctions) if the attorney breaches the code of ethics in a serious manner.

In spite of the progress achieved by A countries so far, some challenges remain. The following measures and activities have been identified as future priorities for these countries:

- Finalizing the restitution;
- Improving the efficiency of public land management;
- Reconsidering the legal acts on spatial planning and land management;

- Introducing land use plans at local/ward/village level.

2.2 Evaluation of B countries

The land governance situation in Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Latvia, Macedonia, Poland, Romania and Slovenia is much more diverse than among A or C countries. Still, there are some very visible general trends. Similar to A countries, **access to land** is better regulated than **use of land** – although both are generally done at a lower level compared to A countries.

Table 6. Evaluation of B countries – Eastern Europe

	Legal frame	Rules and Procedures	Technology	Implementation
Property rights	++(+)	++(+)	++(+)	++(+)
Land registration	++(+)	++(+)	++(+)	+ /++ /+++
Public land management	++	++	+	+
Land valuation	- /+ /++	- /+ /++	- /+ /++	- /+ /++
Spatial planning	- /+ /++	- /+ /++	- /+ /++	- /+
Land management	- /+	- /+	- /+	-
Construction permits and control	+ (+)	+ (+)	++	-

Similar to A countries, land reform (privatization, distribution, restitution etc.) is very much advanced but not yet finished in all countries. Most countries have some state land left which they would like to privatize. In most countries, legal frame, rules and procedures and technology are very satisfactory. In some countries, some improvements need to be made. Depending on the history, former property structure, forms and frequencies of expropriation of private owners (redistribution, nationalization, collectivization etc.) as well as the (non)availability of ancient cadastral data, every country has had to identify its own procedures. Some required more, others less time and effort. Several countries introduced very fair and at the same time efficient ways of privatization such as Georgia which implemented several phases of privatization where equal distribution of agricultural land was followed by first closed and later open auctions. Although irregularities in privatization happened in B countries, the extent of it was limited. Gradually, the legal frame has been improved and mechanisms for more control and transparency introduced.

In terms of the legal frame as well as the (foreseen or intended) rules, procedures and technologies, land registration is rather advanced as well. However, implementation differs massively among B countries. Whereas Georgia managed to turn its public registry from one of the most inefficient and corrupt registries 10 years ago to a customer-oriented, transparent, safe and unified registration system providing for e-services and ranked 2nd in Doing Business 2009, Croatia still has to fight with the problem of differing entries in cadastre and land registry. Other countries are in between such as Bulgaria, which has introduced a web-based integrated digital Information System for cadastre and property registration. Advancement of spatial data infrastructure and completeness of geo-databases also differ among countries of this group. But even in less advanced countries, backlogs have been significantly reduced, as has the time necessary for registration.

Public land management still poses certain problems. The use of public land as well as its disposal is often unclear and non-transparent. Most countries lack a public land inventory.

Hence, the state does not know (exactly) which land belongs to the state. In other countries, the main problem is the differentiation between municipal and state ownership.

Land valuation also differs significantly among B countries. In Croatia, for instance, land valuation is not regulated allowing for different methods applied by different institutions and professions and resulting in extremely different land values defined by different land assessors. The lack of a clear land valuation system can become a source of injustices, which are not illegal but somehow illegitimate (see box 2). Other countries in this group are more advanced. Slovenia, for instance, passed a Property Mass Valuation Law in 2006 and initiated a public information program and a valuation appeals process in all 210 of the nation's municipalities. Revaluation has been provided for every four years.

Box 2. The municipality wants to build a road

A typical situation has been reported from one of the countries that lack clear land valuation rules and standards. It is about a municipality that wants to build a road and some "friends" of influential decision-makers: *"Friends" know about the project and they start buying all lands of the future road. After that the Municipality wants to buy that land for the road. The Municipality offers money. "Friends" do not want money but they want plots of land somewhere else. The Municipality says: O.K., we have parcels on another location. In this case it is not possible to make the usual tender – it means that "friends" will get valuable lands and they do not have to compete at the market. This is not the end. In the next step the Municipality and "friends" engage a land valuator. Since land valuation is not regulated at all it turns out that the land of the "friends" is extremely expensive and the land of the Municipality is extremely cheap. Hence, "friends" are compensated with rather big parcels..."*

Just before finalizing the study, recent changes were reported: *"Based on the absurd assumption that the central state is less corrupt than local government, it is now, due to a change in law, the central state that is in charge of exchange of lands as means of compensation for the construction of public roads. As land valuation, however, continues to be unregulated, the problem (and its benefits) are only shifted to another level..."*

The situation concerning spatial planning is also very diverse and almost comparable to the one in land valuation. However, implementation remains at a lower level in all countries. The following statements have been made by different interview partners from several different countries:

- *"There is no land use planning for rural areas."*
- *"Local government is not guiding any development."*
- *"There is little public involvement, if any, in adjudication, demarcation, land use and re-settlement planning."*
- *"Investors make development plans for their own purposes."*
- *"Too much emphasis is given to the market."*
- *"(Land) policy has become too liberal."*

Although land fragmentation is considered a major problem in several B countries and land consolidation and readjustment seen as very useful instruments for land development, both of these land management tools are hardly introduced. Though in Croatia land readjustment is included in the law, there is a lack of know-how and experience on how to actually do it. The interest in both – land readjustment as well as land consolidation – is very high. Again, the crucial role of land valuation becomes evident: in countries without functioning land valuation systems, land readjustment and land consolidation cannot take place in an adequate manner.

Permitting and control of construction can only be considered insufficient for all countries of this group apart from Georgia that has been ranked 7th in Doing Business 2010 due to a procedure that only involves 10 steps and takes less than 3 months. All other countries are ranked between 59 and 164, their procedures involving up to 36 steps and lasting for up to 420 days – which is more than a year.

Land governance – as stated above – is very much about accountability, equity and fairness. In group B countries corruption varies but a general trend towards its limitation is evident. It can be assumed that by now the political will to fight corruption is present in all countries of this group. The advancement in technology introducing web-based solutions and increasing the number of e-services helps a lot to diminish corruption. I received the following statement from a Georgian expert explaining how the country managed to reduce corruption within such a short time: *“The creation of electronic databases, development of web-based software, legislative changes, and streamlining of procedures greatly contributed to almost elimination of corruption.”* In those countries where land registration procedures are less advanced, motivation money is still common to speed up the process. This, however, needs to be seen in the context of very low public salaries. To reduce irregular behaviour some countries such as Romania, Macedonia and Georgia regularly conduct customer surveys. They also introduced complaint mechanisms.

Based on the above evaluation, the following measures and activities have been identified as future priorities for B countries:

- Completing the improvement of geo-databases and spatial data infrastructures;
- Getting land administration online as part of the e-government strategy;
- Improving identification and management of public land which is often unclear and non-transparent in its use and disposal;
- Improving land valuation;
- Improving spatial planning and introducing land readjustment;
- Dealing with land fragmentation and introducing land consolidation;
- Shortening the procedures for construction permits while increasing transparency;
- Reconsidering the role of the market.

2.3 Evaluation of C countries

In Albania, Bosnia and Herzegovina, Kosovo, Montenegro and Serbia land governance is the weakest in comparison to the other two country groups. Rules, processes and structures through which decisions are made about **access to land and its use** are all less advanced than they are in A and B countries. The same applies to the manner in which the decisions are implemented and enforced and the way that competing interests in land are managed – with few exceptions. This is not surprising as most of the countries of this group have been involved in the Balkan War and hence started much later with reforms than the countries of group A and B. In relative terms, in this country group too, access to land is slightly better regulated than its use.

Table 7. Evaluation of C countries – Eastern Europe

	Legal frame	Rules and Procedures	Technology	Implementation
Property rights	+(+)	+(+)	++	+
Land registration	++	+	+(+)	-/+ / ++
Public land management	+(+)	+	+	-/+
Land valuation	-/+	-/+	-/+	-/+
Spatial planning	++	+(+)	+	-

Land management	+	-	-	-
Construction permits and control	+(+)	+(+)	+(+)	-

To give an impression on the overall governance situation in the land sector, I would like to quote some statements that have been made during interviews in several different countries of this group and by different interview partners within these countries:

- *“In the socialist period, the focus was on public interest. Now, there only is individual interest.”*
- *“Individual financial interests often overrule procedures which are anyway not fully transparent.”*
- *“The major force on the land market is financial benefit of individual investors (not seldom with questionable money sources).”*
- *“Investors either ignore urban plans or pay the planner responsible for the elaboration of it.”*
- *“The main challenges are illegal settlements and illegal constructions.”*
- *“Codes of conduct are in place but with low influence on actual practice.”*
- *“There is still a lot of fear of retaliation against whistle-blowers.”*

It has, however, to be recognized that the governance situation is improving, although the political will in some fields still might be quite weak. The example below shows how media presence resulted in changes in the law to limit illicit practices.

Box 3. The influence of media on land governance

“In Serbia, the purchase of bankrupt former social enterprises in prime locations has been very attractive. Many new owners of privatized objects have used the possibility to snatch the right to use the land after having bought the object for a low/symbolic price. The Law then gave them the possibility to convert the right of use into private ownership. Good connections then ensured that the land use was changed into construction land. Hence, for the low price of a rotten factory one could receive huge areas of inner-city construction land in prime location! After Belgrade independent media B92 had reported on the case of Belgrade port, the Law on Planning and Construction has been changed in order to stop this type of activity. Those investors who bought companies and did not continue production or even destroyed the factories now have to pay extra for the land according to market price.”

Concerning land reform (privatization/restitution), all countries of this group have started the process and are working on its finalization. In some countries such as Montenegro restitution only needs to be finished in some areas. In other countries the entire urban areas (construction land) still need to be privatized or restituted as is the case in Serbia – the main obstacle being the unsolved question of compensation. Albania, too, is still confronted with some outstanding issues of restitution and compensation. Especially in the coastal area where the land is very valuable, historical landowners dispute the post-1991 privatization of agricultural land to workers of the cooperatives and state farms.

