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**LAND PRIVATIZATION
IN THE REPUBLIC OF MOLDOVA**

A Progress Report Prepared for USAID

by

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INTRODUCTION

This report was prepared at the request of the United States Agency for International Development. The report investigates the current situation regarding land privatization and related reforms in the urban and rural sectors of Moldova. The authors visited Moldova during September 6-October 7, 1995 to gather information and discuss impressions. Sources of information include: (1) review of Moldovan laws and regulations, (2) conversations with Parliamentarians and officials in the Ministry of Privatization, the Ministry of Agriculture, the President's office and various other republican institutions, (3) extensive interviews of collective farm leaders and peasant farmers in seven raions in the central, northern and southern regions, (4) interviews of raion and village officials, and (5) conversations with representatives of various foreign assistance organizations maintaining permanent offices in Chisinau.

The program to privatize urban real estate and to establish a land market for urban real estate appears to be proceeding at a reasonable pace. A number of administrative and legal improvements (detailed below) could and should be made to facilitate this process. In contrast to progress in the urban land sphere, prospects for privatization of agricultural land and establishment of a market for such land are not at all encouraging. This report analyzes current prospects for land privatization and development of land markets, and provides recommendations for enhancing such prospects.

BACKGROUND

General Legal Framework for Land Privatization

In 1991 the Moldovan SSR (soon to become the Republic of Moldova) promulgated the Law on Property (January 22, 1991), which establishes a basic framework for ownership of private property including land, personal property, monetary instruments, etc. Immediately preceding creation of the new republic, the Law on Privatization (July 4, 1991) was enacted to establish the framework for transfer (through sale and grant) of state and municipal property to the ownership of private citizens and enterprises. This law was followed several months later by the Land Code (December 1991), which is the most fundamental law regarding land relations in Moldova. The Land Code regulate the ownership, use and protection of land and recognizes the legitimacy of different forms of private land ownership and use and contemplated private transactions in land in conformity with law. In response to political concerns, the Parliament amended the Land Code in February 1995 to impose additional constraints on the ownership and use of land, including, for example, a moratorium on private sales of land until January 1, 2001.

A second group of general laws regarding land privatization were enacted in 1994 and 1995. The Law on Normative Price of Land (December 2, 1994) establishes prices for land sold by the state and municipalities to private owners. The law also establishes prices for land that the state expropriates from private owners for public use, and private and public land converted from agricultural use to non-agricultural use. According to the February 1995 amendments to the Land Code, the Law on Normative Price also describes certain land that is not subject to the Land Code moratorium on private sales. This was followed by the Law on the State Privatization Program in the Republic of Moldova for 1995-96 (apparently signed into law

in May 1995), which describes the ongoing program for privatizing state and municipal property, including land and other assets. Finally, the Provisional Regulation on the Purchase and Sale of Land Plots (approved by Government Decision No. 377 of June 6, 1995) regulates the sale of certain types of land by private owners and is based upon the Land Code, the Law on Normative Price and the 1995-96 State Privatization Program. Each of these laws is discussed in the body of this report.

Privatization of Agricultural Land

Agriculture and food processing are the leading sectors of the economy. According to government figures, agriculture and food processing currently account for roughly 58% of GDP.¹ Approximately 56% of the population live in rural areas and almost half of the work force are employed by the agro-industrial complex. However, since 1989 agricultural output in Moldova has declined significantly, processing capacity has diminished, trade has fallen, and there is concern that soil fertility is declining as a result of a steep reduction in the use of chemical fertilizers. Given the importance of agriculture to the national economy, Moldovan policy makers of all political persuasions feel strongly that Moldovan agriculture cannot afford to experience continuing declines. The current situation has produced a general sense of caution among policy makers.

Beginning in 1991 Moldova initiated the "small privatization" program, which is described in Decision No. 510-a-XII "On the Conception of Agrarian Reform and Socio-Economic Development of the Village" (February 15, 1991). The small privatization program focuses on privatization and enlargement of "private plots" (also called "household plots") already being

¹ Roughly 43.1% of GDP for agriculture and 14.9% for food processing.

used individually by rural families. The program, which is reported to be essentially completed, provided rural families with ownership of an average of 0.30 hectares per family, and affected 325,000 hectares, or roughly 13% of agricultural land.

In late 1992 Moldova began the "large privatization" program in which land share certificates are distributed to the members of collective and state farms (hereinafter "collectivized farms"). There are an estimated 800,000 land share owners in Moldova, each of whom have claim to an average of 1.7 hectares. This program is reported to be substantially complete, but some raions have not yet distributed documentation for land shares. An estimated 30% or more of land share owners are pensioners, who usually lease land shares to collectivized farms for terms of one year.

According to the original design of the large privatization program, land share owners were free to withdraw their share of land in kind, either individually or with family and friends, to establish an independent peasant farm. Many families chose to depart to establish such farms during 1993 and 1994. A reported 21,400 peasant farms were organized as of April 1, 1995, of which 13,100 had been registered. These farms owned 38,000 hectares of land, or 1.9% of Moldova's 2,050,000 hectares of agricultural land.

Despite evidence that collectivized farms in Moldova are generally underproductive, Moldovan policy makers were alarmed by the increasing numbers of independent peasant farms. Creation of independent peasant farms was effectively outlawed after the February 1995 amendments to the Land Code, which prohibit individual members and farm families from withdrawing land in kind from collectivized farms to establish independent peasant farms. Instead, Article 13 of the amended Land Code, which is discussed in more detail below, restricts withdrawals of land to *groups* of farm members that have enough combined land

shares to withdraw fields that average 100 hectares. Since Article 13 was amended, officials report that 396 new enterprises (associations of peasant farms) have been registered with a total of 40,000 hectares (106 hectares per enterprise), which is 2.0% of agricultural land.² These so-called "peasant farm associations" are in reality mini-collectives rather than associations of independent farms. The mini-collectives are not what these farm families desire, but represent only the most independence they can get from collectivized farms under current law.

Policy makers give several reasons for their reluctance to see independent peasant farms established. Policy makers suggest that lack of appropriate farm machinery and underdevelopment of input, transport and marketing infrastructure in the countryside undermine the commercial viability of individual peasant farms. Another fear is that peasant farmers will plant potatoes and other crops for on-farm consumption rather than commercial crops.

