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# LAND REFORM AND LAND MARKET DEVELOPMENT IN UKRAINE

FINDINGS OF THE UKRAINE LAND TITLING INITIATIVE  
(ULTI) PROJECT ASSESSMENT AND STRATEGIES FOR  
FUTURE USAID INTERVENTION



JUNE 2006

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COVER PHOTO:

ULTI's Technical Director Brennan Klose speaks with villagers during titling ceremony in Cherniakhivskiy Raion of Zhytomyr Oblast.

Photo by Vladimir Mayevskiy, September 2, 2004

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## **DISCLAIMER**

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# ACRONYMS

BTI	Bureau of Technical Inventory
COP	Chief of party
CTO	Cognizant technical officer
FAO	U.N. Food and Agriculture Organization
FSU	Former Soviet Union
GIS/LIS	Geographic information system/Land information system
GoU	Government of Ukraine
IFC	International Finance Corporation
IMF	International Monetary Fund
LAC	Legal aid center
MOJ	Ministry of Justice
NALT	ULTI Non-Agricultural Land Titling project
NGO	Nongovernmental organization
OECD	Organization for Economic Cooperation and Development
PAD	Project appraisal document
PIU	Program Implementation Unit
RAISE	Rural and Agricultural Incomes with a Sustainable Environment
SCLR	State Committee of Ukraine for Land Resources
SME	Small- and medium-scale enterprise
SO	Strategic Objective
SOW	Statement of work
TA	Technical assistance
UAH	Ukrainian Grivyna (US \$1.0 = UAH 5.10)
ULED	Ukraine Local Economic Development Project
ULTI	Ukraine Land Titling Initiative

# КОРОТКИЙ ВИКЛАД

## ПЕРЕДІСТОРІЯ І МЕТА ОЦІНКИ

Програма USAID має на меті розбудову ринку землі і майна, відродження сільського господарства України і забезпечення найбільш вразливих і літніх селян мережею соціальної допомоги. Розбудовуючи ринок землі і майна, програма передбачає підсилення спроможності малих і середніх підприємств використовувати заморожені активи, надаючи сільськогосподарському сектору можливість залучати інвестиції і прискорити зростання переробки продуктів сільськогосподарського виробництва з утворенням доданої вартості. Передання прав власності на землю селянам, які економічно постраждали під час переходу від планової до ринкової економіки, також має покращити якість життя бідних селян, більшість з яких є людьми похилого віку.

Як успіх фінансованого USAID Проекту ПЗУУ (Проекту підтримки приватизації землі в Україні) в розбудові ринку землі, так і очікуваний від цього результат у вигляді розширення кредитування залежать від ступеню свободи переходу права власності на землю та можливості заставляти землю і майно, а також від пристосованості землі для використання як застави в очах офіційних позичальників. За ініціативою USAID було проведено цю оцінку роботи ПППЗУ і ступеню прогресу України в справі розбудови ринку землі з метою: (1) зміцнення співпраці USAID з програмою земельної реформи Світового банку; (2) удосконалення підходів до земельної реформи і розвитку ринку землі в Україні; (3) визначення нових стратегій і шляхів розвитку з метою сприяння приватизації землі та розвитку ринку землі в Україні.

## ЗЕМЕЛЬНА РЕФОРМА В УКРАЇНІ

Земельна реформа в Україні пройшла три стадії розвитку. Перша стадія (1988-1992) забезпечила ефективним підприємствам (сільські господарства, промислові і торговельні підприємства) незалежний менеджмент і самофінансування. На другій стадії (1992-1999) колективну власність на землю сільськогосподарського призначення було трансформовано у спільну власність (без фактичного виділення ділянок в натурі). Протягом поточної третьої стадії (з 2000 до цього часу) земельні паї передаються у власність громадян з виданням Державного акту з/або без закріплення меж ділянок межовими знаками і з правом здавати землю в оренду сільгосппідприємствам або працювати на землі самостійно.

З огляду на кількість земельних ділянок і виданих юридичних документів друга і третя стадії земельної реформи були дуже успішними. На другій стадії, до 1998 року, землю колективних господарств було, здебільшого, передано 6,9 мільйонам громадян-колгоспників шляхом вручення сертифікатів на земельні паї, які USAID допоміг виготовити та видати селянам. Протягом третьої стадії сертифікати на земельні паї замінюють на державні акти на право власності на землю. Це завдання становить основну мету ПППЗУ, роботи Державного комітету України по земельних ресурсах (Держкомзем) і проекту Світового банку.

Існує і очікувана четверта стадія земельної реформи, протягом якої деякі або усі існуючі обмеження на використання і розпорядження землею мають бути зняті. Станом на сьогодні, Україна ще не повністю визначила принципи, інститути, процедури або практику, які характеризуватимуть її майбутню земельну систему. Згодом вона може набути повний спектр цивільного законодавства і ринкових відносин за прикладом Європейського цивільного права. Або Україна може створити систему, за якої держава зберігає більше важелів управління використанням землі і нагляду за операціями і діяльністю ринку. Певні рішення, які будуть прийняті в недалекому майбутньому, матимуть дуже важливе значення для напрямку земельної політики. Серед них концептуальне і практичне визначення „об'єднаного реєстру/кадастру” за сприяння позики Світового банку. Мова також іде про законопроект „Про ринок землі” та інші законодавчі акти. Дія „мораторію” на продаж землі сільськогосподарського призначення закінчується в січні 2007 року. Держава має розробити свою політику щодо цього питання і підготувати заходи, які треба буде вжити у зв'язку з припиненням мораторію.

Ці рішення можуть мати своїм наслідком наповнення юридичного змісту прав, які ПППЗУ допоміг забезпечити для громадян, новим значенням і дієвішими методами захисту. Або, навпаки, вони можуть погіршити ситуацію громадян-власників землі, запровадивши обтяжливіші регулятивні вимоги, вищу вартість здійснення правочинів і можливості довільного втручання державних і муніципальних чиновників в операції юридичних і фізичних осіб із землею.

## Ключові питання і висновки

- існуюча система численних установ, які складають і реєструють документи стосовно землі і майна, є вкрай недосконалою для забезпечення вимог системи цивільного права і ринкових трансакцій;
- існуюча система утворює низку перешкод на шляху процесу визначення і пред'явлення доказів прав власності на землю і майно;
- без прояснення концепції і мети реєстрації система, сформована як результат об'єднання існуючих елементів, буде неспроможна виявити чіткий „ланцюжок” юридично значущих дій, не перевантажений нагромадженням іншої інформації;
- концепція „об'єднаного кадастру”, як це зараз обумовлено в законі, не вирішить зазначені вище проблеми.

## Рекомендації

- 1) Залишається потреба в наданні донорами (особливо USAID і Світовим банком) Міністерству юстиції і Держкомзему підтримки у вигляді технічної допомоги в сфері земельної політики, юридичної і регуляторної реформи у галузі земельних і майнових відносин.
- 2) Світовий банк через свою позику урядові України має забезпечувати чіткішу політику і технічне керівництво щодо визначення характеристик об'єднаної реєстраційної системи, яку він прагне створити або просувати.

## ПРОЕКТ ПІДТРИМКИ ПРИВАТИЗАЦІЇ ЗЕМЛІ В УКРАЇНІ (ППЗУ) І ОТРИМАНІ УРОКИ

З часу прийняття в 2001 році Земельного Кодексу Україна просувала вперед питання передачі прав власності відносно чотирьох основних категорій земель. (1) Земельні сертифікати, надані

селянам як співвласникам сільськогосподарських угідь (без визначення конкретних ділянок), замінюються на державні акти на право власності на визначені ділянки землі. (2) Громадяни також можуть отримати державні акти на право власності на невеликі ділянки (під житлове будівництво, городництво, для ведення особистого селянського господарства). (3) Існуючі комерційні і промислові користувачі землі можуть викупити землю (отримати право власності на землю), яку вони займають (продаж землі під підприємствами). (4) Міські адміністрації можуть виставляти на аукціони і тендери щойно сформовані міські ділянки землі під забудову.

Проект підтримки приватизації землі в Україні (ПППЗУ) сприяв цьому етапу земельної реформи п'ятьма різними способами. По-перше, проект надає технічну і юридичну підтримку (землевпорядні роботи, підготовка документів, перевірка прав власності громадян) в заміні земельних сертифікатів на державні акти. Очікується, що на час завершення проекту у вересні 2006 року буде видано і зареєстровано 1,8 мільйона державних актів (з 7 мільйонів для всієї сільської місцевості України). По-друге, проект посприяв більш ніж 14 тисячам комерційних і промислових підприємств в отриманні прав власності на землю. По-третє, проект здійснив інформаційно-освітню програму щодо прав на землю і забезпечив безплатну юридичну допомогу громадянам через мережу 26 центрів юридичної допомоги сільському населенню. По-четверте, проект надав підтримку урядові України в питанні формулювання стратегії і розробки законодавства. Провідним напрямком роботи в цій галузі була допомога в розробці прийнятого в 2003 році закону „Про порядок виділення земельних ділянок власникам земельних паїв в натурі”, розгляд і надання коментарів щодо закону 2004 року „Про розмежування земель державної і комунальної власності”. По-п'яте, в рамках проекту було започатковано пілотні проекти для опрацювання процедури суцільної інвентаризації земель сільських рад, видачі і реєстрації державних актів на землі усіх категорій – ділянок сільськогосподарського призначення, для обслуговування житлового будинку, для ведення особистого селянського господарства, під комерційними/промисловими об'єктами.

Успішна робота ПППЗУ значною мірою сприяла земельній реформі в Україні і не лише з точки зору кількості державних актів, виданих громадянам, але й тим, що Проект продемонстрував методи формування земельних ділянок, юридичної перевірки та реєстрації, які є більш спрощеними і дешевшими у порівнянні з альтернативними методами.

## **Ключові питання та висновки**

- В той час, як ПППЗУ скоріше за все виготовить заплановану кількість державних актів, існує ризик того, що значна частина цих актів не буде зареєстрована після завершення проекту, що залишить власників землі з незахищеними правами на землю та майно?
- Підтримка ПППЗУ, що надається центрам юридичної допомоги (ЦЮД), є дуже ефективною з точки зору сприяння громадянам у тому, щоб вони були краще обізнані із своїми новими правами, проте центри все ще не в змозі надати допомогу всім селянам щодо судового захисту прав.
- Інформаційно-освітня робота ПППЗУ виявилися ефективною у підвищенні рівня обізнаності людей з їх правами на землю та з програмою видачі державних актів, проте самореклама проекту, його спрямованість на боротьбу з корупцією та підтримка в пресі однієї із сторін в питаннях стратегії також негативно позначилися на ефективності його відносин з Держкомземом на загальнодержавному рівні.
- Хоча ПППЗУ зібрав відповідні дані для відслідковування діяльності проекту, USAID не спромоглося сформулювати компоненту прикладної політики та досліджень, направлених на

кращу оцінку роботи ПППЗУ та на інформування громадськості про перешкоди на шляху до розвитку ринку землі.

- ПППЗУ зайняв публічну позицію стосовно того, що функція реєстрації прав на нерухоме майно має бути передана від Держкомзему Міністерству юстиції, аби зменшити рівень корупції та ліквідувати монопольні повноваження Держкомзему в земельних питаннях.

## Рекомендації

- 1) Існує потреба в тому, щоб або перерозподілити існуючі ресурси і зменшити кількість областей, або збільшити ресурси ЦЮД з тим, щоб центри охопили більшу кількість громадян, яким потрібна юридична допомога, щоб центри могли брати більше справ, що встановлюють прецеденти, і займатися більш широким спектром правових проблем громадян.
- 2) При розробці наступної програми технічної допомоги (ТД) буде потреба ретельно відділити компонент захисту прав громадян від ТД з питань земельної політики і правової та регуляторної реформи.
- 3) Використовуючи механізми укладення субконтрактів робити інвестиції в збір інформації та її аналіз, що ретельно відслідковує просування земельної реформи і зняття перешкод на шляху до економічного зростання.