Land registration has advanced in the last decade. In Montenegro, a new integrated cadastre has been established since 1993 covering 55% of the country. It is planned to be finished for the remaining areas in 2012. In addition, the provision of cadastral and ownership data from the national agency to the municipalities for tax purposes has been introduced free of charge. In Bosnia and Herzegovina, major reforms resulted in the renaissance of the land register (land book) previously introduced by Austria in the 19th century. Recent reforms included the return to the exclusive responsibility of independent land registry courts, the introduction of the Latin notaryship, a new property law and an appropriate contemporary cadastre law. In

addition, considerable progress on the digital land register has been made (75% of aged data being included in the digital system). As a result, quality of documents has improved considerably, much fewer applications need to be rejected and confidence in the land registration system with its factually independent referees has been increased significantly. In some districts, the system is already cost recovering. The cadastre, on the other hand, still needs major improvements. In Albania where an integrated property registration system has been introduced, documents from the archives have been digitized, the computerization of processes improved (digital application for monitoring of procedures) and standard prices and times for each procedure are publicly displayed in the cadastre offices as is a list of documents needed for different applications. Here, too, notaries now assume a key role. There is, however, a need to introduce rules regulating their activities. In Serbia, the availability of data can be checked on the web. All countries, however, still need to improve data quality, completeness and access. Concerning routines for retrieving, storing and updating cadastre and register information there also is room for improvement. The same applies to transparency, accountability and efficiency in a number of processes. Most countries currently receive support from bi- and multilateral projects to improve technology as well as procedures and – to a smaller degree – the legal frame. In a number of cases, personally known by the author and confirmed by other international experts/consultants, the political will and capacity of the aid receiving institution needs, however, to be questioned (see 2.4.1).

Public land management suffers from two shortcomings. First, most if not all of the countries do not have a complete overview on their public land. Second, municipal and state public lands are not yet conclusively separated. There are, however, differences among the countries. Albania, for instance, has gone much further than Serbia in the decentralization of public land. In Serbia, only the land that is used for public infrastructure (roads, schools, hospitals, parks etc.) has been decentralized. The Law on Public Property is still missing.

Land valuation in C countries is still in an early phase, although governments are aware of its importance. In Serbia, for instance, right now a project supported by SIDA is starting to introduce a mass valuation methodology.

Land use and development are not yet sufficiently regulated. Individual interests can easily overrule public interest. However, the situation is improving, especially in regard to the legal frame. In the last several years, governments reviewed their laws on spatial planning or urban planning as well as their construction laws. Still, there is the problem that competencies regarding spatial planning are usually not defined in a single law, but rather in several legal acts, creating a dispersion of the legal matter. The recent frequent changes in the legislation (as well as in urban plans) sometimes resulted in legal uncertainty. Nevertheless, further adaptation of the legislation will be necessary. Main reasons for this are too much centralized approaches to spatial planning, too complicated procedures for adopting plans, no clearly defined hierarchies of plans and insufficient regulation for procedures to receive consent for plans from higher levels of authority. In addition, most countries of this group lack experience in specific land use planning and land management practices that are adapted to a market economy and private ownership of land, such as land banking and land readjustment. Land use planning tools to achieve a more ecologically sustainable land use such as eco-balance, green compensation areas, inner-city densification and brown field development are also little known and rarely applied. Most countries of this group do also experience delays in the development of local land use plans. Reasons are lack of data, unclear ownership, lack of staff, lack of technical equipment, lack of finance etc. Another existing shortcoming is the very limited public participation in local land use planning. In most countries, public participation is regulated by law, but is insufficiently practiced. An exception is Republika Srpska where so

far no obligatory procedure for public participation is foreseen in the law. Although there exists criticism that plans are made without public participation in Albania, it needs to be highlighted that some Albanian municipalities already introduced a few years ago a very transparent participatory urban planning. This includes among others participatory planning workshops and participatory budgeting for investments.

Photographs 1. Participatory urban planning in Albania



Photographs by Eri Cobo, Co-PLAN, Albania

A hot issue in all these countries is illegal construction. Many sites have been erected during and briefly after the war. At this time, it was hardly possible to receive a permit and hence legal construction was not possible either. In addition, refugees and IDPs needed shelter and could not wait months or years for permits. In the last several years, however, illegal developments are often done by investors purely for their financial benefit. They construct tourist areas along the coast as well as residential buildings in peri-urban areas. They are not forced to construct illegally as people had been during the war. The current trend to start general legalization campaigns benefits both groups in the same way. There is a risk that these policies might encourage more people to construct illegally in the future. Altogether the lack of land use control contributed to the massive destruction of farmland, vineyards, olive groves, forests, biodiversity, natural and cultural landscapes, potentials for tourism etc.

Photographs 2. Lack of land use control resulting in the destruction of natural and cultural landscapes



Photographs by the author

It needs to be highlighted that a very important first step to regulate informal settlements in the region has been done already. In 2004, the Vienna Declaration on Informal Settlements in South Eastern Europe was agreed upon by Albania, Macedonia, Montenegro and Serbia, and Kosovo joining the initiative the year after. The five countries agreed:

- to create adequate legal and institutional environment;
- to aim at the complete regional resolution of informal settlements by the year 2015;
- to undertake in-situ regularization and upgrading to the maximum extent;
- to prevent future informal development;
- to follow principles of good governance;
- to develop effective policies and programmes;
- to support capacity building and training;
- to exchange information on good practices and monitor progress (review meetings).

It now remains to implement the declaration in all the countries that ratified it.

The unplanned development of green fields goes hand in hand with the lack of brown field re-development. Many Eastern European countries – not just C countries – suffer from huge brown field areas – often in prime locations. The reasons for non-development are diverse, including unclear ownership, unclear responsibility for redevelopment, lack of financial means and lack of tools. The issue is increasingly addressed. In 2008, a first regional conference was organized in Zagreb focussing on conversion of industrial sites. Just before that conference, several countries prepared manuals on the issue, e.g. Czech Republic, Serbia (“Recycling of urban land in Serbia”) and Romania (“Reactivating industrial sites in Romania” available in Romanian and German language at: www.reactivation.biz). The latter one is currently being translated into Serbo-Croatian.

Photograph 3. Typical brown field area



Photograph by the author

The list of remaining challenges is still quite long for C countries:

- Continuing improvements to data quality, completeness and access;
- Finalizing harmonization or amalgamation of data from land books and cadastre – and their harmonization with reality;
- Improving routines for retrieving, storing and updating cadastre and register information;
- Completing surveying, mapping and systematic registration;
- Increasing transparency, accountability and efficiency in land registration;
- Improving institutional capacity and reforming land institutions to ensure that the qualification of staff matches the tasks (less field work, more quality control and service based work);
- Setting up and empowerment of notaries and property related jurisdiction – free from corruption;
- Improving identification and management of public land;
- Separating municipal and state public lands;
- Adapting a legal framework for land valuation;
- Developing capacities in land management;
- Gaining experience in land readjustment;
- Introducing/expanding land consolidation;
- Dealing adequately with informal constructions/settlements;
- Preparing policies on spatial development,
- Introducing comprehensive planning systems,
- Improving spatial planning regulations,
- Paying more attention to environmental assessments,
- Improving monitoring tools, land use control and sanctioning systems,
- Improving horizontal and vertical public sector cooperation and coordination,
- Increasing transparency and public participation,
- Reducing corruption (in acquiring building permits, for overcoming field inspections etc.),

- Strengthening decentralization and local accountability,
- Overcoming patronage systems,
- Increasing independence of courts and media.

Key to any further improvements in land governance are the following measures:

- Increasing public awareness on sustainable land use,
- Promoting a better understanding for public interest,
- Raising awareness that private property includes duties,
- Overcoming patronage systems in land acquisition and property registration by, for instance, introducing codes of conduct and/or improving their implementation,
- Establishing a strong state free from corruption and clientelism.

2.4 General aspects concerning all Eastern European Countries

2.4.1 Some general characteristics of land governance in Eastern Europe

As already discussed above, countries of all groups have either already finished the re-privatization of land or are about to finish it within the next years. Private ownership over buildings and apartments has been reintroduced in all countries. The all-encompassing privatization of apartments created similar problems in most countries. As generally all apartments have been allocated to the person or family living there, quite a high number of rather poor people are now confronted with the costs of renovation. The money not being available to them, many buildings still wait for renovation. In a market situation where apartments are bought, this hardly happens, as the buyer will only be able to buy an apartment he or she can afford – in terms of acquisition and maintenance. A significant number of rather big, often centrally located apartments are inhabited by single-person households. This results in a comparatively high surface area per capita. In situations where apartments have to be bought as well, as in the case of rental markets, most single-person households would live in smaller units due to the costs. Georgia found a solution for this type of problem. Private investors redevelop these properties by constructing bigger apartment buildings in which the owners of the apartments of the previous building receive a new apartment. The additional apartments are sold by the investors covering his costs. This solution, however, was not appreciated by everybody as it caused the extension of building sizes and heights which destroy historical building landscapes and put high pressure on the utilities. Hence, it is not easy but all the more important to develop adequate, locally adapted approaches to deal with the problem.

Another problem very frequently related to condominiums is the lacking maintenance of stairways, facades etc. One reason is the insufficient regulation of ownership of these areas. Another reason is the lacking regulation of administration and maintenance. Few countries in the region have comprehensive laws on apartment ownership that regulate issues such as maintenance and repair of common property, accumulation of a reserve for maintenance of common property, preparation of business plans, establishment of house rules etc.

Another similarity is the opening of national property markets for foreigners. This being an EU requirement, all countries of the region have introduced foreign ownership over land. In some countries there are no restrictions for foreigners. Other countries excluded certain lands as for instance agricultural land from foreign investment. In Montenegro, for instance, foreigners cannot own agricultural land, forests and forest land – with the exception of land up to 5000m² in those cases where the subject of alienation is a residential building on that land. In still other countries such as Macedonia, there are additional administrative procedures for foreigners. Finally, there are countries where there are no special restrictions for foreigners

but where (foreign) investors suffer from the general administrative and regulatory burden as well as from lingering land ownership uncertainties (e.g. Croatia).

Today, foreign investment (FDI) in land is present in all countries in the region – its intensity mainly depending on general security and location. Especially in tourist areas (e.g. all along the Adrian coast) foreign investors contributed to massive increases in land values. FDI in agricultural land is handled differently. Some countries try to attract investors. Others countries (e.g. Slovakia, Czech Republic and Hungary) negotiated a moratorium of several years during which foreigners were not allowed to purchase land to gain time to resolve restitution claims and enable local citizens to acquire land first. Some countries (Hungary and Slovakia) recently extended the moratorium. Czech Republic did not extend the moratorium. There, 6% of the farmland is now foreign-owned (378 farms on 230,000 ha of land). Cases of “land grabbing” have not been reported from this region as private property generally protects people from it. “Land grabbing” generally occurs where land is state-owned and leased to foreign investors without respecting use rights of local land users. In this regard, the temporary ban on agricultural land as it was/is done in Slovakia, Czech Republic and Hungary is an excellent measure to prevent “land grabbing” during the transitional period. Once the transition has been concluded, the risk for small farmers that their land is grabbed barely exists as regulations on expropriation are generally fair in Eastern European countries - with a few exceptions. In Georgia, for instance, people are wise not to invest in land located too close to oil pipelines. Whereas “land grabbing” does not constitute a danger for small farmers in Eastern Europe, they may however be effected by market mechanisms that may lead to crowding out. However, if in this context they sell their land, it is generally on a voluntary basis or due to economic/market constraints.

