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ONE PROBLEM, MANY SOLUTIONS:  
LAND MARKET DEVELOPMENT IN THE CIS AND CENTRAL AND EASTERN EUROPE  
by  
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## **1. BACKGROUND**

In most countries in Central and Eastern Europe (CEE) and the Commonwealth of Independent States of the former Soviet Union (CIS), the agricultural system developed during the socialist period has been the subject of fundamental restructuring efforts over the past 6 years. This restructuring has responded to the interplay of two factors: (1) the desire to improve the productivity of agriculture; and (2) the decision to move toward a market economy to replace central planning.

By 1991, every country in CEE-CIS found itself obligated to rethink its land ownership and management policies, with many new options for reform. In practice, these options are often not as numerous as would be possible theoretically, due to the requirement of market oriented economies that the rights to hold and use the means of production be privately held. This creation of private rights to land and investments tied to the land has several implications:

It shifts to individuals or companies the decisions about how to manage farming enterprises, including the decision to transfer the enterprises to other holders ("market transactions").

The process of privatization frequently results in the fragmentation of previously integrated enterprises into several smaller enterprises.

The public obligations of private land owners (such as environmental protection, obeying of zoning regulations, payment of taxes, observance of rights of way) remain undefined and frequently ignored.

Access to land becomes limited to market transactions in which groups which are "disadvantaged" either socially or economically are marginalized.

Each country has engaged in its own debate about how quickly and to what extent to transfer use-rights and ownership rights from the state to private individuals, families, associations and companies. Some chose to move more radically and rapidly, while other move cautiously and slowly, with gradual transfer of rights to private individuals or groups, with limitations on the rights of the new owners to buy and sell immovable properties, or with broader provisions for state re-acquisition of privatized properties than are common in Western market economies.

Yet with all of these variations and hesitations, privatization programs are moving forward, and contain within them provisions to protect the rights privatized, to allow the new holders of properties to transfer them to others and others to acquire them, i.e. the basic provisions for market transactions. Such provisions are necessary if market transactions are to assume the role

of assigning people to land rather than returning to centralized administrative procedures of the State.

Each country has adopted its own approach to the privatization of control over agricultural land, the restructuring of farms and the encouragement of markets in immovable property. There is a continuum of outcomes ranging from a complete individualization of farm holdings and abolition of the state and collective farms (e.g. Albania and Armenia) to slow, tentative efforts at restructuring the existing farms and retaining collective control of land (e.g. Ukraine and Uzbekistan).

Nearly every country accepted the principle that members of the former state and collective farms should have rights to the farms' land, but the mechanism of re-distribution differs, taking one of the following forms:

1. Restitution of land to the families that owned it before collectivization.
2. Distribution of physical parcels of land to families on a per-capita basis without regard to former ownership.
3. Distribution of land shares on a per-capita basis, with no demarcation of parcels or identification of specific parcels corresponding to the shares.<sup>1</sup>

The essential difference between the latter two options is a fundamental difference in the spatial and organizational conception of agriculture. Under socialism, the organization of rural sector was based on the state and collective farms, from the educational system to rural finance. Official detail maps of rural areas were centered on farms rather than on geographical coordinates. Where this concept is widely held, the share distribution privatization approach is used. Where there is strong pressure for the deconstruction of previous enterprises, actual land parcels are distributed. For example, in the Kyrgyz Republic the government's reform implementation passes through newly-created Rural Committees, one for each farm. The Rural Committee is supposed to preside over the restructuring of the farm, and then disappear itself. Given that its leadership is almost always composed of the former managers of the state or collective farm, the Rural Committees often have a vested interest in keeping as much as possible of the former farm intact. These committees are also unlikely to consider ecological and economic restructuring options that affect any land other than that under their control (Bloch et al. 1995).

Another example of the top-down, former farm-centered approach is the most widely-known farm restructuring effort conducted with international support, the International Finance Corporation project in Nizhny Novgorod, Russian Federation. Expatriate experts in agriculture, accounting and other specialties worked with the management and members of five farms for about 18 months. Even though all members of the farm labor force were given individual land and property [machinery and buildings] shares and were permitted to decide individually how to use them, most either preferred or were guided to pool their shares into large farm units. The IFC notes that during the project:

“Several trends emerged on the pilot farms related to the use of land and property entitlements:

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<sup>1</sup> Some countries also allocate some land to previously landless people, and some have envisioned coupon auctions for land similar to those used in industrial mass privatization programs.