## РОЗВИТОК РИНКУ ЗЕМЛІ ТА ДОСТУП ДО КРЕДИТІВ

За винятком ринків землі та нерухомості, які діють у великих містах, ринок землі на селі є дуже слабким. Підприємства, які все ще керують сільськогосподарським виробництвом, придбанням ресурсів, а також постачанням і розподілом сільськогосподарських товарів, не можуть володіти землею сільськогосподарського призначення або використовувати її як заставу. Для більшості власників сільськогосподарських земель, які затиснуті в рамки оренди, їх земля не має цінності для сільськогосподарського фінансування, оскільки вартість землі є низькою і позички не будуть забезпечувати фінансові потреби підприємства як орендаря, що займається виробництвом. Щодо фермерських господарств, які можуть бути власниками землі, певне поєднання чинників не дає їм можливості використовувати землю як заставу – слабка рентабельність, мораторій на продаж землі сільськогосподарського призначення, низька вартість землі, що зменшує вартість застави навіть, якщо мораторій буде відмінено, значний рівень інституційної неефективності при здійсненні правочинів із землею та майном на селі, і в результаті, великі витрати кредитора у випадку переходу заставленої нерухомості у його власність. Не дивно, що можливість використання земель як застави для використання фінансування сільського господарства не була реалізована. Незважаючи на те, що спостерігається зростання сільськогосподарських кредитів, більша частина цих кредитів була надана великим підприємствам, а не фермерам.

Було б неправильно робити висновок, що вищезазначені дані припускають, що ринок землі є млявим. Навпаки, виявляється, що є значний обіг земельних ділянок завдяки укладанню правочинів спадщини, оренди, рентним та неофіційним продажам землі (з використанням переходу власності за дорученням). Експерти з оцінки чули інформацію про певну кількість випадків укладання неофіційних контрактів, за якими відбувався перехід права власності на майно. Динаміка ринку припускає дві тенденції, що викликають стурбованість, і які, зрештою, підірвуть цілісність земельного реєстру та роботи з виготовлення правовстановлюючих документів: по-перше, через високу вартість перереєстрації та повторного проведення

землевпорядних робіт багато трансакцій\правочинів відбуваються „неофіційно”. По-друге, в результаті цього, буде неможливо підтримувати „ланцюжок записів про право власності”, необхідний для захисту прав землевласників і ефективного наведення доказів для майбутніх правочинів\операцій.

Ці прогнози не є неминучими, зокрема, якщо кроки, необхідні для укладання угод із земельними ділянками, будуть спрощені, а реєстраційний збір буде зменшено не тільки для перших реєстрацій, але також для вторинних реєстрацій у передбачуваному майбутньому. Проте, без цього через 10 років Україна може опинитися у ситуації, коли треба буде здійснювати перереєстрацію у спосіб, в який здійснюються перші реєстрації, того, що вже один раз було зроблено.

## Ключові питання та висновки

- Земельна і аграрна реформа в Україні ще не проведена повністю з точки зору правової та економічної свободи людей у реалізації своїх прав на землю та на майно.
- Підхід ПППЗУ до землевпорядних робіт без закріплення меж ділянок межовими знаками є більш економічним, ніж підхід Світового банку, хоча останній є кращим з технічної точки зору, але тільки в невеликій мірі.
- Більш важливою ніж технічна перевага є домінуюча нормативна база, що регулює управління „земельним фондом”, яка впливає на заохочення приватних структур до проведення землевпорядних робіт та реєстрації операцій при укладенні перших і вторинних правочинів.
- Досягнення ПППЗУ і Уряду України матимуть тільки скромний і поступовий вплив на розвиток ринку землі на селі доти, поки не зменшаться перешкоди, створювані державним управлінням „земельним фондом.”
- Зусилля ПППЗУ та Уряду України все ще не позначилися на розвитку ринку землі в місті або на селі.
- Відміна мораторію на продаж земель сільськогосподарського призначення дасть свій ефект, але тільки для маргінальних сільськогосподарських земель і тільки для заможних громадян, які добре орієнтуються в бюрократичному середовищі „земельного фонду.”
- Поки не буде вирішене питання з бюрократію „земельного фонду”, ризик полягає не в тому, що ринок землі буде повільно розвиватися, а скоріше в тому, що динамічний ринок, заганятиме правочини\операції в поле тіньової економіки, що в результаті робить реєстр недостовірним.

## Рекомендації

Негайно слід звернути увагу на питання лібералізації ринку землі та усунення обтяжень стосовно прав власності на землю, що були введені керівництвом „земельного фонду”. До тих пір, поки Уряд України не визначить напрями заходів, які б звели до мінімуму непослідовність та неузгодженість, що виникає у результаті існування системи подвійного регулювання - з одного боку нормами цивільного права, та застосуванням державного контролю „земельного фонду” з іншого боку, до тих пір ми матимемо мало шансів для заохочення створення реального ринку землі, який обслуговував би більшість землевласників. Необхідне ґрунтовне обговорення стратегічних питань для подолання цих протиріч, а також розгляду наступних можливих варіантів:

- Кадастрові центри відокремлені від технічних функцій Держкомзему і, отже, дієво відокремлюють вирішення питань права на землю від технічних послуг, що надаються Держкомземом.
- Законодавчо-нормативна база про землю і власність на практиці спрощена з метою визначення та підтримки лише важливих функцій, які вимагає Держкомзем.
- Замість спрощення взагалі відмовитися від багатьох функцій управління „земельним фондом”, включаючи численні функції та обов’язки, що наразі покладаються на Держкомзем.
- Створюється „операційний фонд” для підтримки землевласників в питаннях вторинної реєстрації на визначений період часу, протягом якого всі витрати відшкодуватимуться Урядом України, починаючи із землевпорядних робіт, видачі державних актів і закінчуючи перереєстрацією.

Наразі, жоден із запропонованих варіантів не виглядає ймовірним чи фінансово доступним, але ціна бездіяльності теж буде високою, коли прийде усвідомлення того факту, що динамічний ринок землі відбувається поза реєстром.

## **ПРОЕКТИ З ПИТАНЬ ПРАВ ВЛАСНОСТІ НА ЗЕМЛЮ І УЧАСТЬ У ЗЕМЕЛЬНІЙ РЕФОРМІ**

Так склалось, що дві організації, USAID і Світовий банк, надають основну допомогу Уряду України у галузі землевпорядних та картографічних послуг, в проведенні земельної реформи, виготовлені правостановлюючих документів на земельні ділянки, а також реєстрації земельних ділянок\ прав на землю. Важлива додаткова робота також проводиться іншими донорами, що працюють за двосторонніми угодами. Проте, масштаби і акценти цієї допомоги не настільки вагомі.

### **Ключові питання і висновки**

- Зв’язок між земельною реформою і доступом до фінансового капіталу серед проектів програми USAID в основному слабкий. Не реалізується потенціал поєднання розвитку ринків землі і фінансів з економічним розвитком.
- Повільне виконання позики Світового банку Урядом України теоретично обмежує можливість залучення USAID та, через невизначеність ситуації, заважає USAID планувати свій внесок в справу розвитку ринку землі (планувати заходи допомоги у сфері розвитку ринку землі).
- У тих випадках, де USAID мало можливість співпраці зі Світовим банком у важливих питаннях програмування заходів у галузі земельних відносин та доступу до фінансів, такий досвід не завжди був позитивним, а інколи навіть конфронтаційним.

### **Рекомендації**

- 1) USAID слід організувати зустріч своїх підрядних організацій для вивчення питань кращої координації заходів з вирішення земельних питань. Згодом, варто проводити принаймні щоквартальні спільні зустрічі за участі проектів і USAID з метою відстеження їх виконання.

- 2) USAID варто визначити пілотні „сфери злиття”, тобто напрями об’єднання зусиль, де частка ресурсів кожного із проектів спрямовується на досягнення запланованого та інтегрованого результату. Наприклад, можна вибрати три „ділянки”: пілотні проекти ПППЗУ об’єднують зусилля із плануванням розвитку міст проекту „Місцевого економічного розвитку”, а “Проект сприяння кредитуванню в Україні” працює над питанням фінансування розвитку міст та сільськогосподарського (с.г.) лізингу, Проект з аграрної політики співпрацює з приватними с.г. виробниками з метою залучення інвестицій.
- 3) USAID рекомендується організувати невеликий „круглий стіл” за участі Держкомзему, Мінюсту, Світового банку та інших донорів за необхідності, щоб дипломатично порушити питання часових рамок та можливості надання технічної допомоги з боку USAID.

## **РЕКОМЕНДАЦІЇ ЩОДО МАЙБУТНЬОГО ПРОГРАМУВАННЯ ВИДІЛЕННЯ КОШТІВ З БОКУ USAID**

У найближчому майбутньому земельна реформа в Україні рухатиметься трьома основними напрямами. Перший: держава намагатиметься завершити заміну сертифікатів на земельні паї на державні акти на право власності на землю. Очікується, що ці роботи будуть фінансуватися за рахунок позики Світового банку. Другий: сьогоднішня система численних реєстрів землі і прав власності буде трансформована у „єдиний кадастр”. Знову ж таки очікується, що це буде зроблено за допомогою позики Світового банку. Третій: починаючи з 2007 р., тимчасовий мораторій на купівлю та продаж землі с.г. призначення буде відмінено, а згодом поступово будуть зняті й інші обмеження на правочини та права власності на різні категорії землі.

У цьому новому контексті подальшої земельної реформи не повинні загубитися здобутки проекту „Підтримки приватизації землі в Україні” та проектів - його попередників, що фінансувалися USAID. Залишається обмежена кількість корисних заходів допомоги, що були визначені українськими колегами, і які має розглянути USAID, а саме:

- 1) Необхідно продовжити ще протягом декількох років підтримку з боку донорів Центрів юридичної допомоги (ЦЮД), які надають безоплатну юридичну допомогу селянам, поки Програма ЦЮД не трансформується у незалежну громадську організацію. Ця підтримка має допомогти центрам спрямовувати свої зусилля на подальшу роботу із справами, які мають стати прецедентом у встановленні правил та роз’ясненні прав громадян (крім вирішення спорів шляхом досудового врегулювання, через переговорний процес, як основної частини поточної діяльності центрів). Подальша допомога має сприяти також створенню більш повної системи даних та аналізу щодо видів юридичних проблем громадян, та шляхів їх вирішення. Ці дані з аналітичними матеріалами передавати органам, в компетенцію яких входить розробка політики та законодавства.
- 2) Окрім ЦЮД, допомогу слід надати також організації з моніторингу ринку землі. Ця організація могла б акумулювати дані з впровадження земельної реформи, створення ринку землі, а також проводити детальний аналіз незалежно від державних установ та різних груп з різними інтересами.
- 3) Доцільно продовжити надання допомоги у сфері розробки стратегії та законодавства з використанням даних та аналітичних напрацювань Центрів юридичної допомоги та організації з моніторингу ринку землі. При потребі, така служба повинна бути також спроможна давати експертні консультації (з використанням національного і міжнародного досвіду) у розробці законопроектів, положень та нормативів.

- 4) Слід також продовжити “пілотні проекти” з суцільної інвентаризації земель сільських рад та видачі державних актів, залучивши до цього процесу додатково невелику кількість сіл або міських територій, особливо у регіонах, де є соціальна напруга або оспорується питання прав власності на землю. Один із таких регіонів - Крим, де виділення землі сім’ям кримських татар, що повертаються додому, викликає суперечки. Продовження робіт з видачі державних актів в сільській місцевості, які фінансуються за рахунок позики Світового банку, не вирішує ці проблеми, які стосуються різних категорій землеволодінь. Отже, у рамках пілотного проекту ППЗУ (який працює з усіма видами земель) можуть бути опрацьовані методи посередництва у вирішенні цих проблем.