Land governance does not only depend on land institutions. It also depends on the general governance situation. In times of transition, governance generally suffers as it does in post-war situations. Institutional economics teaches us that during institutional change the distribution of property rights remains unclear and unregulated for a certain period of time. It takes some years until all institutions (laws, by-laws, agencies, organizations etc.) are in place again. Experience shows that it takes on average at least ten years to more or less re-establish all relevant institutions. It takes even longer for all institutions to function according to the new rules. Hence, it is more than evident that (land) governance in Eastern Europe can still be improved in some fields.

In some countries, the justice system still does not function sufficiently. Courts are slow in adjudicating cases, not all judges are well trained in real property law, help is needed with court administration, and corruption sometimes is a problem. On a positive note, alternative dispute resolution (ADR) is gaining influence in settling property cases. In Albania, a mediator service is provided as part of the First Registration process. In Kosovo, a mediation law was recently introduced. Property cases are one of the primary conflict types along with inter-community conflicts, which mediation is supposed to deal with.

In a number of countries, key land market institutions such as the national property registration agencies suffer from weak management capacities and a lack of accountability. Tendering, for instance, still involves irregular practices. An example: during fact-finding missions, international consulting firms were told which local companies or experts to include. Later, the agreed fees were transferred to these people or companies without any service in return. In other cases, national agencies simply don't have the capacity to implement large-scale projects (see 2.3). Having exclusive ownership over the project, therefore, easily leads to a failure of the project. New institutions and institutional settings need a lot of additional capacity.

They require knowledge and skills, which are not yet in place. And they do not automatically grow with the ownership. Capacity development, therefore, still represents a major need in many Eastern European countries. Without adequate capacity, good governance cannot be achieved. Capacity goes hand in hand with the understanding, acceptance and internalization of the new rules. In most former Yugoslav countries, there is still a lack of understanding for democracy. The following examples have been given by several international experts:

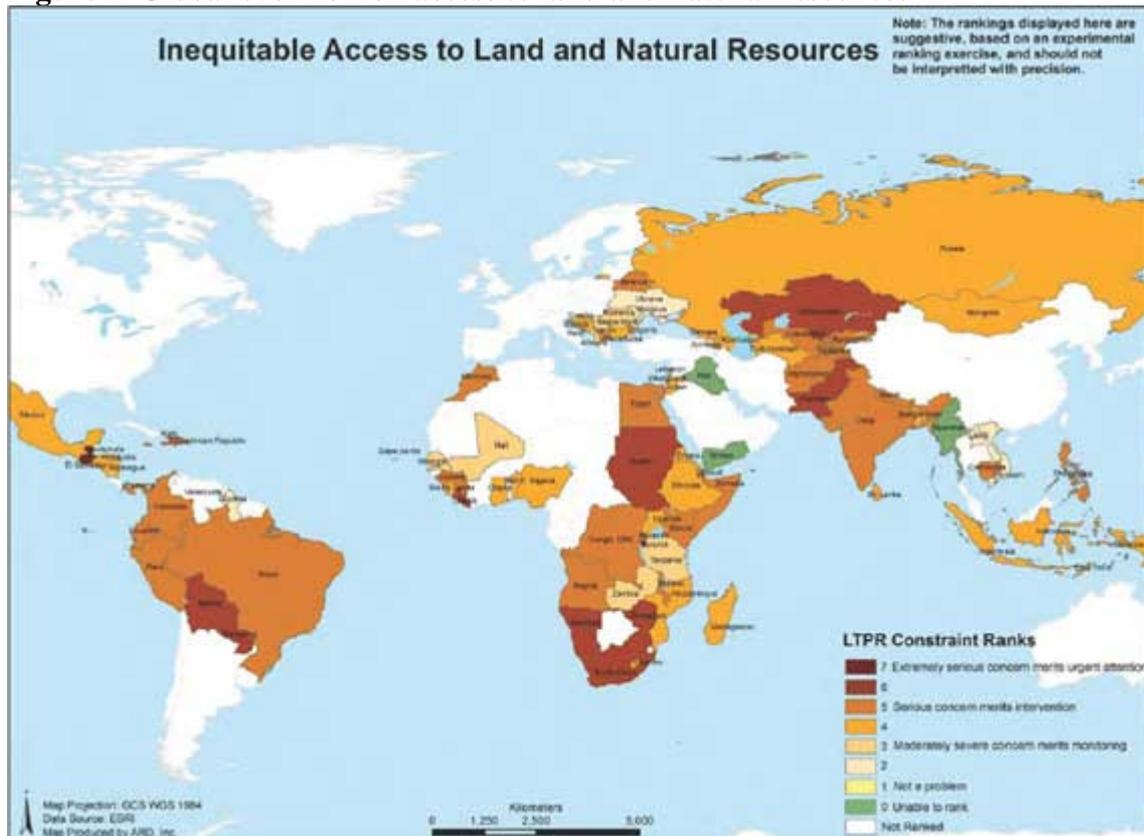
- Public administration hesitates to become client-oriented,
- Private owners understand that they have rights but are not aware of obligations,
- Few opportunities exist to appeal against administrative decisions concerning urban planning,
- Private sector and professional associations are weak and rarely considered by public institutions as partners or advisors,
- Appointment of institution leaders is generally a political issue resulting in frequent changes of top managers and a lack of continuity in vision and strategies,
- Politicians use access to land as leverage for political clientelism and undue financial benefits.

2.4.2 People deprived of their rights

In Eastern Europe, access to land and natural resources is rather equitable compared to other regions of the world. In 2007, USAID published a suggestive ranking concerning land tenure and property rights constraints of all countries in which the agency was actively involved at that time. The classification ranges from 1 (no problem) to 7 (extremely serious concerns). In regards to inequitable access to land and natural resources, those Eastern European countries that had been considered (Balkans, Bulgaria, Romania and Georgia) have been ranked 2-4 and one country 5 (see fig.4).

De jure, there is hardly any discrimination in regard to access to land in Eastern European countries. *De facto*, common practice can be disadvantageous to certain groups of people. These are:

- Certain ethnic groups in post-conflict countries such as the Serbian minority in Kosovo or Georgian majority in the occupied territories,
- Internally displaced people (situation improving),
- Refugees (situation improving),
- Sinti and Roma people (de facto discrimination),
- Homosexuals (e.g. in case of succession),
- “The public”.

Figure 4. Global overview on access to land and natural resources

Source: USAID 2007a

Whereas comparatively, internally displaced people (IDP) and refugees receive a lot of international attention and support, the discriminatory practices towards Sinti and Roma are more or less taken as a given. “The number and volume of recently implemented projects [...] are absolutely insufficient when compared with the needs of the Roma community [...]” (OSCE/ODHR 2006:33). This is a typical danger of long lasting discriminatory behaviour: more people are used to it, they take it for granted and no longer think of improving the situation. Current media interest in Sinti and Roma welfare is way behind the attention given to IDPs and refugees. On the other hand, it needs to be mentioned that some attempts have been made to improve the situation. However, they remain without major positive impact. Serbia, for instance, recognized the problem as early as in the 1970s. The Law on Planning and Construction of 2003 was another attempt to solve the problem, but to no avail. The degree to which the legalization procedure for homes is inefficient is best demonstrated by the fact that, three years after the law came into effect, only 2 % out of 117.000 requests for legalization in Belgrade had been resolved (OSCE/ODHR 2006:15f).

Discrimination of homosexuals – not only in respect to access to land – is hardly discussed at all. Although it is a rather common phenomenon, only one interview partner referred to it. Gender differences in access to land are also hardly discussed. Legally men and women have the same rights over land. Also, no cases have been reported where women had problems acquiring land – as long as they had sufficient financial resources. However, it occurred me that very few statistics are available showing male and female land ownership. A study on gender equity in Montenegro included a paragraph on land ownership by gender stating that only 22% of all women interviewed had been owners or co-owners of apartments compared to 28% of men. Hence, it was concluded that women have approximately 20% less chance of owning an apartment than men of the same age. In case of house (co-)ownership chances are

stated to be even 40% lower. The main finding of the study, however, is that education and age are by far more important factors in regards to land/apartment ownership than gender. There are, however, regions/countries left where traditional inheritance practices and/or social pressure on women to resign from inheriting property is still very strong. A rough estimation from a colleague in Kosovo was that about 90% of the land belongs to men. Hence, we can assume that inheritance rules favour men.

In conclusion, it can be stated that although discrimination of individual groups exist, it is minor compared to other regions, affects only a limited number of countries (especially Balkans, Romania, Bulgaria and Georgia) and is generally already perceived as a problem. Solutions are being implemented. However, they do not include more justice for Sinti and Roma. Meanwhile, the really “big loser” who is massively deprived of its rights to access and use land and natural resources is “the public”. Privatization of land without the necessary land use regulations in place has already destroyed and continues to destroy valuable natural and cultural landscapes that are part of people’s identity, serve as recreational areas and provide for ecological services all citizen can benefit from.

2.4.3 EU influence on land governance in Eastern Europe

All experts from Eastern Europe I talked to in the context of this study stated that in their countries EU standards are generally considered universal standards very worthy of being implemented. Those countries that already are EU member states are more or less familiar with current EU policies dealing with land issues. Those who are not (yet) EU member countries showed a massive interest in learning more about EU policies and standards. Some experts said that international experts/consultants are their only messengers in this regard. It is only through international projects, especially bilateral projects, they said, that they learn about EU policies and standards as well as about practices and technologies applied in other European countries. Other interview partners highlighted the positive impact of capacity building programs, including study trips to EU countries, training courses in EU countries, master courses at Western universities and university cooperation between different EU and EU accession countries. Many of these activities are supported by EU programs. EU influence on land governance in Eastern Europe can be summarized as follows:

- Providing standards, concepts and best practices;
- Providing basic concepts on the role of public and private sectors in land administration and management;
- Forcing better cooperation and coordination between public (and private) institutions;
- Encouraging the development of National Spatial Data Infrastructure (INSPIRE directive);
- Encouraging private-public partnerships;
- Encouraging e-services/e-government;
- Introducing land consolidation as a tool for sustainable rural development (EAFRD, IPARD, IPA);
- Encouraging public authorities to adopt policies and measures for protecting, managing and planning landscapes (European Landscape Convention);
- Defining rules for nature protection (Natura 2000 etc.);
- Providing funds and technical support...