The majority of owners chose to lease their land entitlements to agricultural enterprises.

- Only 1.5% of land entitlement owners chose to use their land entitlements on their own.
- Only 1.5% of land entitlement owners were willing to sell their land entitlements.
- The majority of owners contributed their property entitlements to the charter capital of new enterprises.
- Although many owners were willing to sell their property entitlements, the number of sale transactions was limited by buyers' capability to pay fair market price (IFC 1995, p. 13)."

The result was a remarkably timid restructuring: the five farms, averaging about 3,000 hectares, that completed the restructuring process broke up into 21 corporate entities averaging over 500 hectares, plus 16 private family farms averaging less than 50 hectares.

The contrast between countries such as the Kyrgyz Republic and Russia on the one hand and Albania on the other is extreme. Within 18 months of the initiation of democratic government in Albania in 1991, nearly all agricultural land formerly organized into state farms and cooperatives had been distributed to individual families, on a per capita basis determined by each village (Stanfield et al. 1992).<sup>2</sup> The ex-cooperative farms themselves were abolished by the stroke of a pen, and their former managers given no special privileges in gaining access to land, although the restructuring of ex-state farms has been slower and more favorable to former managers. Similarly complete destruction of state and collective farms was undertaken in Armenia, Romania and several other countries.

There is no uniformity in CEE/CIS in terms of the definition of property rights to land. In some countries, such as the Kyrgyz Republic and Kazakstan, the state has retained the right of ownership, and grants long-term leases or use rights to farmers individually or in groups. In most of Eastern Europe, ownership has been passed from the state to farmers, although in Macedonia and Albania the state has kept title to land that was formerly under state farms. Under usufruct, leasehold and ownership arrangements, the land is generally allocated to families rather than to individuals. This policy avoids the extreme fragmentation of land which would result from strict per-capita distribution. The policy can protect the rights of family members, especially women and heirs, if such rights are protected by formal law and if patriarchal customs weaken.

## **2. LAND AND IMMOVABLE PROPERTY MARKET DEVELOPMENT ISSUES**

Particularly in the CIS countries where the privatization of rights to agricultural land is still in process, agricultural land markets remain largely dormant. There is no great clamoring for the sale, purchase, or rental of use rights in most areas yet because the implications of privatization are just beginning to be understood, and most rural residents are still deciding what they want to do with their land. Furthermore, lack of agricultural credit makes mortgaging and collateral issues moot at present.

The stagnant period at least in the offering of land for sale or rent is likely to end soon. Administrators, social service workers (doctors and teachers), technicians, and persons employed

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<sup>2</sup> In a nontrivial number of villages, land was restored to ex-owners rather than being distributed equally; while this was 'against the law' it is not being seriously challenged by government or by deprived beneficiaries, and the unequal holdings will in all likelihood be given legal standing when the immovable property registration system is finalized.

full-time off the farm comprise a large share of the working-age population of many former state and collective farms. When pensioners are added to those who received land but are unlikely to farm, it is obvious that land transfer of one kind or another will be extremely common in the near future. For the first type of person, their opportunities for non farm employment and their professional competencies will incline them to transfer into non-farm occupations as the opportunities arise. As they do so, they will be motivated to liquidate their interests in land and transfer the capital generated into other assets.

Moreover, in heavily populated regions, the land shares allocated to individuals often are quite small, in some countries less than .05 hectares. Even when a nuclear family pools its individual shares, total household shares are frequently less than .25 hectares. Groups of families have consolidated their holdings to achieve a plot that is farmable and/or meets the government mandated minimum farm size. But it is clear that under these conditions vast numbers of rural dwellers can have no effective role in agriculture in the future: neither their labor nor their management input will be adequately remunerated, and they will soon be seeking to sell or lease their shares or parcels and engage their labor time in more attractive activities.

The gradual removal of constraints to market transactions in land is already apparent. Legal constraints on market transactions are being modified over time as a reaction to increased pressures from landholders to exercise a fuller set of rights usually associated with the concept of ownership, especially the right to buy or sell. The economic constraints on the supply and demand for land through market transactions are influenced by macroeconomic changes as well as sectoral policies which influence the profitability of agriculture. While the economic situation in many countries is increasingly desperate, in others it seems to be improving.