Оскільки проект „Підтримки приватизації землі в Україні” завершується, то застосування його надбання слід краще забезпечити спільними зусиллями, залучивши до цього відповідні урядові відомства (Держкомзем та Мінюст) та Світовий банк. Суттєве розуміння досвіду, набутого проектом „Підтримки приватизації землі в Україні”, могло б сприяти успішному виконанню складових програми подальшого виготовлення і видачі державних актів на земельні ділянки сільськогосподарського призначення та реєстрації прав власності.

# EXECUTIVE SUMMARY

## BACKGROUND AND PURPOSE OF EVALUATION

USAID's program sought to revitalize the agricultural sector through land privatization and, at the same time, provide the rural population a social safety net. USAID hoped to enhance the ability of small- and medium-scale enterprises (SMEs) to use frozen capital assets, thereby allowing the agricultural sector to recapitalize and accelerate growth in value-added food processing. Transferring ownership of land to rural individuals who have become economically disenfranchised during the transition from a planned to market economy is also expected to improve living standards for the rural poor, most of whom are elderly.

Both the success of the USAID-funded Ukraine Land Titling Initiative (ULTI) in developing the land market and its expected result of credit expansion depend on the ability to transfer and mortgage land and property as well as the suitability of land as collateral in the eyes of formal lenders. At USAID's initiative, this evaluation has been undertaken to evaluate ULTI's performance and Ukraine's progress with land market development for the purpose of (1) strengthening USAID's collaboration with the World Bank (WB) land reform program, (2) improving on its approach to land reform and land market development in the Ukraine, and (3) identifying new strategies and development pathways for assisting Ukraine's land privatization and land market development.

## LAND REFORM IN UKRAINE

Land reform in Ukraine has passed through three stages. The first stage (1988–1992) gave productive enterprises (farms, industrial and trade entities) independent management and self-financing. In the second stage (1992–1999), collective ownership of farmland was transformed to common ownership (without delineation of land plots in nature). In the current third stage (2000–present), land shares of farmland are being transformed into citizen ownership by issuance of a State Act with or without delineation in nature and with the right to lease to a farm enterprise or work the land independently.

In terms of the volume of land parcels created and legal documents issued, the second and third stages of land reform have shown significant success. In the second stage, by 1998, land under collective farms was largely transferred to the 6.9 million citizen farm members by receipt of their land share certificates which USAID helped to create and deliver. In the third stage, the land share certificates are being transformed into State Acts. This task is the focus of the ULTI project as well as efforts by the State Committee of Ukraine for Land Resources (the SCLR) and the World Bank project.

There is an implied fourth stage of land reform in which some or all of the existing limitations on the use and disposition of land will be lifted. As of today, Ukraine has not fully defined the principles, institutions, procedures, or practice that will characterize its future land system. It may achieve over time a full system of civil law and market relations following the models of European civil law. Alternatively, it may pursue a system in which the state retains a stronger role as manager of land use and overseer of transactions and market activity. Certain decisions that will be made in the near future will have a critical influence on the direction of land policy. These include the conceptual and practical definition of the “unified registry/cadastre,” which will be assisted by the World Bank loan. They also include consideration of the draft law

*On the Land Market* and other legislation. The “moratorium” on the sale of agricultural land is scheduled to end in January 2007. The state should be considering the policies and preparing the actions that it will take in response to this event.

These decisions may provide new substance and stronger methods of protection to the legal content of the rights that ULTI has helped to secure for citizens. Or, they may have the effect of eroding the situation of citizen landowners by placing more burdensome regulatory requirements, transaction costs, and opportunities for ad hoc interference by state/municipal officers in citizen and enterprise dealings with land.

## **Key Issues and Findings**

- Ukraine is mid-stream in its land reform program, having achieved significant milestones in issuing land shares and State acts, but the present dual system of civil law and the Land Fund will require ongoing attention under a fourth stage of land reform
- The existing system of multiple agencies that form and register land and property documents is highly flawed as the support system for civil law and market transactions.
- The current system provides a number of obstacles to the process of determining and offering proof of rights in land and property.
- Without clarification of the concept and purposes of registration, the system resulting from unification of the existing elements will be unable to reveal a clean “chain” of legally significant actions, free from the clutter of other data.
- The concept of a “unified cadastre” as it now stands in the law will not remedy the problems outlined above.

## **Recommendations**

1. There is ongoing need for donors (and in particular USAID and the World Bank) to assist the Ministry of Justice (MOJ) and the SCLR with technical assistance in the areas of land policy and legal and regulatory reform with respect to land and property.
2. The World Bank, through its loan to the Government of Ukraine (GoU), must provide clearer policy and technical direction on the features of a unified registry system that it seeks to create or promote.

## **UKRAINE LAND TITLING INITIATIVE PERFORMANCE AND LESSONS LEARNED**

Since the adoption of the Land Code in 2001, Ukraine has been carrying forward the transfer of ownership rights in four major categories of land: (1) the land shares, issued to rural citizens as common owners of agricultural fields (without specific land parcels), are being transformed into State Acts of ownership of specific land parcels; (2) citizens can also obtain the State Acts of ownership in their small parcels (housing, garden, subsidiary farm); (3) existing commercial and industrial land users can purchase the ownership rights in the land they occupy (enterprise land sales); and (4) municipal administrations can offer newly formed urban land parcels for development at auctions and by tender.

The ULTI has assisted this stage of land reform in five ways. First, it is providing the technical and legal support (surveying, preparation of documents, verification of citizen rights) to transform rural land shares into State Acts. It is expected that 1.8 million State Acts will be issued and registered by the project's end in September 2006 (out of the 7 million total for all rural Ukraine). Second, it has assisted over 14,000 commercial and industrial enterprises to acquire their land ownership. Third, it has carried out programs of public education on land rights and provided free legal assistance to citizens through 26 legal aid offices. Fourth, it has helped the national government formulate policy and drafting legislation. Chief among its work in this area has been assistance with the drafting of the law of 2003 *On the Procedure for Dividing in Nature the Land Parcels of Owners of Land Parcel Shares*, and its review and comment on the law of 2004 *On the Delineation of State and Communal Ownership*. Fifth, it has initiated pilot projects to test a procedure of “village-wide” survey, issuing and registering State Acts for lands in all categories—agricultural, housing and small parcels, and commercial/industrial.

ULTI's achievements have made a significant contribution to Ukraine's land reform, not only in the volume of State Acts issued to citizens, but in demonstrating methods of land parcel formation, legal verification, and registration that are less complex and costly than alternative methods.

## Key Issues and Findings

- ULTI's supported legal aid centers (LACs) have been very effective in making citizens more aware of their newfound land rights, but they have not yet met the need for delivering legal recourse.
- ULTI's mass media campaigns have proven effective in raising public awareness of people's land rights and its titling program.
- While the ULTI project has assembled relevant data to monitor project activities, USAID might have considered building in an applied policy and research component to better evaluate ULTI's performance and contribute to public knowledge on constraints to land market development.
- ULTI has taken a public position that the registry system should be removed from the jurisdiction of the SCLR and reassigned to the MOJ or ordered to reduce corruption and break up SCLR's monopoly powers in land affairs.

## Recommendations

1. There is need to either reallocate existing resources to fewer oblasts or augment resources of the LACs to enhance their reach to legal clients, take more “precedent-setting” cases, and tackle a wider range of citizen legal problems.
2. In the design of future technical assistance (TA), it will be important to carefully separate advocacy components from TA on land policy and legal and regulatory reform.
3. Through subcontract mechanisms, invest in data gathering and analysis that rigorously monitor land tenure reforms and lifting of constraints on economic growth to help counterbalance or dissolve government's monopoly on knowledge generation and information dissemination.

## LAND MARKET DEVELOPMENT AND CREDIT ACCESS

Outside of land and real estate markets working in principal cities, the land market in rural areas is very weak. Enterprises that still manage agricultural production, input purchases, and supply and distribution of agricultural commodities cannot own agricultural land or leverage it for collateral. For the majority of rural landowners locked into leases, their land is of no value for agricultural finance as land values are low and the lending will not serve the financing needs of the enterprise as a lessee that engages in production. For private independent farmers who can own land, a combination of factors detract from the suitability of using their land as collateral, the moratorium on sale of agricultural land, low land values that will discount land's collateral value even if the moratorium were lifted, a significant level of institutional inefficiency in transacting land and property in rural areas, and consequently high lender costs in foreclosure. Not surprisingly, the feasibility of using land as collateral to leverage agricultural finance has not been realized. While there has been growth in agricultural credit, much of this credit expansion has gone to larger-scale enterprises and not to private individual farmers.

It would be incorrect to draw the conclusion that the above data suggest a sluggish land market. Quite to the contrary, there appears to be strong turnover of land in inheritances, leasing, rental, and informal land sales (using power of attorney transfers). The team heard on a number of occasions of informal contracts being drawn up to document the transfer of property. The dynamics of the market suggests two disturbing trends that will ultimately undermine the integrity of the land register and titling effort. First, because of high cost in resurveying and re-registering transactions, many transactions are taking place “off the books.” Second, as a result, it will be impossible to maintain the “chain of ownership” necessary to protect the rights of landowners and efficiently supply proof for future transactions.

These predictions are not inevitable, particularly if the steps involved in transacting land are simplified and fees are lowered, not only for first registrations but also for secondary registrations in the foreseeable future. Without this, however, in 10 years' time Ukraine could find itself in the position of needing to re-register as first registrations what has already been done once.

### Key Issues and Findings

- Land and agrarian reform in the Ukraine has not yet been fully achieved, as measured by people's legal and economic freedom to exercise their rights in land and property.
- ULTI's approach to land survey without establishing boundary markers to delineate individual parcels is more cost effective than the World Bank approach, while the latter is technically superior, but only on the margin.
- What is more appropriate than technical superiority is the prevailing regulatory framework governing administration of the Land Fund that influences private incentives to survey and register transactions in first and secondary transactions.
- ULTI's and the GoU's accomplishments will have only a modest and gradual effect on development of the land market in rural areas until encumbrances imposed by administration of the Land Fund are mitigated.
- Lifting the Moratorium on Agricultural Sales will have an effect, but only on the fringes of agricultural land and only for the well-to-do who can navigate the Land Fund bureaucracy.

- Until the Land Fund bureaucracy is dealt with, the risk is not slow land market development, but rather a dynamic market that drives transactions into the grey economy that ultimately undermines the currentness of the register.

## Recommendations

Urgent attention needs to be given to liberalizing the land market and eliminating the encumbrances on land ownership imposed by administration of the “Land Fund.” Until the GoU sets forth a path that minimizes the inconsistency and frictions caused by its pursuit of dual civil law and state control of the “Land Fund,” there will be few alternatives to stimulate a formal land market that serves the majority of landholders. A substantive policy debate is needed that reconciles this conflict and gives consideration to the following options:

- The cadastre offices are separated from the technical functions of the SCLR, effectively decoupling land rights from SCLR technical services.
- The legal and regulatory framework with regard to land and property in practice is simplified to identify and maintain only the critical functions required by the SCLR.
- Rather than simplification, much of the administration of the Land Fund is done away with, including many of the roles, functions, and responsibilities now practiced by the SCLR.
- A “Transaction Fund” is established to assist landholders with secondary registrations for a time period to be established in which all costs are covered by the GoU from survey to issuance of State Acts to re-registration.

None of these options at present look likely or affordable, but the cost of inertia is also very high once there is validation of the finding that a dynamic land market is moving ownership off the register.

## LAND TITLING PROJECTS AND LAND REFORM INTERVENTIONS

Two organizations—USAID and the World Bank—have historically provided (and continue to provide) the majority of assistance to the GoU in areas of land survey and mapping, land tenure reform, land titling, and land registration. Important complementary work is being carried out by other bilateral donors, but these efforts are less substantial in scope and focus.