Photograph 4. EU Twinning project on land administration enabling exchange between the Serbian National Cadastral Agency (RGZ) and the Baden-Württemberg Surveying Agency



Photograph by Ministry for Rural Areas, Food and Consumer Protection Baden-Württemberg, Germany

In regard to the EU, the problem of the *acquis communautaire* has also been addressed by one interview partner: It has been criticized that in the fields of land management, land administration and land valuation EU regulations are limited to guarantees of free movement, of property rights and the role of courts in the protection of property rights as human rights *sui generis*. It was requested that there should be more EU guidance in the listed fields that deal with day-to-day practices.

3. Evaluation of land governance in CIS countries by country groups

CIS countries are more heterogeneous than Eastern European countries. Eastern European countries more or less follow the same path. Some countries started the transition earlier, others later, some were hindered by a war. In the case of CIS countries differences are bigger. Southern Caucasus countries as well as Moldova followed a similar approach to Eastern European countries. They have mainly finished their reforms and now follow a market-driven development. Western CIS countries started reforms towards market economies as well, but are not completely in line with general European trajectories of development. Central Asian countries (except Kyrgyzstan) only changed their political and economic systems slightly. They mainly continued with the previous system. Only recently, could some trends towards democracy and market economy be observed. Hence, the land governance situation in these countries differs strongly from that of Eastern European, South Caucasus and Western CIS countries. On the other hand, there are typical characteristics of CIS countries that distinguish them from Eastern European countries. The main difference between CIS countries and Eastern European countries concerning land tenure is the fact that no CIS country opted for restitution. The main difference concerning land use is that CIS countries are primarily characterized by huge farms while Eastern European rural/agricultural areas suffer from land fragmentation. Concerning governance issues, they tend to be weaker in CIS countries than in Eastern European countries. One interview partner put it this way: “CIS countries are generally marked by centralization, data secrecy, conflict between involved institutions, low motivation and efficiency of the personnel, twinned with their insufficient skills, little sustainability of implemented systems (lack of systematic education), strong outside political influence and corruption.” Later during the interview he added: “Fighting corruption is the top priority, but it doesn’t look like it will be eliminated during the next 5 years in most of CIS countries. Liberation of the system from political influence and control seems to remain unsolvable as well. Other problems are of less importance and easier to overcome.” Two other interview partners also underlined that political aspects do often have a higher priority over technical aspects. They also highlighted the lack of strategies and concepts. They added that those concepts that do exist only do so on paper.

3.1 Evaluation of B countries

Only one country of the Commonwealth of Independent States has been classified as a B country: Armenia. Concerning its land governance situation it can be compared with Eastern European B countries. Like these countries, Armenia recently improved its land registration system tremendously but still faces problems concerning land management – land fragmentation constituting a major challenge. Hence, as in the case of the Eastern European countries, **access to land is currently much better regulated than use of land.**

In terms of ensuring property rights, Armenia is very advanced. Already during the 1990s, Armenia made remarkable progress in the privatization of land. Especially agricultural land was quickly privatized in 1991-93. It was free of charge. Non-agricultural land, on the contrary, was privatized by auction. Apartments were also privatized in the 1990s. Unlike most Eastern European countries, Armenia does not allow foreigners to own agricultural land. However, legal entities registered in Armenia can buy land. This is different from the general situation in most CIS C and D countries where Foreign Direct Investment is not possible at all.

Table 8. Evaluation of B countries – CIS

	Legal frame	Rules and Procedures	Technology	Implementation
Property rights	++	++	++	++
Land registration	+++	+++	+++	++
Public land management	++	++	++	++
Land valuation	+	+	+	+
Spatial planning	++	++	++	-
Land management	-	-	-	-
Construction permits and control	+	+	+	-

Land registration is very advanced and needs to be considered as a good practice. The Government of Armenia has largely built its land administration system on the recommendations of the ECE Guidelines on Land Administration. The system has been based on BTI (Bureau of Technical Inventory which in most other CIS countries still constitutes a separate institution). Accordingly, the institutional framework for land register and cadastre (unified system) is very modern, the institution almost self-financing. It has been ranked 5 in the Doing Business Ranking 2010. A minor shortcoming is that the private sector (surveyors) is not allowed to do surveys for registration.

Public land management is decently organized. There is a law on the privatization of state property, there are clear procedures for leasing state land (mainly pastures) and the administration of public land has been divided between regional authorities and local authorities for those lands that lie within the communities.

Concerning land valuation, Armenia has applied a real property mass valuation system. This, however, is not related to market value/price. This is mainly due to the fact that there is a lack of information on sales activities, as sales are not reported. Currently land valuation is mainly used by the state (registry) to define fees.

Spatial planning is regulated in the Land Code. From the legal side – or in other words “on paper” – the spatial planning system is quite good focussing primarily on urban planning (general plans). For each zone it is clearly regulated what can be built and how; the allocation of permits is based on it. In practice, it is however doubtful if the system also works outside the capital.

Land management is considered a necessity in Armenia, however, not yet very advanced. But the discussion has begun and different approaches and ideas are being discussed. FAO supported a pilot project on land consolidation that proved that there is a high interest in it. Participation in the project was 100%. Even a law had already been prepared, but it wasn't agreed upon. Similar to the Georgian government, the Armenian government does not see the role of the state in dealing with land fragmentation but believes the market will regulate it leading to land consolidation.

In regard to the issuing of construction permits, the situation could be improved. Armenia is ranked 72 in Doing Business 2010. The major shortcomings are the high costs (in % of income per capita) – especially if compared to OECD countries.

In conclusion, the situation in Armenia is quite similar to Eastern European B countries. This is also reflected in the orientation towards EU standards (see above concerning land registration).

3.2 Evaluation of C countries

The land governance situation in Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation and Ukraine is constantly improving but in many fields still quite weak. From all groups of countries discussed in this study, the **gap between regulating access to land and guiding use of land is probably the most extreme**. Privatization is quite advanced, several countries recently improved their land registration systems tremendously (others however are still struggling with inefficient systems) and public land is managed more or less decently in most countries. On the other hand, land valuation, spatial planning and land management do hardly exist. In addition, more than in all other country groups presented so far, lack of transparency and corruption (state capture, land grabbing, illicit practices in land allocation etc.) are very widespread in most of the countries of this group.

Table 9. Evaluation of C countries – CIS

	Legal frame	Rules and Procedures	Technology	Implementation
Property rights	++	++	++	-/+
Land registration	+/>++	+/>++	+/>++	+
Public land management	++	++	++	-/+
Land valuation	-/+	-/+	-/+	-/+
Spatial planning	-/>+/>++	-/>+/>++	-/>+/>++	-
Land management	-	-	-	-
Construction permits and control	-	-	-	-

Box 4. Typical tender situation

The following typical situation regarding bribery in the land sector has been reported from one of the countries of this group: *“In case of public tendering, private surveyors or surveying companies generally bribe three times: 1. to increase the amount to be tendered, 2. to ensure that the result/outcome is excepted and not rejected again and again with flimsy arguments, and 3. to ensure that they are paid within an acceptable period after having finished the job. In total, companies have to calculate 20% loss in case of public contracts.”*

All countries of this group have privatized agricultural and construction land. Agricultural land has been privatized under a land share system allocating land shares to former farm members. Pastures generally remained public land. Apart from Ukraine, foreigners cannot own agricultural land. Even in Ukraine the procedure for foreigners to acquire land seems to be slightly complicated. Hence, foreign direct investment (FDI) in agriculture is limited in these countries. Up to now, FDI has mainly taken place in the Ukraine (based on land purchases as well as land leases) and Russia (based on land leases). They include arrangements between governments (e.g. Ukraine and Libya) as well as arrangements between private investors and public or private sector (e.g. Swedish and Danish agricultural companies leasing land in Russia, a British company leasing land in Ukraine, French and US American companies who purchased land in Ukraine, a group of Iranian businessmen planning to invest in livestock breeding in Russia etc.). According to the information available, these land investments should not be considered as “land grabbing” as they generally do not exclude small or poor farmers from access to land. There is also no imbalance of foreign investors in these two countries compared to national investors. In the Ukraine, for instance, most investors are from Ukraine and Russia. It also should be noted that Russia is involved in FDIs abroad as for instance in Ghana where Russia acquired large tracts of lands for bio-fuel production. As far as it can be seen from the documentation by media and NGO, so far no major conflicts are arising from FDIs in agricultural land in these two countries. Rather the limited possibilities for

foreigners to invest in agricultural land in CIS countries have been criticized by a number of experts interviewed who promote that states should regulate how the land is used but not by whom. The situation, however, is different in Kazakhstan – the third country international investors are interested in, foremost neighbouring China. The Kazakh Land Code forbids selling land to foreigners and the Prime Minister confirmed last December that Kazakhstan will not sell land to China. One month later, the decision by Kazakh authorities to lease land to China for growing crops led to riots. The majority of Kazakh farmers de facto dispose of land use rights only (see below). Hence their tenure security is much weaker than those of Ukrainian or Russian small farmers. Consequently, the risk that they may be negatively affected by land deals by their government is much higher.

All countries apart from Kazakhstan do already experience active land markets. In Kazakhstan, the major challenge citizens are facing when wishing to acquire land to establish an individual farm is withdrawing their land share from the farm enterprise. The government favours the establishment and maintenance of large farm enterprises while discouraging the establishment of small individual farm units. Apart from Kazakhstan, land privatization was done quite quickly in the 1990s. While the transition from state to individual ownerships is now largely complete, the efficiency and equity of the process varied widely within the region as well as within individual countries. In Kazakhstan, during privatization of agricultural land (distribution of land shares) the most fertile lands were provided to relatives of the heads of former kolkhozes and sovkhoses (see 3.4). In Kyrgyzstan, corruption remains a major problem. It was reported that recently structures have been changed to facilitate land grabbing. In Kyrgyzstan, women do also encounter more discrimination than in the other countries of this region. This is due to discriminative national traditions and customs (e.g. regarding inheritance or compensation in case of divorce) as well as due to laws that do not reflect women's realities.

In urban areas, condominiums constitute a challenge in several countries. Some countries do also face growing informal settlements around the major cities due to rural-urban migration and insufficient provision of housing.

Land registration has started to be built up in all countries and has been finished to different degrees. Moldova has a quite advanced land registration system. In Kyrgyzstan more than 80% of land parcels have been registered already. Ukraine is still setting up its systems and provides for interim solutions for investors. Concerning the ease of registration, Azerbaijan, Moldova and Kyrgyzstan have been ranked among the top 20 countries in this year's Doing Business report.

