UKRAINE:

THE CONTINUING DILEMMA OF LAND RIGHTS OF THE PEOPLE

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FAO LEGAL PAPERS ONLINE #25

February 2002

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Ukraine: The Continuing Dilemma of Land Rights of the People

By William Valletta and Volodimir Nosick*

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Summary

After 12 years of reform activity, Ukraine has created a system of land law in which elements of civil law and market mechanisms exist parallel to elements of the former Soviet law and administration. This structure should not be understood as an incomplete transition toward a full system of civil law and markets, but rather, as a deliberate attempt to create an integrated system in which the rights of citizens and juridical persons are balanced with strong social and environmental obligations.

The integrated structure of land law is defined in the Constitution of Ukraine of 1996, which describes the nation's land as the "object of ownership of the Ukrainian people" and as the "national wealth." These principles set a higher-level framework under which there are placed subordinate principles of the state, citizens and juridical persons as owners and users of tracts and parcels of land. The state is given the power to "exercise" the rights of the people as owners of the nation's land, and citizens are each guaranteed the right to make use of land and resources, sufficient to satisfy their needs.

The practical application of these Constitutional principles, in legislation and administration, has resulted in a land system with three major features:

- Using methods of planning and measurement (zemleystroistvo), all land is classified in terms of its potential for use, based on natural characteristics , location and societal needs. Each major category of land has a different mix of rights of possession and disposition and a different set of obligations and limitations of its use.
- The state maintains a broad system of management under the concept of the "land fund." The state monitors and guides the use of land and enforces regulations and restrictions in order to insure environmental and social protection and fulfil economic policies.
- The rights of ownership, or possession and use, associated with some categories of land, can be purchased and sold, exchanged, granted by gift or bequest, mortgaged and leased by citizens and juridical persons in a "regulated market." The state sets the procedures and standards for these transactions and it intervenes as a parallel market participant and a third-party in transactions, in order to prevent speculation, price distortion and other abuses.

Within this framework, Ukraine has carried out land reform activity, inventorying the landholdings of all citizens, enterprises and organizations and transforming their former administrative grants of possession and use into new forms of ownership, use and leasehold. The state has also carried out large-scale programs, allocating small land holdings to citizens. In 2001, over 22 million citizens possess subsistence farm plots, gardens, house and recreation plots; and 6.5 million rural workers possess land shares to agricultural land in common ownership. Industrial, trade and other enterprises have transformed their land holdings into leaseholds -- about 47,000 and ownership -- about 3,000.

Further reform activity is underway to transform the agricultural land shares from "abstract" units of common ownership to ownership of land parcels, defined "in nature." The new land parcels may be withdrawn from the large farms and re-consolidated, by lease, into smaller scale independent farms and re-organized co-operative or joint stock farms.

Although the reform efforts have resulted in large numbers of independent land owners, users and lessees, the incomplete definition of these institutions under the civil law and their varying meanings in the different categories of land have created complexity and uncertainty. Instead of achieving an effective balance of state management and private

initiative, Ukraine has, so far, achieved only a structure of contradictory elements of civil law and administrative-command. State and municipal agencies continue to intervene as discretionary "deal-makers" rather than disciplined regulators; land tenure is not secure and real property mortgages cannot exist. Productive investment, construction and improvement of land remain at very low levels.

Thus, although Ukraine's unique Constitutional formula of balanced rights and responsibilities in land can, in theory, lead to a strong and harmonious system of land relations, in practice Ukraine has not yet found the right balance of elements to achieve its goal.

Introduction

Since 1991, Ukraine has carried forward land reform by gradually introducing elements of civil law and market relations into its system of state management of land resources. Its purpose has been to create a balanced system in which efficient, self-motivated activity of citizens and enterprises will take place compatibly with state-controlled investment and production and strong regulation. As a central part of this system, Ukraine has sought to develop a concept of land ownership, in which the rights of possession, use and disposition of land are integrated with obligations of environmental and social protection.

Most "western" analysts have described the process of land reform in Ukraine as a transition in which administrative-command relations are to be replaced fully with market relations and civil law. However, this appears to be a mistaken understanding of the Constitution, land and property laws, decrees and policies. A careful reading of this record and of the practical process of land reform shows a more complex picture. Ukraine has adopted a unique formulation of Constitutional and legal principles, which appear in its Constitution of 1996 as a dual-level, balanced structure of land ownership and control. At a higher level, the nation's land and natural resources are described as "objects of the right of ownership of the people" and land is defined as the "national wealth." The ownership right of the people is to be "exercised" by the state and citizens have a guaranteed right to "use" the land and other resources. At a subordinate level, the state (municipalities), citizens and legal persons can acquire ownership of tracts and parcels of land and their rights of ownership are subject to equal protection under the law.

This article is an attempt to clarify the meaning of the Constitutional formulation and to assess within it the progress and potential of Ukraine's land reform, as well as the significance of the new Land Code, which was adopted in October of 2001 and took effect on January 1, 2002. Up till now, the analyses of Ukraine's experience have split into two categories, with "western" analysts measuring indicators of "privatization" and Ukraine's own land professionals maintaining the Soviet methods of numerical weighting of natural and location characteristics and land output capacities. To determine whether the Constitutional mandate is being fulfilled requires new methods of measurement and interpretation.

Ukraine's progress in achieving its unique vision of land as the "ownership of the people" and the "national wealth" has global significance. Many nations are trying to achieve the economic efficiencies of "western" market relations without the adversarial tensions between rights of property, on the one side, and the interests of the state, society and the environment, on the other. Ukraine's experiment could point the way to more rational and harmonious relations in the use and control of land. This article will show that the ideal vision has not yet been achieved in practice, but it will note some favorable, as well as unfavorable, indicators.

Part 1. The Dual-level, Balanced Structure of Land Relations

The Constitution of Ukraine of 1996 makes reference to land and land relations in Articles 13 and 14, and it contains other provisions defining the rights and obligations of citizens, juridical persons and the state as owners and users of all types of property.[1] Article 13 describes land as one of several objects of natural resources:

> The land, its mineral wealth, atmosphere, water and other natural resources within the territory of Ukraine … are objects of the right of ownership of the Ukrainian people.
> Ownership rights on behalf of the Ukrainian people are exercised by bodies of state power and local self-government within the limits determined by the Constitution.
> Every citizen has the right to make use of the natural objects of the peoples' right of ownership in accordance with the law.
> Ownership entails responsibility. [Property] ownership shall not be used to the detriment of [another] person or society.
> The State ensures the protection of the rights of all subjects of the right of ownership and economic management and the social orientation of the economy.
> All subjects of the right of ownership are equal before the law.

Article 14 defines the rights related to land specifically:

> Land is the fundamental national wealth that is under special state protection.
> The right of ownership in land is guaranteed.
> The right [of ownership] is acquired and realized by citizens, legal persons and the State, strictly in accordance with the law.

Taken together, Articles 13 and 14 embody nine different principles, which are derived from three sources -- Soviet law and theory, the reform concepts of "perestroika," and traditional civil law. By mixing these principles together, the fundamental concept of an integrated and balanced system has been created.

Both Article 13 and Article 14 are structured in the same way. Each begins with an opening clause in which a higher-level principle is stated. In Article 13, this is the statement that land and other resources are "objects of the right of ownership of the people of Ukraine." In Article 14, it is the statement that land is the "fundamental national wealth under special state protection." The additional clauses in each Article express the ways in which citizens, juridical persons and the state will possess and carry out rights and obligations subordinate to the two primary principles. To understand the meaning of these Constitutional clauses, it is helpful to review the history of Soviet land relations and the reform ideas that were prevalent in the period of "perestroika" (1987-1991) and in the first period of independence (1991-1996).

At the beginning of the Communist era, ownership of land was abolished in accordance with Lenin's statement that land was an integral part of nature and the essential base on which all human activities -- production and daily life -- had to be located. Land could not be subdivided and kept under the control of self-motivated individuals or institutions, because they would over-exploit its natural properties and force laborers to pay maximum rent to occupy the land they needed. Under early Communism, therefore, land in each territory was defined as the commonwealth of the workers, to be allocated and administered by the responsible Soviet in the peoples' name. The law recognized no one as owner of the land and, consequently, all questions of occupation and use were answered by

other economic, social or administrative relationships. For example, each collective work unit, given its order to produce a certain amount of product, received an amount of land, which was calculated by scientific planning to be suitable for accomplishing the production goal.

Over time, it became clear that the system of undefined legal land relations, overseen by Soviets at all levels, failed to insure discipline and effective administration. Therefore, the 1936 Constitution of the Soviet Union revived the legal institution of land "ownership" and vested it exclusively in the state. This gave the central agencies control over territories, tracts and parcels and it fixed, as legal relations, the subordinate processes of allocating land by "right of use" to collectives, enterprises, organizations and individuals.

State ownership and central planning also turned out, over time, to provide an inadequate basis for rational use and efficient management of land. During the perestroika era (1987-1991), concepts of civil law property were introduced with the purpose of breaking the monopoly control of the central bureaucracies over land and resources and over the process of economic production. Individuals and enterprises were to take greater responsibility for the management and improvement of land and the soviets of the constituent republics and their subdivisions were to oversee the use of the "stocks" of land and resources within their regions. These ideas were expressed as the "ownership of the people" and as the "national wealth" in several of the fundamental laws of the perestroika era.[2]

The perestroika-era commentators described the formulation of "ownership of the people" as a return to a more accurate interpretation of Lenin's principle that control of land must be exercised by the persons with responsibility to work and care for it. In the last months of the Union, the soviets and their technical bureaus at republic, regional and local levels were replacing the central ministries as the agencies allocating land and setting the terms and conditions for its use. By the time of national independence in August 1991, the principle of land in the ownership of the people of the territory of Ukraine was already established and institutions for republic, regional and local level administration of land were in their formative stages.

In a similar way, the idea of land as the "national wealth" made clear the status of the state of Ukraine as the successor to the Soviet Union, in control of the territory and land resources within its new borders. This concept provided justification for the regime of "special state protection." In Ukraine, particularly among the post-Soviet states, the land was, in fact, the basis of national wealth. Its many regions of rich soil and ample rain made Ukraine one of the leading producers of food in the world. The protection of the land as a resource for agriculture would be a major priority of society and the state.

The history of Soviet law and perestroika concepts helps to illustrate the meaning of the subordinate principles found in Article 13 of the Ukrainian Constitution. Foremost among these principles is the idea that the state "exercises" the ownership rights of the people.

In Soviet times, property relations were defined in a hierarchy of three forms. State ownership was at the top, with the strongest status under the law. Collective ownership (by groups of workers less than the whole people) was a preferred but lower form, expected gradually to move toward the higher level of state ownership. Personal ownership was an inferior form, expected to wither away as Communism evolved. It was tolerated with respect to household objects, but had no role in the process of production. It could not apply to any object potentially useful for industry, trade or farming. During perestroika, the hierarchy was abolished and economic producers -- individuals, collectives and enterprises -- were

recognized as having property rights, defined in the civil law and exercised independently of the state.

In the new system, the state no longer holds exclusive or superior ownership of objects but holds rights along with individuals, collectives and legal persons. The form and extent of its rights are subject to definition in the Constitution and the laws. With respect to the land and natural resources, covered by Article 13, the state (municipal) agencies are not owners with equal rights, interacting with equivalent non-state owners. Instead, they are agents given authority to "exercise" the rights of ownership of the people in these resources. What this appears to mean is that -- unlike private parties -- the state (municipal) agencies cannot be self-motivated in making decisions about the possession, use and disposition of land. Instead they must act in the public interest and must subject their decisions to public participation and public scrutiny. For example, the law On Ownership of 1991 contains the following clause in its Article 10:

> The people of Ukraine -- as the exclusive source of state power -- are entitled to decide on the matters concerning the legal status, use and protection of natural objects by a referendum in the republic.

