

Land Privatization in Ukraine

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Key words: land reform, land registration, land privatization, land ownership, Land Code.

ABSTRACT

Realization of a large-scale economic reform in Ukraine has stipulated the necessity of a land reform. Since 1992 all lands in Ukraine have belonged to the state, except for lands of kolkhozes and sovkhozes that were transferred into collective ownership. On 15th of March 1991 the Supreme Council (Parliament) of Ukrainian SSR adopted the Land Code and the Decree “About Land Reform”. This date is the date when the Land Reform started in Ukraine. In October 2001 Verkhovna Rada (Parliament) of Ukraine adopted the new Land Code, where in Chapter III “Right to Land” in Article 78, it is stated that land in Ukraine can be in private, communal and state ownership. “Right to land can be acquired and realized on the basis of the Constitution of Ukraine, this Code and other laws that are issuing in accordance to them”.

With the adoption of a new Land Code the way to a formalized land market in Ukraine has been opened. Drafts of laws, which will be the base to establish elements of land market infrastructure, are developed. They are – laws on real estate registration, hypothec, about real estate transactions, about land hypothec bank.

Land reform in Ukraine is developing with wide involvement of international experience. One of the factors that the Land Reform is acceleration is the establishment of an efficient system of real property registration that in turn will secure investments in agriculture. Support of Ukraine regarding the creation of such a system is the aim of several joint Ukrainian-Swedish projects. Main objectives of projects are to support development of National Real Property and Title Registration System. A World Bank Loan is under preparation.

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1. INTRODUCTION

Land is the ultimate resource for without it life on earth cannot be sustained. Land is both a physical commodity and an abstract concept in that rights to own or use it are much a part of the land as the objects rooted in its soil. Good stewardship of the land is essential for present and future generations. (UN Economic Commission for Europe: Land Administration Guidelines.)

Since 1992 all lands in Ukraine have belonged to the state. Agricultural lands have belonged to collective enterprises (kolkhozes) and to Soviet enterprises (sovkhozes) as collective property and were transferred by the state in permanent use according to the state acts. Only housing areas, lands for summer residences (dachas) and for vegetable gardens were in private ownership. Land selling, as such, did not exist and the land was sold together with residential building in the country.

The date when the Land Reform began is the 15th of March 1991, when the Supreme Council (Parliament) of Ukrainian SSR (explain) adopted Land Code and the Decree "About Land Reform". Exactly from this date all the lands in Ukraine were proclaimed as the object of Land Reform. Land Code was put into effect in 1992.

This paper deals mostly with land privatization of agricultural land.

2. UKRAINE

On July 16, 1990 the Ukrainian Soviet declared sovereignty, following in the steps of the Baltic States. On August 28, 1991 the Ukrainian Soviet passed a declaration of independence as the Soviet Union fell apart. This was ratified by a ratio of almost nine votes to one in a referendum on December 1. At the same time Ukraine directly elected a president for the first time.

Ukraine is the second most populated and the third largest area among the former Soviet Republics. Ukraine covers 603 700 km² with a population of 49,1 millions.

Ukraine, which simply means borderland, is divided into 24 oblasts or provinces as well as the cities of Kiev and Sevastopol and the Crimean Autonomous Republic, into 486 districts and 9796 village councils.

Out of the population close to 65% are urbanized while the rest live in rural areas. The rural population of Ukraine has been declining at a rate of 1,2% per year over the past 20 years. The migration is mainly by younger people. The aging rural population and the low reproduction rate suggest that the labor force will decline at an increasing rate in the future.

Of the territory of Ukraine about 41,9 million hectares (69,4%) is agricultural land. Much of Ukraine is part of the Chernozem or black earth belt incredibly fertile soil. The naturally fertile black soils and the less fertile forest soils present few physical obstacles to cultivation. Slopes are gentle to moderate over wide areas, permitting many regions to have more than 80% land under cultivation.

The Ukrainian climate is mainly temperate-continental, without the extremes of heat or cold. Summers are often cloudy and winters sunny. The three climatic regions generally traverse the country belts oriented southwest to northeast. The forest zone is generally in the north and the steppe in the south and southeast.

The forest of Ukraine were extensively damaged during the World War II and were reduced from 40% of land area to only 12 % after the war. Forest now covers 10 million ha, of which 85% is considered commercial. Ukraine has become a net importer of wood.

Forest are state owned, with 72% managed by the state forestry departments at the oblast level, 24% by state and collective farms and 4% by the military and institutes of teaching and research.