Public land is managed in different ways. In Azerbaijan for instance it has been decentralized to the municipalities that lease it out. In Moldova, every 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. In other villages the population pressure (new families) has already consumed this land. Still other villages did not reserve any land, preferring to distribute all of it to the former members of the collective. Russia, Ukraine and Kyrgyzstan introduced agricultural land redistribution funds that function similarly to the land funds or land banks currently discussed in several Eastern European countries. The key objective of these funds was to redistribute land from state and collective farms to peasant farmers. Transparency, however, differs. From Kyrgyzstan it was reported that "nobody knows how much land is left in this fund. It is a source of corruption for local municipalities who e.g. rent it out below price or give it for free – creating a special land use purpose on paper that is free of charge. A major shortcoming is that there is no arrangement in place for accountability at municipal

level.” In contrast to agricultural land, positive achievements have been reported concerning pastures in Kyrgyzstan: The responsibility of managing pastures (85% of all land) is currently transferred to users’ associations based on the 2009 pasture law that constitutes a big step forward, transferring fundamental rights to the users. Herders groups can now have use rights for six months to allow for seasonal migration. Poor users need to be included in the management. Poor as well as women are represented on the boards. In general, it can be concluded that consistent systems for public land management have been developed in most C countries. The implementation may sometimes be hindered by illicit practices – especially in regard to privatization or leasing.

The extent to which land valuation has been introduced differs between the countries. Azerbaijan, for instance, has no land valuation yet. The discussion there focuses on mass valuation but there is no legal frame and no methodology so far. Ukraine did introduce land valuation and currently works with different systems for different purposes. In Kazakhstan the valuation system for agriculture land is based on a very rigid system of coefficients and complex factors. Some complained that the assessment approach is not very effective.

Spatial planning is extremely underdeveloped in most of the countries of this group. Answers on this question included “almost nothing”, “very poor”, “severely outdated – out of touch with current realities”, “ineffective”, “bureaucratic”, “top-down” and “corrupt”. There is, however, a significant difference in transparency. In regard to public participation Moldova leads: this is not only regulated by law but also very well implemented at central and local levels of government. In Kyrgyzstan, on the other hand, information on land use is not available to the public.

Land management is also poorly advanced. Most countries don’t have any approaches concerning land consolidation or land readjustment etc. The concept of land management is often not clear. When asked about land management, many answers focussed on agricultural land use and its regulation (agricultural land use planning).

The issuing of construction permits is very cumbersome and marked by corruption. Doing Business 2010 ranks Azerbaijan, Kazakhstan, Moldova, Russian Federation and Ukraine between rank 143 and 182, only Kyrgyzstan comes out better. However, even here it was reported that there are unclear rules for different permits. The recently introduced one-stop-shops (which may have resulted in a better rank in Doing Business) mainly resulted in a centralization of corruption. The procedure is still not transparent and the difficulties to apply for a permit have remained more or less the same.

3.3 Evaluation of D countries

Land governance in the three Central Asian countries, Tajikistan, Turkmenistan and Uzbekistan as well as in Belarus differs significantly from the situation in other CIS countries. First, private farmers only have use rights to the land and not ownership rights. Privately owned land shares do not exist apart from very small household plots. Farmers generally have use rights – in some countries based on a lease, in others on use rights certificates. Second, transparency and accountability are less marked than in B and C countries. The current systems are rooted in the previous Soviet system and have not been changed significantly. The same applies to the economic structure – especially in the three Central Asian countries: cotton production remained a key factor determining use and access to land in many parts of the region. Both, **access to land and use of land are state controlled** to a wide extent.

Table 10. Evaluation of D countries – CIS

	Legal frame	Rules and Procedures	Technology	Implementation
Property rights	+	+	+	+/-
Land registration	+	+	+	+/-
Public land management	-/+	-/+	-/+	-
Land valuation	+/-	+/-	+/-	+/-
Spatial planning	++/-	++/-	++/-	+/-
Land management	-	-	-	-
Construction permits and control	-	-	-	-

Individual property rights are very limited. Farmers' rights to use do not necessary imply the right to decide what to cultivate. In some countries, land use is defined by public (either state or regional) authorities. Recently, governments started to strengthen individual property rights slightly.

In the Republic of Belarus, the right to own land is very limited. The overwhelming majority of legal entities in Belarus hold land plots under lease. The rest of them have either permanent use rights or (very few) ownership rights to land plots. The Belarusian government does not sell land to private persons, only to companies. Foreigners or foreign companies cannot own property, but it is possible to indirectly own property as a foreigner in form of a co-owner of a local operating company with Belarusian status – usually a joint venture.

In Uzbekistan, all land is state owned. Kolkhozes and sovkhoses were transformed in cooperatives (shirkats) and family farms (dekhan farms), the farmland remaining state property. The land is leased for 30 to 50 years. Despite the openness and publicity of land allotment to farm households, transparency and management of the process are not always in line with the objective. If for some reason, a dekhan farmers (who has to be a shirkat member) decides to challenge his supervisor, he may lose his plot or he may be allocated a different lot in a less suitable location. However, dekhan farms are the only dynamic segment of Uzbek agriculture. They average about 0.17 ha and are limited by law to less than 0.35 ha each. They account for about 60% of total agricultural output and nearly 90% of the livestock output, produced on only about 11% of agricultural land. Since independence in 1991, the number of these farms increased from 2.3 to 4.3 million. Dekhan farmers have full freedom to grow whatever they want because they receive their plots for permanent use with the right to bequest. Since their shirkat income is small or non-existent, for most of them this is the only way to survive and hopefully generate some cash income. In addition, they compensate for the low income they receive from their shirkat by diverting inputs, fuel, and other services to their plots.

In Turkmenistan, more than 95% of the land is state owned. Agricultural land is generally leased for agricultural production. In rural areas, a plot close to the house of up to 0.16 ha can be owned by the proprietor of the house who is allowed to grow various plants and/or to keep cattle on it. This has been introduced recently. Registration was free of charge.

In Tajikistan, the state is the owner of the land as well. Farmers (individuals, families and groups), municipalities and collectives possess use rights. As the use right certificate is always in the man's name, women whose husbands left the country (mainly to work in Russia) often encounter problems when they need to prove their rights. Given the fact that 75% of farmers are women, this constitutes a major handicap for development. Until recently, even people who had land use rights could not decide on the use of the land but had to ask the local government. In theory in 2009, the freedom to farm was introduced giving farmers the right to

choose what to crop. The same resolution also provided for a land use right market, i.e. the land use rights are to become tradable. In practice, most farmers are still instructed what to grow (cotton!). Many depend on influential people (generally the president's relatives) who allocate land within their region for cotton production only. Possessing the monopoly for fertilizer as well, farmers start cultivation with debts that they generally can never get rid of. They generally pay for fertilizer etc. in kind (cotton). Hence, the "manager" receives cotton at very low price which he then sells on the (international) market. The issue is known as the "cotton debt". The debt is not on the people but on the land. People take the land with debt and put more debts on it. If they improve the quality of the soil, the land may be taken away from them in exchange for land with lower soil quality. The good land then remains with the manager of that land. Because of the debts, many farmers give back the land to the municipality and migrate to Russia to work there. This structure of cotton business in Tajikistan is a major barrier to land privatization. "If land would be privatized, people would stop growing cotton. This is not in the interest of those people currently benefiting from the cotton industry", according to one interview partner.

Similar to Turkmenistan, rural households in Tajikistan recently received so called presidential plots for subsistence agriculture – a reaction to the food shortage due to cotton monocultures. The introduction of these presidential plots in Tajikistan and the small private plots in Turkmenistan definitely represent two good practices. The major achievement is that people are free to choose what they grow on these plots.

Another good practice in Tajikistan concerning property rights is the third party arbitration to solve land disputes that has been introduced by DFID and taken over by a local NGO. It works very well in the case of symmetric conflicts (between farmers). However, in the case of asymmetric conflicts, farmers have no chance to win against the state.

There is no information available on FDI in agricultural land in D countries. Nor are land grabbing cases reported by international media or NGO.

Land registration: In Turkmenistan, the small private plots are registered. In Tajikistan, land use rights are registered. The government started to set up a land administration system some years ago. This enables rights holders today to trade their land use rights. If the government decides one day to introduce private ownership, the necessary land registration system would already be in place. For the moment, however, land administration in Tajikistan is rather slow and very corrupt. It also suffers from the fact that big plots are leased to many people based on one title only. In Belarus, there is a functioning real estate registration system in place which is mainly used to register buildings and apartments. The agency for the state registration examines the papers and causes the official state registration of the real estate – transaction. The service of the state agencies is rather cheap. Other actors involved are notaries and brokers who demand much more money. Land registration in Uzbekistan is very cumbersome involving a minimum of twelve visits to different institutions. The procedure has been ranked 133 in Doing Business 2010.

Land valuation is generally done in the form of soil quality assessment. In Uzbekistan, a coefficient is used combining soil quality with such factors as distance to market, kind of crops grown and type of irrigation infrastructure. The main purpose of this valuation of agricultural land is to determine the land tax rate (which is equivalent to the land lease fee).

In Turkmenistan and Tajikistan, spatial planning and land management needs to be seen in the context of a centrally planned economy focussing on mass production of a limited number of crops for export (cotton, wheat, rice etc.). Hence, planning and land management refers to

Soviet style agricultural land use planning that defines the outcome/production (in t) per area (e.g. district). Land use planning and land management in the Western sense do not exist.

The situation is completely different in Belarus. There, positive aspects of the Soviet spatial planning system have been combined with new ideas, approaches and methodologies. Today, Belarus has at its disposal a comprehensive spatial planning system based on extended legislation aiming at economic, ecologically and socially sustainable use of natural and territorial resources. Spatial planning is done at national, regional and local level.

In conclusion, although democracy is poorly developed, governance rather bad and corruption very much present, regulation of land use and access has been changed in the recent past introducing more rights to individuals. There is, however, a slight risk that changes remain on paper only. A typical reaction in Tajikistan by people when asked a question is: “officially or in reality?” From Uzbekistan the following was reported: “All of the laws, decrees, and resolutions have a single objective: to create favorable conditions for agriculture development and effective operation of family farms. However, somehow the laws and regulations lack a sufficient force to make a real difference. Laws and regulations are often ignored by local officials.” It remains to be observed to which degree the new Land Codes and land related laws will be implemented.

