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LAND REFORM (lifting the moratorium)

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The purpose of this study was to assess the impact of civil society organizations (CSOs) on the formation of state policy regarding land reform, especially the lifting of a moratorium on the sale of land zoned for agricultural purposes in Ukraine. This report is part of a project that includes similar studies on reforms in five other sectors: pension, education, consumer rights, labor law, and regional integration.

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Executive summary

Ukrainian society and most political forces have acknowledged the inevitability of forming a proper market for farmland. Still, the absence of a focused state policy and the lack of information mean that most voters are afraid that instituting a market for farmland will cost them their properties, make it impossible to use lands that are in the public domain or to access forested lands and waters. For this reason, a significant portion of civil society is against withdrawing the moratorium on the sale of land zoned for agricultural purposes.¹

Ukraine has a good opportunity to turn land reform from an unpopular move to one that has strong support among voters. On one hand, there is considerable dissatisfaction across the board among Ukrainians about the issue of land, as most rural dwellers own land without being able to properly dispose of their property. On the other, the lack of a land market means the country has no real means of improving the productivity of the farm sector and increasing the level of investment in agriculture.

Launching public debate and making use of public policy instruments by engaging all interest groups and stakeholders in establishing what obstacles stand in the way of land reform and the policy decisions needed, understanding their positions, and mobilizing support among those who favor reform while neutralizing opponents, would allow the Government to choose the best configuration of land reform that will protect the rights of property owners while reflecting the interests of both rural Ukrainians who own land and those who do not have any land.

¹ This includes both land designated “for agriculture” and land designated for “subsistence (household) farming.”

Goal of reform

The issue of lifting the moratorium on the sale of farmland and allowing the free movement of land has remained unresolved for many years in Ukraine. The first reason is the lack of a consolidated position on the question of ownership of land among the country's voters and the second is the lack of political will among major political forces to resolve the issue, that is, to make their position clear in their party platforms. In a sense, the second reason flows out of the first, as the issue of a land market and the private trading of land has been one on which elections could be won or lost for the entire 20 years of independence and virtually non-stop elections at one level or another.

The first Government program that contains an official view of the government's aim with land reform is the Presidential Economic Reform Program for 2010–2014, called "Prosperous society, competitive economy, effective government." This program aims to "**set up a transparent market for farmland on the basis of a consolidated land cadaster system.**" The purpose of reform as seen in this program is: "to ensure the technical upgrading of the sector to transform it into an efficient sector of the economy that is competitive on both the domestic and foreign markets."² In short, the purpose is a technical upgrade and an increase in the efficiency of domestic farming. Forming a transparent market for the sale of farmland is merely a step towards this goal.

Among the country's opposition forces, the BYT-Batkivshchyna VR faction has publicly presented its view of the goal of land reform: "**To initiate a national referendum against the sale of farmland and in favor of leasing land with clear commitments.**"³ Other opposition forces are critical of various elements of the land reform that the Government has proposed, but they have not publicly presented their own views of the purpose of land reform or the measures that such reforms should include.⁴ At the same time, individual faction leaders have made public statements proposing to expand the options for leasing farmland and to focus more on ensuring that the state does not interfere in the trade of agricultural products. We believe that this position can be explained in the light of probable elections to the Verkhovna Rada in October 2012.

In the meantime, the complexity and socio-economic significance of land reform for Ukraine will make it possible to define its final phase as **establishing modern market for farmland based on an understandable, transparent state land title registration system and state guarantees that property rights will be respected.**

Ukraine needs land reform for a variety of reasons, but the most important are three: establishing normal property rules, reforming existing rules regarding farmland, which allow country dwellers to own it without the right to dispose of it, and restoring the Constitutional right to truly own land. And without these reforms, the further development of Ukraine's agricultural potential, which requires major investment, will be impossible.

² Source: http://www.president.gov.ua/docs/Programa_reform_FINAL_2.pdf

³ Source: http://www.tymoshenko.ua/uk/article/yulia_tymoshenko_18_4_2, <http://www.byut.com.ua/news/5775.html>

⁴ Source: <http://www.kpu.net.ua/petr-simonenko-ot-svobodnogo-rinka-zemli-postradajut-fermeri-i-krestjane/>

Problems

The Economic Reform Program for 2010 – 2014 called “Prosperous society, competitive economy, effective government” **does not mention** any problematic aspects of a land market. It notes that the absence of a market for farmland is one of the reasons for the low investment appeal of the farm sector and the inefficient utilization of agricultural potential.