Article 10 continues with a series of clauses, which describe the right of citizens to participate "personally or via social organizations, work collectives or the organs of territorial self-government" in making decisions on the matters concerning the use and protection of natural resources.

Parallel to the right of the state to "exercise" the peoples' rights in land and natural resources in Article 13 of the Constitution, individual citizens are recognized as having the right "to make use of" objects of land and natural resources. This phrase appears to have two aspects.

First, it is a rejection of the former system in which state ownership resulted in purely administrative allocation of land and resources. No longer can the state bureaucracy simply issue orders granting and withdrawing objects necessary for production and daily life. Citizens may seek these through legally defined procedures and civil law transactions and, once acquired, they may apply to the courts and other enforcement and mediation services to protect their possession and use from interference and injury by others. Again, Article 10 of the law On Ownership of 1991 helps to illustrate the meaning. It provides that each citizen has the right " to expect from other citizens and organizations the respect for natural exploitation and ecological safety rules and to demand the prohibition of the activities of companies, institutions, organizations and citizens causing damage to the natural environment." Balanced against this right is the obligation of each citizen, "to protect the land … and other natural resources and to enhance their re-generation as the primary basis of life and the existence of society."

Second, the principle of the citizen's right to use land and natural resources embodies a principle of distributive justice. Since the land and natural resources constitute the basis for all human productive activity, they cannot be monopolized, either by state agencies, by individuals or by enterprises. All citizens must have the opportunity to occupy and possess some portion of these resources to support themselves and to carry out productive activity.

The balance expressed in Article 13, between the state's power to "exercise" ownership rights of the people and the citizen's right to "use" the land and natural resources, appears a second time in Article 14. Here the right to own land is recognized for three categories of "subjects" -- the state (including municipalities), citizens and juridical persons.

These subjects of the right of ownership are equal before the law, and they are guaranteed protection of their rights, consistently with the "social orientation of the economy."

Article 14 expresses the key idea that, within the right of ownership itself, there are corresponding obligations. In Ukraine, under no circumstances, is the right of ownership of land to be considered "absolute," as the Code Napoleon defined this right. All owners in Ukraine bear obligations to protect the environment, society and the rights of other individuals. These arise, not out of a separate, balancing power of the state, but are inherent in the concept of ownership itself. Thus, Ukraine distinguishes its definition of "ownership" from that of "western" civil and common law jurisdictions.

The mix of principles within Articles 13 and 14 of the Constitution add up to the structure of balanced rights and obligations and balanced state/private land relations. In creating this structure, Ukraine follows the pattern of other post-Soviet states, which similarly have sought to retain elements of the former Soviet land system integrated with new elements of civil law and market relations. Ukraine's constitutional formulation is unique, however, in containing the principle of the state as the agent, which "exercises" the rights of the people. In other former Soviet republics the "rights" of the state are expressed more strongly and do not appear to be subordinate to higher principles of rights of the people.

Part 2. Application of the Constitutional Principles in Legislation

The concepts of the Constitution of Ukraine have their practical realization in a three-part structure of land law and administration, defined in the Land Code and other laws.[3] First, all land is subject to classification in terms of its potential for use, based on natural features, location and societal needs. Each category of land has a different mix of rights of possession and disposition and a different set of obligations and limitations of its use. Second, the state maintains a broad system of management under the concept of the “land fund.” Through planning, methodologies of land measurement and arrangement (called “zemleystroistvo”) and the land cadaster, the state is to monitor and guide land use and enforce restrictions in order to insure environmental and social protection and fulfil economic policies. Third, there will be developed a "regulated market," in which physical and juridical persons may acquire and dispose of land in response to their own needs, while the state sets the procedures and standards for transactions. The state also will intervene as a parallel market participant and a third party in private transactions, in order to prevent speculation, price distortion and other abuses. It is within this three-part framework that the evolution of land legislation, policy and the programs of land reform have taken place. In general, all of these tasks are within the jurisdiction of the State Committee on Land Resources, the land management agency, which is hierarchically structured with offices at national, regional and local (municipal) levels.

A. Land Classification

The Land Code divides the land fund into seven categories and numerous sub-categories, which are defined by intended use and users or by natural and man-made conditions. The categories are (1) agricultural land; (2) land in settlements (urban and village); (3) land for industry, transport and communications; (4) land under environmental protection, recreation, health-related and historic/cultural preservation regimes; (5) the forest fund; (6) lands of the water fund; and (7) reserves. These categories, and numerous sub-categories, form the basis for the definition of rights and obligations, the structure of land management, statistical reporting and the division of administrative responsibilities among state and municipal agencies. In practice, the programs of land reform have taken place on

a categorical basis (although the categories have differed somewhat from those defined in the law).

1. Citizen small holdings

The principle of exclusive individual control of small land parcels was established during the Soviet era. In rural areas, farm members and workers were granted personal subsidiary plots for their gardens or livestock. In urban areas, employees of industrial and trade enterprises received plots on the periphery of the city for weekend recreation houses (dachas), gardens and orchards. The citizens' rights to these plots were not legally defined and aspects of their possession, use and disposition changed at different periods. In general, however, the ability to occupy and use a small holding was part of a person's primary labor relationship and most people received their plots from the farm or industrial enterprise where they worked. They were expected to care for the plots after-hours (subsidiary labor) and produce supplementary food for their own use. Some people received plots through their membership in veterans' groups or professional associations. In either case, the landholder could not protect his/her rights in a court or tribunal, but during some periods of the Soviet era, family-law protections were offered and a divorcing spouse or heir might claim the right of use and possession.

With perestroika, there began the process of transforming the possession and use of the small holdings into property rights. Three changes in law were needed. First, the types of holdings had to be legally defined. In the Land Code of 1992, they were the following:

- Personal subsidiary farm plots (особисти підсобни господарство): agricultural land allocated to employees or members of large farms, set at 0.6 hectare in size.
- Orchard (perennial planting) plots (садівництва): garden plots allocated to town and city residents employed as non-farm workers, fixed at 0.12 hectare and usually part of a communal (enterprise or association) garden society.
- Individual house plots: allocated on request (without payment) to farm workers and rural residents at a size of 0.25 hectares. Residents of small cities could request a plot of 0.15 hectares, and residents of large cities, a plot of 0.10 hectare, made available by local authorities either without payment or for payment.
- Dacha plots: recreation/garden plots of 0.10 hectare, on which families could build small weekend cottages, usually in "colonies" linked to enterprises or associations.
- Garage plots could be created in large and small cities at 0.01 hectare.

Second, the right of possession had to be clarified. In the perestroika legislation, citizens gained the right of "inheritable life possession," but after independence, they were allowed to take ownership of their plots. Third, the rights of possession and use had to be given substance. In particular, the right of the landholder to sell any output and keep the profits was recognized and limited rights to sell or transfer the parcel were defined.[4]

As the national economy and the agricultural sector both declined in the mid-1990's, the importance of the small holdings grew. The subsidiary farms and gardens were a source of subsistence income for pensioners and the unemployed and their output was a significant part of the supply of fresh vegetables, fruits, eggs and potatoes. The improvement and construction of dachas and cottages on became a major source of housing investment in all regions. Thus, the government increasingly recognized the small holdings as key components of economic life, deserving encouragement and support. Regional and municipal administrations set up programs to expand the numbers of citizen landholders and, during the "privatization" of the large farms, they set aside reserve areas for mass distribution of small plots. These programs were popular and they fulfilled the constitutional principle

that each citizen of Ukraine would have a share of the land resources of the nation. They offered people a tangible asset with real economic value at a time when other assets -- rubles, karbovintsi (the temporary currency) and shares of enterprises were losing value.

By 2001, over 22.4 million citizens have received small holdings – almost half the population. These include over 11.5 million people with subsidiary farm and garden plots. Not all of the plots are held in ownership, because many citizens are unwilling to pay the costs of surveying and administration needed to claim the State Acts (the final documents giving evidence of ownership).

In addition to expanding the numbers of landholders, other adjustments have been made to encourage small land holding. Municipal and regional officials have the option to offer larger plots, if local conditions make this possible. In any region, a citizen may obtain an average size plot without payment and expand it by purchase or lease of additional land from the state reserve or from an adjoining owner. There are also new categories, mentioned in the recent laws, including plots for livestock grazing and hay-making in rural areas and leased gardens (городництво), which are allocated from state lands at 0.25 hectare. Plots for handicraft manufacture and small-scale entrepreneurial activities also are defined. In all these cases the citizen's property right remains personal, with no requirement that a separate juridical entity be organized and registered.

Despite the changes, however, the laws continue to reflect the fundamental idea of these holdings as small units under collective control. For example, the Land Code of 2001 describes the orchard and garden plots within associations, which must set the rules for their use and the size and types of structures to be put on them. The associations hold in common the land under internal roads, communal buildings, infrastructure and livestock pastures. Further, if the owner of a plot wishes to sell it, other members of the association have a right of first refusal before it can be sold to an outsider.

2. Agricultural land sharing

The principle of agricultural land sharing was introduced into the Land Code in 1992 as an element of both the internal re-Organization of farms and the external reorganization of rural production and society in general. Internally, land sharing was expected to achieve a new relationship between the peasant workers and the management of the large collective farms. The political leaders and agrarian experts believed that, by re-establishing a legal link between the peasant and the land, he or she would begin to take responsibility for the proper use and long-term care of the land and would become a stronger voice in management of the farm. The land share would give the peasant greater status as a common owner as well as the legal right to break away and farm independently. Together, these rights would change his/her mentality -- no longer a hired hand, but an owner in the true sense.[5]

Externally, land sharing related to the "perestroika" vision of the rural economic structure. Large collective farms would be preserved as the primary units of agricultural production, but they would be re-organized with a variety of internal arrangements, based on the preference of their members and the different conditions of local climate and topography, methods of production of crops and livestock types. The large farms would supply bulk commodities -- grains, meat and industrial farm products (flax, seed oils, etc.). Alongside the large farms, independent peasant (farmer) holdings would operate. These would offer a balancing form of production, providing competitive stimulation to the large farms, as a result of their greater flexibility to adapt new technologies and methods of management. Finally, subsistence farms, personal subsidiary plots and gardens would absorb surplus rural labor and give additional part-time income to rural workers (farm members and workers in social

spheres). The small units could provide a significant proportion of seasonal fresh crops -- vegetables, fruits and berries.

Ukraine's agrarian leaders rejected programs of land restitution and mass subdivision of farms in order to prevent a fragmentation of the land and the infrastructure/technical base. They also sought to prevent independent farmers from developing a political and economic block, separate from and antagonistic to the large farm system. It was within this overall framework the concept of land sharing evolved in three stages.

In the first stage (1992-1994) the initial transfer of the land and other assets out of state ownership into the common (collective) ownership of the farm members was accomplished. This involved the inventorying of the farm holdings, setting aside tracts for state or municipal reserves, and the re-registration of the farms as new forms of enterprises. Within the farms, the common ownership rights of the members were only abstractly defined. It soon was recognized that this was insufficient to affect the status of the farm workers in a practical way.

In the second stage (1994-1997) the focus shifted toward the land share as a structural mechanism, which would realign the internal organization of the farms. Land management officials issued share certificates, providing the farm members with the legal evidence of their share rights and allowing them access to courts, administrative bodies and civil transactions to make those rights a reality. It was still expected that the shares would be kept within the common ownership, not divided "in nature,"[**] but each certificate would specify the individual holders' proportion of the land assets of the farm by value. The share values would be equal, with small adjustments recognizing the holder's years of service and level of job responsibility.