## Key Issues and Findings

- Slow implementation of the World Bank loan with the GoU has theoretically limited space for USAID engagement and, due to uncertainty, is confounding USAID programming on what it might contribute in the area of land market development.
- In instances where USAID has had the opportunity to collaborate with the World Bank on critical programming in areas of land and finance, the experience has been mixed.

## Recommendations

- If resources and time permit, USAID should identify pilot “areas of confluence” where a portion of resources from each project will be programmed to achieve targeted and integrated impact. For example, three sites might be chosen: where ULTI’s pilots and the Ukraine Local Economic Development (ULED) project’s municipal planning are joined; the Access to Credit project, which works on municipal financing and agricultural leasing; and the Agricultural Policy project, which works with private agribusiness to accelerate investment.
- USAID is advised to organize a mini-roundtable attended by the SCLR, MoJ, the World Bank, and other donors as appropriate to diplomatically raise issues of timing and opportunities for USAID technical assistance.

## RECOMMENDATIONS FOR FUTURE PROGRAMMING OF USAID FUNDING

In the near future, land reform in Ukraine will move forward along three major paths. First, the state will seek to complete the transformation of rural land shares to State Acts, and it is still hoped that a World Bank loan will finance this activity. Second, the existing system of multiple land and property registries will be transformed into a “unified cadastre,” also with expected World Bank loan support. Third, beginning in 2007, the temporary moratorium on purchase/sale of agricultural land (imposed in 2001) will be lifted and gradually, thereafter, other restrictions on transactions and ownership of various categories of land will be removed.

In this new context of continuing land reform, the legacy of ULTI and USAID’s earlier land projects should not be lost. A limited number of useful tasks of assistance remain, which the Ukrainian counterparts have identified and USAID should consider.

- The LACs, providing free legal services to rural citizens, should continue to receive donor support for a few years while they transform their operations into an independent nongovernmental organization. This assistance should help them to direct their efforts further in taking test cases that can establish the rules and interpretations of citizen rights (in addition to the routine negotiations that make up the bulk of their current activities). Further assistance should also help create a more complete data system and analysis of citizen legal problems and solutions, and communication of these data and analysis upward to influence policy and legislation.
- Outside the LACs, support should be given to a land market monitoring organization, which can assemble data on the progress of land reform and land market formation and provide thorough analysis, independent of the state agencies and the various specific interest groups.
- Support should also continue for a policy and legislative assistance service, which can draw from the data and analysis produced by the LACs and the land market monitoring organization. This service should also have the ability to supply expertise, domestic and international, when needed to assist with drafting laws, regulations, and normative standards.
- The “pilot projects” of village-wide land parcel formation and issuance of State Acts should continue with a small number of additional villages or urban areas, specifically chosen in areas of social tension or dispute over land rights. This would include the Crimea, where the grants of land to returning Tatar families have been controversial. The continuation of agricultural land parcel formation (financed by the World Bank loan) does not address these problems that involve multiple categories of land holdings. Thus, within a village-wide land titling project (encompassing all lands), methods of mediation may be worked out.

As the ULTI project comes to an end, its legacy should be better insured by a cooperative effort with the pertinent agencies of the Ukraine government (the State Land Resources Committee and the MOJ) and the World Bank. Elements of the program of continuing agricultural land parcel formation, issuance of State Acts, and registration could benefit from a thorough understanding of the lessons learned by ULTI.

# 1.0 BACKGROUND AND PURPOSE OF EVALUATION

## 1.1 OBJECTIVES OF THIS EVALUATION

USAID’s program has sought to develop a land and property market, revitalize Ukraine’s agricultural economy, and provide the rural poor and the elderly with a social safety net. Through development of a land and property market, it hopes to enhance the ability of small- and medium-scale enterprises (SMEs) to use frozen capital assets,<sup>1</sup> thereby allowing the agricultural sector to recapitalize and accelerate growth in value-added food processing.<sup>2</sup> Transferring ownership of land to rural individuals who have become economically disenfranchised during the transition from a planned to market economy is also expected to improve living standards for the rural poor, most of whom are elderly.<sup>3</sup>

Accomplishing these objectives will hinge on the successful implementation of a diverse portfolio of USAID projects visited during the course of this evaluation. USAID also assumes satisfactory progress of the World Bank’s complementary land titling program and demonstrated commitment by the Government of Ukraine (GoU) to provide legislative and regulatory support. USAID also believes that as a result of Ukraine’s recent “Orange Revolution,” it will be possible to achieve new synergies among the GoU, USAID, and World Bank programs.

Both the success of the USAID-funded Ukraine Land Titling Initiative (ULTI) in developing the land market and its expected result of credit expansion depend on the ability to transfer and mortgage land and property, as well as the suitability of land as collateral (notably land having value) in the eyes of formal lenders. At USAID’s initiative, this evaluation has been undertaken to:

1. Review the status and performance of ULTI, its success in laying the foundation for land market development, and its contribution to achieving the mission’s Strategic Objective (SO) 2.3: Increased Access to Land and Credit.
2. Assess the effectiveness of ULTI’s technical assistance (TA) with land privatization and in developing the land market in Ukraine.

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<sup>1</sup> The Ukraine State Committee on Land Resources estimates the normative value of all land in Ukraine at 330 trillion UAH (\$66 trillion) (SIDORENKO 2005). Based on actual land values reported or interpolated in this paper, this estimate is grossly exaggerated.

<sup>2</sup> Ukraine will not be able to dramatically increase its agricultural GDP unless increased factor productivity and an expansion of input markets increases agricultural output, and expanded access to output markets increases value-added in the marketing and processing of agricultural commodities.

<sup>3</sup> The Impact of Land Titling in Ukraine Survey conducted in September 2003 demonstrated that, by assisting rural individuals to transform their right to land ownership into real ownership, their income earned from leasing agreements increased by 32% (Rolfes 2003). (Note, see caveats in Box D in Section 4.0).

3. Consider whether ULTI's pilots aimed at comprehensive "village-wide" registration provide a promising new method for land titling.
4. Propose mechanisms and strategies for improving coordination between USAID and the World Bank land reform and privatization activities.
5. Formulate a strategy to support further development of the land market and accelerate investment in the rural agricultural sector as possible next steps for future USAID intervention.

The present evaluation thus seeks to evaluate ULTI's performance and Ukraine's progress with land market development for the purpose of making recommendations for (1) strengthening USAID's collaboration with the World Bank's land reform program, (2) improving upon its approach to land reform and land market development in the Ukraine, and (3) identifying new strategies and development pathways for assisting Ukraine's land privatization and land market development.

## 1.2 METHODOLOGY

A two-person team, comprising a land economist and team leader (Michael Roth) and a land lawyer and registration specialist (Bill Valletta), was mobilized to carry out the statement of work (SOW) (attached in Annex 5 of this report). Funding was provided by USAID/Kiev through the *Lessons Learned: Property Rights and Natural Resource Management Task Order* under the *Rural and Agricultural Incomes with a Sustainable Environment (RAISE) IQC*. Gregory Myers, the cognizant technical officer (CTO) of this task order, also participated in the assessment. The methodology involved review of documentation listed in Annex 1 and key informant interviews with government officials, survey contractors, and ULTI project staff in Kiev and in four of ULTI's field offices in Koresten Oblast, Kherson Oblast, Chernigiv Oblast, and the Autonomous Republic of Crimea, as detailed in Annex 2.<sup>4</sup> In addition, a Roundtable on Land Titling and Land Market Development in Ukraine (see Annex 4) was organized on 8 February 2006 to review the team's findings and solicit further input from Ukrainian experts.

The evaluation covered a three-and-a-half-week period starting on January 22 and ending with the team leader's departure on 16 February 2006. A revision of the draft report was submitted to USAID Kiev on 18 February 2006, with an updated revision sent again to USAID on 23 March 2006. This final revision incorporates comments made by USAID on 7 April 2006 and by the ULTI project office on 19 April 2006.

The schedule of *Meetings, Interviews, and Contacts* (Annex 2) was organized in large part by USAID with assistance from the Chemonics ULTI office.

An outline of the evaluation report was submitted to USAID on January 29 for its internal review, one



Photo: USAID Staff

**Roman Schmidt (right), head of Association of Advisory Services of Ukraine, confers with Oleksandr Muliari (left), ULTI activity manager, USAID Roundtable, 8 February 2006.**

<sup>4</sup> Much of the evaluation is based on anecdotal information, and some data, but there have been very few studies and even less analysis of the impact of land privatization/land reform in Ukraine.

week after the team’s arrival in country as stipulated in the SOW. Each of the five chapters or sections that constitute the main body of the report reflect the principal thematic foci outline in the SOW. Each chapter or section starts with a review of relevant background material based on review of the literature, and then concludes with an assessment of issues based on personal interviews and field level study. Certain issues were already identified in the SOW and represented an initial focal point of enquiry; other issues were identified in the context of personal interviews. Lines of enquiry were also shaped by the team’s comparative experiences with land and agrarian reform and their legal and economic backgrounds that helped formulate or shape hypotheses on land reform realities and impact.

The methodology used involves primarily key informant interviews and triangulation, the latter involving similar or related questions posed to multiple informed respondents in order to refine key facts and/or cross-check the verity of responses being given. Approximately one-week of the team’s visit to Ukraine was spent on visits to ULTI project field sites organized by the ULTI project office. The remainder of the time was spent in Kiev interviewing key informants at the national level with GoU counterpart agencies and other donors, on meetings with USAID, and on writing the report.

Since a significant portion of the evaluation involved the assessment of the ULTI project, a large amount of time needed to be spent in interviews with its personnel. The team in these meetings sought to maintain objectivity and privacy to allow for dissenting views if they existed. On the basis of the team’s assessment, ULTI project personnel were helpful in contributing logistical support, providing background and documentation on ULTI project components, and providing their personal assessments of land reform in Ukraine. However, in no instance did this support cross the line in terms of influencing the evaluation or deflecting criticism. Quite to the contrary, the ULTI project staff for the most part left the team alone and volunteered its support and services only when asked to do so by the team or USAID.

The team also debriefed USAID and the ULTI project chief of party (COP) at multiple points during the course of the evaluation, and briefed ULTI project staff on other occasions. These meetings are documented in Annex 2. In early discussions with Allan Slipher, the ULTI project COP, the discussions tended to cover points of clarification. In subsequent meetings with Slipher and ULTI project staff, the meetings provided a forum for giving feedback (for purposes of triangulation) and to solicit personal views on possible future land reform interventions.

In a few instances, the respondents agreed to be forthcoming on providing information only if their names and organizational affiliations were kept strictly confidential. The evaluation team has abided by these requests, and has generally kept the sourcing of information to a minimum to avoid association by absence of being named.

### **1.3 ORGANIZATION OF THE REPORT**

The remainder of this report is laid out in five sections. Section 2.0 describes the history of land reform and privatization in Ukraine. Section 3.0 assesses ULTI’s project performance and lessons learned. Issues related to agrarian structure, land market development, and financial market access in Ukraine are the focus of section 4.0. Section 5.0 examines coordination and collaboration among USAID projects and the World Bank program. Each section concludes with an evaluation of key issues identified by the team or raised by the SOW. Recommendations are stated in each section as appropriate. In a final section 6.0, overarching conclusions are drawn and recommendations are made for future USAID programming.