Ukraine is renowned for its outstanding natural endowments suited for agricultural production. Traditionally the country has been a substantial net exporter of food and agricultural products.

Barley is the most important feed grain in Ukraine, both in terms of production and area. Potatoes are the most important food crop after grain. Sugar beets and sunflowers are the most significant industrial crops. Livestock production in Ukraine is exceptionally large.

During the Soviet regime, Ukrainian agriculture was organized in two centrally-controlled sectors of large scale farming. Kolkhozes were collective farms in which output and all assets were jointly owned by the members. Sovkhozes were state farms in which output and all assets were owned by the state. In addition to these centrally organized sectors, an important part of agricultural production originates in individual subsidiary farms, such as household plots of individual kolkhoz/sovkhoz members and garden plots assigned to city workers.

Before World War II, the differences between the sovkhozes and the kolkhozes were pronounced. Sovkhoz workers were paid fixed wages, while kolkhoz members received shares of residual income from the harvest. The kolkhoz sub-sector was larger than the sovkhoz sub-sector.

The reorganization of the kolkhoz/sovkhoz sector began in 1992. Most of the farms have gone through some reorganization and at least changed their titles during the last years. Instead of kolkhozes and sovkhozes the large scale farms in Ukraine is collective or state farms.

The villages making up a kolkhoz or a sovkhov were formally governed by a municipal council. Housing was provided by the kolkhoz/sovkhov. Only in recent time has the residents built their own housing, financed with personal savings or government loans.

3. REASONS FOR LAND PRIVATIZATION

One of the most important steps in the transition from a centrally planned to a market economy is the establishment of private ownership in land. For investment to take place the investors must feel confident that the assets that they develop will be built on land to which there is a secure title. There must be a clear and rigid framework of laws governing the ownership and rights to use the land.

Good land resource management will help to promote economic and social development in both urban and rural areas. For countries in transition, land reform is a key component in achieving these goals.

The term “land reform” has a variety of meanings. It may involve the restoration of land rights to previous owners, a process known as land restitution. This occurs in many countries in transition when former private rights in land are being restored.

But a land reform can also involve redistribution of land rights from one sector to another – for example by taking land from the State and giving it to people who have no land.

Development of rural and urban areas need a good land information system.

4. FROM LAND CODE OF 1992 TO THE LAND CODE OF 2001

The Land Code of 1991 provided the following forms of land ownership: state, collective, and private. All forms of ownership are equal. Land is at disposal of Council of Peoples Deputies, that transfer lands into ownership or in use within their jurisdiction.

By purposes, all land of Ukraine are subdivided into following categories:

1. Agricultural land
2. Land of settlements (urban, rural)
3. Land for industrial, transport, communication and defense purposes and land of another purposes
4. Conservancy, sanitary, recreation land and land of historical and cultural value
5. Land of Forest Fund
6. Land of Water Fund
7. Reserve land.

Land transference from one to another category is made in the case use has been changed.

Attribution of land to corresponding categories and their transference from one to another category is carried out by institutions (see below chapter 7.2), which are making decisions about transference of these land into ownership or in use.

It is necessary to notice that the land borders are not demarcated, and are shown only on land use plans or on maps.

During 1991-1992 a land reserve consisting of 4 millions hectares of agricultural lands, including 2,2 mil hectares for farms, was established by local Radas (councils). This land reserve is about 10% of the total agricultural area in Ukraine. On the 1st of February 1993 land parcels from reserve lands were transferred to more than 18 000 farms. The total area was about 360 000 hectares. Average size of the land parcel for each farm was about 20 hectares. The number of farms is growing. Thus, on the 1st of January 2000 there were nearly 36 000 farms that had in their ownership and use 1 162 000 hectares of agricultural lands, with average acreage for each farm 32 hectares.

The Decree of the Cabinet of Ministers of Ukraine “About Privatization of Land Parcels” (26 Dec, 1992) played a very important role at the beginning of the land privatization. According to legislation in force at that time, this Decree was valid as law. It stated that rural and urban councils were obliged to transfer to citizens of Ukraine into private ownership land parcels, which were granted them for truck farming, construction and maintenance of dwelling house and for household facilities, gardening, dachas and garages construction within limits determined by Code.