At this stage, three aspects of the legal content of the shares were expected to transform the status of the farm members. First, the profits from farm operations would be distributed on a shared basis. This would give each individual the incentive to work harder and more creatively to boost profits. Second, the shares were to be alienable in a limited sense. They could be sold to or exchanged with other persons, who had the proper qualifications to be farm members; they could be given in donation and bequest and could, in theory, be pledged. This offered a potential ability to profit from the shares' capital value and would be an incentive for good management to keep the land value high over the long term. Third, a shareholder could, at any point, make application to transform the share into a plot "in nature" and withdraw it to create an independent peasant (farmer) holding. This would be a difficult and disruptive process because it would require platting out all the shares of the farm to insure their equality in value (size balanced by quality of soil and location). Thus, the possibility that one or a few unhappy members could initiate the process was expected to change significantly the behavior of farm managers. They would be much more careful in consulting the members, giving full information and insuring that consensus was reached on major decisions.

Based on the concept of the land share as a mechanism of internal farm reorganization, farm members were not encouraged to demand partition and no systematic platting of shares into land parcels was undertaken. The process of issuing the share certificates, which involved inventorying of the overall land holdings and valuing them by measurement of fertility and other natural factors, did not take place with great speed. On many farms, when the share certificates were received from the state they were not

[**] "In nature" is a term meaning surveyed and marked with monuments on the ground.

distributed to the members, but kept in the safe in the manager's office. There continued to be no appreciable improvement in farm efficiency and productivity or in the care of the land.

These shortcomings gave rise to a third stage of evolution, beginning in 1998, in which the economic aspects of the land share now gained emphasis. The agrarian leaders were concerned about several interrelated phenomena. They noted the continuing decline in the quantity and quality of agricultural production, the limited ability of the state-controlled system to provide inputs (fuel, fertilizer and financial credits) and the failure to improve worker productivity and management skills. The land management agencies recorded on-going deterioration in the quality of the land. Another problem was the aging rural population. On most farms a large portion of the work force was already retired or soon to be pensioners.

The agrarian leaders recognized the need to attract new investment into the agricultural sphere but they began to realize that the "abstract" land share was a positive impediment. This was because the farm, as an object of common ownership based on the land shares, could not guarantee its own capital integrity over time. The farm organization, theoretically, could acquire, use and dispose of its land and property assets and pledge them as security. However, since individual shareholders could, at any time, demand partition and withdrawal, there could be no assurance that the farm of today would be same farm tomorrow. Its assets and operations were under constant threat of disruption and no investor could offer it substantial capital.

This combination of problems gave rise to a new policy of farm reorganization based on the shares, transformed into actual land parcels. The farms would be re-created as new entrepreneurial enterprises to which the active, young farmers would commit their land and property shares as the fixed capital. Meanwhile, the pensioners and other passive members would offer their shares in lease. In this way, the land assets of the farms would be held together by clear legal relationships and the economic relationships would be realigned. Since the shares would now be defined "in nature," the problem of the integrity of the farm assets, over time, would be solved. The size, quality, location and value of the land (and other property) held by the farm could be precisely calculated (as the aggregate of all the shares) as well as the number of years it would retain this character (the length of the leases). Further, the problem of aging rural population could also be addressed. By the lease relationship, the pensioners and passive farm members would be provided a fixed annual income -- the rent (supplemented by income from their small plots), while the active farmers would take the risks and gain the profits of the farm operations.

By a Presidential Decree of 1999, the process of mass transformation of the land shares into land parcels in nature was ordered, along with parallel processes of leasing land shares and reorganizing the collective farms.[6] Generally, this took place in the following way. There was a planning process in which all the land areas of the farm were valued on the basis of natural characteristics and location differentials. The shares, as value units, were transformed into land parcels (by surveying and subdivision) with corresponding values in nature, and the farm members each received the State Act of ownership for his/her specific parcel. The farm member was then given a choice -- to withdraw the share into an independent holding or to transfer it back to the main farm by contribution to fixed capital or lease.

In 2001, 6.5 million members of farms and other eligible rural workers had received share certificates and, by mid-year, 1.7 million State Acts were issued for land parcels, fully defined in nature. In total, the shares represented 26.4 million hectares of land within 11,419 large farms. On average, each peasant held rights to 4.1 hectares, with smaller sizes in

western Ukraine and larger sizes in the dry steppes of the southeast. The state set aside reserves of 3.07 million hectares for future distribution. It was estimated that 22.4 million of the 26.4 million hectares held by shareholders were subject to lease, yielding rent payments of 1.6 billion hryvna for the year. On average, however, the rent payments amounted to only 40 hryvnia per share ($7.50) and, in most places, these were paid in kind, not in cash.[7] Nevertheless, the government announced a successful first year and made a commitment to carry forward the process of transforming abstract shares into land plots, and further clarifying the shareholder rights. Two key issues had still to be resolved.

First, there was continuing lack of political consensus about the right to dispose of the share and the land parcel "in nature" by sale or mortgage. The draft of the revised Land Code of 1992 had been presented to the Supreme Rada (parliament) and during its second reading in May, 2001, there was strong opposition from left-leaning factions to any change in the law, allowing farm land to be subject to purchase and sale. As a compromise, the presidential administration included in the draft Land Code a moratorium on agricultural land sales until 2003 in order to prevent the "devaluation of land." This provision was part of the revised Land Code when it was adopted in October 2001.

Second, the “dual ownership” structure of the land share system left many uncertainties. At the end of the procedure creating a land parcel “in nature,” the shareholder possessed two documents -- the share certificate and the State Act of ownership of the land parcel. It was unclear whether the State Act would supersede the share certificate. In practice, both were presented in carrying out any legal transaction or court process. This appeared to mean that -- whatever subsequent actions the landholder might take with respect to the land parcel -- its ownership at some level retained status as part of a common ownership. This seemed to envision a rural economy in which the "collective" would continue to influence the decisions being made by individuals as land owners and managers -- even those who would choose to establish independent farm operations. Over time, this might become a mere formality, justifying the systems of land use and environmental regulation. Alternatively, however, the courts and administrators might allow a high degree of interference by local officials or the large farm managers in decisions of legally independent farm operators and as third parties in all transactions.

3. Peasant (farmer) holdings and other independent farms

The peasant (farmer) holding, an independent, family farm, was first introduced during the era of perestroika, in 1990.[8] It was intended to provide a more flexible farm organization, that would operate parallel to and in competition with the large farms. It could serve as a center of innovation, more easily experimenting with new technologies and methods of cultivation and management, and it would accommodate entrepreneurial-minded farmers who might lose their creativity and energy in the more structured environment of the large farms.

Initially, land for the peasant (farmer) holdings was allocated from state reserves, not from land of the state or collective farms. This tended to be land of lower fertility and more remote locations. Thus, there began debate about whether the state authorities should withdraw better quality lands from the large farms or allow the individuals to withdraw their land shares in order to create new peasant (farmer) holdings. The Land Code of 1992 appeared to authorize such withdrawals and, by Presidential Decree in 1994, land shareholders were authorized to withdraw their land “in nature” for the purpose of establishing peasant (farmer) holdings.

Between 1991 and 1995, there was a steady expansion of the number of peasant (farmer) holdings, reaching a peak of 39,800 in 1998. Many of these were economically weak, as a result of the lack of material inputs and credit and the slow development of local markets for their products, and most remained dependent on sub-contracts from the large farms in their districts. During the years of poor harvests and overall economic recession (1996-1999) many peasant (farmer) holdings failed. Even so, as the large farms were being restructured, some well-managed peasant (farmer) holdings took the opportunity to acquire more land by bidding for the leased shares of pensioners and by attracting other, young farmers into the independent operations. Thus, while the number of peasant (farmer) holdings declined the amount of land under their control increased.

After 1998, as part of its revised agrarian policy, the government sought to expand the forms of independent farms in the post-1998 period. By Presidential Decree and in the language of the revised Land Code of 2001, it introduced new forms of independent farms. These were independent farms established on the basis of leased land (combining the shares of farm members who are not part of the same family). The Presidential administration also sought to allow the owner of a personal subsidiary holding to increase it in size, by lease or purchase of land, and to combine it with withdrawn land shares to create a small independent farm, without the creation of new juridical entity. The Supreme Rada, however, rejected this provision.

Taken together the initiatives of the government and the reviving economy resulted in a new stage of activity, creating peasant (farmer) holdings and other independent farms. By July 1, 2001, there were about 40,400 independent farms, with an average size of 31.2 hectares. (Table 4)

4. Land of production and service enterprises

Ownership of land by industrial, trade, service, mining and energy enterprises was not permitted in the Land Code of 1992, which retained the idea that this land was a "means of production" not properly transferred to private ownership. However, the Land Code did intend to change the relationship between the state and enterprises by introducing the lease of land. As state and municipal enterprises were re-structured into private entities of various types, the lands on which their production, warehouse or trade facilities stood were measured, boundaries were fixed and values were calculated. Then lease agreements were concluded between the state as owner and the enterprise, as lessee with the obligation to pay rent.[9]

The land lease had significant limitations because, in substance, it was only a definition of the terms and conditions of the relationship. The actual property right, defined in the Civil Code, was the right of use, which was linked to the ownership of the buildings or structures standing on the land and which remained subject to administrative allocation and withdrawal by the state. With such a legal status, the lease was not alienable and the enterprise could not take independent actions to acquire or dispose of its land. It could not hold land for future expansion or sell-off surplus areas, no longer needed. If its operations were consolidated, leaving buildings or open areas vacant, the use right in the affected land would be subject to withdrawal. If the enterprise were merged, sold or subdivided, the new enterprise(s) would have to apply to the State Committee on Land Resources to withdraw and re-allocate the land. In such cases the state agency would require new lease agreements, with all terms and conditions open to negotiation. These usually included land use and environmental requirements and conditions and limitations on management and operation; thus they were regulatory documents, as well as instruments of legal possession. It was assumed that this process of leasing would prevent speculation and insure that the

state (municipality) would absorb any gains in the value of land resulting from changes of obsolete uses to modern, high value activities.

Unfortunately, in the economic decline, few opportunities arose for the state (municipality) to realize gains in land value and investment was hindered by the complexity of the procedures. The state agencies (municipalities) were soon holding large inventories of unfinished construction sites, polluted former industrial sites and parcels with obsolete and irrationally located commercial facilities. This led the President to authorize, by decree in 1993, the sale of ownership rights in two categories in an effort to attract investment. These were lands for gasoline stations (which were in short supply) and lands under objects of unfinished construction. Later, in 1995, anticipating the new Constitution, the President declared that land of non-agricultural designation, generally, could be acquired by enterprises in ownership or long-term lease. The decree provided both for the transfer of ownership of land already occupied by privatized enterprises and for the competitive lease or sale of vacant, previously withdrawn, sites to new investors.

With the adoption of the Constitution of 1996, it appeared that lands of any domestic enterprise could be subject to "privatization." However, there was no speedy movement by enterprises to claim land or by state and municipal officials to offer it. Most enterprises were struggling in poor economic conditions and saw little benefit in paying the costs of surveying, land arranging and legal work, necessary to claim the State Act of ownership. For their part, the state and municipal agencies were reluctant to give up ownership of productive lands. Lacking adequate bases of taxation, most officials believed that they had better ability to capture revenue from land and retain its asset value through leasing. Loss of land ownership would decrease their opportunities to take part in the "deal making" involving industrial and trade investments.

It was only after the economic crisis of 1998 that enterprise land privatization got under way. Land ownership was recognized as a way to strengthen the balance sheets of enterprises and make them more attractive to foreign and domestic investors. Several decrees were issued, setting out procedures, and a program of urban enterprise land sales was initiated. By January 1, 2001 over 4,000 land sales agreements had been concluded and approximately 3,000 State Acts of ownership had been issued. However, the situation of most of the 49,000 Ukrainian industrial, trade and service enterprises was unchanged.[10] They owned their buildings, infrastructure and fixtures, but held the use right and lease from the state or municipality. As explained above, the land leases provided them with few rights and the enterprises could not consider their leased land to be a real estate asset, whose value could be accurately predicted and realized, in a sale or mortgage.