At the same time, analysis suggests that the issue raises at least **six serious problems**:

- the absence of a systemic view and effective model of land reform and—as a result of this—the lack of basic understanding in Ukrainian society about land markets. This has resulted in a large proportion of rural residents rejecting the very notion of trading in land as private property;
- the system of government and the country's leading parties have not come up with a single approach to or view of the way that Ukraine's agricultural, including land, reform should look when it's done. Nor have they established the principles for how a land market should function and, as a consequence, they have no consensus on the basic issue of lifting the moratorium on the sale of farmland, about who will have the right to buy it (foreigners, stateless individuals, legal entities, and so on), about the maximum size of a parcel of land that can belong to a single individual, how to change the zoning and utilization of a particular parcel of land, and how to set up a state regulator or fund over the market for farmland and/or a land bank;
- key elements of a state policy regarding the functioning of a land market are missing and the role of the state in regulating this market has not been determined, for instance, what institutions and mechanisms will be used to register agreements and title, what fiscal policy will be, and so on;
- no policy decision has been made regarding the ownership and disposal of privatized parcels of land whose owners have died without heirs, that is, land with no successor owner, and land in state ownership;
- because there is no clear state policy and lack of information, most rural residents are afraid that instituting a market for farmland will lead to loss of land for them;
- no attempt has been made to enlighten owners of parcels of land about their option and rights to dispose of such property and the state's position on these issues has not been promulgated.

The cost of non-doing

No consolidated, public official position on the price of not making a transparent market for farmland exists. Moreover, certain sources and situational analyses make it possible to list at least four major consequences:

- **loss of investment appeal** for Ukraine's farm sector and the inability to mortgage land for the country's farmers, which represents a further loss of nearly UAH 50 billion in investment each year;
- **losses to rural residents** of around UAH 500-700⁵ per annum on each hectare of land that they lease out;
- **violations of the constitutional rights** of the owners of land parcels to dispose of their property;
- **failure to resolve existing problems and the accumulation of new ones** if the moratorium is extended as this prevents the formation of a civilized land market in Ukraine.

These figures coincide pretty consistently with those of many experts in the sector. In addition, while the moratorium was in place, a shadow market for land has been formed that experts say now covers close to 10% of all the country's land, that is, nearly three million hectares. Not only does the state not receive taxes from the transactions, but the sellers of these land parcels get far less than they would in a civilized market.

⁵ About US \$62-78.

Policy decisions

Institutional

The Economic Reform Program for 2010-2014 called "Prosperous society, competitive economy, effective government" only provides for some institutional decisions in terms of setting up a transparent market for farmland, including:

- setting up the conditions for a land market to function properly, including by inventorying land resources, completing the issue of state deeds for title to land, and establishing the boundaries of land parcels on-site, and improving the methods for assessing the value of various categories of land in order to establish their actual market value;
- establishing an electronic nationwide cadaster of land and the necessary database with information on land;
- establishing the working infrastructure for a land market;
- develop mechanisms for regulating the land market and efficient trade in farmland.

Regulatory

The plan for the Economic Reform Program for 2010-2014 called "Prosperous society, competitive economy, effective government" includes some approved measures for developing and adopting the rules and regulations for a market for farmland to function transparently, such as:

- taking steps to adopt the Law of Ukraine "On the land market;"
- developing the rules and regulations for setting up land mortgaging fund.

In their public statements, the President and members of the Government have also mentioned the need to adopt the Law of Ukraine "On the State Land Cadaster."

Financial

No financial decisions are anticipated

Alternative policies

As mentioned earlier, individual political leaders, predominantly from the opposition, propose using a system of land leasing and making such leases heritable. Community groups that are close to the Communist and Socialist Parties rarely bring the question of trading in land as property up for discussion. When it comes to the issue of owning land, they tend to promote very outdated notions of giving land only to those who actually work it and limiting the number of hired hands. Nevertheless, these parties' platforms actually contain no specifics about these issues.