# 2.0 LAND REFORM AND PRIVATIZATION IN UKRAINE

## 2.1 LAND TENURE AND PROPERTY RIGHTS REFORM

The status of land reform in Ukraine today can be understood by comparison with the Baltic states, Poland, and other East European countries where land markets have emerged more quickly when the following conditions were achieved (RDI, 2000; Environmental Information Systems, 2002):

- Large numbers of objects were formed (land parcels, buildings, or premises) with the civil legal status of “real property.”
- These objects were transferred or recognized in the ownership of individuals and juridical persons who had the legal capacity to acquire and dispose of them in direct person-to-person transactions.
- Reasonably convenient and cost-effective methods became available to bring together sellers and buyers, lessors and lessees.
- The civil law was revived to recognize these transactions as binding (on the parties and against “all the world”) and the courts were empowered to uphold the rights and obligations created by these transactions.
- A convenient and cost-effective method was provided to obtain proof of the legal rights, whenever needed, through the land book or registry.
- Soviet-style administrative land management, which made the state a mandatory third party in all transactions, was abolished.
- Economic activity reached a level sufficient to create demand for land and property objects, and individuals and juridical persons began to make a supply of units available for sale/lease.

These nations achieved market activity relatively quickly because, at the start of transition, they had stated a clear goal of reviving the civil law. These states had European-style civil codes in the period before Communist rule, and the civil principles and practice were legitimate and familiar for most citizens. In this context, each element of land and property reform (legislation, institutional change, legal and transaction documentation, and procedures) could borrow from and be tested against the complete, modern systems of property and land law in Europe generally.

In Ukraine, civil law tradition was weak, and there was no broad agreement to the goal of achieving European-style principles and practice. Concepts of social protection and noncompetitive economic activity remained attractive to many groups, and the principle of “land as the patrimony of all the people” was kept in the Constitution and the Land Code. On the basis of this principle, Ukraine retained the Communist-era concept of the Land Fund, which has described the state system of control over the allocation and use of the land. Ukraine’s land reform has been deliberately gradual and has sought to introduce selected elements of civil law alongside the Land Fund (Valletta and Nosik, 2002).

What is not clear today is whether this dual system of civil law and the Land Fund is envisioned as a stage of transition only, or whether Ukraine envisions it to be the permanent end-result of its land reform. If the future vision does include the Land Fund co-existing with civil law, the dilemma for Ukraine’s leadership will be how to create a practical system that can efficiently manage and integrate both aspects of land relations. For the international donors assisting transition, the problem will be how to adapt the civil law models of land legislation, regulation, and practice to Ukraine’s peculiar dual system.

## 2.2 DISTINCT FEATURES OF OWNERSHIP IN THE DUAL SYSTEM

Ukraine has made progress in revising its legal and regulatory framework with regard to land since independence (see Box A for the recent legislation), but as Myers (2002) points out, land tenure and property rights are still encumbered by state oversight, monitoring, and intervention in ways that discourage private sector investment. Ukraine’s new laws, regulations, and decrees continue to preserve the state’s substantial role in ensuring rational land use, protecting the environment, valuing resources, managing land transfers, and preventing speculation to ensure that state goals and objectives are met.

Four main features of the Ukrainian Land Code and land legislation, which have been retained from Soviet law, distinguish its concept of ownership from the typical systems of European civil law:

- Property rights in land originate both from (1) the formation of a civil law status for each land parcel and property unit and (2) administrative allocation of each unit from the Land Fund (and the buildings and housing funds) based on fulfillment of conditions and demonstration of socially useful purposes.
- The specific elements of law are applied to land parcels and landholders by categories, not to all types of land or persons. For example, juridical persons can acquire land only for the specific classified uses, corresponding to their types of production or services—commercial, agricultural, industrial. Citizens can acquire land for housing, subsidiary gardening, personal agricultural production, and recreation (dacha) use. Agricultural land is prohibited from sale of ownership until 2007; housing and commercial land has been subject to sale since 2001.
- The various elements of the civil law side have been defined and transferred to citizens and juridical persons in stages (see below).
- Because of the dual origins, categorical application, and staged introduction of civil law, today there are parallel elements of administrative control and civil/market transactions. These operate simultaneously and are commingled.

### Box A. Selected Recent Land Legislation Adopted

Land Code of Ukraine, 2001

Law On Hypotek (Mortgage), 2003

Law On the Procedure for Dividing In Nature the Land Parcels for Owners of Land Parcel Shares, 2003

Amendments to the Law On Payment for Land, 2003

Law On the Valuation of Land, 2003

Law On the Subdivision of Lands between State and Communal Ownership, 2004

Law On Protecting the Constitutional Right (of Citizens) to Land, 2005

Decree of the President, no. 134/2003, On the Method for Creating a Unified System of State Registration of Land Parcels, Real Property and the Rights in Them in the Framework of the Cadastre

## 2.3 STAGES OF LAND REFORM

Land reform in Ukraine has passed through three stages of evolution and will require at least one more stage:

1. The first stage (1988–1992) gave productive enterprises (farms, industrial and trade entities) independent management and self-financing. Land and property relations changed from unpaid state allocation of assets by unilateral grants to paid possession and use of assets under two-party lease contracts. Farm workers were recognized with collective ownership of the land and property objects. Citizens generally were recognized to have rights of life possession and inheritance in their small parcels of housing, garden, and recreational land.
2. In the second stage (1992–1999), collective ownership of farmland was transformed to common ownership (without delineation of land plots in nature). Each citizen/land share owner was allowed to lease his/her shares to a farm enterprise or withdraw the share to work it as an independent (family) entrepreneur. Individual citizen rights in small parcels were recognized as ownership. Non-agricultural enterprises and entrepreneurs could transform their rights of possession to ownership or lease.
3. In the current third stage (2000–present), land shares of farmland are being transformed into citizen ownership by issuance of a State Act with or without delineation in nature and with the right to lease to a farm enterprise or work the land independently.<sup>5</sup> Rights of disposition by sale or placement in an enterprise capital fund are withheld until 2007. Citizen ownership of small parcels can be defined as full civil law ownership (with unlimited disposition) by obtaining and registering a State Act. Non-agricultural enterprises must transform their rights of possession into leasehold or ownership.

In each of these three stages, the land reform was expected to have a direct effect in transforming the relationship of farm workers and management within the structure of large farm enterprises as described in the following way (World Bank 2003, p. 3):

Until [2001] ..., the size and organizational structure of most former collective farms had remained largely unchanged from their Soviet predecessors, despite numerous legal transformation and name changes over the last ten years. ... [L]ack of management and labor incentives to maximize the long-term profit of the collective, lack of accountability of managers, and perpetuation of production practices more appropriate to a central planned economy, combined with the poor economic and policy environment, has led to the low productivity and performance of these farms. These incentive problems when combined with poorly-defined ownership rights and poor contract enforcement have resulted in a critical shortage of agricultural credit and financial liquidity in the rural sector. In an attempt to save them from bankruptcy, the government has provided subsidies in the form of direct supplies of agricultural inputs, debt write-offs, tax write-offs, tax exemptions, and subsidized credit. Private household farmers, on the other hand, have grown in numbers, shown productivity increases, and been able to survive in the same policy environment without these subsidies.

In terms of the volume of land parcels created and legal documents issued, the second and third stages of land reform have shown significant success. In the second stage, by 1998, land under collective farms was largely transferred to the 6.9 million citizen farm members by receipt of their land share certificates, which USAID helped create and deliver. In the third stage, the land share certificates are being transformed into State Acts.<sup>6</sup> This task is the focus of the ULTI project, and of efforts by the State Committee of Ukraine for Land Resources (SCLR) and the World Bank project (see section 5.0).

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<sup>5</sup> The State Act is the document of proof of ownership. In translation, it is often called the *title* or the *state deed*; however, its legal content and status is very different from the meaning in European civil and common law contexts.

<sup>6</sup> These are sometimes referred to as *titles* or *deeds* (as in section 5.0) although neither term is entirely accurate in the European or American sense.

With respect to other household and non-agricultural lands, systematic projects have not been undertaken to issue State Acts on a mass scale. Over 11.7 million citizens are recognized as the owners of small parcels, and they are free to initiate the process of gaining their State Acts (see section 4.0 for elaboration). The SCLR estimates that 3.7 million citizens have done so.<sup>7</sup> Privatized enterprises, already occupying land, have the legal right to purchase the ownership right from the state and, under the Enterprise Land Sales Project up to 2001, USAID helped about 12,000 companies become landowners. USAID assistance has also been given in the past to some municipal governments to conduct auctions and tenders of vacant commercial and industrial sites for development.

There is an implied fourth stage of land reform in which some or all of the remaining limitations on ownership will be removed. This may include the moratorium on sale of agricultural land, other restrictions on land transfers, the prohibition on ownership by a farm enterprise, the 100-ha total ownership limitation, and the prohibition on sale to a foreign entity. If a commitment is made to achieve a full civil law system, there will be a very significant restructuring of land and property administration (including registration) following European models. However, if the policy remains the pursuit of a unique, dual origin system, the end goal of legal relations, documentation, and institutional arrangements cannot be predicted at this time.

## 2.4 REGISTRATION OF RIGHTS IN LAND AND PROPERTY

In Ukraine, the creation of a registry of land and property rights has been especially difficult because of its dual-origin land rights system. Ukraine has preserved all the elements of its former Soviet-style land and, to manage all these data, Ukrainian government units have created a complex system of competitive registries, each of which contains some of the legal elements usually found in a European civil law registry but commingled with elements related to the Land Fund and “building fund” management (see Box B).

Ukraine has preserved all the elements of its former Soviet land and buildings registries, which were designed as the mechanisms of management of the “Land Fund.” Since 1992, the government has added several new administrative units with the responsibility of creating and keeping the records of land and property transactions, authorized by the Land Code, the Civil Code, and other new legislation. These have followed the model of European style registries and have been established with the assistance of USAID, the World Bank, and other donors. This has resulted in a complex system of competing registries (see Box B). To remedy the situation, Ukraine has made a commitment to join the separate registries into a “unified” cadastre within the framework of the World Bank loan.

### Box B: Multiple Registries in Ukraine

Data are kept in all of the following places:

1. The State Acts and other initial privatization documents are formed and kept in municipal-level registries (village or city Rada archives).
2. Data on land parcels as physical objects (boundaries, location survey data, and maps), as economic and social objects (productivity data, normative valuation, monetary valuation, designated use), and data on land ownership (but not subordinate rights) are formed and maintained in the offices of *DerzhKomZem* and its subordinate state enterprise (the Cadastre Centers).
3. Data on buildings, apartments, and premises are kept in the Bureau of Technical Inventory (BTI) which includes physical data, economic/social data, ownership, and legal rights data.
4. Data on subordinate rights (lease, mortgage), transactions (purchase/sale, inheritance), and judicial orders or limitations (court liens, notices of foreclosure) are contained in separate registries of the Ministry of Justice with control by the notary service.

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<sup>7</sup> DerzhKomZem, 2005, *Cychastnii Stan Zemelnoi Reformi v Ukraini (Current Status of Land Reform in Ukraine)*, Kiev Yrozai Press, p. 45.

This commitment has been restated as recently as 20 January 2006, by Cabinet of Ministers Decree no. 42. The pertinent legislation—Law no. 1952-IV of 1 July 2004 *On State Registration of Real Rights in Immovable Property and Changes to Them*—embodies the concept of the unified cadastre, and it appoints the SCLR as the agency that will create and manage it. The SCLR has announced that it will be ready on 1 June 2006 to launch the new unified system within its network of cadastre centers. However, two obstacles have arisen that may block the SCLR's intentions. First, the State Anti-Monopoly Committee issued a Recommendation on 13 December 2005 declaring the cadastre centers to be in violation of the Anti-Monopoly law because they have transformed governmental services into commodities under their exclusive control. Second, certain members of Parliament have introduced a draft law which would replace the law of 2004 "*On State Registration ...*" with a different concept of land and property registration under the jurisdiction of the Ministry of Justice (MOJ). This unresolved conflict over the purpose, structure, content, function, and jurisdiction of the unified registry or cadastre is likely to prevent an efficient system from being formed and functioning in the near term.