5. Land under multi-family housing

Reorganization of lands under multi-family housing was impeded by the inability of the land technicians to resolve practical questions of common ownership. Most apartment buildings existed as separate or clustered objects of real property, whose owners had the right to claim from the state or municipality a right of lease or ownership in the land.[11] Under the programs of housing "privatization," the municipal administrations and State Committees on Land Resources inventoried the buildings, registered them as legal objects of real property, determined the size and boundaries of their related land parcels and defined the pertinent land rights. Two aspects of definition, however, hindered these processes of legal formation.

First, most apartment buildings were objects of a mixed common ownership -- with families holding ownership of some of the apartments and the municipality retaining

ownership of other units, whose occupants had chosen not to buy. The mechanism of management for this type of common ownership was not worked out in most cities and settlements, although some experimental programs did take place. Second, the process of measuring and parceling the land under the buildings was complicated by the patterns of Soviet housing design. Buildings were usually clustered as "micro-rayons" in a ring or square around a central open space, containing a kindergarten, other schools, clinics or service facilities. It was difficult to draw lines to give each building a functional "yard" and strangely shaped plots emerged. Further, since these land plots fell under the same regime of common use and management as the buildings, systems for resolving individual preferences and claims to the yard space had to be defined. In particular, the demand for parking by those residents with cars was a constant problem.

As a result of these practical issues, the regime governing land under multi-family housing has remained the least well-defined of the categories of urban land and municipal administrations have continue to own most of this land. Of 427,000 hectares classified for housing use in urban settlements in 2000, non-state "housing companies" controlled only 90,000 hectares. This situation limited re-investment in apartment buildings, systems and common areas.

6. Urban land for development

Vacant urban tracts and parcels with obsolete buildings and uses were held in reserve to be allocated by the municipalities for new investment and development projects. Although the Land Code and the various decrees seemed to allow their transfer in several different ways – auctions, tender, negotiated sale -- in practice, the agencies required a specialized procedure, in which the land rights were granted in stages, linked to the process of planning and construction permitting.

In Ukraine planning and preparing land for development has involved an hierarchical system, in which large scale plans for regions, rural districts and cities are supplemented with medium scale, detailed plans for villages, neighborhoods and blocks and, finally, small scale plans for parcels and specific buildings.[12] These plans described in narrative and graphic terms the functional uses, types of development and levels of infrastructure and urban services, but they did not fix the land uses and parameters of development as legal requirements. Thus, at the outset of any proposal for development, the land plot, which an investor/developer proposed to acquire, had no status as an object of real property and no development right (maximum or permitted size and type of use). The investor/developer (called the "applicant") had to apply to the municipal agencies for a permit to plan the project (called the architectural-planning order, “APZ”) and for a permit to occupy the land temporarily for the limited purposes of planning (measurement, soil testing, etc.). In the APZ, the parcel size, permitted uses, parameters of development, infrastructure requirements and other conditions were defined. When this first stage was completed with approval of the construction plans in accord with the APZ, a second pair of permits was issued -- the permit to build and a right of temporary occupation of the land for purposes of construction. Throughout this period -- as significant capital expenditures were made -- the applicant (investor/developer) held no legal "rights" to the land and the unfinished building, which could be protected under the civil law. When the building was complete and approved by the inspection service, the applicant had to register it and thereby transform it into a legal object under its ownership. The building ownership then gave rise to the claim of rights to the land -- ownership or right of use with a lease.

This system required a developer to accept a high level of risk while its capital was spent at the site and made it impossible to use a mortgage to finance construction. All over

Ukraine there were found sites on which development projects had stopped in mid-construction because of inadequate financing, disputes among the parties, or withdrawal of permits by the municipal authorities. Political interference in development projects was pervasive and corruption was wide-spread. The number of unfinished construction sites rose over 38,000 in 2000.[13]

As a way to offer greater security to investors, some cities began "packaging" a pre-approved set of urban development documents for important sites -- including site plans and infrastructure designs, the legally designated use of the land, the APZ and temporary rights to the land. The "package" would be offered at auction or by tender, or held for negotiation with interested parties. In theory, by purchasing the package, the applicant could start the project at the second stage, rather than the first, and could gain a contractual basis of legal protection in addition to the administrative permit. In a few cases, this "package" mechanism led to successful projects; but generally the municipal planning officials were unable to anticipate the needs of investors. Tenders drew no bids and in the negotiated deals, the plans and permits usually required substantial revisions. Further, the "package" device could not solve the problem of lack of property rights and the inability to mortgage land.

7. Lands with useful natural resources and protected lands

The Land Code of 1992 defined several categories of lands with natural resources and other uses requiring protection, which were to be kept from private ownership and divided in some way between state and municipal ownership. These were the lands of the "forest fund" and the "water fund;" lands requiring environmental protection, therapeutic and recreation lands, and parcels with historical, cultural and archaeological objects.[14] Also placed in exclusive state ownership were lands to be used for mining, energy production and the space industry; lands needed for rail, highway, sea and airport facilities; lands for military and security uses; and lands for experimental, seed and breeding farms.

The forest, water and environmental protection lands constituted a significant portion of the territory of Ukraine. The forest fund encompassed over 10 million hectares (17% of all land); the water fund had 2.4 million hectares (4% of all land). Open lands were classified as wetlands, about 950,000 hectares and as wastelands with 600,000 hectares.

The regimes of protection and use of these lands were similar in all the categories, with four major elements:

- The total area of land and total volume of resources constituted a "fund" under the control of a Ministry or State Committee, which had power to license exploitation of the resources and allocate tracts of land, requiring the user to insure protection and conservation in these activities.
- Each "fund" was sub-divided into lands and resources of greater or lesser quality, allowing different permitted uses and requiring different levels of protection.
- The pertinent Ministry or State Committee imposed use restrictions and obligations for preservation and conservation, both in general regulations and in specific conditions of the land leases and resource licenses.
- The responsibility for inspection and enforcement of these regulations and conditions was to be carried out by the state inspection service, under control of the Ministry of Environmental Protection.

It was generally acknowledged that environmental protection efforts were ineffective for several reasons -- low budgets, lack of trained staff and modern equipment and lack of priority in the ministries and state committees in charge of the "funds."

The lands retained in state ownership for public uses, open space, environmental protection and reserves were supposed to be sub-divided to place some parcels, tracts and territories into municipal ownership. The standard for determining which lands are to be in each category was to rest on the volume and quality of natural or man-made resources and their anticipated uses, keeping in the state only those with resources or uses of "national importance." By 2001, however, this subdivision of lands into communal ownership had not yet begun.

B. Monitoring, managing and regulating the use of land

The Constitutional principle of land as the "national wealth subject to special state protection" was to be applied in practice in the system of state land management. This system retained the Soviet concept of the "land fund" -- that the territory of the state and of its administrative subdivisions constituted a stock of resources to be classified and managed for the benefit of the people residing in each territory. The science of "zemleystroistvo" was retained as the methodology for measuring the capacity for use of all tracts and parcels and valuing them (in "normative" terms), enabling their allocation to the most suitable users.

The classifications of the land fund and the methodology of zemleystroistvo were expected to guide legal actions involving all land -- state, communal and privately owned. By combining these methods with "market" mechanisms, it was hoped that economic discipline would reinforce the legal and administrative controls to achieve efficient use and care of land.[15] Thus combined, state land management consisted of the following tasks:

- field research and inventorying of land resources, including geodesic and geologic research, surveying, and testing to determine the quality of soils, levels of moisture and other natural factors related to potential economic use and preservation of land;
- based on the above, preparing territorial (spatial) plans for the nation, its regions and municipalities, and sub-city or sub-district areas;
- in rural areas, working out the plans of collective farms and the subdivision of functional areas within them (called “exterior and interior land arrangement plans”), and subdividing member shares “in nature;”
- in urban areas, preparing layout and landscape plans for blocks and multi-unit developments; subdividing blocks into parcels; platting infrastructure, rights of way and building setback lines; and reviewing and “expertizing” the plans for individual parcels and projects;
- valuing land parcels by three methods: land capacity valuation (the relative weighting of natural and man-made characteristics and location); normative valuation (transforming the capacity valuation into monetary terms) and market valuation;
- organizing and maintaining the land cadaster, in which the data concerning the natural qualities, legal status, designated use, level of development and economic values of all land parcels would be recorded and updated;
- monitoring changes and periodically re-measuring the conditions of land parcels and areas in order to insure enforcement of laws and regulations, revise plans, discover negative trends (pollution, erosion) and undertake measures of prevention, melioration and improvement;
- monitoring changes in the value of land and proposing measures of state intervention in the markets to insure price stability and prevent speculation.

In this system the "cadaster" was supposed to play the central role. It was defined not merely as an information system in which precise boundaries, location and ownership of parcels are recorded and the parcels recognized as objects of the civil law. Instead, it was

expected to hold a complex aggregation of data on natural qualities, man-made conditions, legal status, obligations and valuation. The system was to output this data in meaningful ways to support all of the tasks of planning, monitoring and enforcement. Analysis of the data would, it was presumed, provide the "scientific" grounding for all actions with legal, economic or social consequences.[16]

This definition of the "cadaster," as an instrument of decision-making, made it the most contentious and difficult element in the organization of land management. The agency, which gained ultimate control over the cadaster, was expected to hold decisive control over the land and natural resources of the nation. Thus, every bureaucratic unit with a role in land or resources has proposed itself as the keeper of the cadaster or of a mandatory element of it. The laws and decrees called for a land cadaster, water cadaster, urban development cadaster, historic resources cadaster, forest and mineral resources cadasters, etc. These were to be linked in a "unified cadaster system," but it remained unclear whether this linkage was to involve legal and administrative control, or be merely a technical (computer) linkage. Because of the unrealistic assumptions and the unresolved political decisions about control and coordination, the cadaster was not functioning in 2001. Nevertheless, the policy documents continued to describe it as the primary support mechanism for state management of land and the government remained committed to its creation.

C. Market formation

In describing the policy that would guide the formation of land markets, Ukraine's leadership expressed the concept of a "socially-oriented market economy."[17] This concept has affected the process of formation of land markets in three significant ways. First, in the Land Code and other laws there were specific limitations and prohibitions on the sale and alienation of land parcels in almost all of the use categories. Some of these limited the volume and types of land subject to "commercial turnover;" others limited the identity or character of potential purchasers of land rights. Second, in various decrees defining the procedures for alienation of land, there were requirements, making every transaction subject to administrative verification. Civil law agreements, in which physical or juridical persons could act independently of the state to set the terms and conditions, were in no cases sufficient to conclude legally binding actions. Only by taking administrative actions, preliminary and subsequent to their agreements, could the parties create effective property rights transfers. Third, appraisal of the value of the land parcel was not allowed to be a matter solely of negotiation among the parties, subject to "market" influence. Instead, it was expected the State Committee on Land Resources would conduct all valuations or would require dual-valuation with both "market" and state-assigned values.

In the context of legislative and administrative reform, the tasks of "market formation" proceeded slowly and with strong differences of opinion and ideological debate. Simultaneously, however, the practical activity of transfer of land among citizens and juridical persons gained momentum as an inevitable result of the growing numbers of landowners. Recently, this practical experience has begun to influence the further evolution of policy and law.

1. Limitations on the sale and alienation of land parcels

The laws of Ukraine have not made provision for the purchase and sale, lease or other alienation of land in general. Instead, specific rights of disposition have been defined for certain of the main categories and for limited subcategories of land.