Although lack of appropriate farm machinery and the underdevelopment of input, transport and marketing infrastructure present serious problems, these problems are almost certainly exaggerated. And policy makers make a fundamental error in questioning the ability of peasant farms to produce commercially. Although some peasant farmers may not be as expert in farming techniques as the "specialists" on collectivized farms (a debatable question), any lack of skill is more than compensated for by the peasant farmers' much greater incentive to maximize production and minimize costs. Our observations, which are described in further

² Thus, the total of roughly 78,000 hectares are believed to be in independent peasant farms and the associations of peasant farms. This figure roughly equates to the Government's January 1, 1995 estimate of 75,000 hectares (as reported in the September 7, 1995 edition of "Monitorul Oficial"). However the Government reports more hectares in peasant farms (54,900 hectares or 2.7% of agricultural land) and fewer hectares in associations (20,200 hectares or 1.0% of agricultural land).

detail in following sections of the report, indicate that it is possible for peasant farmers of Moldova to produce greater yields at lower unit costs than collectivized farms. We have seen such success even where peasant farms are using large machinery and have difficulty obtaining inputs, transport and marketing services for their products.

The government's very successful program to control inflation has meant elimination of subsidies to collectivized farms, without which the farms find it difficult to survive. On several collective farms we visited, members reported that the farms were planning to break up into groups of peasant farms, in large part as a result of the collective farm's failure to pay wages. One family in Ialoveni raion reported that the collective had paid annual wages for the past year of only 60 lei (roughly \$13) in cash, 200 kg. of wheat, 50 kg. of sunflower and 300 kg. of grapes. By contrast, the family stated it could produce 2 tons of grapes on its private plot of 0.3 hectares. From the perspective of workers on such farms, there is simply no economic justification for the continued existence of the collective. Several collectivized farms we visited were also very far behind in making contributions to the national pension system. As a result, the pension system is delaying payments to pensioners on the collectivized farms. These pensioners, who have paid into the system throughout their lives, are now receiving late payments because collectivized farms are not profitable.

Peasant farm success may of course be threatening to collectivized farm leaders, and government officials who enjoy close ties and the support of collective farm leaders, but such successes should be an encouragement for those concerned with the future of Moldovan agriculture. As more peasant farms are allowed to develop, it will become profitable for entrepreneurs to begin servicing the needs of peasant farmers, including the supply of inputs, transport and marketing services. The state can play a valuable role in encouraging private

entrepreneurs to compete with one another to provide such services. The state can also remove institutional and legal barriers that restrain such competition.

The state must also address issues that affect both private and collectivized farms. All farms are currently suffering from the lack of commercial credit at reasonable rates. The lack of a market in agricultural land constrains the ability of banks to make loans at reasonable rates to agricultural producers. Because agricultural land is not included among the categories of land that can be bought or sold, banks refuse to accept land as collateral for loans and instead demand wine or raw products as collateral. Interest rates, which range as high as 70% per annum, are so much higher than inflation that sensible farmers are not willing to borrow.

OBSERVATIONS AND GENERAL RECOMMENDATIONS

The following observations and general recommendations are divided into three parts: issues relating to both non-agricultural and agricultural land, issues relating exclusively or primarily to non-agricultural land, and issues relating exclusively or primarily to agricultural land.³

³ For the purposes of this report, "non-agricultural land" includes dacha plots, house plots and other plots occupied by private and enterprise structures in major municipalities, towns and rural villages. "Agricultural land" includes land used by collectivized farms, land farmed commercially by farm families and groups of farm families, and the so-called "private plots" distributed to rural households as part of the "small privatization" program.

I. Non-Agricultural and Agricultural Land Issues.

A. Private Land Sales.

The February 1995 amendments to the Land Code establish a moratorium on sales of land by private parties until January 1, 2001. Article 14 of the Law on Privatization contained the same moratorium, but the Parliament has reportedly annulled this provision very recently. President Snegur recently proposed legislation that would eliminate the moratorium by amending the Land Code. This is a very promising development.

The Law on Normative Price of Land, which was also approved by Parliament, creates exceptions to the 2001 moratorium for sale of house plots and dacha plots. These exceptions are also reflected in the Provisional Regulation on Buying and Selling of Land Plots, a regulation that was approved by the Government, but which did not require or receive the approval of parliament. Although the Provisional Regulation also allows private sale of "construction sites" (land now used by or capable of being used by commercial enterprises), such sales are not allowed by the Law on Normative Price of Land. This raises the possibility that courts could rule the private sale of construction site land to be in violation of the Land Code moratorium and the Law on Normative Price of Land. Enterprises and individuals interested in purchasing construction site land from private sellers might therefore be disinclined to risk making such purchases until the law is clarified. Therefore, if the general moratorium on private land sales is not lifted, the Law on Normative Price of Land should be clarified to exempt sales of enterprise land from the moratorium.

An equally important problem is the continuing moratorium on private sale of all agricultural land, including the small "private plots" owned by rural families as well as land owned by peasant farms and members of collectivized farms. The moratorium on such sales

should be lifted immediately. The rationale for allowing private sales of land is the same for both non-agricultural land and agricultural land. There are at least four reasons for allowing land to be a commodity:

1. **Tax base.** If land can be bought and sold, it immediately becomes a source of value that can be taxed. One might conservatively estimate that the value of the roughly 2 million hectares of agricultural land, at an average of \$1500 per hectare, is roughly \$3 billion. The value of land in municipalities and towns would almost certainly be equal or greater, resulting in a total land value of at least \$6 billion. If an annual land tax of around 2 percent is applied to this,⁴ the Government could collect around \$120 million in land tax revenues per year (roughly equivalent to 540 million lei).

2. **Mortgage base.** Land that can be bought and sold also becomes available for use as collateral to secure bank loans. In Europe, the United States and other developed economies, land and accompanying structures represents the single greatest source of value for enterprises and private individuals alike. Once a land market develops and Moldovan banks become confident they can resell any land they acquire from defaulting borrowers, the banks will become more willing to accept land mortgages as collateral for loans and interest rates charged by banks will begin to approach the lowest rate charged by the national bank. Bank financing can be used to expand all sectors of the economy.