The creation of dynamic land markets which are also accessible to wide sectors of the population and which preserve the land base for future generations is a complicated challenge. Experiences to date suggest the following components of a land market development strategy.

### **3. COMPONENTS OF A LAND MARKET DEVELOPMENT STRATEGY**

#### **3.1 Institutional requirements for the promotion of market dynamism**

Markets will not work without marketable titles. While the privatization programs have as their goal the creation of marketable titles, there is often a gap between intention and reality in this regard. Several programs are needed to assure that land and other immovable property markets work dynamically:

##### **3.1.1 Completion of legal and regulatory infrastructure development**

In most transition countries there are a number of initiatives which should be given priority in order to achieve the goal of marketable titles to privatized properties. If adequately designed, efforts to create a modern immovable property registration system and the comprehensive registration of rights in that system can also help to consolidate the privatization initiatives through the following activities for making titles marketable:

Finalize the issuance of legally valid titles to the privatized land and buildings (bureaucratic delays are common as are disputes between the recipients of properties and the agencies

which grant the privatized rights of possession and ownership);

Develop and implement condominium legislation and assist in the organization of associations to manage common areas of buildings (governments have been anxious to privatize state owned dwelling units, but have often neglected to establish the condominium arrangements for managing common areas in apartment buildings);

Clarify the ownership, management, use of communal grazing and ex-state farm land (governments first establish programs to privatize the holding and management of agricultural land, often leaving in public ownership pastures and forests);

Correct errors of privatization programs (in the haste to privatize, boundaries are often incorrectly demarcated, areas incorrectly calculated, names of owners not accurate, leading to potential confusions in the future);

Clarify the ownership rights to dwelling units and surrounding land. In many NIS countries buildings can be privately owned, while land can be privately held in some form of use right. At the same time in people's minds their rights to their houses include the land within the fences traditionally established and recognized locally.

Define the rights of members in the various types of associations and commercial companies which come to own and lease land. Privatization of land often means that not just individuals or families become the owners of rights, but that collectives composed of several families hold those rights to land. The rights of the constituent members to the assets of the collective are often inadequately defined, which leads to the gradual bankrupting of the collective.

Clarify and legalize the easements emerging on the privatized parcels of land, rural and urban. The breakup of large fields into smaller parcels often overlooks the question of access to parcels not bordering on access roads. The concept of easement or servitude has to be understood and introduced into the privatization arrangements.

### **3.1.2 Creation of a secure, transparent immovable property registration system**

Potential buyers, lessees, renters, and mortgagors will not readily offer to acquire the ownership or use of properties unless they are able to identify the true owner or use-right holder and be confident that the rights are securely held. The public identification of the true users and owners of immovable properties is one of the main functions of an immovable property registration system.

Countries are considering a range of alternative immovable property registration institutions, which record rights to all immovable properties as they have emerged from the privatization programs and as they change over time. There are varying opinions on whether such institutions should be extensions of the privatization recording process or should be patterned on deeds registries familiar in most market economy countries, or should be more ambitious property based systems for recording changing rights while at the same time describing the location of properties in a comprehensive property maps. The recent experiences of mature and maturing market economies indicates that it would be advisable for the transition countries to move

directly to a property based registration system, which unifies the registration of legal rights with the comprehensive mapping of property location in a single institution. Of course such an investment makes sense only in countries or regions where there is a firm and demonstrated commitment to the creation of marketable rights to immovable properties.

Two countries which have made such a commitment are Albania, which has been implementing a parcel-based registration system since 1994 (Stanfield and Jazoj, 1995), and the Kyrgyz Republic, where the legislative framework is being constructed in early 1996 and where pilot registration offices will open in late 1996 (LTC 1995). Their experiences show that it is possible to create a cost-effective registration institution with recording technologies that are appropriate to local conditions but capable of upgrading as those conditions improve.

### **3.1.3 Construction of linkages between immovable property markets and capital markets**

For people to mobilize the often substantial capital required for the acquisition of immovable properties, they can either draw on their savings or on loans from family and friends, or they can approach financial institutions for the needed capital. Typically in transition countries the restructuring of financial institutions goes through a stage of instability and often bankrupt financial institutions in a context of high inflation. During this stage, capital for long term loans typically is greatly limited and/or interest rates are very high. Temporary measures are required (such as encouraging remittances from abroad) as well as long term institutional innovations are needed (financial sector reforms, secure and all encompassing immovable property registration system, simplified procedures for mortgaging immovable properties).