Under the Land Code of 1992 only citizen small holdings, including peasant (farmer) holdings, were recognized as subject to purchase and sale and other civil law transactions between citizens. In the decrees of 1995, agricultural land shares were defined as subject to sale, exchange, gift, inheritance and mortgage. However, in later decrees, purchase, sale and mortgage of land shares were not allowed and, in adopting the Land Code of 2001, a five-year moratorium on sale and mortgage of agricultural land was imposed. With respect to the broad category of agricultural land, there were no provisions in any law or decree allowing collectives and other "corporate" farm enterprises to deal in land among themselves. For non-agricultural lands of enterprises and other organizations, the Land Code of 1992 made no provision for their ownership and provided only the procedure of withdrawal/allocation as the means of their transfer. The Constitution of 1996 appeared to remove the prohibition on the purchase and sale of non-agricultural lands, but the mechanisms for "commercial turnover" of these land parcels were not created.

With the adoption of the Land Code in October 2001, express authority has now been granted for purchase and sale of non-agricultural lands and, after the moratorium in 2006, for agricultural land parcels. In its recent policy decrees, the government has made a commitment to organize the methods of "regulated market" transfers.[18] It is likely that these procedures will retain many of the features of the existing process under which citizen small holdings and agricultural land shares have been traded. These can be described as a combination of administrative and civil law elements.

Two citizens may conclude between themselves a civil law agreement of purchase and sale, exchange or free transfer. However, this document requires the inclusion of terms and conditions, preliminarily obtained from state (municipality) and it has no force in law until it is confirmed by issuance of an "evidentiary certificate" and subsequently registered. The notary issues the "evidentiary certificate" upon a determination that all limitations and administrative requirements are fulfilled in the agreement. In the case an agricultural land share, these include that the share had first been offered to members of the collective farm, to an independent peasant farmer or other person with farm skills or education.

In the transfer process, the existing owner (seller) is required to hand over the State Act of Ownership, which the notary marks as subject to abolition. The new owner (buyer) then must seek from the local Rada (through the State Committee on Land Resources) a new State Act in its own name. In this procedure the passport of the seller is marked to remove the notation that he or she holds ownership of a small holding or agricultural land share, and the passport of the buyer is amended. The parties must also obtain from the State Committee on Land Resources a certificate of valuation of the land parcel, calculated by the "official" methodology. This value is binding for purposes of setting the tax on the transaction and other fees, but the parties are free to set a price by negotiation based on a "market" appraisal. Comparison of the "official" valuation and the "market" valuation is inevitable and, if a significant disparity results, this is supposed to alert the state officers of market distortions or speculative activity.

The final act of registration of the transfer agreement gives rise to the legal status of ownership in the new party. Registration is not merely an administrative recording of the final documents, but involves a review of all aspects of the transaction. The registry officers can reject the documents and thereby invalidate the transfer if they disagree with any of the substantive terms (presumably, including the price). In combination, therefore, the preliminary and subsequent administrative requirements have a direct influence on the terms and conditions under which any sale or transfer may take place.[19]

2. Land valuation

In the early stages of land reform, the obligation of users to pay for land was introduced as a mechanism for disciplining the process of production.[20] By requiring a land cost to be included in the calculation of production costs, producers would be induced to use land sparingly and efficiently. The land cost was to be based on two factors: resource quality (fertility and natural components such as minerals, timber, etc.) and location. Measuring these factors objectively, the state land managers would define the "normative" values of different lands and derive the taxes and rents, which would compensate society (the state) for lands of different quality and location.

A parallel concept of payment for land arose from the need to compensate owners and users, who had to move off of land that was being withdrawn for transfer to a new party.[21] At the beginning, this was not considered a purchase price ("market price") to be negotiated by the parties, but was another aspect of calculation of standard cost features. Subsequently, however, state and municipal officials began to incorporate competitive mechanisms into the process of land allocation – auctions and tenders. In negotiated allocations, they often required the person acquiring the land to negotiate with the old users (in order to avoid a protracted argument over terms and costs of relocation). These methods began to give more accurate values of resources and locations and helped to insure that the state did not give away the land too cheaply. Out of this experience arose the conceptual and methodological question of how to achieve realistic prices, while preventing unstable land values that would encourage speculation.

The State Committees on Land Resources, other agencies and private real estate services made efforts to track the prices of real property in the categories of permitted transactions -- apartments, small houses and dachas and commercial premises. As data accumulated, the patterns emerged of price differentials based on location, levels of service and other factors. This information fed back into the normative valuation formulas and allowed them to be refined. Cities, which in 1993-1994 had based their land taxes and rents on maps with five or six value differential zones, by 1997-98 were using maps with 50 to 100 zones and recording differentials of 20 or 50 times the value of the highest (central city) land compared with the lowest.

3. Future policy and practice related to land markets

As practical experience with real property markets has grown, the policy relating to the formation of land markets has evolved. Some leaders in the parliament and the agricultural sector have kept alive the ideological debate, continuing to warn that if land becomes an object of commercial turnover, peasants and citizens will be duped out of their birthright by monopolists, speculators, banks and foreigners.[22] But most opinion, expressed in professional journals and political commentary, recognizes that productive investment is being hindered by the inefficiency of administrative land allocation and the inability to mortgage and sell land. In this context, the key policy question concerns the form that a regulated market will take. There appear to be three possible elements in the systemic model.

- First, the state agencies will define the mechanisms and institutions which make the market, and the state will exercise regulatory control over them. These will include the technical and professional services of valuation and appraisal, brokering, listing of offers and reporting sales prices, auctioning, drafting and notarizing documents and registering rights as they are transferred. There remain differing opinions about the proper level of state control. The State Committee on Land Resources and other agencies take the

position that they should provide these services, exclusively or in parallel with private, licensed professional services.

- Second, the state agencies expect to intervene as strong "players" in the market, manipulating their stocks of reserve lands to influence prices and qualitative demand. This is an attractive idea for many political leaders and bureaucrats, who want a role in the "deal making." As a successful long-term strategy, however, this will require discipline and the ability to bear political and economic costs. Depletion of the reserves in order to moderate rising prices will be easy and popular, but the process of buying back land (spending budget monies) during times of falling prices will be difficult. There is little evidence that the land management agencies and municipal administrations can carry out such a comprehensive market strategy.
- Third, the "regulated market" may be one in which all transactions will involve three-parties -- buyer, seller (lessor, lessee) and the state. In many aspects, this is what the law already requires and, as seen above, what happens in practice in most land transfers. Under this scenario, the State Committees on Land Resources and the municipal and regional councils will continue to use the planning, urban development and land allocation procedures to dictate terms and conditions and insure their own role in deal making.

As late as mid-year 2001, it is not possible to answer with certainty the level to which each of these elements of market regulation will be a part of the Ukrainian system. The main policy document -- the Decree of the President "On the Main Directions of Land Reform in Ukraine, 2001-2005" -- stresses the need for continuing privatization of enterprise lands and the sub-division of agricultural land shares "in nature." It calls for perfecting the methods of valuation and creating the cadaster; introducing a single system of land rights registration; issuing routine standards and technical forms for transactions; and creating a market information system. The decree does not indicate whether these will be exclusively state functions or a mix of state and private services, but it contains many clauses repeating the need for a strong state role.

The various decrees and policy documents discuss the elements of market formation as if all questions remain open. In reality, however, a land market had been in existence in Ukraine for several years -- the inevitable result of the "privatization" of large numbers of citizen small holdings, agricultural land shares and other parcels. Plots are transferred in a number of ways -- deaths and divorces, liquidations and bankruptcies, enterprise buy-outs and joint venture agreements, administrative withdrawal/allocation, exchanges and direct purchases and sales of real property objects with the land. So far, however, there are few reported instances in which land has been transferred without a building or has been valued as a distinct component of a real property deal. It can be expected that the volume of sales and other direct transactions will increase, as a result of the revised Land Code and new provisions of the Civil Code, adopted in May 2001, which both authorize land and real property transactions in general terms. Neither of these laws , however, has changed the fundamental structure of mixed elements of civil law and discretionary administrative processes. Thus, the growth of the market will still be impeded by the activity of state and municipal agencies, reluctant to give up control.

Part 3. Measuring the Results of Land Reform

Since independence, the State Committee on Land Resources has continued to compile and classify data on the use of land, employing the methods and classifications of the Soviet era, with some refinements. The State Committee has also begun to classify land based on the status of its users. These data, aggregated for national and regional levels, are published in the annual Reports on the Land Fund.[23] By comparing the reports, year to

year, trends of functional change can be recognized, and the progress of the "primary market" of land transfers from the state to private, collective and municipal owners and users can be followed. More recently, data on the "secondary market" has become available in sufficient volume to begin analysis of the types of transactions, their location and trends in prices. This data is compiled in a cooperative effort of the community of brokers, appraisers and other real estate professionals.[24] From these two sources, it is possible to assess, in broad terms, the outcome of ten years of reform.

A. Trends in the use of land

In order to show the trends in land use, the composite Table 1 has been prepared from several years reports On the Land Fund. This table shows only small categorical changes between 1991 and 2000, indicating that the overall structure of land use in Ukraine remains the same as in the Soviet period. This would be expected because geography, topography and climate do not change appreciably and fixed assets remain in place. Further, the stability of land use reflects the decade of depressed economic conditions and Ukraine's failure to articulate a clear policy of development. Overall, Ukraine retains a high proportion of its total land resources in agricultural classification -- over 70 percent and its forest cover is relatively low among Eastern European countries -- about 17 percent. Built-up land has remained at about four percent of the total, including land under all types of urban and rural buildings, infrastructure and production facilities.

In the broad categories and sub-classifications of land shown in Table 1 the State Committee reports leave considerable room for interpretation (and confusion) because the inclusion of a certain area of land in a category can be a matter of its natural characteristics, its actual use or its institutional allocation. Despite these limitations, two important trends in the post-independence period can be seen.

First, there has been a decline in actively used land and a significant increase in lands that are fallow or abandoned. Viewing the land fund as a whole, industrial land has declined in volume and housing land has grown only slightly. Viewing land in settled areas of all types, open public lands and lands, covered by citizen plots, have increased. Viewing urban jurisdictions only, similar trends are seen with small declines or small growth in the active categories and significant growth in agricultural and open public uses. Viewing rural areas, there appears a similar trend away from the sub-categories of cultivated land and perennial orchards toward the sub-categories of fallow land, pasture and hayfields and a new sub-category of "other" agricultural lands. Viewing natural areas, the amount of forestland -- particularly land covered by trees -- shows a large volume increase. All these data are consistent with the general economic downturn and declining population.

Second, in the category of "built-up lands" the most significant growth has been in citizen small holdings -- house plots, dacha plots and gardens. This sub-category has grown, while sub-categories involving developed land have declined (industrial) or remained unchanged (higher density housing). This reflects both economic conditions and the fulfillment of the programs of land distribution.

The statistics probably under-estimate the trend away from active use of land, given that change in the classification of any particular parcel or tract usually does not occur until a change in its institutional possession takes place, with re-registration. Thus, many inactive industrial facilities continue as nominal holders of large tracts, despite the fact that much of the land is idle or given over to "non-designated" uses on an informal basis. The land is retained in industrial classification in the hope that it may return to production and in order not to invalidate the right of possession of the enterprise. A similar combination of inertia

and land hoarding by farms results in inflated volumes of land classified as agricultural and cultivated.

The decline of active use of land has positive aspects. The Soviet system used land quite inefficiently, both in industry and in agriculture. In most cities a high proportion of the territory was placed in industrial use categories. Enterprises did not use their land intensively because there were no rent or tax costs and because the industrial construction and planning standards prescribed very high land input ratios. On the farms, the constant drive to expand output led to the cultivation of many areas of poor soils and unfavorable topography. Thus, the decline of volume of land in these categories may signal a process of rationalization, a conclusion reinforced by the increases in forestland and public open uses in built-up areas. Lands of low utility appear to be reverting to a natural state.

On the negative side, the statistics do not show improvement of environmentally sensitive lands. The category of open, damaged land (which includes the large Chernobyl zone) has continued to grow, although areas of barren slopes and scrub brush have declined (some have grown into forest). The volume of land in the water fund, which provides zones for environmental protection, has not changed significantly.