3. **Encourage improvements.** Persons and enterprises that are allowed to sell the urban land they own are more inclined to invest money and labor in building upon the land since they know they will be able to recover their investment. Farmers who are allowed to sell the agricultural land that they own are more inclined to invest money and labor in improving the land by draining it, creating terraces, installing irrigation works, planting trees and vineyards and making the soil more fertile. Farmers are willing to make such investments because they know that if they retire or decide to quit farming, they will be able to sell the land for a higher price and recover their investment.

4. **Encourage most productive use.** The right to purchase and sell land also encourages the most productive use of land. Persons and enterprises that have the financial, managerial and creative ability to add value to land (through investments described in the preceding paragraph) will be inclined to purchase

⁴ A real estate tax of around 1%-2% is found quite commonly in industrialized democracies. In the United States, for example, communities apply an average annual real estate tax of 0.7% for agricultural real estate and 1.15% for residential real estate.

land and improve it to make it more productive and therefore more valuable.⁵ Productive land in turn contributes to the strength of the national economy, provides a larger base for the land tax, and provides a larger base for collateral to be used to secure loans.

There is concern in some quarters that if agricultural land can be sold, it will be purchased by speculators who will hold the land as an investment rather than cultivate it. If necessary, it is possible to restrict sale of agricultural land to those who are or will be farmers. Some Moldovan policy makers have also suggested imposing a three- or five-year moratorium on private resale of agricultural land by an owner who acquires the land from a seller who withdraws land shares from a collectivized enterprise. We would recommend against any such moratorium since it would undoubtedly discourage some capable farmers from acquiring land and might also complicate mortgage transactions. A better alternative might be to allow all owners to sell agricultural land, but impose a declining tax on profits from private resale of agricultural land during the first three to five years after it is acquired from a seller who withdraws land shares from a collectivized enterprise.⁶ Such a tax would require some administrative capacity, but would be far less of an impediment to formation of productive farms.

Finally, the normative prices applied to state and municipal sales of land to private buyers should not play any role in sales of land by private sellers. Private sellers are in the best position to determine the appropriate price for land. Sellers may have personal reasons for

⁵ Land can be considered more productive when the flow of income generated from the land is increased, whether the increase results from construction or improvement of buildings on non-agricultural land, or new irrigation or other improvements on agricultural land.

⁶ The land share owner should not be required to pay a tax when selling the land shares since the land share owner has fully earned his ownership during many years of labor on the collectivized farm, and cannot therefore be accused of benefiting from speculation.

selling land for less than the price demanded by the state or municipality. Moreover, the basic normative price established for land by the Law on Normative Price is high for agricultural land, particularly given the state of the Moldovan economy.⁷ Likewise, if land becomes more valuable, as often occurs in a growing economy, the private owner should be free to sell the land for more than the price demanded by the state or municipality. If the state collects a tax on the private transfer of land, the state might nevertheless establish a minimum normative price to be used for calculating such tax.⁸

B. Private Land Leases.

Private land leases are currently allowed by Law on Lease (January 14, 1992), but there is some question whether private rents are regulated. Article 14 of the Law on Normative Price states that leases cannot be less than 2% nor more than 10% of the normative sale price for land.⁹ The Law on Normative Price must be clarified to provide that only state rents are regulated. Private owners and prospective leaseholders are in the best position to determine

⁷ Average agricultural land in Moldova is assigned a point value of 73 (on a 100-point scale), and the average price for agricultural land is 289.53 lei per point according to the annex to the Law on Normative Price. This means the average cost of agricultural land is 21,136 lei per hectare (roughly \$4700 per hectare or \$1900 per acre), which is three times higher than the average cost of dry wheat land in the United States, which was roughly \$650 per acre in 1992.

⁸ This minimum price would prevent private sellers and buyers from avoiding the transfer tax (reported to be currently 2%-5%) by reporting a sale price below the actual price paid by the purchaser. If minimum normative prices are established for taxation, such prices must be reasonable in order not to discourage private sale of land and the law should state clearly that sellers may sell land for less than the minimum price so long as tax is paid based upon the minimum price.

⁹ If agricultural leases were regulated according to this formula, it would mean that annual rents could not be less than 423 lei (\$94) nor more than 1902 lei (\$423) per hectare.

the appropriate value of leases. In addition, the present Law on Lease should probably be amended to describe the consequences of breach of lease by the owner and the leaseholder.

Private land leases are potentially more important for agricultural land since many pensioners and family farmers will be less inclined to sell agricultural land during the first years of the land market, and farmers will be short of cash to purchase such land (although mortgage financing would help to solve this problem). Ultimately, private leases are not a substitute for private purchase of agricultural land since leaseholders do not have adequate incentive to invest in improving the soil, draining land, terracing or otherwise make long-term improvements in the land. This issue is related to lease of land shares, discussed in III(D) below.

C. Land Mortgage.

The use of collateral to secure borrowed capital is a fundamental requirement in market economies in order to obtain investment capital for business operation and expansion. Land is typically a farmer's most valuable collateral. Farmers in many countries mortgage their land to receive loans to purchase inputs and machinery. Farmers in the industrialized democracies often obtain a loan to purchase land by using such land as collateral for the loan. This practice, sometimes known as "purchase money mortgage," allows competent farmers to purchase land even though they have limited cash or savings.

Land mortgages are currently governed by the Temporary Regulation on Collateral (October 29, 1993). Although the regulation is fundamentally sound, it should be amended to provide greater detail regarding the procedures by which the mortgagee bank can foreclose upon the mortgage if the mortgagor borrower does not repay the loan in a timely manner. The regulation should describe the grace period, if any, to be granted to the mortgagor borrower,

and should describe the role of the court in approving the foreclosure auction of the collateral. The regulation should allow land owners (and leaseholders) to enter into mortgage contracts that secure loans for less than the full value of the land. In this way, the land owner can use the land to borrow small amounts. The regulation should also allow owners and leaseholders to enter into secondary mortgages; if a second lender is comfortable accepting collateral that has already been mortgaged to another lender, the second lender should be allowed to do so. These and other adjustments could make the regulation more responsive to the needs of lenders and borrowers.