In mature market economies, a significant proportion of medium- and long-term lending is secured by using immovable property as collateral. Institutional support for this relationship has to be created in the transition countries, including legal procedures for registering mortgages and for enabling foreclosure due to the lack of repayment of loans; general public knowledge of such arrangements and acceptance of their legality; and protection of the rights of the borrowers against arbitrary foreclosures.

### **3.1.4 Rapid and equitable resolution of conflicts among different people who claim rights to the same properties**

Privatization of land inevitably engenders disagreements among recipients. Sometimes this is inherent in the process: most CEE countries restituted some, but rarely all, land to its previous owners; in others, such as Albania, ex-owners are to be compensated in money instead. In neither situation can everyone be accommodated completely. In addition, boundary conflicts and inheritance disputes will gradually arise as land is more clearly perceived as a valuable asset. The newfound feeling of freedom and individualism, litigiousness will likely grow. The civil court system is very likely to be inadequate to the task, especially because its responsibilities unrelated to land have also increased during the transition.

In some countries a special administrative tribunal has been created to relieve the pressures on the courts by the very numerous conflicts among people concerning the facts of ownership and use of land. Such a tribunal would operate with more flexible rules of evidence and would include as members of the tribunal land specialists other than just lawyers.

### **3.1.5 Clear and equitable rules and procedures for the combination of properties into larger farm enterprises, while protecting the rights of the holders of the component parcels**

Countries such as Albania which followed land distribution policies aimed at equity and countries such as Macedonia which permitted private landownership throughout the socialist period face a situation of high land fragmentation; productive efficiency may be difficult to increase on small parcels. While it is preferable for market forces to play a major role in determining appropriate farm sizes and levels of fragmentation, in the early stages of market operation such forces may not give sufficiently clear signals. The willingness of recipients of land in countries which have opted for highly fragmented agricultural holdings to combine their parcels with others is often not matched by legal rules for the structure and functioning of such arrangements; arrangements for both formal and informal associations to function are needed.

### **3.2 Institutional Needs for Democratic Access to the Marketplace of Immovable Properties**

For land and other immovable property markets to work properly, there have to be many buyers and many sellers. Moreover, in order to avoid tensions due to the polarization of society the immovable property market has to be open to all the people, those with initial capital and those without, to women as well as men, to people of various ethnic backgrounds. Examples of programs which are needed include:

Special programs for young people, and/or people without capital to assist their competing for land and immovable properties (mortgage guarantees, subsidized loans for beginning farmers, local government land bank programs;

Removal of biases against certain social groups' rights to buy and rent properties, where such biases are susceptible of removal;

Protection of the rights of family members, especially spouses, to participate in transactions to avoid irresponsible behavior of family heads, who in most countries are males;

Simple rules for family management of immovable properties when the family head is absent;

Clear and simple rules applicable to all social groups for the transfer of ownership, for leasing and renting, or inheritances, for mortgaging of immovable property.

### **3.3 Future Generations' Rights to Immovable Properties**

The rights of future generations to access to immovable property within a sustainable environment require consideration in the design of immovable property market institutions. While markets may be the optimal institutions for allocation of resources in the short run, they may fail to give proper weight to long-run considerations such as future productive capacity.

#### **3.3.1 Avoidance of land degradation**

Some buyers of immovable properties may have very short time horizons, intending to recoup

their investments rapidly. This can lead to destructive land use practices. Buyers have to be made aware of socially desirable limitations on their use of the land, and these limitations have to be more real than just legal expressions of empty desires. How to make private, immediate interests converge with the interests of future generations is a challenge. A strategy for meeting this challenge is an integral part of the immovable property market institutional development strategy.