To understand the problem of land and property registration in Ukraine today and consider future actions, it is necessary to contrast the two models of European-style and Soviet-style registration.

### 2.4.1 European-Style Registration

In the European-style system, the purpose of registration is to provide a convenient method for obtaining proof of the rights that individuals, juridical, persons and the state have acquired in land and property on the basis of their civil law status and transactions. The registry consists of an archive of documents, which reveal the origin and the subsequent transfer, subdivision, change, and discontinuance of these rights. To access pertinent information efficiently, the legally significant data are excerpted from the documents and noted on a registry card (or "page") for each property unit. This system of notation creates on the card an unbroken "chain" of legal actions and transfers, from which the current status of all persons with interests in the property unit is revealed. When proof of rights is needed for court proceedings, new transactions or administration, the registry provides the method for viewing the chain and issues a certificate, declaring the up-to-date status of ownership and subordinate rights.<sup>8</sup>

Because technology now allows the creation of data banks with large amounts of information in multiple categories, many European countries are modernizing their land and property registries by linkage to a cadastre or similar land/geographic information system (LIS/GIS). The cadastre or LIS/GIS can be understood as a data bank that organizes all of its bits of information on a property-unit by property-unit basis. All types of information about the unit—its physical characteristics, boundary lines, legal status, productivity, and economic value—can be input, stored, and extracted from the electronic file. The unit can be given a unique unit code number and linked to a survey map to show its precise location. Despite this unified management structure, however, the legally significant data about civil law rights are administered separately from the other data, with different rules of input, management, and output. This is done because the error rate for legal data must be far lower than that permitted for other data. Further, the legal data must always be input, maintained, and extracted on a single-unit basis, while other data may be aggregated, categorized, compared, averaged, or estimated for various purposes.

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<sup>8</sup> European countries use two forms of registry. A *title* registry creates the chain by linkage of all the data notations to the property unit (a land parcel, separately owned building or premise) that carries a unique code number and is usually linked to the cadastre map. A *deed* registry creates the chain by chronological linkage of the archived documents and may be indexed by the names of owners/subordinate right holders, by addresses, or by property unit code numbers. Usually a deed registry is not linked to the cadastre map.

## 2.4.2 Soviet-Style Registration

Under Soviet law, all tangible assets (land, raw materials, immovable objects, apartments, other building premises, and moveable equipment) were defined in the aggregate as “stocks” of resources in the ownership of the state or the people collectively. The allocation of these assets to specific possessors and users was subject to laws, rules, and standards that defined the purposes for their use; the categories and status of the individuals or entities entitled to possess the asset; and the amounts, value, or character of assets that each category of persons could hold, manage, or use. The registries were the inventory lists of each unit in every asset stock, with the corresponding persons to whom each asset unit was assigned and with pertinent terms and conditions stated. The registry data were changed and updated through processes of monitoring use and remeasuring its condition. This was done because, as the status of persons and conditions of use would change, the eligibility of certain persons to possess the assets would change. Assets would then be withdrawn and reassigned, or the person (who was found to be violating conditions of use) would be disciplined.<sup>9</sup>

Unlike the European-style registries with their focus on the legal chain separate from other data, the Soviet-style registry anticipates the commingling of all the data. This is because the physical conditions, economic/social purposes, valuation, and record of compliance with terms and conditions are supposed to substantiate the continued eligibility of the person to possess and use the asset. The eligibility criteria are defined in administrative law, thus any certification that may be issued to prove a person’s rights will be a declaration that he/she is in compliance with the administrative law requirements. Modern technology appears to provide a new ability to strengthen the Soviet-style registries, since computers can handle and inter-relate a large volume of data.

## 2.4.3 Current Land and Property Registration in Ukraine

The dilemma of Ukraine today is that, in law and practice, it is seeking to integrate and reconcile the different models of registration and, at the same time, to consolidate the separate registries maintained by different administrative units. These can be grouped as the municipal Rada and the SCLR registries, which primarily cover land, and the MOJ registries, which cover buildings and other immovable assets.

### 2.4.3.1 Municipal Rada registries

The village and city Radas produce most of the decisions that allocate land parcels for various purposes (housing, industry/commerce, recreation, gardening) and allocate units from the state’s stock of buildings, apartments, and commercial premises. In the new era of private ownership, many of these allocation decisions allow the creation of rights of ownership in the persons receiving the asset, while other decisions are made to keep the assets in state ownership with allocation by lease. The registry consists of an archive of these decision documents, the supporting documentation (citizen applications and the information defining their entitlements), and the index book, chronologically maintained. Copies of the related civil legal documentation (such as purchase/sale contracts and leases) are also on file. Authorized persons—the owner, a notary, the court, administrators—can receive copies of any of the documents for a *fee*.

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<sup>9</sup> The Land Code of 2001 has maintained the fundamental concepts of the land stock and its allocation and management by the state, through use of an inventory registry system. An important change was made in the Land Code by deleting the power of the state to withdraw land parcels from private ownership. However, the management and monitoring system will continue to enforce conditions of entitlement and discipline use of the land assets by criminal, administrative, and other methods.

From the perspective of European civil law, the files in this registry relating to land and property units transferred into private ownership should embody one-time final actions and be closed. All subsequent transaction documentation constituting the civil law chain should carry forward in the land and property registry. The municipal registry would continue to function as the inventory registry of the assets kept in state/municipal ownership. However, in Ukrainian practice, this distinction is not made between the privately owned units and the units retained in state/municipal ownership. Landowners are directed back to the municipal registry in order to get copies of the originating decisions and other supporting documentation in order to carry out new transactions, and they are required to file the final documents proving ownership (the State Acts) in this registry. When a transaction has taken place, transferring ownership, the new owner is required to apply for a new State Act and the two copies of the previous State Act are destroyed.

For buildings, this same village or city Rada registry ties into the BTI of the MOJ. However, for buildings and premises, permits to transact and State Acts are not required. Subsequent transactions run in a proper chain at the BTI without reference back to the village or city Rada. The BTI itself issues the certificate, which is the proof document. This difference reflects the different meaning of “ownership” in the Civil Code from that in the Land Code.

### **2.4.3.2 Registries of the State Committee on Land Resources**

The SCLR (*DerzhKomZem*) maintains a hierarchical and inter-linked system of land registries that hold various elements of data and archive documents generated by the other units of land administration, land arrangement (*zemleystroistvo*), and land monetary valuation. Offices of the SCLR exist at each level of governmental administration: (1) national headquarters, (2) oblast land resources, (3) raion land resources, and (4) municipal (city/village) land resources.

At the raion level, there are 525 offices of the State Cadastre Service, a state enterprise that acts as the primary (but not exclusive) repository of the combined data on each land parcel. This office is the required point of contact for citizens/juridical persons seeking the documents of proof of land rights. The essence of the land registry system is the combination of four processes and the maintenance of the documentation which they produce:

- Formation of land parcels by authorization of their subdivision from the national, regional, and local stock of land; their allocation to entitled holders; and the creation of the right-originating documents (acts of the Radas and substantiating applications and evidence).
- Fixing and recording of data about land parcels as physical objects with precise boundaries and location (maps, parcel sketches and survey notes, and protocols—part of the technical passport).
- Fixing and recording of data about land parcels as economic/social and environmental objects with normative value (relative productivity calculations), monetary (market) valuation, designated use, and regulatory limitations and conditions (these are also part of the technical passport).
- Fixing ownership and subordinate legal rights in the land parcels and the maintenance of the documentation embodying the origination, subdivision, transfer, change, and extinguishing of those rights (the State Acts, leases, purchase/sale, and other transfer documents).

This large volume of documentation is required because, as noted above, each action in the chain must be proven by the civil law document (e.g., the lease) and parallel administrative document(s) showing authorization from the state to take the civil law action (e.g., permit to transact the lease, notary certification of the lease, receipt of registration of the lease, registry “extract” noting key terms of the lease). Since the system is dynamic, there is constant change in the status of parties, their entitlement to hold land of different categories, the conditions of the land, and the economic and social conditions justifying land con-

trol. Thus, the registries are expected to receive a continuing flow of data from multiple sources (not just legal transaction documents) and to have the capacity to substantiate entitlement (administrative law) along with civil law possession, use, and disposition rights.

## How the elements of registries are functioning

On the basis of the team's visits to several registries at village, city, raion, and Republic of Crimea levels, the following explanation of the process of creating the land documentation is provided.

The municipal office of Land Resources keeps a series of maps showing the zones of the territory at 1:3000 scale. Each map shows the land parcels that have been formed and authorized for transfer into citizen ownership (by act of the former village Rada). The parcels shown on the one map reviewed are house plots and subsidiary gardens. The map leaves blank space for areas that are obviously state/municipal lands (streets), agricultural fields, and other vacant territories. The zone is further divided into subzones, groups, and by code numbers allowing each lot, shown on the map, to be linked with a file in the archive. The parcels are color coded to show whether the owner has filed an application to process the State Act. Substantial numbers of properties are not colored, indicating that the owner has died without resolution of inheritance, or the owner has failed or refused to come forward. When the owner is missing, a file is created for the lot containing the technical passport along with the copies of the originating documentation (village Rada decision), but the data identifying the owner and verifying his/her entitlement are missing. This could allow the person to come forward later without the need to re-create this substantiating and right-originating documentation. Alternatively, however, the unidentified ownership status can also substantiate a municipal decision withdrawing the rights and returning the land into the state reserve.

To obtain the State Act—the ownership proof document—the citizen must file an application, which initiates the administrative procedure (*a fee* is paid for the application form). Upon its submission, the land parcel file is opened and given its identifying street and code number. The application can request action on more than one parcel if the citizen has rights to several. Notation of joint ownership (husband/wife) is not made, and there is no legal authorization for common ownership by other persons.<sup>10</sup> With the application form, the citizen submits his/her passport information (identity, legal, and social welfare status). He/she also submits a copy of the village Rada decision with the original grant of the land parcel formation and transfer, along with any inheritance document or exchange/transaction document showing a transfer in the interim. (*A fee* is paid for the issuance of each such document.)

To create the technical documentation, fixing the parcel boundaries, location, normative valuation, use designation, and other data, the office prepares a technical order submitted to the mayor for his/her signature. This contractual style document authorizes a private survey firm (or the survey service of the cadastre center) to carry out the survey and preparation of technical data as detailed in the *Instructions of the DirzhKomZem*. The licensed surveyors are obliged to follow the technical standards, ensuring consistency of all calculations, maps and technical documentation. (*Fees* are paid for the technical order and the survey work.)

In preparing the technical passport, the surveyors send notice to the citizen/owners and neighboring owners of the date and time of the survey. The surveyor walks the parcel along with the owner and neighbors and sketches the plan on the field notes. The specialist of the municipal office of land resources accompanies them. The owner and the neighbors sign the protocol document, which contains their agreement on

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<sup>10</sup> The registry clerks stated that joint ownership is unnecessary because spousal rights are automatically recognized under the law.

the placement of the borders. The field notes are subsequently redrawn as the land parcel schematic plan (1:500 scale) and are specified on the zone map (1:3000 scale). If the parcel has buildings, their placement and size is determined by obtaining an extract of the BTI documentation (*fee* paid). The surveyor cross-references these data with the field notes. The schematic plan also shows the interior use subdivision of the land parcel—for example, a part occupied by the house and access ways, and another part used for garden or orchard. Land valuation data and valuation data from BTI on building elements also appear on the sketch plan.

The SCLR examines the technical work—survey documents, valuations, interior subdivision, and use designation—and they make a recommendation (“opinion”) that this is satisfactory under the instructions, and recommend that transfer is authorized for purpose of construction and servicing of the buildings (uses). Similar opinion is sought from the city building department and any other technical departments about the possibility of using the property for the use.