D. Registration of Private Ownership and Private Transactions.

Creation of a functioning land market requires a legal registration system in every raion that is capable of registering land ownership and other interests in land that arise from private transfers, mortgages and leases. Proper registration allows land to move freely in commerce by providing definite proof of ownership and other interests, and by collecting data in one location for access by landowners and prospective purchasers. The legal registration system (which might also be termed a "legal cadastre") must be designed so that it can be quickly implemented and efficiently administered in each of the 40 raions in Moldova. The primary objectives of the system should be: (1) to establish an accurate record of ownership and other interests in land; and (2) to make the transfer of ownership and the registration of other interests in land as simple, inexpensive and speedy as possible. The system should be designed in such a way that the needs of the owners of land are served rather than ancillary needs of the state and municipalities. The design and speedy implementation of a functioning rural land title registration system might be an appropriate focus of foreign assistance.

The focus should not be upon development of a multi-purpose cadastre designed to evaluate soil quality or collect tax revenues. Such a multi-purpose cadastre, however desirable, is not essential to creation of a land market. To the extent that development of a multi-purpose cadastre retards implementation of a functioning title registration system, the multi-purpose cadastre would be positively harmful to creation of a land market. A functioning land market is much more important at present in Moldova than creation of a system to monitor land use and taxation.

Another key issue is where the registry will be maintained. It may be more sensible to keep title registers at the offices of 40 raions than in 1700 communes, contrary to the provisions of current regulation governing registration.¹⁰ Registration at the commune level appears to be unnecessary and there are probably insufficient staff in the communes to administer such systems properly. The agency registering interests in real estate should also issue the ownership certificates. The Regulation "On the Content of Documents Related to the General Land Cadastre" (January 11, 1995) presently appears to call for local registration, but provides in some cases that the ownership certificate will be issued by a raion or republican authority.¹¹ We recommend that a raion agency issue the ownership certificates at the time the land ownership is registered. Moreover, a single certificate should be issued for each land plot, regardless of how many land plots the landowner owns. The referenced regulation appears to

¹⁰ Communes are administrative jurisdictions roughly, but not completely, coextensive with Moldova's approximately 2000 villages.

¹¹ Articles 7 and 8 of the regulation provide that each owner will have one certificate of ownership that describes all land plots owned, regardless of where in Moldova the land is located. If all of an owner's land plots are located in one commune, the commune will issue the certificate; if an owner's land plots are located in more than one village in a single raion, the raion administrators will issue the certificate; and if the owned land plots are located in more than one raion, republican administrators will issue the certificate.

contemplate that a landowner who owns more than one plot of land will have all land described on a single certificate. This system will unnecessarily complicate registration of all types of land transactions, including transfers, leases and mortgages. An exception could be made for agricultural land that is withdrawn from one collectivized farm, in which case a single certificate could describe the four or five small plots owned.

The raion-based land registration systems need not be computerized, at least initially. It is more important for landowners, leaseholders and mortgagees to have a reliable, functioning title registration system now than to wait even a year for a computerized system to be implemented. Given the fact that computers do not now exist in many (perhaps most) raions, it is unreasonable to assume that a state-of-the-art computerized system can be used any time soon. Of course, the registration system implemented now should be capable of being placed on a computer once the technological capacity improves in the raions.

E. Publicize Private Land Rights.

Lack of access to information regarding land rights is probably a larger problem in rural areas than in urban areas. Many of the peasant farmers and collective farm leaders we interviewed did not have a clear understanding of laws regarding rights to own land and patrimony. Pensioners were generally even less informed. Publicization of private land rights would serve not only to inform citizens of their rights, but would emphasize the Government's resolve to ensure that such rights are enforced. This would place pressure on raion and local officials to respect these rights. The publicization program should include references to specific laws and regulations and should describe how farmers, pensioners and citizens can obtain free copies of all relevant legal materials. Copies of such materials should also be placed in

permanent binders available for public inspection in every commune. A publicization program of this type might be an appropriate focus of foreign assistance.

F. Legal Assistance for Participants in Private Land Transactions.

Even where farmers, pensioners and other citizens know their rights to obtain and use land and patrimony (and to conduct at least limited transactions), they may not be able to effectively enforce them. Although some farmers have brought lawsuits in some raions—for example, to obtain their proper patrimony shares in kind—it should not be assumed that large numbers of farmers are able to do so. Despite the fact that Moldovan courts are reportedly very efficient and capable of enforcing their judgments, it is likely that peasant farmers lack the time, information and financial resources necessary to obtain reliable legal advice and assistance in pursuing legal claims. Peasant farmers are currently in the political minority throughout Moldova, which often makes it difficult to obtain information (and impossible to obtain cooperation) from local and raion officials. As a result, laws on the books are ignored, which makes it impossible for policy makers to assess the impact of such laws.

A legal assistance program organized by the republican Government could help enforce private rights to own and use (and, to the extent allowed, to sell and lease) land and patrimony. Rights with respect to both non-agricultural and agricultural land could be enforced to overcome obstacles imposed by officials and collectivized farm managers. The program could pay salaries of attorneys assigned to handle cases in every raion. The program might also pay salaries to law students who would be given temporary leave from their courses. A program of this type might be another likely candidate for foreign assistance. Not only would such a program directly assist many private parties to enforce their rights, publicization of the

program's availability and of administrative and judicial victories could help to deter a far larger number of violations.

II. Exclusively Non-Agricultural Land Issues.

A. Privatization of Enterprise Land.

The Moldovan Government has embraced the idea of privatizing land beneath and immediately surrounding privatized "objects" (buildings and other constructions), which is to be accomplished by selling such land at a state-established normative price to the owner of the privatized object. This is an important step in the process of creating a private land market. As of early October, the Government was inclined to allow either the Ministry of Privatization or local governments to establish the normative prices (within a specified range) by taking into account the location of the land plot and the municipal services provided to the plot. The program must also be administered by either the Ministry of Privatization or the local governments.