The Decree of the President of Ukraine on the 10th of October 1994 “About Urgent Measures to Accelerate Land Reform in Agricultural Production” has changed considerably the directions of reformation of land relations. During previous stages of the reform land management was realized by withdrawal of land from kolkhozes and sovkhoses and transferring them to citizens, primary for farming. After adoption of this Decree, the land management was changed from collective agricultural enterprises through parceling to other forms of management. It is significant, that such evolution is a result not only of decisions of councils, but uninitiated by members of agricultural collective enterprises KSP, cooperatives, and joint stock companies themselves.

When this Law was adopted, each member of enterprise, cooperative, company has a right to dispose his share (land parcel), that is to sell, to gift, to change, to mortgage, to hand down or freely to drop out from enterprise and to get free of charge his part of land (share) into private ownership.

Development of the land reform in the sphere of agricultural production had led to changes of the nature of agricultural land privatization. Till 1997 the main work was to transfer state lands into collective ownership, to agricultural enterprises and into private property to citizens. After adoption of the Decree of the President of Ukraine on the 3rd of December, 1999 “About Urgent Measures to Accelerate Reformation of Agricultural Sector of Ukraine” it was proposed to reconstruct agricultural enterprises into economic enterprises of market type, which act on the base of private ownership on land and property. Furthermore it is possible to transfer shared agricultural lands from collective ownership of agricultural enterprises into private ownership of their members.

5. EXTERNAL ASSISTANCE

External assistance to develop and assess a land registration systems has been carried out since 1993. Below is a short description of the projects.

5.1 Joint Ukrainian-Swedish projects on development of land registration systems as a part of land reform

One of the tasks that have to be solved during land privatization is development of land and other real estate registration systems. Cooperation on this point between Main Administration of Geodesy, Cartography and Cadastre of Ukraine and Swedesurvey started with the joint Ukrainian-Swedish pilot-project “Creation of Prototype of Land Registration System” in the village of Makiivka of Bilotserkovsky District of Kyiv Oblast (April 1995 – March 1996). In the end of the project the village of Makiivka was the first village ever in Ukraine where lands were being totally privatized. About 450 certificates were issued for private ownership of housing areas and garden plots. The collective farm was allocated to the collective and part-owned by villagers in Makiivka. The register is kept up-to-date in the registration office in Bila Tserkva. Even though only a few plots have changed owners, the system works and the village has a good economic perspectives. The privatization works continued in the phase 2 of the project “Development of Cadastral and Land Information Systems in Ukraine” (March 1997 – April 1998) with the town of Uzin as pilot area. The main tasks of this phase were to support governmental authorities of Ukraine in development of an efficient system of real estate mapping, its formation and registration, development of informational system for real estate market support, especially in an urban area and training of Ukrainian specialists.

Logical continuation of the second phase was another Ukrainian-Swedish project “Efficient Data Capture and Registration Process to Support the Development of a Real Property and Title Registration System in Ukraine” (August 1998 – July 2000). For this time the area of the project was considerably extended and the works were carried out in the town Kherson, village of Zmiivka of Kherson Oblast, in the towns Vinnitsa and Chernivtsy. As during the time of realization of previous projects the Main administration of Geodesy, Cartography and Cadastre of Ukraine was closely cooperating with Land Committee on Land Resources of Ukraine, Ministry of Justice, State Committee on Architecture and Urban Construction and their local subdivisions as well and with District State Administration of Bila Tserkva, Oblast State Administrations of Kherson and with Town Councils of Kherson, Vinnitsa and Chernivtsy.

Main objectives of the project were to support development of National Real Property and Title Registration System, to develop methods and routines for data collection, central emphasis being laid on graphical and attribute data. The most important outcomes were: new methods regarding data capture have been introduced; digital registration and city map have been produced in the pilot sites; about 1000 state certificates for land ownership have been issued.

In June 2000 Sida decided to give further financial support to a new land cadastre project in Ukraine – “Capacity Building for the Implementation of a National Spatial Data”. This

project started in September 2000 and its main objectives are to support the implementation of a national real property legal framework that is adapted to the needs of market; to support the creation of a National Spatial Data Infrastructure that can be introduced nation-wide; to support the implementation of new methods for land restructuring, valuation and taxation of collective farms.

5.2 Canadian project

This project was funded by the Government of Canada through the CIDA agency in the form of grant technical assistance and lasted from March 1994 to June 1996. The objective of the pilot project was to create a working model (prototype) of land registration system for a small territory (with minimum expenses), on the basis of Canadian experience, and with due regard to economic, legislative and institutional peculiarities of Ukraine. The project should also assess whether the created model was suitable for a broader application and introduction in Ukraine, propose strategy to introduce a land registration systems. A modern geodetic center on the oblast level was established. Land inventory of some 20 000 land parcels was carried out in order to assess expenditure on the collection of data for one parcel using different methods. A draft of a law on registration of real estate was done as well as a prototype of a land registration system. The work was carried out by the Canadian company UMA Engineering Company.