Box 5. Limited public awareness on Western European land management practices and institutions

In the evaluation report 2008 on the SIDA funded project “Development of Real Property Market in the Republic of Belarus” the following statement can be found (Sahlin/Kalyta 2008): *“According to the project proposal as well as SIDA’s decision memo, the project’s long-term or overall objective is “to facilitate the development of a real property market in Belarus through bridging the knowledge gap among civil servants and the general public in Western European land management practices, measures and the institutions that are necessary to establish in order to carry out the transition process”. In the regular project reports (covering July–Dec. 2006 and 2007 respectively) the overall objective has been modified. The aim to increase the knowledge among the general public is no longer part of the objective. No reasons are given for this important change. Regardless of the phrasing of the overall objective, very few activities have been conducted by the project in support of this objective.”*

3.4 People deprived of their rights

In Western CIS and Southern Caucasus countries, access to land is mainly regulated by financial means – formal as well as informal payments. Hence, disadvantaged groups are mainly pensioners and low-income groups. In addition, ethnic minorities, refugees and IDPs are often discriminated against.

In Central Asian countries, in addition to the above-mentioned groups, small farmers and women are extremely discriminated against when it comes to access to land. Discrimination against women has also been reported from Azerbaijan (see box 6).

From several Central Asian countries it has been reported that small farmers are extremely discriminated against. The government in Kazakhstan is discouraging the establishment of small individual farms (see 3.3). It was also reported that “the introduction of private property of agricultural lands has created favourable conditions for occurrence of oligarchs in the countryside. During privatization of agricultural land (distribution of land shares) the most fertile lands were provided to relatives of the heads of former kolkhozes and sovkhoses. Private property of agricultural lands became a powerful mechanism for the reception of super-profits. These oligarchs improved their financial positions not because of a successfully se-

lected policy in agriculture, but because of affinity to officials.” USAID (2007a) considered access to land and natural resources in Kazakhstan as the most unequal in the whole region (see fig. 4). In Tajikistan, small farmers depend on influential people who control all agricultural activities within their area. They define what has to be grown, they have the monopoly over fertilizers, and they have the access to the market. Several interview partners compared farmers’ situation there with the situation of slaves (see 3.3). One interview partner specified as follows: “This “slavery” occurs primarily in cotton production areas. High-ranking people in Tajikistan have a stake in the cotton business. Hence, they create a lot of dependency on cotton claiming that cotton brings a lot of state revenue. In reality, it’s mainly about individual gains for politicians.” Apart from politicians, some big farmers are also benefiting from the current situation. These are generally former heads of the kolkhozes. They are free to farm what they want, have access to education etc.

Box 6. Women’s land rights in Central Asia

From several Central Asian countries it has been reported that women experience discrimination in regard to access to land. The following examples from Kyrgyzstan and Tajikistan show that this is equally due to state regulations as it is due to tradition and custom.

Kyrgyzstan: “Numerous surveys and gender responsive reviews of laws of the Kyrgyz Republic demonstrate that almost all laws and regulations in the area of land and agrarian reform were adopted without conduction of gender review and were initially drafted without considering the gender issue. Traditional, social, cultural and economic barriers had been ignored. Yet some of such restraints include the following: (i) preference is given to the traditional law (adapt) applied in every-day life rather than to the national legislation on land, ownership and inheritance issues; (ii) limited awareness of women of their economic rights; (iii) lack of coordination among key institutions, agencies and stakeholders, responsible for implementation of land reform processes in these countries. Therefore, women rights are discriminated when they attempt to implement specific legal acts in practice. Examples: In case of divorces, women do not receive compensation for many years usually due to unwillingness of a former husband to pay such compensation or due to his insolvency. In such cases women cannot change the situation. They often leave their land plots with their husband, thus remaining without land and without compensation. It should also be noted that limited ownership rights prevent women from entering financial markets. Pursuant to the formed traditions women always need special permission of her husband to use assets, including land as a pledge to receive loan, whereas for men such permission is not mandatory.”

Tajikistan: Apart from discrimination based on custom – similar to Kyrgyzstan – women in Tajikistan do also suffer from discrimination in the law. As the use right certificate is always in the man’s name, women whose husbands left the country (mainly to work in Russia) often encounter problems when they need to prove their rights.

4. Conclusion

Different from other regions in the world, Eastern European countries can often look back at a long tradition of land administration and land management that existed long before the communist period. Hence, neither land market institutions nor governance principles are really something new or alien to these societies/cultures. In addition, they are located closely to Western European countries that partly have the same administrative or legal traditions and from whom they can easily learn how to modernize their institutions. In this context, the EU plays a very important role. EU influence comes in forms of guidance and funds and constitutes a major incentive for improvements. (Land) Governance is an issue in almost all Eastern European countries and many of them could already achieve major progress.

The situation is different for CIS countries. Whereas all Southern Caucasus and most Western CIS countries have followed a similar path to Eastern European countries, most Central Asian countries and Belarus continued for the most part the old system based on state ownership over land although they introduced certain mechanisms of a market economy. These countries, so far, are hardly in touch with (Western) European land administration and land management systems. Their standards are largely still those of the former Soviet Union. (Land) Governance – if at all an issue in these countries – is limited to good intentions/resolutions on paper only.

4.1 Evaluation of land market institutions in Eastern Europe

In all three country groups land tenure is regulated better than land use and development. Land value ranks in between. More specifically, we can observe that regulation of land tenure can be rated very good to good. Land value is ensured in a basic way, some countries performing better others not so well. Land use and development, however, is regulated in a very basic way and in many countries insufficiently.

Table 11. Evaluation of the land market in Eastern Europe

Land Tenure	<ul style="list-style-type: none"> • privatization, restitution... • land registration, cadastre • public land management 	Constituting the land market by securing legal rights
Land Value	<ul style="list-style-type: none"> • land valuation 	Supporting the land market
Land Use and Development	<ul style="list-style-type: none"> • spatial planning • land consolidation • land readjustment • land banking • permitting • land use control, sanctions 	Regulating the land market (providing for sustainable and efficient land use)

Legend: green: very good, yellow: basic/good, red: insufficient, yellow-green: countries ranging between very good and basic; orange: countries ranging between basic and insufficient.

In regards to access to land, the findings can be summarized as follows:

- Privatization/restitution is almost completed. Especially in C countries some compensation issues still remain unsolved.
- The management of condominiums remains a challenge. First, the maintenance of common areas has not always been regulated effectively. Second, in some countries ownership of the land is still not conclusively clarified.

- Most achievements are in the field of land registration (see table 8), A and most B countries being significantly ahead of C countries. In the majority of cases, improvements in technology are ahead of those in procedures.
- Current priorities still mostly concern the improvement of spatial data quality and land administration services.
- In some countries, institutional issues do not receive adequate attention yet – their national agencies being quite large bureaucratic administrations. The principle of self-financing agencies sometimes resulted in “little states within the state”. In other countries, they are efficiently functioning institutions. Hence, the problem is not the introduction of cost-recovery systems but the lack of state control over some of these agencies. There is a risk that they mainly serve the individual financial interests of the management board. The introduction of comprehensive e-services has already proven to be the best remedy against these practices and hence should be pushed in all countries. In addition, some countries should reconsider the extreme independent status given to the national real estate registration agency. From the legal perspective, considering that the registration of property is a legal act, land registration should institutionally be linked to the Ministry of Justice.
- Some countries are considering improvements in public land management.

Table 12. Land registration – the increasing strength of Eastern European countries

Country	Registering	Construction Permits	Country	Registering	Construction Permits
Georgia	2	7	Kosovo	68	176
Lithuania	4	64	Albania	70	173
Slovakia	11	56	Poland	88	163
Estonia	13	20	Romania	92	91
Bulgaria	46	119	Serbia	105	174
Latvia	58	78	Slovenia	108	59
Hungary	61	87	Croatia	109	144
Czech Rep.	62	76	Montenegro	131	160
Macedonia	63	138	B. a. H.	139	136

Source: Doing Business 2010

In regards to use and development of land, the findings can be summarized as follows:

- Spatial planning is a weak point in almost all countries. Many people are aware of it realizing that a realistic future-oriented zoning is an essential tool for sustainable land use. Still little is done to improve the situation
- There is a tremendous interest to learn more about land management (land readjustment and land consolidation).
- Land banking is gaining increasing interest but is still not known by many experts and decision makers. Where it has been introduced, it has been done in the form of a national land bank. In addition to this, there is also potential for land banking at the municipal level enabling municipalities to buy land as a reserve for future development or land consolidation projects as long as land prices are still low. This, however, requires a comprehensive decentralization of state land.
- There is a need for coordinated comprehensive land policies, especially in C and partly in B countries.

In conclusion, it can be stated that tenure security is constantly increasing resulting in very active construction work. However, due to the almost inexistent inasmuch as ineffective land

use and development control they do not necessarily contribute to sustainable development. Often construction destroys farmland, vineyards, olive groves, forests, biodiversity, natural and cultural landscapes, potential for tourism etc. A major lesson learnt from the transitional period in Eastern Europe is that land use and development should be regulated before privatization – not the other way round. In the Eastern part of Germany, all laws regulating land use had been in place before restitution took place because the laws of former Western Germany entered into force overnight with the reunification. And still, some years later we could observe an awful and unnecessary sprawl of commercial areas throughout the Southern part of the former East. The reason was that all municipalities prepared their municipal land use plans without any coordination between them and without guidance from a higher level. When regional planning was finally introduced, beautiful cultural landscapes had been lost already and farmland with very good soil quality had disappeared under bitumen of extremely oversized commercial areas that are still for the most part undeveloped today. Most municipalities also zoned extensive residential areas at their peripheries converting agricultural land into plots for one-family-houses, aiming to quickly solve the housing problem. It is evident that inner-city redevelopment would have taken longer and required more investments. But the result was the continuous lack of attractiveness of many inner-city residential areas and loss of good quality agricultural soils in peri-urban areas – a development far from being sustainable. Hence, having the law regulating land use in place in time is still not enough to avoid the loss of valuable soils and landscapes. It also requires the necessary administration with adequately trained staff and experienced decision-makers defending the public interests of current and future generations. Accordingly, there is ample need for land use regulations right from the beginning of the transition from planned economy to market economy and continuously during a market economy. Hence, the current neo-liberal approach or rather the *laissez-faire* attitude towards land development in many Eastern European countries should be reconsidered because of its lacking conformity or compatibility with sustainable development. After decades of centrally planned economies, the trend towards neo-liberal deregulation is reasonable and understandable. However, deregulation should not be mistaken for an absence of any regulation. Or as one interview partner formulated it: *“Is it really a result of a neo-liberal model of deregulation and privatisation or is there something else beneath the surface?”*

Photograph 5. Tenure security but no land use control – fragmentation and loss of agricultural lands



Photograph by the author

4.2 Evaluation of land market institutions in CIS

In all three country groups land tenure is regulated better than land use and development. Land value ranks in between. There is, however, a difference compared to Eastern European countries. In CIS countries, all three areas – land tenure, land value and land use and development – are less well regulated, especially in terms of governance, when compared to Eastern European countries. More specifically, we can observe that regulation of land tenure can be rated good to sufficient. Land value is ensured in an either basic or insufficient way. Land use and development is regulated in an insufficient way without exception.