Originally, the Government's draft regulation regarding the price of privatized enterprise land called for application of the very steep 99-year use value of land appearing in the final column of the annex to the Law on Normative Price of Land. Application of this price formula would mean that the average price for enterprise land would be roughly 676,342 lei (\$150,298 per hectare), which is far more than the Moldovan economy can presently support. We recommend that the Government also establish a smaller cap on the normative price to be charged for privatized land. The experience of the government in St. Petersburg, Russia suggests that excessive land prices charged by the municipality can obstruct privatization. In July 1994 President Yeltsin issued a decree establishing the normative price to be charged for

privatization of enterprise land as equal to 200 times the annual land tax. As a result, the City of St. Petersburg was able to sell very little land. After President Yeltsin issued a decree in May 1995 reducing the normative price to ten times the land tax, large numbers of enterprises began purchasing the land. The Moldovan Government should set the cap equal to either a multiple of the base price of land or the price paid by the state for expropriation of land for public purposes (which prices are described in the first and second columns of the annex to the Law on Normative Price of Land.

There is some question regarding how best to privatize unused and "reserve" land associated with particular privatized objects. At one time, the Government was considering selling the unused or reserve land to the enterprise-owner of the associated privatized object on condition that the enterprise build upon the land within three years. We conclude that such a requirement would not promote the most efficient use of land. Maximum efficiency is achieved only when land is acquired and owned by a person or enterprise who has an economic incentive to use the land most productively. We recommend that the state and municipalities sell such land to the enterprise-owner of the privatized object at the same normative price charged for the land beneath and immediately surrounding the privatized object. The enterprise would then have the option of either building upon the unused land, selling the land to raise capital, or holding the land for future development or sale. The enterprise would decide which use of the land makes the most economic sense. Other enterprises that believe they can make better use of the land would be motivated to negotiate with the owner to purchase the land and develop it. In the alternative, if the Government concludes that privatization of unused and reserve land at normative prices would be viewed by the public as a windfall for established

enterprises, we recommend that the unused and reserve land be auctioned publicly to the highest bidder.

Some suggest that it is not clear whether the Ministry of Privatization or the local administrations should administer privatization of enterprise land. There appears to be some justification for concern that officials at the raion and commune level will obstruct privatization of land related to privatized objects.¹² However, the Ministry of Privatization may not have sufficient personnel to play a direct role in the privatization process at the raion and commune levels. Foreign assistance might be used to provide temporary assistance in helping the Ministry of Privatization to administer the privatization program at the local level.¹³

B. Privatization of Dacha Plots.

Use rights to dacha plots have historically been assigned to families participating in a fruit growing cooperative. Such use rights could be transferred from one family to another. Although sale of use rights was forbidden, we understand that transfers of ownership of dacha structures also served to transfer use rights to the land plot associated with the dacha, and that transfer of ownership of a structure was in practice accompanied by an unrecorded cash payment to the transferor. Over many years the dacha plots have been improved by the

¹² For example, Government Decision No. 687 of October 9, 1995 observes that in the three months since Government Decision No. 377 of June 6, 1995 (which provides for privatization of dacha plots—that is, plots within the so-called "orchard cooperatives"), no local executives had approved privatization of dacha plots.

¹³ In addition, the Ministry might consider designating a Ministry officer with jurisdiction to solicit and hear complaints in a territory of several raions. Such officers could help to uncover obstructive behavior by raion and commune officials. The Ministry of Privatization might fund these positions by assessing penalties against the offending local governments equal to a portion of the local government's share of the price paid by the new owner of the privatized land. Such financial sanctions might encourage local governments to cooperate.

construction of dachas and planting of fruit trees and other permanent plants. Many urban families rely upon the dacha gardens to provide much of their food.

The Provisional Regulation on Buying and Selling of Land Plots (approved by Government Decision No. 377 of June 6, 1995) (hereinafter "Provisional Regulation"), provides that the user of a dacha plot may now become the owner of such plot by purchasing the plot from the municipality that currently owns it. The price for such land is to be determined according to the Law on Normative Price of Land and the Provisional Regulation. According to section 10 of the Provisional Regulation, the municipality that owns the plot shall share the proceeds equally with the state. In order to encourage the privatization of the dacha plots, Article 5 of the Parliamentary Decision "On the Effectuation of the Law on the State Privatization Program in the Republic of Moldova for 1995-96" provides that until the end of 1995 the price of dacha plots will be reduced to half of the price determined according to the Law on Normative Price of Land. Local officials and the Ministry of Agriculture have resisted the privatization of dacha plots, as noted in Government Decision No. 687 of October 9, 1995 "On the Failure to Implement Government Decision No. 377 of June 6, 1995."¹⁴ This decree orders the Ministry of Agriculture to rescind its regulations that complicate the privatization process and orders local governments to comply with the June 6, 1995 decree.

III. Exclusively Agricultural Land Issues.

A. Withdrawal of Land by Individual Families.

¹⁴ There is widespread speculation that many local government officials would rather delay privatizing the dacha plots until after the end of 1995, when the 50% reduction in the privatization price will no longer be in effect.

As a result of the February 1995 Land Code amendments, Article 13 now provides that members of collectivized farms cannot withdraw their land shares individually or in small groups to establish peasant farms. Such members can instead withdraw their land shares only if they form a group large enough to enable withdrawal of a "crop-field rotation." Article 13 does not define this term, but the term is interpreted by raion officials to refer to fields of "arable" land (e.g., ploughed land) which are on average approximately 100 hectares. Since the average land share is 1.7 hectares per adult member and the arable land represents an average of 80 percent of a land share, in practice a group must typically assemble around 70-75 land shares (equal to 100 hectares of arable land and 25 hectares of orchard and vineyard land) to withdraw any agricultural land from the collective.¹⁵ It is obviously much more difficult to organize such large groups than it is to withdraw with one's own extended family or a small group of families. Although a senior government official estimated that, if given complete freedom to withdraw, more than 50% of collectivized farm members would withdraw to establish peasant farms (or lease land to peasant farms), only a small percentage of such members have been able or willing to establish groups large enough to withdraw an entire crop rotation field. The Article 13 crop rotation field requirement is widely (and correctly) viewed as having been added solely in order to prevent families from withdrawing from collectivized farms.