Experts consider such a position moribund and largely tied to the fact that a certain part of the population and local residents of the older generation are holding onto the ideology of the communist regime that was in place from 1917 to 1990.

Analysis of stakeholder positions

Depending on the position they hold on the issue of setting up and establishing a transparent land market, there are two main interest groups:

Opponents of land reform, those who want the moratorium prolonged

1. Owners of parcels of land who have no opportunity to work their land and would like to sell it, which experts say is about 25% of landowners. But lack of information means that these individuals are generally afraid that their land will simply be taken away from them for peanuts.
2. Owners of parcels of land who actually work the land themselves and currently have no interest in selling—mostly farmers and family members of small rural holdings. Again, lack of information means that these, too, are afraid that their land will be taken away and are therefore generally against a land market.
3. Farmers and farm enterprises that currently lease land are generally afraid that the institution of a land market will take away their right to continue using the land they have leased.
4. Individuals who don't have land but are afraid that land reform will prevent them from ever using common lands, such as forests, rivers, lakes, the sea, and so on.

Supporters of a land market

1. Modern agricultural production and sales holding who would like to legalize their generally large land holdings, most of which have been bought on the shadow market.
2. SMEs who are owners of farms that have gained a foothold in the farm business and would like to expand based on expanding the land holdings they currently have.
3. Banking institutions, including foreign ones, that have a stake in promoting mortgages in Ukraine's farm sector.
4. Domestic and foreign investors who see Ukraine as an opportunity for major investment projects.
5. Owners of land parcels who cannot work their own land and would like to sell it, believing that a civilized land market will bring a decent price for their property.

The group interested in a transparent land market represents about 7 million owners of land parcels in Ukraine, more than 40,000 commercial farms, and investors who want to put their money into the farm sector. Again, the lack of sufficient information about land markets, the absence of public debate on the issue, lack of understanding of their own rights and opportunities to dispose of their land parcels have led to a situation where a large part of rural dwellers are against the idea of a land market. Farmers generally speak against the lifting of the moratorium in public, as do the managers of poorly performing farm sector SMEs.

Obstacles to policy

The first major step to lift the moratorium on selling farmland is to adopt the Laws of Ukraine "On the land market" and "On the State Land Cadaster." However, on 21 March 2011, the Verkhovna Rada voted down the Bill "On the land market" and, as of 1 April 2011, there was no longer such a bill on the agenda for debate in the legislature. The Bill "On the State Land Cadaster" has been submitted by deputies for review in the Rada.

Given that there is no single state position on the functioning of a land market and key issues around lifting the moratorium on the sale of farmland have not been agreed, the provisions of the future law on the land market in Ukraine cannot be predicted. Thus, the version of the Bill "On the land market" posted for public discussion by the State Agency for Land Resources (SALR) prohibits foreigners and legal entities from purchasing farmland. Meanwhile, the President's First Deputy Chief-of-Staff recently made an official statement that the land market needs to be open to foreigners as well.

Timetable

The Economic Reform Program for 2010-2014 called "Prosperous society, competitive economy, effective government" states that by 1 January 2012, "a transparent market for farmland is to be organized, based on a single land cadaster system." To this end, the schedule calls for:

➤ **by September 2010:**

the regulatory base for setting up a land mortgage fund is to be prepared;

➤ **by October 2010:**

the Bill "On the land market" is to be agreed among interested ministries and agencies, reviewed at a session of the Cabinet of Ministers of Ukraine and submitted to the Verkhovna Rada of Ukraine;

➤ **by July 2012:**

a functioning, automated state land cadaster system is to be up and running, including a series of program measures, operating sub-units in the territorial offices of the State Land Committee, Derzhkomzem, which will be responsible for operating the state land cadaster using modern information technologies.

In a speech before the Economic Reform Executive Committee on 21 March 2011, President Yanukovich reconfirmed that the planned goal was to launch a land market in 2012 and to adopt the Bills "On the land market" and "On the State Land Cadaster" by mid-2011.⁶

But it's already evident that the original schedule is seriously delayed. In his Annual Speech to the Verkhovna Rada, President Yanukovich mentioned the possibility that the moratorium on the sale of farmland would be lifted as of 1 January 2013.⁷

Various statements by highly placed officials—the President, Premier, Ministers and the VR Speaker—allow us to predict that over 2011-2012 the moratorium will be officially lifted. But it is also possible that its restrictions will merely be relaxed.