Table 13. Evaluation of the land market in CIS

Land Tenure	<ul style="list-style-type: none"> • privatization, restitution... • land registration, cadastre • public land management 	Constituting the land market by securing legal rights
Land Value	<ul style="list-style-type: none"> • land valuation 	Supporting the land market
Land Use and Development	<ul style="list-style-type: none"> • spatial planning • land consolidation • land readjustment • land banking • permitting • land use control, sanctions 	Regulating the land market (providing for sustainable and efficient land use)

Legend: yellow: basic/good, orange: countries ranging between basic and insufficient, red: insufficient.

In regards to access to land, the findings can be summarized as follows:

- Private ownership has been introduced in B and C countries, however not in D countries. There, individual property rights remain restricted.
- Especially in D countries, small farmers are massively discriminated against and/or experience high degrees of dependency on influential people.
- In D countries more than elsewhere, privatization of land benefited mainly oligarchs.
- In B and C countries, individual property rights are better secured. Land registration systems are in place, although their effectiveness and efficiency varies.
- Land registration systems from all three country groups have been ranked among the top 20 in Doing Business 2010. Whereas the ranks adequately reflect the situation in Moldova, Armenia, Belarus and to a certain degree in Azerbaijan, they are questionable in respect to Kyrgyzstan. A one-stop-shop does not yet make a well functioning land registration system. On the other hand, Russia is ranked much lower although land registration offices there have significantly increased their transparency, accountability and efficiency some years ago.
- Public land management varies significantly between the three groups, being much more transparent and accountable in B and C than in D countries.

Table 14. Land registration in CIS countries

Country	Registering	Construction Permits	Country	Registering	Construction Permits
Armenia	5	72	Russian Federation	45	182
Azerbaijan	9	158	Tajikistan	78	177
Belarus	10	44	Uzbekistan	133	142
Moldova	17	161	Ukraine	141	181
Kyrgyzstan	19	40	Turkmenistan	no data	no data
Kazakhstan	31	143			

Source: Doing Business 2010

In regards to use of land, the findings can be summarized as follows:

- Spatial planning and land management in a Western sense aiming at long-term sustainable land use are extremely limited in all CIS countries. In B and C countries, they are more or less absent or outdated or corrupt. In D countries (apart from Belarus), people have a different understanding of land management and land use planning. In their context, these terms are linked to agricultural land use planning by public authorities.
- As average privatisation and restitution levels regarding individual farms are rather low in CIS countries and much lower than in Eastern European countries, land fragmentation is very moderate. Especially in Central Asia where agricultural structure is still based on kolkhozs (although farmers may dispose of individual shares) fields are extremely large. The only CIS countries that are affected by land fragmentation are Armenia, Azerbaijan and Moldova where land privatization has been done by distribution. Land fragmentation is particularly marked in Moldova where spouses received separate lands.
- The limited regulation of land use results in misuse and overuse of agricultural land and pastures in Central Asia. Agricultural land suffers from soil salination, desertification, soil and water pollution etc. Pastures suffer from overgrazing close to settlements. After the privatization of livestock, most services in remote areas, such as water and food supply, disappeared resulting in an accumulation of herds around settlements where these services are available. Suboptimal regulation of access to pastures may be another reason for the concentration of herds around settlements. The introduction of temporary use rights to seasonal pastures being currently discussed may improve the situation. As a positive effect, many pastures in remote areas recovered from overuse during the last years.

In conclusion, it can be said that so far reforms mainly focussed on access to land allowing for increasing individual property rights – in one way or another. Land use and development is still under-regulated. Both – the regulation of access to land and use of land – are marked by a lack of transparency, accountability, equity and efficiency. The situation is better in B and C countries than in D countries, but corruption represents a major handicap to (land) development in all three country groups.

Photographs 6. Pasture and cotton field in Kyrgyz Republic



Photographs by Rural Development Fund, Kyrgyz Republic

4.3 Evaluation of governance criteria regarding land market institutions in Eastern Europe and CIS

In regard to the (land) governance situation in Eastern Europe and CIS, it needs to be pointed out that it is constantly improving; at least in A, B and C countries. A countries are performing very well in governance. Only in regards to public participation could some more efforts be made. Decentralization respective subsidiarity is also limited but this is mainly due to the limited size of the two Baltic countries. B countries perform more or less well. There is some scope of improvement in most fields. C countries, however, still struggle with the institutionalization of democratic principles resulting in weak (land) governance. Here, a distinction needs to be made between Balkan and CIS countries that are in this group. In the Balkan countries, the post-war situation clearly delayed and partly still delays advancements in this field. Reasons for weak (land) governance in Western CIS and Central Asia are more related to the political systems respectively to the power structures. The same applies to D countries where governance is weak in every aspect.

Table 15. Evaluation of governance criteria in Eastern Europe and CIS

Governance criteria	Average situation in countries of group			
	A	B	C	D
Efficiency	Green	Yellow	Red	Red
Effectiveness	Green	Yellow	Red	Red
Subsidiarity	Yellow	Green	Yellow	Red
Transparency	Green	Yellow-green	Orange	Red
Accountability, integrity	Green	Yellow-green	Orange	Red
Autonomy, depoliticization	Green	Yellow-green	Orange	Red
Public participation	Yellow	Yellow	Orange	Red
Equity, fairness, impartiality	Green	Yellow-green	Orange	Red
Legal security & rule of law	Green	Yellow-green	Orange	Red

Legend: green: very good, yellow: basic/good, red: insufficient, yellow-green: countries ranging between very good and basic; orange: countries ranging between basic and insufficient.

Unlike the results of this study, Transparency International (TI) considers corruption in land matters to be very high in almost all Eastern European and CIS countries. The Global Corruption Barometer (GCB) includes two questions on corruption in the land sector:

- a) How serious do you think the problem of bribes being paid to land authorities to obtain favourable decisions is in this country?
- b) How serious do you think the problem of grand or political corruption is in land matters in this country?

People can reply on a scale from 1 (not a problem at all) to 5 (very serious problem). If we look at those who considered corruption in the land sector to be a serious or very serious problem in their country (marking 4 or 5), we receive the following results:

- Between 42% and 77% of the people asked consider bribes being paid to land authorities in their country to obtain favourable decisions a serious or very serious problem. In most of the countries the percentage lies between 60% and 70%.
- Between 49% and 88% of the people asked think that grand or political corruption in land matters is a problem in their country. In most of the countries the percentage lies between 60% and 80%.

In the GCB 2009, six Eastern European EU countries (Bulgaria, Czech Republic, Hungary, Lithuania, Poland, and Romania), five Balkan countries (Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, and Serbia) and six CIS countries (Armenia, Azerbaijan, Belarus, Moldova, Russia, and Ukraine) have been included.¹ There are no significant differences between the three regions nor between the four country categories of this study (A, B, C, and D). A reason might be that in more advanced countries the population is more sensitized and accepts less corruption than the population of countries where corruption is the rule. The willingness or courage to reply honestly to the questions may also vary due to various reasons. Hence, the data from TI GCB should be interpreted with caution. A direct comparison between different countries cannot be made. Still, the results from the GCB survey indicate two main issues:

- Administrative (petty) as well political (grand) corruption in regards to land matters is considered to be a serious problem in all countries tackled by this study and TI GCB.
- In all 17 countries, grand corruption is considered to be more serious than petty corruption.

The second finding – that grand corruption is considered to be more serious than petty corruption – corresponds to the results of this study. Administrative corruption has decreased in many countries – mainly due to improved land registration systems (issuing building permits remaining a quite corrupt sector). However, little to nothing (depending on the country) has been done to reduce political corruption. This trend, however, is not specific to Eastern Europe and CIS. Whereas the number of good practices to reduce petty corruption in land administration and management is increasing globally, good practices on the reduction of grand corruption remain rare.

¹ In addition, Georgia has been included. However, the results from Georgia have not been considered in the context of this study because of data inaccuracy. More than 40% of the respondents did not answer these two questions.

5. Recommendations

Quite a number of issues have been addressed in this paper. In the following, only the key issues are listed that should be tackled urgently.

Focus in Eastern European countries should be given to:

- Comprehensive land policies;
- Spatial Data Infrastructure and data collection systems to allow for monitoring land use and improving land management (B+C);
- Completion of cadastres and registration systems, incl. one-stop-shops and e-services (B+C);
- Institutional reform in land administration (C);
- Management of public land;
- Spatial planning. This requires the introduction of a comprehensive planning system reaching from the national to the neighbourhood level as well as modern land use planning tools;
- Land management tools such as land banking, land readjustment and land consolidation;
- Dealing with informal construction/settlements making a difference between those people who had no choice to construct illegally (implementing the Vienna Declaration on Informal Settlements in South Eastern Europe from 2004) and those who had and avoiding incentives for future illegal developments;
- Land valuation (C) – ensuring that land valuation is done according to the same (international) standards by everybody licensed to do so;
- Maintenance of condominiums – establishment of comprehensive laws on apartment ownership and financial support to poor people for the maintenance of common areas during a transitional period (e.g. for another 10 years) until most apartments will have been transferred at the market and market mechanisms will ensure that owners have sufficient financial means for the maintenance of the buildings.
- Improving access to land and tenure security for Roma and other vulnerable groups.
- Internalization and institutionalization of good governance principles and practices (C);
- Reconsidering current (extreme) neo-liberal approaches, especially in regard to their lacking compatibility with sustainable development.

Focus in CIS countries should be given to:

- Fighting corruption.
- Liberation of land administration and management from political influence and control.
- Development of visions, strategies and clear concepts in the field of land governance that derive from participatory processes and that are prepared to be implemented and not to just remain on paper.
- Introduction of new tools to regulate the use of land that can respond to the challenges of market economies.
- Capacity development and public awareness rising in all fields of land governance.

A final remark:

When this paper was finalized, the regional consultation meeting on the voluntary guidelines on responsible governance of tenure of land and other natural resources had already taken place. In general, the issues highlighted in this paper have been confirmed. The results from that meeting that took place in March 2010 in Bucharest have been summarized in the regional assessment for Europe which is available on the following website:

<http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

The regional meeting for the CIS countries is currently scheduled for October 2010. That regional assessment will then also be available on the same website.