Moreover, Article 13 of the amended Land Code has been interpreted to require that the withdrawing groups farm the withdrawn land collectively rather than individually. Although this

¹⁵ The crop rotation requirement apparently does not apply to orchard and vineyard land. However, members cannot withdraw their land shares only in orchard and vineyard land since this would reduce the orchard and vineyard land available to those who have not yet withdrawn. Although members could theoretically voluntarily exchange portions of their land shares so that withdrawing members withdrew only one type of land, such exchanges were not known to have occurred in raions and villages we visited.

requirement is reportedly not observed by all groups that recently withdrew, this requirement does make it impossible for the groups to formally register the land in the ownership of individual families. In effect, the land continues to be owned collectively even if it is not cultivated collectively. This arrangement will discourage farmers from making long-term investments in the improvement of the land, and clearly forestalls any market in such land.

The crop rotation field requirement has effectively stopped the formation of independent peasant farms. The requirement should be rescinded as soon as possible. Rescission would not only benefit those members who desire to withdraw to establish peasant farms and small groups of peasant farms, but would greatly contribute to the recovery and expansion of Moldovan agriculture and the Moldovan economy. The peasant farms we visited were doing much better than the collective farm from which they withdrew. Their yields were up to two times greater than the yields of the collective farm and their costs of production (fuel, seeds, fertilizer, etc.) were generally lower than the costs of the collective because the peasant farmers were personally motivated to make the most efficient use of their inputs.¹⁶ These peasant farms are accomplishing these results without the assistance of the Moldovan government or any foreign investor or international agency. These peasant farms are also accomplishing these results despite the fact that they are at a disadvantage vis a vis the collectivized farms with respect to access to purchasers for their production.¹⁷ Although it

¹⁶ These peasant farmers also attributed their success to a willingness to time their farm operations—irrigation, harvest, etc.—based upon the needs of the crops rather than predetermined schedules. Peasant farmers also reported that theft of crops by members of the peasant farm had been effectively eliminated, whereas the collectivized farms continued to lose a significant portion of their crop to theft by members.

¹⁷ Collectivized farms enjoy well established relationships with the relatively small number of crop purchasers in each raion. Because the collectivized farms are the major suppliers of agricultural production, they are in a position to insist that purchasers either refuse to purchase from peasant

would be rash to predict that peasant farms can replace the productive capacity of the collectivized farms overnight, we have seen evidence that peasant farms, including farms of five hectares, can compete with the collectivized farms and can produce for the commercial market very effectively. An official of the Ministry of Agriculture told us that a relative had made a significant profit by producing vegetables on less than three hectares of land. Peasant farms therefore represent not only a democratic and decentralized alternative to collectivized farming, but also represent a viable commercial alternative that can supply Moldovan food processors and participate in the export market alongside the collectivized farms. We predict that ultimately, if the peasant farms are allowed to compete with collectivized farms on equal terms, the peasant farms in the aggregate will produce and market a much greater volume of agricultural production than the collective farms.

Rescission of the crop field requirement is not only important for direct withdrawal by individual families and small groups of families, but is crucial to sale and lease of land shares. Pensioners on the collectivized farms are presently forced to lease their land shares to the collectivized farm for a small fraction of what the use of the land is worth. Pensioners effectively have no choice under the present system since the collectivized farm is often the only registered enterprise in the area: there are no peasant farms (or even associations of peasant farms) in the area, or there are not enough such farms to stimulate a competitive lease market. Pensioners can lease out their land shares by first withdrawing their land share as part of group of typically 70-75 land share owners (the average number of shares needed to withdraw a 100-hectare field). Pensioners can also lease their land shares to a member of

farms or purchase from peasant farms only after the collectivized farm has sold all of its production.

such a large withdrawing group. If pensioners were allowed to withdraw their land share individually or in a small group, they would stand a better chance of being able to rent the land to a peasant farmer. Competition among farmers for lease of land from pensioners would help ensure that pensioners obtained a more fair rent for their land. A competitive rental market would also help people to estimate values for agricultural land for purposes of purchase and sale, once such transactions are allowed.

B. Distribution of Documentation for Land Shares and Patrimony Shares.

Documentation of land shares and patrimony shares has still not been distributed in every raion. There appears to be wide variation among the raions in this regard, which may well be attributed to the opposition of some raion officials to the land privatization program. Land shares were recently recalculated according to amended Article 12 of the Land Code (and Article III of the Law on Amendments to the Land Code), which extended land share rights to rural social service workers, veterans and others. The recalculation appears to have been accomplished in most areas. The size of land shares of members of collectivized farms was in general not substantially reduced by the recalculation.

C. Private Sale of Land Shares.

According to Article 12 of the amended Land Code, land share owners can presently sell land shares only to other members of the collectivized enterprise. The law should be amended to allow land share owners to sell land shares to existing peasant farmers and associations of peasant farmers. Such sales are unlikely to occur very often since the purchasing peasant farmer would not know precisely where the land represented by the land shares would be

allocated. Where arable land is of generally uniform quality, however, some peasant farmers might be willing to purchase several land shares and accept whichever land plots are allocated. Peasant farmers should therefore be given the right to purchase land shares and to exercise all rights of land share holders regarding withdrawal of land in kind. The law should also provide that, whenever possible, newly withdrawn plots shall be allotted so as to be contiguous with one another. Virtually all such withdrawals will of course depend upon rescission of the Article 13 crop rotation requirement discussed in III(A) above.

D. Private Lease of Land Shares.

Peasant farmers should be allowed to enter into lease agreements with land share owners such that the leaseholder can withdraw the leased land in kind from the collectivized enterprise. The law should provide that a peasant farmer who leases land shares from more than one land share owner may demand that the land in kind be allocated together in contiguous land plots. This procedure makes sense only if the Article 13 crop rotation field requirement is rescinded.

E. Calculation of Patrimony in Kind for Withdrawing Families.

Although agricultural land is very scarce in Moldova, functioning farm machinery is even more scarce. It is critically important that farm families withdrawing from collectivized farms be allowed to withdraw their fair share of functioning farm machinery. This issue is closely related to the issue of service cooperatives discussed in III(G) below.