The degradation of land resources is a serious impediment to the welfare of the people of the transition countries as well as that of future generations. Soil erosion is a key problem that not only relates to environmental quality but also to food security. In addition, the potential for catastrophic flooding is great in many transition countries because of widespread deforestation, loss of soil through erosion, and sedimentation in reservoirs that reduces their storage capacity. The lower coastal plains are most susceptible to flooding as many of the earthen dikes have been weakened through neglect. The pollution of soil, water and air by agriculture and industry directly affect the health and welfare of the people of the transition countries. The uncontrolled conversion of high quality agricultural land to non-agricultural uses undermines the capacity of the countries to feed themselves and to generate an exportable agricultural surplus.

There are several steps that can be taken that will complement market forces to ensure sustainability:

***Document Land Degradation Problems.*** The first step is to determine the various types of land degradation and then to document the nature, extent and geographical location of the land degradation problems.

***Identify High Risk Areas.*** A second step is to identify the geographic areas of highest risk for the various types of land degradation. Concerning uncontrolled urbanization, it is usually clear what urbanizing areas are the most affected, although the degree of the problem in other urban centers should be assessed.

***Conduct research on land degradation.*** Air, soil and water quality should be monitored on a routine basis. An effective way to integrate these degradation studies would be to examine the fluxes of water, particulates, and dissolved chemicals in a watershed that features multiple-use activities. Applied research that is needed to improve the productivity of agroecosystems include: (1) a study of alternative irrigation systems to the gravity system, (2) ways to maintain drainage channels in reclaimed areas of the coastal plain, and (3) farming system approaches to avoiding soil erosion. Applied research is also needed to clearly identify and map the high quality agricultural land surrounding urban areas as well as the location of the urban boundaries.

***Design Educational Programs.*** The fourth component should be an educational program to teach farmers and the general public on the types of land degradation, their causes, the extent of the problems, their effects on the welfare, health and safety of all people, and methods for prevention and protection of the environment. The general public should be educated on the prevention of land degradation because public support is necessary for an effective land protection program. Perhaps the greatest need for land protection is a comprehensive agricultural extension program. During the collective era, technical information was transferred from research institutes to the manager of the state or cooperative farm. With privatization and land fragmentation, there is an even greater need for an extension program.



***Prepare Legislation.*** The first step is to examine existing legislation for adequacy in a land protection program followed by the preparation of needed legislation. For example, it is likely that there is a need for developing a Soil and Water Conservation Law that includes provisions for controlling soil erosion on the land and preventing surface and ground water pollution from sedimentation, nutrients and pesticides resulting from soil erosion. Such a Law should involve both the National Government and local governments in soil erosion and water pollution control programs, with responsibilities assigned to both levels. Another likely piece of legislation is a regionally oriented Land Use Planning and Zoning Control Law to prevent land degradation from housing developments in rural areas and assist in locating solid waste disposal facilities.

***Develop Investment Program for Land Protection.*** Public resources as an investment in the future will be needed to resolve the different types of land degradation by sharing the costs with owners of land or enterprises. It will also be necessary for the owners of the land or enterprises where degradation is most severe to share in the costs of correcting the deficiencies.

***Implement a LIS for Monitoring Evolution of Different Types of Land Degradation.*** Detailed resource mapping is usually available in transition countries concerning natural resources. However, few of the data have been digitized, and few reproducible maps have been prepared that depict the potential and actual extent of land degradation, particularly the high-risk areas. Much of the data presently are stored in notebooks that survive the initial shocks of government reform. Accordingly, it is essential that these data be scanned and archived on computer, at a minimum to show the geographic distribution of various forms of land degradation, especially areas of high risk.

### **3.3.2 Redefinition of ownership rights and responsibilities**

Another component of this strategy is the clear and active consideration of what land should be exempted from normal market activities, such as greenbelts around cities and lands where environmental conditions are fragile or biological diversity is seriously threatened. In such areas the "development rights" of private owners will have to be limited, but in ways which is perceived as fair and not as a confiscation of private ownership rights.

This structure for the appropriate limitation of development rights should be rapidly considered, while people are learning what private ownership means of properties in which they have not invested much personal, private capital.

### **3.3.3 Community management of forests and pastures**

Substantial portions of the forests and communal grazing land are often retained in formal public ownership, but are used by private people and companies under different arrangements with different entities of public administration. It is necessary to find new ways to empower local communities, whose members have themselves interests in using these resources, to benefit from and monitor the private concessions, leases or rentals of publicly owned pastures and forests.

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Bloch 1995

IFC 1995

Stanfield and Jazoj 1995

LTC 1995