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- UN-ECE Country Profiles on Housing Sector : www.unece.org/hlm/prgm/cph/welcome.html
- UN-ECE Working Party on Land Administration (WPLA): Land Administration Reviews: www.unece.org/hlm/wpla/lar.htm
- World Bank – Doing Business Report: <http://www.doingbusiness.org/>

Annexe A1

Guiding Questions for Interviews:

The following questions have been discussed with different interview partners according to their specification. Hence, for each interview partner, a specific set of questions was identified before the interview.

Each group of questions, apart from A, is linked to one of the working groups foreseen in the conference.

A) General Questions

1. What are currently the key problems, obstacles, shortcomings and challenges in land tenure, land administration, land management, urban/regional planning and state land management?
2. Are any groups deprived of their rights, suffer from certain injustices or are disadvantaged due to their gender, age, ethnicity, social or socio-economic status or due to being a refugee or internally displaced person (IDP)? [If so, please elaborate briefly.]
3. Do any groups receive irregular benefits? What kind? How? What is done to stop it? [Could you provide an example?]
4. Please list the most common and/or most serious land conflicts in your country.
5. Is there a code of conduct for politicians, public officials, private professionals and/or judges? If so, is it effective? How does it work?
6. Which major improvements could be achieved in the last 10 years?
7. Do you know of any good practices of land governance in your country? [If so, please elaborate briefly.]
8. What are the priorities for the next 5 years to improve governance in land tenure and land administration in your country?
9. How do media (TV, radio, newspapers, internet etc.) inform/report about good and bad land governance practices?
 - Which media regularly report about land governance?
 - What have been recent topics related to land tenure and land administration that have been discussed in the media?

B) Access to land and land tenure

1. How did the land ownership structure change since the beginning of the transition? What are current/future trends? Which groups of people – if any – are disadvantaged?
2. In the course of privatization (restitution), what problems have been encountered? How have they been tackled? Have there been any irregularities? How have they been prevented or dealt with?
3. What type of problems do poor people, old people, women, ethnic minorities, refugees and/or internally displaced people encounter in regards to access to land (ownership)?
4. Which different types of bodies exist to resolve land disputes (e.g. courts, special land courts, technical commissions, mediation, other alternative dispute resolution (ADR))? How are the different bodies interlinked?
5. What is the percentage of public property vs. private property vs. common property?
6. What is the percentage of female landowners in comparison to male land owners?
7. Is there any evidence of corruption in court decisions with respect to land disputes? If so, what is the government doing about it?

C) Land administration and state land management

1. Is information on properties and land ownership available to the public? How? To what extent can information be found on the web?
2. Do the land records cover all social groups and all geographical areas?
3. How long does it take to register a property (duration and steps)?
4. How many agencies/institutions are involved in the same transaction – in the case of a) private property and b) state property? Does one-stop-shop work?
5. In the case of a dual system: how are data synchronized between land register and cadastre?
6. How much does it cost to register a property (formal and informal payments)?
7. Are the registered rights protected under the law?
8. How good are quality and up-to-dateness of the data? Do data cover the whole country or only parts of it? Was there a one-time-data-collection or are data constantly updated? If so, how?
9. What is the degree of computerization?
10. Is there a front-office/back-office separation?
11. Are there clear and appropriate service standards? Are these standards easily known to the public/clients? Is their application regularly monitored?
12. Are any tasks outsourced to private sector (e.g. surveying, mapping, establishing of GIS data banks etc.) and how are standards monitored in this case?
13. Has a land administration clients' survey ever been done? If so, are the results available? How have they been used? Are there regular surveys?
14. Are there complaints mechanisms available for land administration clients?
15. Has there ever been any corruption in the land administration? What has been done to stop it?
16. Is there retaliation against whistle-blowers or are they protected?
17. How is state land administered (centrally, decentralized, by one or several ministries etc.)? Are there clear, fair and transparent rules for state land management?
18. Is there a state land inventory? How does it function? Is it available to the public?
19. Does the government have clear, transparent and well-functioning procedures for disposing state land, including mechanisms for control and sanction?
20. Is there any evidence of state land being illegally allocated?
21. Are there public displays in case of boundary demarcation, adjudication or systematic registration (e.g. in case of legalization of informal settlements)?
22. Are affected people involved in demarcation, adjudication, land use and resettlement planning?

D) Land markets and land valuation

1. What irregularities and/or forms of corruption occur in the land market?
2. What is done to avoid these irregularities and/or corruption?
3. For which purpose, on which basis and how often is land valued?
4. How strongly are banks, insurance agencies, real estate agencies, consultant services etc. are involved in land valuation? Do they apply standardized methods? How do results differ?
5. To what degree have international standards of valuation been adopted?
6. What kind of appeals system is in place for appeals against valuation?

E) Land use planning

1. Does land use planning exist in a) urban areas, b) rural areas?
2. Is an adequate law on land use planning (urban/regional planning) in place? Since when?
3. How well is the law implemented? What are major constraints to its implementation?
4. What kinds of land use plans are prepared/used at national, regional, local, neighbourhood level? How is the planning at different levels interlinked?
5. Who is responsible for the elaboration, implementation and control of land use plans at different levels?
6. Has land use planning been decentralized? To what extent?
7. How are stakeholders a) different public institutions, b) the public/the population involved in land use planning?
8. Do higher levels approve plans?
9. Is it possible to contest against approved plans? If so, how?
10. How is private property on one hand and public interest on the other weighted? How does compensation take place?
11. What is done to ensure that land use planning always balances between individual and national economic benefits, social development and environmental sustainability?
12. Have there been cases where land use planning was exploited by influential people resulting in land use plans and/or land uses that are not for the benefit of society but only for the benefit of an individual? [If so, please give examples]

F) Gender, ethnic minorities, indigenous people, IDPs, refugees, vulnerable groups

1. What are typical land disputes that only or mainly affect one or several of these groups or people? How are they addressed?
2. Are these people organized? If so, how?
3. How do the media report about the affected peoples claims/rights?
4. Are all stakeholders equally represented in the land policy paper and/or land related laws? To what degree have the above-mentioned groups been involved or represented in the land policy formulation process?
5. To what degree do these “minorities” participate in restitution/redistribution, land use planning, land readjustment, land consolidation etc.?
6. Do all people have equal access to the courts or other land dispute resolution bodies?

Short questionnaire for national decision-makers in Eastern Europe

1. What are currently the key problems, obstacles, shortcomings and challenges concerning
 - land tenure (access to land)?
 - land administration (cadastre/land registry)?
 - state land management?
 - urban/regional planning?
 - other land management measures?[You may consider the legal base and its implementation separately.]
2. Are any groups deprived of their rights, suffer from certain injustices or are disadvantaged due to their gender, age, ethnicity, social or socio-economic status or due to being a refugee or internally displaced person (IDP)? [If so, please elaborate briefly.]
3. Do any groups receive irregular benefits? What kind? How? What is done to stop it? [Could you provide an example?]
4. Please list the most common and/or most serious land conflicts in your country.
5. Is there a code of conduct for politicians, public officials, private professionals and/or judges? If so, is it effective? How does it work?

6. Which major improvements concerning land governance could be achieved in the last 10 years? [Please address land administration, state land management and spatial planning separately.]
7. Do you know of any good practices of land governance in your country? [If so, please elaborate briefly.]
8. What are the priorities for the next 5 years to improve governance in land tenure, land administration, state land management and spatial planning in your country?
9. What is the influence of the EU on land governance? How has EU in the past influenced land governance in your country? What are current challenges?
10. How do media (TV, radio, newspapers, internet etc.) inform/report about good and bad land governance practices? Which media regularly report about land governance? What have been recent topics related to land tenure and land administration that have been discussed in the media?

Short questionnaire for national decision-makers/experts in CIS

1. Could you please provide an overview on land ownership in your country?
 - State land: _____%
 - Municipal land: _____%
 - Collectively owned land: _____%
 - Privately owned land: _____%
 - Other types of ownership (please specify): _____ : _____%
 2. How did the ownership structure concerning land change during the last 20 years?
 3. What are currently the key problems, obstacles, shortcomings and challenges concerning:
 - land tenure (access to land: land reform, privatization, lease market, rental market sales market etc.)?
 - land administration (cadastre/land registry)?
 - state land management?
 - land valuation?
 - spatial planning (urban land use planning, regional land use planning)?
 - other land management measures (such as land consolidation, land readjustment or land banking)?
- [You may consider the legal base and its implementation separately.]
4. How does agricultural production influence or determine access to and use of land?
 5. How do foreign direct investments (FDI) influence use of land and access to land?
 6. How much land is under foreign ownership?
 - a) _____% of total land, b) _____% of agricultural land, c) _____% of mining areas.
 7. Are any groups deprived of their rights, suffer from certain injustices or are disadvantaged due to their gender, age, ethnicity, social or socio-economic status or due to being a refugee or internally displaced person (IDP)? [If so, please elaborate briefly.]
 8. Through which means can women have access to land? What are their rights over these parcels?
 9. Do any groups receive irregular benefits? What kind? How? What is done to stop it? [Could you provide an example?]
 10. Please list the most common and/or most serious land conflicts in your country.
 11. To what extent are international standards applied/respected in land administration and management? Please, list all relevant international standards applied in your country.
 12. Is there a code of conduct for politicians, public officials, private professionals and/or judges? If so, is it effective? How does it work?

13. Which major improvements concerning land governance could be achieved within the last 10 years? [Please address land administration, state land management and spatial planning separately.]
14. Do you know of any good practices of land governance in your country? [If so, please elaborate briefly.]
15. What are the priorities for the next 5 years to improve governance in land tenure, land administration, state land management and spatial planning in your country?
16. How do media (TV, radio, newspapers, internet etc.) inform/report about good and bad land governance practices?
 - Which media regularly report about land governance?
 - What have been recent topics related to land tenure and land administration that have been discussed in the media?

Questions for international experts familiar with the region

1. How would you describe the overall governance situation in regard to land tenure, land market, land administration, state land management and land use planning in Eastern Europe and/or CIS states?
2. What currently are the key problems/challenges in land tenure, land administration, land management and state land management?
3. Which problems, obstacles, shortcomings and challenges would you consider to be very specific or very typical for Eastern Europe occurring primarily in this region?
4. Are any groups deprived of their rights, suffer from certain injustices or are disadvantaged due to their gender, age, ethnicity, refugee-, IDP-, social or socio-economic status? [If so, please elaborate.]
5. Do any groups receive irregular benefits? What kind? How? What is done to stop it? [Could you provide an example?]
6. What major improvements could be achieved in the last 10 years?
7. Do you know of any good practice in land governance?
8. What are the priorities for the next 5 years to improve governance in land tenure and land administration – either for the (sub)region or for individual countries?
9. Do you have or are you aware of any documents (reports, studies, statistics etc.) or websites on governance of land tenure in Eastern Europe?