B. Trends of landholders and forms of tenure

The reports On the Land Fund contain information on the categories of landholders, defined both by type of person or organization (legal personality) and type of land object. (Table 2) Total numbers of landholders and the volumes of land held by them are reported and the organizational matrix is superimposed upon the use classifications, described above. These data show the trends of allocation of land to various users and allow a rough analysis of the "rationality" of their holdings and management. For example, the numbers show that, in the holdings of collective farms, cultivated land has declined over time and fallow, damaged and scrub land have increased. For peasant (farmer) holdings, cultivated land is increasing and fallow, damaged land and scrub land remain a very small component. These contrasting trends raise questions about farm organization and land allocation policies.

The user matrices illustrate some of the key legislative acts and policies of the past decade and reinforce the same trends discussed above -- decline in active use of land and growth in natural and passive use categories. Large shifts in volumes of land away from old institutional users to newly defined users is evident -- attesting to the success of the land bureaucracy in redefining and re-registering land holdings. This can be seen most clearly in the classifications of agricultural organizations -- millions of hectares of land held by "state farms" have moved into the new forms of collective, cooperative and commercial-trade farms.

Significant changes in industrial land holding can also be seen, as the result of re-classification of the data. In 1998 data for the broad category of industrial, transport, communication and utility enterprises, over 2 million hectares are noted. In the year 2000 report On the Land Fund, these categories are dis-aggregated to show industrial, transport-communication and mine/quarry separately. The holdings of these three categories of enterprises are shown at less than 1.6 million hectares. In parallel, the category of commercial, service and cultural users has jumped from 167 thousand to over 650 thousand hectares. Part of the increase is the result of inclusion of (apartment) housing maintenance organizations in the category with 96 thousand hectares. The other part appears to represent the spin off from industrial enterprises of worker social services, medical clinics, education and sports facilities with the land on which they stand.

One aspect of land reform, not visible in the reports On the Land Fund, is the trend of change in the legal forms of land holding (ownership, lease, right of use) within the user categories. This illustrates a key point: for the Ukrainian state bureaucracy, the goal of "privatization" of land is not a major concern and the management of the land fund is expected to operate without distinction among lands that are owned, leased or held by right of use. In the annual reports, only one Table on ownership is given, showing the total volume of land in each of the four main categories -- the state, private (with collective) and communal. (Table 4) The trend of transfer of land out of state ownership into private and collective control is revealed, year-by-year, and up to 2001, the category of communal (municipal) land remains empty. These data leave many questions unanswered but they present an interesting overall picture. Despite ten years of effort, in which achievement of a "balanced" system has been sought, the Soviet property hierarchy is still reflected. State ownership remains predominant. Collective ownership holds second place. Private ownership is a minor form, largely limited to non-production assets (citizen small holdings). Although the trend is in the opposite direction from the Leninist theory -- which foresaw the withering away of the lower forms -- nevertheless, a "balanced" system, by volume, is not seen.

Cross-reference of the Ownership data with the data on types of landholders shows that, even within the "personal" land plot categories, a significant proportion of citizens have not yet transformed their rights of use into ownership. Citizens in total hold over 7.8 million hectares of land but the private ownership category shows 4.3 million hectares

C. Dynamics of the real estate market

The real property market in Ukraine is an aggregate of several sub-markets composed of those categories of land, buildings and premises, which the law has defined as permissible "objects" of the civil law. The transactions reviewed are the "secondary" transfers of objects, previously given into the ownership of private parties, and certain "primary" transfers, which take place by auctions and tenders. The size and character of the "secondary" market may be roughly understood by comparing the fairly accurate numbers of already "privatized" objects with numbers of "secondary sales" that have been aggregated from various sources.

Table 5. Elements of the secondary real property market

Category	Total Number of Units	Secondary Sales (year)
Apartments	18,858,000	428,000 (1998)
Small holdings (urban)		30,000 (1998-1999)
Single-family houses with land plots	9,822,200	
Dachas (recreation houses with land)	33,600	
Garage plots	1,308,800	
Collective gardens	2,739,600	
Buildings owned by small enterprises	17,000	376 (1999)
Land parcels owned by enterprises	3,000	3 (2000)
Agricultural land		sales not allowed
Other garden/orchard plots	2,630,400	
Peasant (farmer) holdings	39,000	
Personal subsidiary farm plots	132,000	
Entrepreneurial subsistence farm plots	19,300	

The numbers showing the volume of secondary market transactions are problematic because there is not a unified source of data and because many changes in the ownership and control of land and real estate objects occur indirectly. Many housing units and garden plots pass in inheritance, divorces and family exchanges. Commercial and industrial premises and the land on which they are located are transferred in liquidations, consolidations and other re-structuring of enterprises. Few of these changes appear as market transactions.

Currently, the real property analysts use three sources for data. First, they consult the records of notary certifications of agreements, which are aggregated in annual reports of the Ministry of Justice. This data, prior to 1997, shows only agreements for transfers of flats and houses. After 1997, the data differentiates the numbers of sales, gifts and exchanges and has a category of "collateral usage," which includes land parcels and other subsidiary objects transferred with the main real property object. The notary records have identified over 30,000 land parcels (small holdings) alienated by the end of 1999.

Another source of data is the Bureau of Technical Inventory, which has collected architectural and construction information in cities since the Soviet era. After independence this data has shown the ownership of apartments, housing buildings and related premises. The source is not regularly consulted, however, because the system retains its original purpose as a building registry and is not indexed to allow easy extraction of the ownership information.

A third source of data are the records of real property brokerage firms; the largest of which regularly publish listings of offers to sell and lease apartments, buildings, premises and land plots. Since there are many small firms, which do not regularly report or share data, this source does not provide a full picture. Further, the actual prices and rents realized in final

transactions are not usually revealed. Nevertheless, this data in the aggregate reveals the patterns of transactions and fairly accurate averages of prices in the main urban regions.

From these sources, three trends can be seen. First, there is a growing body of transactions, as the numbers of properties in ownership are gradually increasing. Generally the rates of "turnover" appear normal. Second, in all sectors, even those with very few transactions, the markets appear to be working rationally. That is, they exhibit the same patterns of price and rent differentiation that are seen in property markets throughout the world. The highest prices are paid for high quality apartments and office spaces located in the centers and most "prestigious" neighborhoods of the largest cities. Other types of properties achieve prices that are differentiated by the expected factors -- location away from the center, access to main roads and other infrastructure, favorable/unfavorable environmental conditions and character of surrounding and nearby development. Similarly, the patterns of price differences among categories of properties -- high-quality and low-quality housing, retail commercial, office, manufacturing, warehousing, etc. -- match in general terms the patterns of similar urban areas elsewhere in the world. Third, and most significant, the price "signals" sent by the secondary market transactions are beginning to have a direct influence on the ways in which land is priced by state and municipal agencies in visible "primary" transactions.

It is important to remember that these favorable signs of "rationality" in turnover and prices are drawn only from the categories of visible transactions. These are very small in comparison to the numbers of primary sales, lease agreements, allocations of use rights and indirect transfers. It is recognized, but has not been verified by analysis, that there is vast disparity in rents paid by users of different categories and within the same categories in most cities -- the result of individual negotiations and tax privileges granted by the municipal and state agencies controlling land and properties. Land taxes, set by the "objective" formulas of valuation, in most cities are at variance from the patterns of value revealed by the secondary market data. However, in recent years the influence of market prices on the “objective” calculations has brought the two prices more closely together.

Therefore, the combination of land use, land user and market data statistics do not offer a convincing picture that the land reform activity, to date, is achieving the desired efficiency and encouragement of land related investment. Far more information is hidden, rather than revealed.

Part 4. Unresolved Problems and a Prognosis for Future Evolution

As seen in the analysis above, Ukraine's attempt to create a balanced system of rights and obligations and of state and non-state ownership of land has resulted in a complex mix of elements drawn from civil law and administrative relations. The level of balance and the process of interaction among these elements vary from one category of land to another and many elements, as yet, are not fully defined. This situation has created two major problems, which hinder productive investment and the efficient management of the nation's land resources.

First, the law offers insufficient security for landowners and users, discouraging their investment in, and improvement of, land. There remain uncertainties in the definitions of ownership, use, lease and other key civil law institutions, which the new Civil Code and revised Land Code have not resolved. There are preserved many circumstances in which state and municipal officials can unpredictably withdraw, curtail and redefine land rights even after they had been fixed and granted to owners, users and lessees. Taken together, these

limitations and uncertainties make it impossible to say, with assurance, that the person holding land rights today will continue to hold the same rights tomorrow or into the medium and long term future. Such insecurity cannot be tolerated in the modern systems of finance for industry, agriculture, trade and housing, all of which are built upon a level of confidence in the security of rights to capital assets. Economic relationships (equity, loans, leases, etc.) rest upon the assurance that the person undertaking the obligation will hold the capital and use it for the period of time sufficient to "amortize" the investment. If the person cannot profitably use the assets they can be sold or traded to gain fair value to reimburse an investment or loan. Any aspects of law, administration or government policy, which make the security of possession uncertain, will make it more difficult to value the assets and determine the ability to "amortize" out of revenue flow.

Experience around the world has shown that it is not the level or types of restriction of the use of land that hinders productive investment. There are numerous examples of cities and rural areas that have strong, sustained investment despite very strict environmental, planning and use controls. For example, many important historic cities have very strong limits on development and require costly architectural requirements for any construction project. Similarly, in many areas of high quality soils or sensitive natural features, state and local authorities impose strict limitations on the types of agricultural uses and methods of farming. Nevertheless, investment in modern agricultural production continues. The important conclusion is that, so long as requirements and risks can be predicted at the outset, the structure of financing an investment can be adjusted to take even high costs into account.

By contrast, productive investment cannot take place when restrictions are undefined and unpredictable, since costs cannot be estimated and the financial structure cannot be adjusted. This is the fundamental problem inherent in Ukraine's "mixed" land system. The state has insisted on retaining for itself, not only the power to define and enforce strong conditions and limitations on use and possession of land, but the power to apply these in a discretionary way. Urban and rural planning do not result in "development rights" defined by regulations for zones or categories of parcels and projects. Instead, the standards and parameters for construction emerge only in a negotiated process of parcel-by-parcel and project-by-project planning. Land allocation, similarly, is a process of negotiation. In which "the deal" is exposed to multi-party influence. The legal outcomes of these processes are not standardized and the underlying administrative actions are vulnerable to future change, withdrawal and re-negotiation.

Second, Ukrainian law does not yet allow owners, users or lessees to alienate land rights in a civil law transactions, independent of the state. In modern business practice and household finance, managers are expected to treat their land and real property assets as dynamic elements of their capital fund. Assets are acquired, used, changed, sold, sub-leased and exchanged on a routine basis in correspondence with market opportunities, convenience and changes in technologies and business strategies. The existence of active markets and market services offer certainty that these fixed assets can be quickly turned into cash or other liquid assets at a fair price. Without the ability to alienate land and real property efficiently and directly, enterprises are much less competitive, unable to take advantage of opportunities or protect their assets when negative trends appear in their sphere of production or trade.

The Ukrainian land system has resisted this aspect of modern economic life. It continues to embody the static, old fashioned ideas of land as a "means of production" and the "base of daily life activities," thus linking land to the relations of labor and processes of "mass" production. It anticipates slow change, over decades and generations, rather than

quickly in market concurrence. Similarly static are the General Plans of cities and land arrangement plans of farms and rural settlements, which assume that an ideal, fixed "order" can be imposed on the land.