One significant obstacle to the fair allocation of farm machinery is a regulation that reportedly requires that a proportionate share of the collectivized farm's debt must be deducted

from the patrimony shares of the withdrawing members before the shares can be exchanged for farm machinery or other assets. This unfairly penalizes the withdrawing members and gives the collectivized farm a tremendous advantage; in essence, the collectivized farm is able to finance the use of farm machinery (by repaying existing debts over time) while the peasant farmers cannot obtain new loans with which to acquire replacement machinery. The law should be amended to allow the withdrawing members to assume their proportionate share of the debt to the state and other creditors, whether or not such creditors agree to this assumption. In this way, the peasant farmers would receive their full share of equipment and could finance such ownership by repaying existing debts over time. If peasant farmers are denied their full share of equipment, they will be denied access to scarce machinery and denied the opportunity to compete fairly with the collectivized farms.

Moreover, if state debts are later forgiven or the state later decides to reimburse creditors for outstanding debts of farms, peasant farmers should be able to benefit equally with the collectivized farms. Peasant farmers should be treated equally with collectivized farms in all such cases.

F. Distribution of Patrimony in Kind to Withdrawing Families.

Another significant reported obstacle to the fair distribution of farm machinery is the reluctance of collective farm bosses to part with machinery. We were consistently told of problems, including refusals by collective farm leaders and delays of two years in the distribution of patrimony in kind. We were also told of litigation instigated by peasant farmers who claim to have been denied a fair allocation of patrimony. The mere fact of such litigation should not be interpreted as an indication that the problems are being handled. It is much more

likely that the vast majority of withdrawing members simply have no realistic opportunity to challenge the power of collective farm bosses. The law must provide guidelines that limit or remove the discretion of the collectivized farm leaders and general assembly to determine which pieces of farm machinery, if any, are to be allocated to withdrawing farm members. If local authorities and locally appointed committees cannot be trusted to make such decisions fairly, then this process could be administered by the Ministry of Privatization. This might also be a situation where it would be particularly helpful to provide legal assistance to peasant farmers and members withdrawing from collectivized farms.

G. Service Cooperatives.

Ideally, each peasant farmer would be able to withdraw separate machinery from the collectivized farm in order to establish an independent peasant farm. This is not possible due to a general shortage of functioning farm machinery on collectivized farms and the fact that most farm machinery is relatively large and expensive, having been designed to operate on large fields. A family which withdraws with two or three land shares to establish a peasant farm typically does not have sufficient patrimony shares to claim even a tractor. The obvious solution is for farm families to pool their patrimony shares and withdraw farm machinery together.

Opponents of peasant farms argue that farm families should be allowed to withdraw farm machinery in common only if they also withdraw a crop rotation field in common and then cultivate the field collectively, as presently required by Article 13 of the amended Land Code. However, an equally obvious solution is to allow withdrawing families to establish independent peasant farms and also establish a service cooperative to coordinate each peasant farmer's

use of the machinery. The machinery would thus be owned in common by the group of farm families, but would be used separately by the families to cultivate their separately owned land plots.

The service cooperative solution is also obvious to Moldovan farmers. We visited peasant farmers who had created service cooperatives spontaneously without the assistance of the government or foreign advisors. The peasant farmers meet and decide how much the service cooperative will charge its members for use of the machinery. The peasant farmers also establish a schedule describing when each peasant farmer can use the machinery. This arrangement allows the farmers to own in common the machinery that no individual peasant farmer can afford to own separately. It also allows the peasant farmers to own separately their plots of land, which they can cultivate separately with the expectation that their family will receive the full benefits of their labor. Eventually, peasant farmers will be able to purchase smaller tractors and other equipment for use on their own farms and the service cooperatives may cease to serve a useful purpose.¹⁸ During this transition phase, however, the service cooperatives have an important role to play.

Unfortunately, the law presently does not allow registration of service cooperatives. The law must be amended to allow groups of independent peasant farmers to own farm machinery in common. The law should also allow the service cooperative to rent the use of the machinery to members of the service cooperative. Because the service cooperative will charge its

¹⁸ Much smaller equipment will be produced for the emerging market of small farmers, as has happened in China following decollectivization. At the same time, the average size of peasant farms will steadily grow through lease of land plots and land shares and through purchase of land plots once such transactions are allowed by law.

members only the cost of maintaining and replacing machinery as it becomes too old, the service cooperative will not earn any profits and should not be subject to taxation.

If the law is changed to allow creation of service cooperatives, foreign assistance might be used to provide advice to peasant farmers who are considering creating such enterprises. The International Finance Corporation has successfully provided such assistance to a reorganizing collective farm in the Rostov region of Russia.

H. Selection of Land Parcels for Withdrawing Families.

Some peasant farmers reported difficulty in obtaining average quality land when withdrawing from the collectivized farm. This may be another area in which peasant farmers could benefit from legal assistance.

Others reported that farms had divided vineyard land into such small parcels that each withdrawing member received two rows of grapes in each of three different vineyards. This makes it more difficult to cultivate commercially. The best solution to this problem is to allow owners of agricultural land to exchange relatively equal quantities of such land without paying any transfer tax or registration fee. Landowners would then be able to consolidate land holdings and improve the commercial viability of their land.

I. Registration of Peasant Farm Enterprises.

Of the reported 21,400 independent peasant farms that exist in Moldova, only 13,100 had been registered as enterprises as of April 1, 1995. Although the unregistered peasant farm enterprises continue to produce commercially and enter into informal contracts to distribute their production, their informal contracts may not be subject to legal protection. The

principal obstacle to registration of peasant farms appears to be the resistance of raion officials who are opposed to peasant farming. Policy makers should consider amending Article 13 of the amended Land Code, which presently requires farmers to demonstrate farming skills before they can register as peasant farm enterprises. Given the abuses of raion officials, the skills requirement presently appears to be causing far more harm than good. The Article 13 requirement should either be deleted or revised to provide that former members of collectivized farms shall automatically be eligible to register a peasant farm enterprise. If the peasant farmer is not successful, his farm will eventually be rented out or purchased by a more successful farmer.

J. Contribution of Land to New Joint Stock Companies.

Much of the conversation regarding agricultural reforms in Moldova concerns the "privatization" of agricultural land and the formation of new "privatized" joint stock companies and cooperatives. Although there has been a sort of privatization on paper in some of the collectivized farms, the joint stock companies and cooperatives represent a continuation of collectivized farming. The joint stock companies and cooperatives do not promise to be any more democratic, productive or efficient than the collectivized farms. The putative "owners" of the joint stock companies and cooperatives will have no greater participation in the decisions of the enterprise than they had in the state farms and collective farms. The only positive aspect of the "privatization" of these enterprises is that direct state control has been diminished. This is a benefit to the leaders of the collectivized farms, but will provide little benefit to rank-and-file members.