Other documents are assembled in the technical passport, including a cadastre plan (1:500 scale) showing the precise borderline survey points; an excerpt from the cadastre topographic map (scale 1:2000); an act of the surveyor placing the corners (if this has been done in nature); and an *Explanatory Memorandum of the Surveyor* detailing the work, the calculations, and the process of agreement of neighbors and owner and other identifications. The pencil sketch field notes are also in the file. The office manager of the municipal SCLR checks the file to determine whether all substantiating documentation has been assembled. If it is in order, the office begins preparing the State Act on the form provided by the SCLR headquarters (*fee* paid for this form.)

## Content and status of the State Act

The data contained in the State Act includes the following. On its first page there is stated:

- Name of the person with reference to the identity documents.
- Decision of the particular authority (Rada) that issued the right-originating document plus any certified transaction documents subsequent to the original.
- Declaration that the named person is recognized as the owner (perpetual user) of the property noted by cadastre number, size and location, and use, with cross reference to the number code and index maps.

The State Act is signed by the head of municipal administration (mayor).

On its second page, the State Act contains a copy of the parcel sketch plan (reduced in scale) with notation of the points and bordering property owners. If the citizen has rights of ownership in two or more parcels, these are shown.<sup>11</sup>

On its back page, there is space for noting changes in the physical description of the property including subdivision or creation of a servitude. No space is provided for notation of changes in ownership or the giving of subordinate rights (non-physical) such as a lease.

Based on this recitation of the contents of the State Act, it should be clear that it is not the equivalent in legal status to a *title* as defined by civil law. A title is a document that declares the status of ownership of a land/property unit based on the civil law status of the person (usually without categorical distinctions)

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<sup>11</sup> ULTI has stated that since 2002 the standard form of State Act no longer allows for multiple parcels. The evaluation team did not specify this point with the registry clerks.

and the unbroken chain of transactions.<sup>12</sup> The State Act declares that a person owns one or more units of property, based on the fulfillment of all the administrative conditions, substantiating his/her entitlement.

Two copies of the State Act are issued, one for keeping in municipal Rada office and one for the citizen. Upon their completion, the municipal office of land resources transfers both copies to the cadastre center office, where the citizen fills out an application form requesting registration of the State Act and produces identifying documentation. The registry clerk opens a file, which must be filled with the following contents:

- Explanatory document
- Technical order signed by the surveyor
- Citizen passport
- Copy of the right-originating document—municipal Rada decision or transaction document
- Copy of the State Act of the original owner, if there is a transfer
- Sketch plan of the parcel (this is redone if there is a new transaction)
- Photocopy of the State Act—the original is given back to the owner and one is sent to the municipal Rada office for filing.

## **Hierarchical data assemblage**

When the State Act has been registered, the municipal-level Land Resources agency (or the cadastre center) transfers a copy of all the data up to the next level (oblast or Crimea Republic), where it is re-entered into a computerized data bank. In doing so, all the bits of data are reorganized into categorical matrices that presumably give the ability to look at aggregate conditions in various territories, monitor changes in environmental conditions, and monitor fluctuations in market prices and compare them with normative prices to determine whether speculation is taking place. The categorical and individual data are also supposed to be available for municipal use such as the calculation of tax levies, urban planning, and other programs of amelioration and improvement of land. It is not clear from the responses of the registry managers whether customers for the data for such purposes have come forward. One manager complained that cities are tending to create their own data banks.

## **Subsequent transactions**

For a subsequent transaction involving a land parcel for which a State Act has been issued and registered, the owner returns to the SCLR office (cadastre center) to file an application for the right to transfer the

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<sup>12</sup> The form of a typical European title document contains the following: (1) a clear and unequivocal statement that the unit is owned by a certain person; (2) cross-reference by archive index to the right-originating documentation; (3) information detailing the location of the property unit, usually with reference to a cadastre or survey map. On its interior pages, the title document contains (4) “boxes” or “lines” on which the subsequent transferees of the rights are noted with cross reference to the archived documents; (5) “boxes” or spaces in which subordinate rights (leases, mortgages, usufruct, servitudes ...) are detailed with cross reference to the archived documents; (6) other “boxes” or spaces on which restrictions, liens, other limitations resulting from illegalities or flaws in the “chain” of documentation can be noted with appropriate cross references.

land parcel (a *fee* is paid).<sup>13</sup> The notary may also require other verifying or substantiating documents such as the original Rada decision or plans. When the notary is satisfied that the seller/lessor is authorized to transact and the buyer/lessor has the capacity to take the land under the form of transaction proposed, he/she drafts and certifies the transaction document. If the land contains a building, transfer of its ownership or rights takes place in a separate, linked transaction with substantiating documentation obtained from the BTI. Upon completion of the transaction, the notary directs the transaction documents into the appropriate transaction registries of the MOJ.

If the transaction results in a new owner (possessor) of the land parcel, this person must return to the cadastre center to obtain a new State Act. If the transaction results in a lease or other subordinate right, this must be registered directly (without a new State Act). The center refers the file back to the municipal Land Resources office which may require new technical documentation—survey plans, valuation, measurement of conditions—as a prerequisite for issuance of the new State Act or registration of the transaction. A new file is created for the new person; the transaction is not noted on the original State Act, and this is destroyed in the case of a new owner, who is issued a new State Act.

### 2.4.3.3 Registries of the Ministry of Justice

The system of registries under control of the MOJ consists of the following seven linked elements:

- The notary service
- Bureau of Technical Inventory
- Unified register of court orders, restraining or limiting land/property
- State Hypotek (mortgage) registry
- Registry of Contracts
- Registry of Acts of Accession (inheritance)
- State enterprise *DerzhInformJust*.

While several of these fragmented registries contain data on land rights and restrictions that would be elements of the chain of title in a European-style registry, other elements retain the structure and function of a Soviet-style registry. In particular, the BTI, which was the “national rent roll” of apartments and commercial premises in the late days of the Soviet Union, continues to record a vast quantity of data on the sizes, physical characteristics, and valuation of all property units, even those that have been transferred into private ownership. Its presumed functions of monitoring and certification of transactions are incompatible with the basic concepts of the civil law and markets in which private parties determine transaction terms and conditions themselves without state interference.

The system is highly inefficient. It requires a duplication of the documents generated by the courts (orders of foreclosure, inheritance, etc.) and by the offices of the notaries (contracts for sale, leases, donations, and mortgages). The notaries keep copies of these documents within their own archives and transmit other copies into the pertinent registries (e.g., buildings registry, Hypotek, or contracts). Usually one BTI office administers each of these as separate archives. The BTI layer of administration, presumably, is the

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<sup>13</sup> ULTI has noted that this is not in accordance with the land legislation; however, the evaluation team was careful to review this procedure in discussions with the registry clerks (since it is a key point of deviation from European civil law practice). According to the registry clerks, the notary will not draft and certify the transaction contract between the parties (buyer/seller, lessor/lessee) without this document.

method by which the right-creating/changing documentation is linked to the description of the property unit (building, not land) to which it applies. In turn, the BTI office transfers copies or extracts of the archived documents to the state enterprise that stands as the “window” through which the citizens and juridical persons access information for a *fee*. BTI retains the power to issue the certificates, which are the legal proof documents of the rights of ownership and subordinate rights in buildings and premises.

This highly complex and duplicative network of registry activity ultimately fails to produce at its end either the chain of rights or a title proving document. At most, its certificate of building ownership can give a limited picture of the current status of possession with a linkage to the administrative law entitlement conditions and to fragments of the civil law chain.

## **How the process of building and building premise registration works at BTI**

The Civil Code of Ukraine preserves the Soviet-law idea that an object of unfinished construction lacks status as *real* immovable property. A building becomes finished only after the Construction and Architecture Inspection Service has issued the order of acceptance (the administrative permit that attests to its completion in accordance with its approved plans and with all safety and sanitary requirements) and only after registration of the building in the BTI. The withholding of real property status thus has a regulatory administrative purpose—to ensure safe, habitable buildings before transactions (sales, leases) with tenants can take place. Registration in the BTI, therefore, is a right-originating act by which the pile of bricks, wood, and metal becomes a “building” and an object of the civil law.

Registration of a new or renovated building or premise takes place pursuant to the records of the final inspection and acceptance order by Construction and Architecture Inspectorate and the technical passport, which is the book of underlying data and plans, detailing building construction. BTI accepts and files a copy of all this technical documentation for the building as a whole, and when individual premises (such as an apartment) are to be separately owned, an excerpt file is separately created for it. In Soviet times, the BTI was expected to function as a building repair schedule roster. That is, its files contained detailed information on the methods of construction and dates of installation of major building systems. In theory, the BTI would inform the housing maintenance services of all the buildings, which would require roof repairs or new heating boilers in 2007, based on the technical normative useful life of these building elements. As a result, BTI files contain enormous detail about buildings all of which is duplicated from the Department of Construction and Architecture and all of which is recreated by on-site inspection whenever an architect or construction entity has to do a job. Nevertheless, the pointless process of extracting detailed bits of data from building plans and entering them onto charts and matrices continues today, and the full computerization of the archive is being carried forward.

In addition to the technical documentation, the BTI requires preparation and recording of *value*, which is calculated in its initial iteration by setting forward and then aggregating the materials cost of all building elements. In the subsequent registration of transactions, market price is supposed to be added and, in theory, accurate monitoring of market trends should result. (Of course, it is likely that false or distorted information is given by sellers and buyers, who fear the tax consequences.)

In addition, the BTI file is to contain any documents which originate or change legal rights in the building object. This would include the actions of the municipal departments and Rada, which transfer an existing building out of state ownership or which gave the permits to construct a new building or undertake renovation; copies of Rada decisions and substantiating documentation that allocated the land on which the building stands; and other documentation authorizing the construction on land of private ownership (such as a lease or business contract).

Because of this basis of technical documentation in addition to legal documentation, the verification of proof of ownership is linked to certification that the owner remains in compliance with all administrative

and normative technical requirements. Thus, if the owner or a tenant has engaged in unauthorized construction or alteration, the BTI will refuse to provide the certificate of building ownership until the applicant has gone back to the Department of Construction and Architecture, gained a retroactive legalization, and brings forward this documentation.

## **The certificate of building ownership**

The content of the certificate of building ownership is as follows. On its first page, the municipal Rada declares that a certain person is the owner of the building or premises described in the following way:

- Type of object
- Address/location
- Owner and form of ownership
- Purposeful use of the object
- The date and code number of Rada decision.

The mayor certifies this declaration by his/her signature. Attached to the certificate is a proof of registration signed by the registrar.

In the same way as the State Act of ownership of land, the certificate of building ownership of a is not the equivalent of a title document in European civil law practice. On the one hand, it lacks the essential linkage of the present ownership to the chain of transactions and to subordinate rights, obligations, or restrictions involving the property unit. On the other hand, it links the declaration of ownership to compliance with administrative regulations and requirements.

## **2.5 ISSUES AND ASSESSMENT**

***Issue 1: The existing system of multiple agencies that form and register land and property documents is highly flawed as the support system for civil law and market transactions.***

The essential data that would be required to create the chain of rights and restrictions for civil law transactions emerge in piecemeal fashion from different offices with different formats and different legal status. These legally significant data are commingled with other data, some of which are related to essential regulatory functions, but most of which merely duplicates information that is collected and used by the departments with regulatory and enforcement functions. A large amount of the data appear to be collected and processed only because the system has always done so, and it appears useless for modern business and governmental activities.