As a result of these problems of unpredictability and limited alienation, Ukraine has been unable to solve the problem of mortgages -- that is, how to apply the methods of modern capital finance in which land and real property rights provide the security for loans and capital formation. Many Ukrainian experts and commentators attribute this situation to inadequate legislation and a weak banking system. However, experience elsewhere has shown that mortgage mechanisms can arise based on simple civil law "pledge" obligations, without special legislation. Additional legislation may be helpful in creating a more efficient system, but it is the practical ability to accomplish the sale of a mortgaged object and gain full value for it that is the important requirement. In Ukraine, it is the lack of ability to sell, lack of an efficient market, and unpredictable security over time that present the major obstacles to mortgaging. Thus, broad sectors of the Ukrainian economy are starved for capital. Thousands of objects of “unfinished construction” stand in urban areas and there is virtually no capital investment in farming. Foreign investment is extremely low and domestic capital continues to flow out of Ukraine.

By contrast, in one sector of economic life Ukrainian citizens have been willing to invest and make careful and intensive use of land. This involves their small garden, subsidiary farm, house and recreation holdings. Ukrainian families recognize that their possession of these land plots is secure and that they can transform their uncertain cash assets into tangible fixed assets by building on and improving the land. The protection afforded by the law allows these assets to maintain their value, allows this family wealth to be transferred in inheritance, by marriage and by gift. If the need arises, the assets can be sold for a fair value in the market. Thus the small plots provide proof that a "regulated market" can work in practice, when legal rights are clear and alienation is unobstructed, and that Ukrainian citizens will make rational decisions about land as an asset, related to other forms of wealth.

The future success of Ukraine’s land reform appears to rest on the extent to which the civil law elements in the land system will become stronger and the administrative elements will move away from discretionary interference toward mechanisms, which are routine and “automatic” in their application. The dual-level of ownership rights defined by Ukraine’s Constitution can provide the framework for a modern, dynamic land system in which strong environmental and social protections are maintained along with independent and self-disciplined management of land. Around the world there are examples of successful “dual-level ownership” systems, in which a higher level of strong state controls and management, coexist with a lower level of secure and freely-alienable individual land rights. In Britain and Canada, for example, the concept of the “Crown” ownership of land provides the fundamental legal basis for strong aspects of environmental management, urban and regional land planning and state regulation of high-quality agricultural land, forests and other resource-rich land. Similarly, in Hong Kong, the dual-level leasehold system has supported a strong urban economy. Most recently, China has adapted the Hong Kong model to serve as the basis of its own dual-level system of state land ownership and subordinate land use rights.

Most likely, Ukraine’s progress will continue to be slow. In the near-term, the new provisions of the Civil Code and the revised Land Code will provide some additional clarity in the definition of the civil law elements. In particular, they will strengthen the rights of urban enterprises to deal with land as a capital asset. Neither law, however, will directly change the fundamental character of bureaucratic control, which foresees state agencies as parallel

participants, with full discretion in all spheres of land relations. The state's disruptive role will effectively diminish only gradually as citizens and enterprises assert their new civil rights and work out the practical activities of their day-to-day transactions involving land and real property.

Table 1. The Land Fund of Ukraine by Use Categories (hectares)

* source: composite of data from the State Land Resources reports On the Land Fund, 1998 and 2000.

Land Use	Hectares Jan. 1, 2000	Percent of Total (2000)	Change 1991-1998	Change 1998-2000
Agricultural	43,067,100	71.4%	-176,000	1,213,200
Cultivated	32,669,900	54.1%	-490,200	-411,000
Pasture and hay	7,838,000	13.0%	371,700	65,000
Perennial orchard	945,200	01.6%	-57,500	-55,300
Fallow	376,400	00.6%	*	*
Other	1,237,600	02.1%	*	*
Forest	10,403,300	17.2%	158,900	23,100
Tree cover	9,514,400	15.8%	130,000	639,600
Uncovered	184,900	00.3%	2,500	4,200
Other	704,000	01.1%	*	*
Built-up land	2,457,400	04.1%	175,700	120,500
Housing	427,000	00.7%	*	-700
Industrial	243,700	00.4%	*	-90,500
Citizen plots	491,500	00.8%	*	270,000
Open public	730,400	01.2%	*	210,800
Transport	491,500	00.8%	*	32.500
Commercial	33,700	00.1%	*	*
Utility infrastructure	64,000	00.1%	*	*

Table 2. Land Fund of Ukraine by Users and Land Types (hectares)
*source: State Committee on Land Resources report On the Land Fund, 2000

Category of user	Number of Users	Total Land	Agricultural Land	Built-Up Land	Forest Land
Agri. Enterprises	17,773	38,381,000	33,962,000	55,000	2.7 mill
Collectives	10,465	30,727,600	27,115,600	38,600	2.3 mill
Cooperatives	362	345,500	321,800	700	
Agri. Companies	1,995	4,258,800	3,852,100	6,700	
State farms	3,309	2,391,500	2,094,700	7,600	65 th.
All citizen holdings	22,448,725	7,851,100	7,433,800	367,400	21 th.
Peasant (farmer)	38,782	1,206,600	1,183,600	100	.
Subsistence Farms	132,037	429,500	427,600	800	
Personal subsidiary	5,723,675	2,704,000	2,680,000	1,600	
Orchard plots	2,739,621	212,500	180,400	300	
Dachas	33,662	3,200	2,600	600	
Garden plots	2,630,460	302,000	302,000	*	
House lots	9,822,287	1,656,900	1,350,600	303,900	
Garage plots	1,308,857	7,500	*	7,500	
Non-ag workshop	19,344	3,100	300	2,600	
Common pasture	0	1,325,800	1,306,700	100	10 th.
Organizations	146,657	652,900	183,800	283,100	13 th.
Housing companies	4,182	96,200	1,600	94,100	
Industrial enterprises	48,241	568,600	85,000	385,400	18 th.
Transport, communica.	9,971	661,200	55,900	475,100	120 th.
Defense, security	5,376	456,000	56,100	174,400	138 th.
Nature, recreation	5,401	335,600	15,200	23,100	178 th.
Forest enterprises	661	7,232,000	120,900	16,400	6.7 mill
Water enterprises	1,041	544,000	9,500	30,900	14 th.
State reserves	1	3,647,500	1,122,500	644,000	283 th.
Urban reserve	1	271,700	191,000	13,200	
Public use	1	2,561,500	355,500	624,300	160 th.

Table 2.b Changes in Citizen Land Users by Category
* source: State Committee on Land Resources report On the Land Fund, 1998

Category	Number of Owners/Users (1998)	Added between 1990-1998
Personal subsidiary	11,537,939	2,331,828
Orchard gardens	2,784,534	724,635
Garden plots	3,043,942	2,221,887
Hayfields, pasture	2,234,838	20,180
Peasant (farmers)	39,880	39,548

Table 2.c Non-Agricultural Land Allocation (1991-1998)

Category	Hectares
Under industrial, transport, Communications facilities	45,100
Water-related facilities	3,500
Forest enterprises	21,200
Urban buildings and development projects	30,900
Recreation, health, nature pro.	20,000
Other uses (incl. housing)	198,400

Table 3. Changes in the Structure of the Land Fund by Forms of Ownership
*source: State Committee on Land Resource reports On Land Fund, 1998 and 2000

Year	State-owned	Private-owned	Collective	Municipal
1991	60,354,800	0	0	0
1992	60,354,800	0	0	0
1993	60,199,200	13,800	141,800	0
1994	57,822,600	910,600	1,621,000	0
1995	55,148,500	1,488,600	3,717,700	0
1996	36,310,500	1,925,400	22,118,900	0
1997	33,141,600	2,446,600	24,766,600	0
1998	30,701,200	3,090,300	26,563,300	0
1999	30,097,000	3,393,800	26,864,000	0
2000	29,265,500	4,327,300	26,762,000	0

Table 4. Peasant (Farmer) Holdings in Ukraine

Year	Units	Hectares
1990	332	4,300
1992	2,687	52,500
1994	30,334	635,300
1996	37,113	843,000
1998	39,800	1,063,800
2000	38,782	1,206,600

[1] The Constitution of Ukraine was adopted by referendum of April 20, 1996 and made effective by the Act of the Supreme Rada, On Adopting the Constitution and Its Entry into Force, no. 254 of June 28, 1996.

[2] See the law On the Fundamental Principles of Legislation of the USSR and the Union Republics on Land, adopted in February 1990 and amended in March 1991. See the draft All Union Treaty of the USSR, adopted by the Supreme Soviet in July 1991 and circulated for signature and ratification by the constituent republics. (This draft Treaty was intended to become the constitution of the Soviet Union, but after the attempted coup of August 1991, it was set aside.) Also see the Land Code of the Ukrainian SSR of December 18, 1990 (revised as the Land Code of Ukraine of March 13, 1992) and the law On Ownership of the Ukrainian SSR of February 7, 1991. And see Decree of the Supreme Rada of the Ukrainian SSR, no. 563-12 of December 18, 1990, "On Land Reform," paragraph 6, amended through December 17, 1999.

[3] The Land Code of Ukraine, no. 2196-12, of March 13, 1992. On October 24, 2001, the Supreme Rada (parliament) adopted a revised Land Code, which was signed by the president on November 14, 2001 and will take effect on January 1, 2002. Other fundamental laws of Ukraine, defining aspects of land relations, are: the Civil Code of 1964, revised and amended in May 2001; the law On Payment for Land of 1992, revised and amended to no. 404/97 of June 27, 1997; and the law On Lease of Land, no. 161-14, of October 6, 1998 (amended to December 7, 2000, no. 2120-14).

[4] Citizen small holdings were listed in the Land Code of 1992, Article 6 and their sizes and terms of allocation were defined in Article 56 (personal subsidiary plots), Article 57 (gaden plots) and Article 67 (house, dacha and garage plots). The law On Ownership of the Ukrainian SSR of February 7, 1991, Article 14, authorized citizens to hold small plots by right of inheritable life possession. This provision was changed in the revised law On Ownership, no. 3180-12 of May 5, 1993, to specify citizen rights of ownership of small plots, consistently with the Land Code of 1992. The rights to own the output of production on the land, to sell it and keep the profits, was specified in the law On Ownership of 1993, Article 6. Article 19 of the law On Ownership allowed citizens to transfer to others, including by sale, their ownership rights. Specific application of this right to sell small holdings was stated in the Decree of the Cabinet of Ministers, no. 15/92 of December 26, 1992, "On Privatization of Land Parcels." See also Decree of the President, no. 1204/99 of September 23, 1999, "On Measures for Long-Term Development of Garden and Orchard Holdings."

[5] Land Code of 1992, no. 2196-12 of March 13, 1992; the law On Agricultural Cooperatives, No. 469/97, of July 17, 1997; and the law On Agreements for Alienation of Land Shares, No 2242-3 of 18 January 2001. Among numerous decrees and policy documents, see the Decree of the President, no. 666/94, of November 10, 1994, "On Urgent Measures to Accelerate the Land Reform in the Sphere of Agricultural Production;" the Decree of the President no. 720/95 of August 8, 1995 "On the Procedure for Sharing Land, Allocated in Collective Ownership of Agricultural Enterprises and Organizations;" the Decree of the President, no. 1529/99 of December 3, 1999, "On Urgent Measures to Step Up reforms in the Agrarian Sector of the Economy;" and the Decree of the President no. 62/01 of January 29, 2001, "On Measures to Secure the Peasants' Property Rights While Reforming the Agrarian Sector."

[6] On the use of land share leasing to create a new economic relationship among farm members, see Anna Levchuk, "Аренда – Источник Доходов" (The Lease – A Source of Income) in Юридическая Практика, No. 35 (141) August 31, 2000 at pg. 1. Her approach was criticized by Viktor Kobilyanski in "Об Аренде и Путях Аграрной Реформы" (Concerning the Lease as a Means of Agrarian Reform) in Юридическая Практика, No.49 (155) of December 7, 2000 at pg.5.