During this period of transition, when peasant farms have not yet been allowed to develop and compete for the purchase and lease of land shares, leaders of the still-collectivized joint stock companies and cooperatives remain in a position to coerce pensioners and other land share owners to make permanent contributions of land shares to the charter capital of the enterprise. In order to preserve continuing flexibility for land share owners, the law should allow land share owners to contribute use rights of land shares for renewable terms not longer than three years. In this way, land share owners would have a continuing right to withdraw their land to allow it to be used for peasant farming or some other form of agricultural production. The law should not allow land share owners to make permanent contributions of land shares to joint stock companies, cooperatives and other forms of agricultural enterprise.

K. Not Require a Onetime, Permanent Decision.

In the most extreme form of the permanent contribution concept, some in the government have suggested that members of all collectivized farms should be required to make a onetime decision either to withdraw land and patrimony to establish a peasant farm or to join in some reorganized form of the collectivized farm—the joint stock company or cooperative—forever. According to this concept, a lease or short-term contribution of use rights of land shares would not even be allowed. This is a terrible idea for the same reasons that land share owners should not be allowed to make permanent contributions of land shares to joint stock companies and cooperatives. Obstacles imposed by present laws and raion officials to the creation of peasant farms have not enabled land share owners to become familiar with peasant farming as a commercially viable alternative to large-scale collective agriculture.

L. Recalcitrance of Raion Officials.

Many, perhaps most, raion officials appear to oppose land reform. Raion officials enjoy the benefits of long-established relationships with leaders of collectivized farms, who feel threatened by the potential break-up of the collectivized farms. Removal of this obstacle to reforms may require changes in institutional arrangements. For example, more stringent oversight of raion reform efforts might be established at the republican level. The organ with oversight would need to be empowered to act in various ways, including assessment of substantial monetary penalties, either directly or through court action, against raion officials who obstruct reforms.

M. State payments for Agricultural Products.

All farmers with whom we met, including collective farm leaders and peasant farmers, complained of delays in state payments for production purchased by the state. Farmers are penalized when they are not able to repay loans on time, but farmers currently have no recourse against the state for its late payments. Late payments undermine the ability of farmers to repay their own debts and to finance improvements in preparation for the next season. In times of inflation (although in Moldova inflation is down substantially), late payments also represent a kind of tax upon the farmer since he receives payment that is worth less when received than it was worth when the payment was due. This effective tax provides a slight benefit to the state (since it can pay in lei that is worth less), but the financial pressure imposed on the farmers undoubtedly causes a net loss in productivity to the economy. This situation must be remedied. The law should provide that the state and other purchasers of agricultural products shall pay interest when payments are made later than promised. In cases where

payments are later than 60 days, the law should also require the state and other purchasers of agricultural products to pay a penalty.

N. Technical Assistance for Collectivized Farms Reorganizing Entirely.

Where collectivized farms decide to disband entirely, the government should offer technical assistance to assist the farm in the reorganization process. We met with farmers who had emerged from a collectivized farm that had simply disintegrated into hundreds of independent peasant farms in an unplanned process that was not designed to help the new farms be commercially viable. We estimate that such whole-farm break-up may be much more common in Moldova than in Russia or Ukraine.

RECOMMENDATIONS FOR FOREIGN ASSISTANCE

Foreign assistance could be helpful in advancing the land privatization efforts in Moldova and assisting with the development of an open real estate market. Specific areas of assistance to be considered include the following:

1. Assist Moldovan policy makers to review comparative legal and policy experience from other countries and to draft Moldovan real estate laws and agricultural laws. Foreign legal experts could provide information, practical experience and legal drafting assistance to Moldovan policy makers interested in promoting development of a modern real estate market. Appropriate areas of focus include real estate sales and lease law, mortgage law, land title registration, and land use planning. Legal specialists providing assistance should be prepared to provide information and advice that is appropriate to both non-agricultural and agricultural real estate sectors. Assistance should also be provided to Moldovan policy makers interested in improving agricultural laws; specifically, there is an urgent need for a functioning agricultural service cooperative law.

2. An organized program to provide legal assistance to peasant farmers and pensioners in each of 40 raions. Such a program could employ private Moldovan attorneys and law students to provide legal assistance, including filing of court claims, on behalf of those who wish to withdraw from collectivized farms to establish peasant farms and to pensioners who wish to withdraw from collectivized farms to rent their land to peasant farmers. Program attorneys could assist peasant farmers to register their peasant farm enterprise and could otherwise assist peasant farmers and pensioners to overcome efforts of collectivized farm leaders and local officials to obstruct the realization of land rights and other rights granted by Moldovan law.

3. Technical assistance and legal advice to peasant farmers who wish to create service cooperatives. Once service cooperatives are legalized, foreign assistance might be used to assist such farmers in organizing service cooperatives to serve their common interests in purchasing inputs, managing expensive or scarce machinery and marketing farm production.

4. Assist Moldovan policy makers to design and quickly implement a functioning rural land title registration system. Such assistance would parallel similar assistance currently planned by USAID and the World Bank with respect to urban land titling. The rural land titling system need not be computerized and should be designed to accommodate the technical and administrative capacity of responsible agencies in the raions.

5. Assist Ministry of Privatization efforts to privatize enterprise land in raion towns and villages. Foreign assistance might help advance the Ministry of Privatization's objective of facilitating the privatization of land used by (and subject to being used by) owners of privatized buildings and other objects located in raion towns and villages.

6. Assist Ministry of Privatization efforts to monitor rural reforms. Foreign assistance could be useful in aiding the Ministry of Privatization to monitor implementation of rural reforms.

7. Assist appropriate Moldovan agencies design and implement a publicization program regarding private land rights. Foreign assistance could facilitate Moldovan efforts to publicize private land rights in urban and rural areas. Rural land owners (and owners of land shares) will have some distinct concerns regarding the realization of their rights, such as their ability to withdraw land shares in kind to establish peasant farms. Any publicization program should be designed to address these special concerns.