5.3 USAID project

Two phases of a pilot project financed by USAID were carried out during October 1994 up to October 1997. The aim of the project was to develop and adapt, on local level, a prototype system for rapid registration of ownership rights in land and other real estate. The work was carried out by the American company PADCO.

A new USAID project, run by the Company Ukraine Land Titling Initiative was started in 2001 with the aim to issue titles to a great number of Ukrainians.

5.4 TACIS project

Within the TACIS program a pilot project was funded. The project started in October 1996 and was completed in January 1999. The project was run by a consortium consisting of Swedesurvey, Sweden , Agrer, Belgium and Kampsax, Denmark. The objective of the project was to support the creation of appropriate legal, institutional and technical pre-conditions for the functioning of the system for registration of land, other real estate and ownership rights in them.

5.5 IFC project

The International Finance Cooperation (IFC) is a member of the World Bank. IFC has been running projects in Ukraine since 1994. Since 1995 IFC has been running the project “Land Privatization and Farm Reorganization in Ukraine”. During this time IFC has developed a method for farm reorganization that IFC had tried earlier in Russia.

6. ACHIEVEMENTS UP TO 2002

De facto and de jure, kolkhozes/sovkhoses system in Ukraine has been ceased to exist. The results show that the process of reformation of collective agricultural enterprises into new economic structures has been accomplished in due time – before April 2000 and from 10 551 collective agricultural enterprises was reformed 10 521. It was formed 11 169 economic formations; 711 farms; 2444 private enterprises; 5 020 economic companies (mainly limited and joint-stock); 2762 agricultural cooperatives.

Issuing of state acts means the legalization of Land Reform. On this date it was drawn up and issued 1,8 millions state acts on land ownership or 28,2% from total amount of issued certificates – 6753054.

There are 6 463 000 members and pensioners of Collective Agricultural Enterprises (CAE) were entitled to land plots/shares. In May 2001 over 6 275 000 (97.1%) received certificates testifying this right. As per January 1st 2001 5.8% of the certificate owners received land titles. In May 2000, 10 700 CAE:s had been reorganized into 12 900 entities with private forms of land and property ownership. 182 000 citizens added and shares to their household plots.

7. FUTURE

7.1 LAND CODE of 2001

On October 25th, 2001 the Verkhovna Rada (Parliament) adopted the draft Land Code of Ukraine. The Land Code was signed subsequently by President Leonid Kuchma and published on November 15th in the official government newspaper, Uryadovoi Kuryer. The Land Code goes into effect on January 1st,2002. The Land Code adoption represents a major step forward for private ownership of land and development of land markets in Ukraine. The Code contains the roles and provisions needed for private parties to own land, use land and transfer land as they see fit. Notably , the Land Code provides these important rights not only for non-agricultural land, but for agricultural land as well, which had been the subject of heated debate.

The Land Code provides an adequate legal basis for private ownership of land. First, the Code defines ownership as the “right to own, use, and dispose of land”. (Article 78.1). More specifically, an owner has the right to:

- sell, give, exchange, or bequeath land,
- lease land,
- mortgage land,
- use the natural resources of land,
- own all crops raised on the land, and
- erect buildings on the land. (Article 90.1)

Second, the Code provides that land can be owned privately by “citizens and legal entities”. (Article 78.3, 80.a) This right to privately own land extends both to Ukrainian citizens and

legal entities and to foreign citizens and legal entities, with two exceptions: foreign citizens and legal entities may not own agricultural land, or non-agricultural land which is outside the boundaries of a settlement, and which has no building upon it. (Article 22.4, 81.2, 82.2)

The Land Code clearly provides that private citizen and legal entities may buy and sell land, exchange land and give land (Article 81,82,90). The Code also contains some essential elements for concluding a land transfer agreement. Article 130.1 provides that Ukrainian citizens who wish to buy agricultural land must have agricultural education, agricultural experience, or be engaged in commodity agricultural production.