[7] The numbers of outstanding shareholders, completed land parcels and leases have been provided by Pavlo Haidutsky, Deputy Chief of Presidential Administration, in an address to the Market reforms Press Club, entitled "Agro-Industrial Complex under Market Conditions," January 24, 2001. The same figures appear in the policy report "Fundamental Directions of Land Reform in Ukraine for 2001-2005," adopted by Decree of the President, no. 372/01 of May 30, 2001. For a critique of the leasing statistics and description of the process of payment of rent "in kind," see "Взгляд с Хутора Год Спустя" ("A View from the Farm a Year Later"), in Зеркало Недели no. 31 (365), August 18, 2001 at pg. 1 and 8.

[8] The law of the Ukrainian SSR On Peasant (Farmer) Holdings, no. 2009/91 of December 21, 1991, amended on October 14, 1992 (no. 2683-12) and on June 22, 1993 (no. 3312-12), with further amendments to May 11, 2000 (no. 2071-14). Also see the Decree of the President, no. 666/94 of November 10, 1994 "On Urgent Measures to Accelerate Land Reform in the Sphere of Agricultural Production" and the Decree of the Cabinet of Ministers, no 118/00 of January 28, 2000 "On the Procedure for Purchase of Land Parcels (Above the Average Norm Which is Privatized without Payment) …" The President adopted Decree no. 751/99 of June 28, 1999, "Measures Aimed at the Development of Subsistence Farms" however, this was rejected by the Supreme Rada by its Decree of July 15, 1999.

[9] See the Land Code, no. 2196-12 of March 13, 1992, Article 7; the law On Lease of Land, No. 161-14, of October 6, 1998 (amended to December 7, 2000, no. 2120-14) and the law On Specific Features of the Privatization of Uncompleted Construction Objects, no. 1953-14 of September 14, 2000. Among the decrees and policy documents are the Decree of the President, no. 612/93 of December 29, 1993, "On the Privatization of Auto Service Stations Which Sell Gasoline to the Public;" the Decree of the President, no. 456/93 of October 14, 1993, "On the Privatization of Objects of Unfinished Construction;" the Decree of the President, no. 591/99 of May 28, 1999 "On the Particulars of Privatization of Objects of Unfinished Construction;" the Decree of the President, no. 608/95 of July 12, 1995, "On the Privatization and Lease of Non-Agricultural Land Parcels for the Exercise of Business Activities;" and the Decree of the President, no. 32/99, of 19 January 1999 "On Sale of Land Parcels of Non-Agricultural Designation." See also the Order of the Ministry of Construction and Architecture, no. 158/61 of September 24, 1993 (registered as no. 152/93), "Procedure for Formulating the Plans for the Land Management Structure of Population Centers."

[10] The Decree of the President, no. 168/00 of February 4, 2000, "On Measures for Developing and Regulating the Market in Land of Population Centers…" noted that 1,500 parcels of land had been acquired by enterprises, amounting to three percent of eligible "privatized" enterprises. The international donor program Ukraine Enterprise Land Privatization and Sales Project reported that 4, 638 decisions to sell land by were made by local administrations, of which over 3,000 transfers of ownership took place by December 31, 2000; final report of USAID Contract No. EPE-I-00-95-0063 (December 2000). The Ukraine Realtors Association report, "Vlastnist' v Ukraini" of March 2001 identifies 45,000 small and medium-sized enterprises and 5,400 large-scale enterprises as eligible landholders. The Land Fund Report of the State Committee on Land Resources for 2000 identifies 48,241 land holders in the category of industrial and other enterprises and 9,971 in the category of transport and communications.

[11] See Regulations of the State Committee on Land Resources, no. 203 of April 26, 1996, "On the Procedure for Defining and Fixing the Boundaries of Yard Spaces Outside Existing Housing and Allocating Them into Common Use or Common Shared Ownership" and the policy report "Basic Directions for Insuring Housing for the Population of Ukraine in 20001-2005," adopted by Decree of the President, no. 856-99 of July 15, 1999.

[12] See the law On Planning and Development of Territories, no. 1699/00 of April 20, 2000, and the law On the Fundamentals of Urban Development, no. 2780-12 of 1992, amended on February 8, 2001, no. 2257/01. Among the decrees and policy documents are the Decree of the Cabinet of Ministers, no. 2328/99 of December 20, 1999, "On the Procedures for Issuing the Architectural-Technical Order and Technical Conditions … for Objects of Architecture; " the Order of the State Committee for Urban Development and Architecture, no. 54/97 of April 4, 1997 (egistered as no. 167/1971) "Model Regulations for Formulaing and Issuing the Architectural-Technical Order and Technical Conditions for Designing Objects of New Construction, Expansion, Reconstruction …" An illustration of the land allocation and construction permitting procedure in the city of Kiev appears in the architectual journal "A.C.C." no. 6, 2000 at pages 30-31. It shows 75 administrative actions, and full investment in construction, all of which must take place before final transfer of the land right.

[13] Statistics compiled by the State Committee on Construction, Architecture and Housing Policy and reported in the journal "A.C.C." no. 2, 2001 at pages 27 and 28. The unfinished construction sites included 12,400 industrial projects and 1,290 housing projects with 16 million square meters of dwelling space. Applications for new construction projects (APZ's issued) were 6,000 in 1999 and 7,500 in 2000. For the government's policy response, see the "Basic [Policy] Direction of Insuring Housing for the Population of Ukraine, 1999-2005."

[14] See the Land Code of 1992, Article 2, and Chapter 10 (Articles 72-75 on open space, recreation and sanitary-health lands), Chapter 11 (Articles 76-77 on forest land) and Chapter 12 (Articles 78-79 on water-related lands. See also the Forest Code, no. 3583-12 of January 21, 1994 amended no. 2120-3 of December 7, 2000, and the Water Code (VVR no.24 st.189) made effective by Decree of the Supreme Rada, no 214/95 of June 6, 1995. Among the decrees and policy documents are the Decree of the Cabinet of Ministers, no. 486/96 of May 8, 1996 "Procedures for Defining the Size and Boundaries of Water Protection Zones and Maintaining Agricultural Activity within Them," and Decree of the Cabinet of Ministers, no. 502/96 of May 13, 1996 "Procedures for Use of Land of the Water Fund." See also Recommendations of the State Committee on Land Resources and the Ministry of Agriculture, no. 1450/92 of May 15, 1992, "On Formulating Project Plans for Subdividing and Privatization of Lands of Agricultual Enterprises and Organizations," concerning the identification and retention in state ownership of lands within the environmentally sensistive categories.

[15] See the Land Code of 1992, Chapter 3 "Protection of Land" (Articles 82-87) and Law On the Planning and Development of Territories, no. 1699-3 of April 20, 2000, Chapter 2, Articles 5-9, and Chapter 3, Articles 10-12. Among the pertinent decrees and policy documents are the Decree of the President No. 372/01 of May 30, 2001, "On Basic Directions of Land Reform, 2001-2005;" the Resolution of the President, no. 970/00 of August 14, 2000 "On the State Committee on Land Resources;" the Order of the State Committee on Land Resources, no. 39/97

of March 11, 1997 (registered as 171/1975), "On Accomplishing State Zemleystroistvo Expertization;" the Directive of the State Committee on Land Resources, the Ministry of Agriculture and the Ministry for Allocating Ownership and Demonopolization, no. 1450/92 of May 15, 1992, "Recommendations for the Content of Project Plans for the Privatization of Lands of Agricultural Enterprises and Organizations;" the Order of the State Committee on Land Resources, Ministry of Agriculture and Ukrainian Academy of Sciences, 11/96 of Februay 20, 1996 "Methodological Recommendations for Sharing of Land Allocated in Collective Ownership to Agricultural Enterprises and Organizations" the Order of the State Committee on Land Resources, no. 85/97 of June 26, 1997 (registered as 522/2326), "Land Cadaster Inventory of Lands in Population Centers;" and the Order of the Ministry of Construction and Architecture and State Committee on Land Resources, no. 152/93 of September 24, 1993, "Procedure for Compiling Plans of the Land-Holding Structure in Population Centers."

[16] See the law On Topographic, Geodesic and Cartographic Activity, no. 353/98 of December 23, 1998 and the Land code of 1992, Chapter 3. Among the technical decrees and policy documents are the Resolution of the President, no. 970/00 of August 14, 2000 "On Regulations of the State Committee on Land Resources;" the Decree of the President, no. 606/99 of June 3, 1999, "On the Main Administration of Geology, Cartography and the Cadaster;" the Decree of the President, no. 372/01 of May 30, 2001, "On the Fundamental Directions of Land Reform in Ukraine, 2001-2005;" the Order of the State Committee on Land Resources, no. 110/97 "On Creating the Center for the State Land Cadaster;" and the Order of the State Committee on Land Resources, no. 522/97 of August 26, 1997 (registered as 522/2326) "Regulations On Land Cadaster Inventorization of Land of Population Centers."

[17] See the Decree of the President, no. 372/01 of May 30, 2001, "On the Fundamental Directions of Land Reform in Ukraine, 2001-2005".

[18] See the Joint Order of the Ministry of Justice and the State Committee on Land Resources, no. 324/96, "On the Procedure for Certification of Agreements to Alienate Land Parcels" and the Decree of the Cabinet of Ministers no. 801 of October 12, 1995, "On Creating the Form of the Certificate for the Right of Land Share and the Registry Book of Certificates of the Right of Land Shares."

[19] See the Order of the State Committee on Construction, Architecture and housing Policy, No. 121 of June 9, 1998 (registered as No. 399/2839 of June 26, 1998) "Instructions for State Registration of the Right of Ownership in Objects of Real Property …" The Decree of the Cabinet of Ministers, no. 192/98, of February 18, 1998, "On Measures to Create a System of Registration of Rights in Real Property and Moveable Property;" and the Decree of the President no. 666/99, "On State Registration of Rights in Real Property," nullified by the Supreme Rada in its Resolution no. 837-14 of July 7 1999. It should be noted that these decrees place the responsibility of creating and keeping the registry system in three different agencies. Several draft laws on creating the registry have failed adoption.

[20] See the law On the Payment for Land of 1992, revised and amended to no. 404/97 of June 27, 1997. The methodologies of normative land valuation are prescribed in the following decrees: Order of the State Committee on Land Resources, Ministry of Agriculture and Ukrainian Academy of Sciences, 11/96 of Februay 20, 1996 "Methodological Recommendations for Sharing of Land Allocated in Collective Ownership to Agricultural Enterprises and Organizations" (valuation of agricultural land shares); Decree of the Cabinet of Ministers, no. 525/97 of May 30, 1997, "On the Method of Monetary Valuation of Land of Non-Agicultural Designation Outside of Population Centers" (suburban and non-urban land for production); Order of the State Committee on Constuction and Architecture (urban land) and Decee of the Cabinet of Ministers, no. 213, 1995, "On the Method of Monetary Valuation of Lands of Agricultural Designation in Population Centers," amended by no. 864 of October 31, 1995) (agicultural land within urban jurisdictions).

[21] Decree of the Cabinet of Ministers, no. 284/93 of April 19, 1993, "On the Procedure for Defining and Compensating the Losses of Owners and Users of Land."

[22] See Dmitri Sergeyenko, "Land and the People," a report on the consideration of the draft Land Code in second reading the Supreme Rada, in Юридическая Практика, No. 24 (182) of June 13, 2001 at pg. 3; see also "Land Reform in Process: Yet Another Step Forward," Ukrainian Center for Independent Political Research, www.ucipr.kiev.ua, October 29, 2001.

[23] State Committee on Land Resources, Structure, Dynamic and Growth of the Land Fund of Ukraine, annual statistical reports, 1991 through 2000 (the reports On the Land Fund).

[24] Ukraine Association of Realtors, Vlastnict' v Ukrainini (Property in Ukraine), Kiev, March 2001.