⁶ Source: <http://www.president.gov.ua/news/19614.html>

⁷ Source: http://www.president.gov.ua/docs/Poslannya_sborka.pdf

The European framework

As of 1 April 2011, Ukraine has no contractual or legal obligations to the EU regarding liberalizing the market for farmland. Indeed, this issue was not even raised during negotiations over the Association Agreement between Ukraine and the EU or other sectoral agreements.

Still, if Ukraine intends to undertake land reform, to one extent or another EU law will have to be taken into account as well as practice in Central and Eastern European countries that gained membership in the EU in recent years and had to agree the essence of and timeframes for liberalizing their land markets in line with EU legislation and eventually joining the EU internal market during accession talks.

Even back in 1957, the Agreement to establish the European Economic Community provided for the possibility that a citizen of one member country would be able to acquire land and build on the territory of another member country (Para e, Section 3, Art. 54).⁸ This rule was repeated in Art. 50 of the Agreement on the functioning of the European Union.⁹ In practice, the application of this principle varies as the land market laws of each individual member of the EU vary, based on historical, geographic, economic and other factors.

In establishing the conditions for accession to the European Union, individual candidate countries as a rule agreed to a transitional provision regarding the institution of a completely liberalized land market. For instance, Czechia, Lithuania, Slovakia and Hungary were granted a seven-year term,¹⁰ which was extended for another three years by the European Commission on 20 December 2010.

The reasons that were given by nearly all candidates from Central and Eastern Europe allowed them to negotiate the necessary transitional period, which ranged from 5 to 12 years, to institute one or another aspect of EU land legislation. Given this, Ukraine at the moment has no obligation to completely reflect EU legislation. But the government is now talking about liberalizing the land market. Indeed, the President specifically stated in a recent speech that foreigners should have the right to buy farmland in Ukraine. Still, it should be kept in mind that liberalizing the land market and adapting to EU legislation are both lengthy and costly processes. In short, the experience of new EU members should be studied now, especially such countries as Hungary, Poland and Rumania, whose farm sectors are similar to that of Ukraine.

⁸ The Agreement on the establishment of the European Economic Community, Rome, 25 March 1957.

⁹ "e) allowing citizens of one member country to acquire and use both land and immovable property located on the territory of another member country," Consolidated Version of the Agreement on the functioning of the European Union.

¹⁰ *Problems with establishing and running a market for farmland in Ukraine*, M.I. Pugachov, V.I. Artiushyn, M.I. Kobets, UNDP Blue Ribbon Analytical and Advisory Center, Kyiv, 2007, p. 60

Civil society impact

Ukraine's agricultural sector is characterized by a large number of non-government professional and representative organizations that have been set up according to specialization, area of activity and/or common interest. In addition, the farm sector has operators that are universal organizations, that is, they operate in many spheres of activity. Yet the number of organizations that have shown active interest in the future market for farmland has been remarkably small—around 10!

When it comes to land reform, civil society is represented by a number of groups with various interests: users of land parcels (big and small business), private owners of land parcels, organizations that do not represent the interests of either owners or lessees but that want to ensure legitimacy and proper order in the country. (see Table 1).

Table 1. Impact of civil society on land reform in Ukraine

Indicator	Civil society organizations (CSOs)		
	Associations of land users	Associations of landowners	Other community organizations
Interest group	Big Business and SMEs	Owners of land parcels, small-scale farmers	Other individuals
Position on land market	Pro/Con	Largely con	Pro
Means of influence	Lobbying	Lobbying, activism	Consultations, research
Institutional means of influence	Social dialog	Social dialog	Social dialog, participation in working groups drafting legislation

Civil society opposed to land reform

Most of these non-government organizations (NGOs) are against the introduction of a market for farmland and favor extending the moratorium for another 3-5 years. Among them, some of the most active are the Association of Farmers and Private Landowners of Ukraine and the Agrarian Union of Ukraine. These organizations are both funded through membership dues.