A completely free land market in land sometimes can lead to undesirable results, particularly in times of transition such as Ukraine is currently experiencing. Therefore, temporary restrictions on market activity may be needed to ensure that the land market will provide benefits to the population over the long term. The Land Code contains three temporary restrictions regarding agricultural land;

- Until 2010, the amount of agricultural land citizens and legal entities may own is limited to 100 hectares,
- Contribution of land share rights to be charter capital of agricultural enterprises is prohibited until 2005, and
- Sale and gift of agricultural land and land shares are prohibited until 2005.

In the 1990's almost 70% of Ukraine's agricultural land was transferred from state ownership to the effective ownership of roughly 6.6 million rural Ukrainians. These new owners hold their land rights in the form of land shares. These land shares do not represent rights of common ownership as described in Articles 86 – 89 of the land Code, but are a unique creation of the agricultural land reform process, and are subject to special rules.

The Land Code uses the land share as the primary vehicle for privatization the land of state and communally owned agricultural enterprises (Article 25.1). In addition, the Code contains rules for calculating a land share's prize, provides the current workers, pensioners, and private farmers have the right to a land share, and guarantees the right to receive the land share in kind as a physically demarcated land plot on the ground (Article 25.3-9,31.2). Finally, the Code's Transitional Provisions contain a variety of provisions supportive of land share rights, including the right of land share owners to withdraw their shares upon their own volition, and the right of a group of land share owners to withdraw their shares in a single field (Items 9, 16, Section X).

7.2 World Bank loan

The World Bank is considering a great loan to Ukraine. The primary objectives of the project "Rural Land Titling and Cadastre System Development" are to support the issuing of land ownership titles to most rural landowners in Ukraine within a period of five years, and establish a uniform national cadastre system suitable to support legal registration, fiscal purposes and local government land planning. These objectives will be achieved through the systematic demarcation of land parcels owned by individuals within the boundaries of former

collective farms, issuing of state deeds and recording these ownership rights in a uniform database that incorporates both graphic and alphanumeric data.

The project will ensure that the privatization of the land of existing agricultural enterprises is completed in an agricultural and environmentally sound manner. Support services in legal issues and farm business development together with a comprehensive public awareness and training program will help to ensure that new farm structures are sustainable.

The Project will cover the whole of Ukraine. There will be six components;

- Legal and Institutional Development,
- Public Awareness,
- Training,
- Land Management,
- Cadastre System Development,
- Project Implementation.

7.3 Possibilities and hindrances

7.3.1 Political awareness

Ukraine still lack political consensus on the basic principles of restitution of ownership and related legislation. There is also a lack of true political and administrative commitment to achieving results. There is no long-term vision for the land administration development to facilitate a step-by-step approach. There is no clear policy and given priority to meeting urgent needs in land administration. Countries as Ukraine, seeking accession to the European Union may be tempted to focus on rural areas in response to the EU requirements rather than on urban areas, although activities in urban areas could generate more economic growth.

7.3.2 Public awareness

The citizens of Ukraine as well as governmental and other administrations have to be informed about the need of legislation and technical development when privatizing land. The information must be given to those who have become and are expected to become owners of land plots, government agencies, local administrations, village authorities, professional groups (notaries publics, attorneys, lawyers, land appraisers) and of course the media.

Various methods should be used as pamphlets, newspapers, TV, radio, etc.

7.3.3 Lack of legislation

Ukraine has difficulties in producing legislation to coordinate the registration of technical information with the registration of legal land information, in a cadastre and in a land book. While considerably expertise exist in geodetic surveying and mapping, less consideration is given to legal aspects as boundary law, transfer law, mortgage law and other land-related legislation.

7.3.4 Real Estate Market

It is important to establish a real estate market with selling and purchasing of land. To enable the credit market to develop, the credit market must be opened. Both citizens and bankers must understand the importance.

7.3.5 Systems development

In Ukraine there is a general unwillingness to recognize that projects institutional and managerial issues are more critical than technical aspects. Strong hierarchical management structures remaining from the socialist era can hinder the effective execution of land administration projects. Human resources issues (recruitment, training, salaries and career opportunities) are not adequately addressed.

8. CONCLUSIONS

Privatization of land is a long process. It includes all the citizens in the country. The politicians must understand the process and institute the necessary laws. The administrators must establish the ground for the privatization-work by proposing legal activities and administrative actions. The professional groups – bankers and lawyers at first – must inform their costumers and act in their interest. The bankers must install a mortgage system that enables the private real estate owners to lend money and develop their properties. The public, the real estate owners, must understand that a credit market and a real estate market is the future of the country. Only by developing the real estates can a country prosper.

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