The **Association of Farmers and Private Landowners of Ukraine** unites farmers from across Ukraine. Most of the country's 40,000 commercial farmers are members of the AF-PLU. The Association also counts individual owners of land parcels among its members and works directly with people who live in rural areas and farmers. It is actively against the institution of a land market and presents its position to the Government and politicians. The Association of Farmers and Private Landowners could get into an open conflict with the government through rallies, roadblocks and so on.

The **Agrarian Union of Ukraine** consists of the managers of small, medium and large agricultural enterprises in all oblasts of Ukraine. The AUU includes among its members some officials and individual politicians as well. It is actively against introducing a land market and presents its position to the Government and politicians.

Civil society in favor of land reform

One professional association of Big Business that is actively in favor of instituting a market for farmland and the removal of restrictions on the purchase of land by foreigners and legal entities is the **Ukrainian Agri-Business Club Association**. The UABCA brings

together very large agricultural and processing companies, including those with foreign capital. The Association's way of acting is analytical studies, broad-based propaganda among voters and government representatives, active measures such as organizing nationwide voter campaigns, television interviews, roundtables, conferences and so on.

Another professional business association is the **Ukrainian Agrarian Confederation**. The management of this organization is actively in favor of instituting a market for farmland and lifting the moratorium on the sale of such land. However, the organization's leadership does not have a single opinion about the question of land and individual directors of oblast branches of the Confederation have made public statements calling for an extension of the moratorium on the sale of farmland.¹¹ The Confederation promotes its ideas through television interviews, participation at roundtables and conferences and so on.

Among **the most active community organizations** that have been formed for the specific purpose of promoting a land market and resolving the problems of the agricultural sector in Ukraine, a few stand out:

- The *Land Union of Ukraine Association* is a community organization that actively works with government offices to develop land legislation, promotes the main provisions for a land market among rural voters, runs events involving public debate of the provisions of current and potential land legislation in the form of roundtables, conferences and so on.
- Another active promoter of land legislation among the general public is the *Center for Land Reform Policy in Ukraine*. This organization is widely known and one of the strongest resources providing practical knowledge to individuals regarding their rights and options as owners of land parcels. It works with the Government in drafting land market legislation and runs events promoting public debate of the issue.
- One community organization that includes the land issue among the various areas of activities that it engages in is the *Rural Development Institute (RDI)*. This is a strong think-tank that runs studies on the land market and brings the results to the attention of the Government and politicians. The Institute is fairly active in different regions of Ukraine when it comes to providing individuals, especially owners of land parcels, information about their rights and options for disposing of their property. RDI organizes and is itself an active participant in public discussions of controversial provisions in the formation of a land market. RDI is almost the only organization that represents and defends the interests of those individuals who are not owners of land parcels and are afraid that land reform will deprive them of access to lands in the public domain, to forests, wetlands and waters.

The majority of civil society organizations belong to the category of research centers or think-tanks that analyze various aspects of an issue and report on their results. Among these are also those who study the land market. Competition on the research market is sufficiently strong that it is hard to name the most important research organizations in Ukraine today.

¹¹ Source: http://www.rada.gov.ua/zakon/new/par_sl/sl230311.htm

Recommendations

Given the situation with the possibility that a market for farmland will be instituted in Ukraine, it is possible to propose to donor organizations that provide the country with technical assistance on this issue to orient themselves on deepening dialog with all links in the government chain-of-command on the need to institute a modern, transparent land without any restrictions. This will result in greater productivity and efficiency in Ukraine's farm sector and thus greater investment in the sector, and will significantly strengthen the agricultural sector's position in ensuring global food security.

To carry out this work, it makes sense to focus on cooperation with NGOs and professional associations of producers of farm products that are generally united around owners of large modern-day holding companies and SMEs, which combine the functions of production and exporting, with private consultancies and advisors specializing in agriculture. Importantly, in terms of activating public dialog about the institution of a land market, the first priority measure must be public-awareness building among owners of land regarding their legal status and the new opportunities that the institution of a modern land market will bring them.

For donor organization, it makes sense to first support public associations whose activities are aimed at:

- running active campaigns to inform rural dwellers about their rights and the opportunities they have to dispose of their land parcels;
- organizing broad public dialog about the main provisions in land market legislation.