***Issue 2: The current system provides a number of obstacles to the process of determining and offering proof of rights in land and property.***

Because of data fragmentation and incompatibility, it is impossible to “forge the chain” by any systematic procedure. Unlike the typical European-style registry, Ukrainian registries cannot issue proof of title by printing out the registry “card” or “page” with all current rights, limitations, and interests set forth. Unlike the typical U.S. registry, Ukrainian registries do not allow a “title searcher” to enter the records room (computer system) and assemble all the pertinent documentation for a legal conclusion of title. Instead, the Ukrainian system requires the person, who needs proof of rights, to deal with two state enterprises (the cadastre centers of the SCLR and the State Information Centers of the MOJ) as well as several municipal and state offices. The state enterprises transform the scattered data into “commodities” for sale. There are no clear rules (such as rules of evidence of the courts) that specify the form and amount of

proof necessary for any particular action or transaction. The person assembling the data must hope that he/she will compile enough to convince the judge, notary, or administrator to take a required action in his/her favor. Obviously, the potential for corruption is high, and all transactions are inefficient (in time expended and costs) and are ultimately insecure.

**Issue 3: Without clarification of the concept and purposes of registration, the system resulting from unification of the existing elements will be unable to reveal a clean chain of legally significant actions, free from the clutter of other data.**

Such a unified cadastre will not provide efficient support for land market transactions and civil law protection of property rights. It will burden transactions and protective actions with the high fees and requirements of constantly updated technical (survey) and social/economic data keeping.

**Issue 4: The concept of a “unified cadastre,” as it now stands in the law, will not remedy the problems outlined above.**

The unified cadastre authorized in the law of 2004 *On State Registration ... of Real Property* and described in two decrees<sup>14</sup> will not solve the problems of inefficiency and insecurity. It merely envisions the unification of all the data and functions of the existing multiple registries without providing the framework for making compatible their functions, document format, management, or legal status. There is need for a clear choice. If European civil law is to be the basis of land and property relations, a European-style registry is essential. It could be achieved by the creation of a registry, which will extract from the existing registries the data related to the chain of real property rights and separate these data from the other data and functions in the cadastre. Alternatively, if Ukraine intends to maintain the dual system of Land Fund and civil law, the model of a European-style registry and cadastre will not be applicable. Some new system, which has no counterpart in the world today, will have to be designed and its content and management carefully spelled out to eliminate duplication and irrelevance and to specify the priorities for its use.

**Recommendation (1):** There is ongoing need for donors (and in particular USAID and the World Bank) to assist the Ministry of Justice and the SCLR with technical assistance in the areas of land policy and legal and regulatory reform with respect to land and property.

Ukraine is midstream in its land reform program, having achieved significant milestones in issuing land shares and State Acts, but the present dual system of civil law and the Land Fund will require ongoing attention under a fourth stage of land reform. Other donors such as the EU, the Canadian International Development Agency, and the Swedish International Development Agency will play important roles, but none has the capacity or has programmed the funding to fill this void should USAID decide to exit. Both the SCLR and the MOJ have underscored the imperative that USAID continue to provide TA with regard to the legal and regulatory framework.<sup>15</sup> Representatives of the SCLR have stated that continuance of USAID TA for land titling and improving land administration is not needed—“There are already too many donors providing assistance with technical elements of land survey, mapping, and registration [including the World Bank].”<sup>16</sup> However, the same SCLR officers have stated that USAID is uniquely posi-

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<sup>14</sup> Decree of the President no. 134 of 17 February 2003, *On the Unified System of State Registration ...*; and Decree of the Cabinet of Ministers no. 1088 of 17 July 2003, *On Creating the Unified System of State Registration...*

<sup>15</sup> Personal conversation with Volodymyr Zhumutsky, Deputy Head of the SCLR on 2 February 2006, and with Inna Zavalna, Director of the Civil Law and Entrepreneurship Department, Xeniya Volkova, Head of Division, and Natalia Kovalchuk, Head of Division, of the Ministry of Justice on 3 February 2006.

<sup>16</sup> ULTI staff and others argue that the World Bank project has been very slow, if nonexistent, in implementation, thus giving the SCLR full reign to perpetuate the bureaucracy implied by the administration of the Land Fund. It is further argued that the efficiency in titling demonstrated by the ULTI office has much to offer and should be emulated. Attention is given to this issue in section 5.0.

tioned to help with legal advice. Other people interviewed have also made the point that USAID support with the organizational features of land administration is less useful because Ukraine will need a European-style system that is fundamentally different from U.S.-style registration and land management.

ULTI agrees with the SCLR that USAID should continue to provide legal advice. Over the years, the legal and regulatory team has worked separately with both the SCLR and the MOJ on an ongoing basis to raise the level of awareness regarding the essential elements necessary for the creation of an efficient land rights registration system. As documented in section 3.5 (Box C), the team has commented on registration law drafts and has prepared its own very detailed registration law drafts. However, ULTI disagrees that USAID cannot offer useful guidance in developing European-style registration and land administration systems. For example, the USAID project in Moldova and its American-led legal team was the principal author, along with the Moldovan cadastre agency, of the Moldovan land registration law that continues to be a model for the region.

As is discussed in section 5.3, the World Bank loan approved funding of US \$75.8 million for cadastre system development, including the creation of a “unified” registry.<sup>17</sup> The size and scope of this endeavor did not create much space for USAID assistance, nor does this team suggest that this is an area where USAID should intervene. However, this team is not confident that the methodology envisioned in creating a unified registry has been satisfactorily worked out, or that the problems involved in doing so have been thoughtfully anticipated. The SCLR vision seems little more than using computer algorithms to pull together all existing data into one centralized database, without changing the ways the data are collected, categorized, managed, or output. The vision of the MOJ has advanced little more than situating the cadastre offices alongside its other existing transaction registries; the design has not yet fully anticipated the problems involved in their integration, if indeed this is even being planned. A number of problems require further consideration:

- Whatever form the unified registry takes, the data must be linked to unique parcel identifiers. Currently, some State Acts are issued in the name of the owner and reference multiple parcels, while other State Acts link the ownership of one or multiple persons to a single parcel. The data on rights in buildings and premises, kept in the BTI, are referenced to property ownership, not parcel ownership. Data in the municipal registries relating to the documentation of initial privatization and issuance of State Acts are kept chronologically and by name of recipient. The team did not investigate the registries under the control of the MOJ, but almost certainly these will not be conveniently parcel based.<sup>18</sup>
- Much of the data, stored in the BTI, relate to buildings and premises as “objects”—that is, physical measurements—and valuation. These data duplicate in text and numerical lists the data found on the building plans in the municipal Departments of Architecture and Planning. These data are irrelevant to the chain of title.
- A large volume of other data is concerned with soil quality, other features of the productive capacity of rural land, and measurements of the development and use capacity of urban land. While useful for planning purposes, these data require continual updating by remeasuring and recording changes. Under the dual system of civil law and administration of the Land Fund, these data provide the method for monitoring improvement or deterioration in environmental quality and proper urban use. The data also are intended to substantiate enforcement actions. However, when these data are commingled with property

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<sup>17</sup> As noted under Issue 2 in section 5.5, the World Bank loan as of March 2006 has been substantially downsized in negotiations with the GoU and officially suspended.

<sup>18</sup> And if these are not parcel-referenced, what then is being used by the SCLR to link data among the various data sets and registries?

rights and transaction data, they also create a great burden of management of data input, categorization, and output that clouds the clarity of the legal status of property.

The key problems to be faced in creating the unified cadastre are not technical, but relate once again to the fundamental question of whether Ukraine will have a civil law land system or a mixed civil law and Land Fund system. USAID's assistance with legal and regulatory reform can help inform this choice, but the GoU (and perhaps the World Bank, if the loan negotiations still provide authority in this area) must create space for outside opinion and provide a more coherent vision.

**Recommendation (2):** The World Bank through its loan to the GoU, must provide clearer policy and technical direction on the features of a unified registry system that it seeks to create or promote.

# 3.0 ULTI'S PERFORMANCE AND LESSONS LEARNED

The ULTI project is composed of six components designed to increase the numbers of citizens and enterprises possessing full ownership rights in land, the effectiveness by which they can exercise these rights under law, and the efficiency of the administrative systems that provide support to land ownership in Ukraine:

- **Issuance of State Acts for Agricultural Land**—The goal is to prepare and issue up to 1.8 million State Acts to eligible rural citizens for specific plots of land, consistent with the ULTI task order. These are citizens who originally received land shares in the break-up of collective and state farms.
- **Sale and Transfer of Ownership Rights in Non-Agricultural Land**—The goal is to facilitate the sale of land for commercial/industrial purposes by auction and negotiated sale. Municipal administrations have the authority to designate these parcels from the state Land Fund and prepare them for sale, thereby augmenting local municipal budgets.
- **Public Education**—The goal is to develop a communications program that helps citizens understand the meaning of their newfound rights as landowners and effectively to enter into transactions or take actions to defend them. The project is also engaging in outreach to municipal and regional officials to help them better implement their responsibilities as land managers.
- **LACs**—In conjunction with public education efforts, the project has established a network of 26 LACs (one in each oblast) to provide free legal assistance to the new rural landowners.
- **Legal and Regulatory Drafting and Policy**—Through project lawyers and international consultants, the project helps the GoU develop legal and regulatory reforms aimed at facilitating land ownership and development of the land market in Ukraine.
- **Pilot Projects**—In the course of project implementation, ULTI came to recognize that rural economic development and the formation of efficient land and property markets will require the privatization and titling of all categories of land. ULTI has initiated activities to survey and prepare the legal documentation of land rights on a “full village” basis in three pilot locations.

ULTI has made significant progress in implementing these components, and the experience gained from their interrelation has much to offer in the way of lessons to the Ukrainian government, local governments, and land professionals. The remainder of this section reviews performance, lessons learned, and issues that merit USAID's attention.

## 3.1 ISSUANCE OF STATE ACTS FOR AGRICULTURAL LAND

The project has organized an efficient and cost-effective method for carrying out the surveying and other technical tasks necessary to form, issue, and register the State Acts in full compliance with laws and regulations.

### 3.1.1 Volume of Land Shares and State Acts

In its original contract, ULTI committed to undertake the conversion of 970,000 Land Share Certificates into 1.8 million State Acts. Under the law then in place, the issuance of these State Acts to rural citizens would give them full proof of rights of ownership in the land parcels, derived from their previous (undivided) land shares. This calculation of the volume of work was based on the expectation that, on average, each land share would result in two land parcels and that each parcel would carry its own State Act. As the project progressed, changes in regulatory procedures resulted in the combination of two or more land parcels into one State Act given to a single owner. ULTI was then able to expand to 1,420,000 the number of land shares being converted but with the same expected total of 1.8 million State Acts.

Progress in reaching this goal appears to be on target. As of 1 January 2006, ULTI reports that 1,244,500 State Acts have been completed with the final acts of signature by local officials, registration, and issuance to citizens. These State Acts are held by 1,114,384 citizens in 1,721 villages found in all the oblasts of Ukraine. Another 84,200 State Acts have been completed by subcontractors and delivered to local officials for signature and final issuance.

The remaining work involves 381,000 land shares in 736 villages which are in various stages of preparation by subcontractors and local officials (e.g., survey, legal documentation, and technical and expert review). If the work on these land shares can progress without delays, all will be transformed into State Acts by the close of the program. However, ULTI is concerned with a group of about 91,000 land shares where delays have been encountered in the technical reviews and decisions by local officials; about 70,000 may remain incomplete when the project ends. Decisions will be made in April 2006 to determine whether to suspend some of these contracts and reprogram the money allotted to them.

### 3.1.2 Completion of State Acts That Were Unfinished by the SCLR

In addition to the 1.42 million land shares involved in the full procedures of transformation to 1.8 million State Acts, ULTI has also assumed responsibility for completing a group of 98,000 unfinished State Acts that were derived from land shares previously started by survey subcontractors working under supervision of the SCLR that, for a variety of reasons, abandoned the work. ULTI has been able to take the unfinished files and complete the remaining stages of preparation. About 70,000 of these State Acts have been finalized and issued and the rest are expected to be completed by project end.<sup>19</sup>

### 3.1.3 Methods Used in Preparing State Acts

USAID's Agricultural Land Share Project issued over 250,000 titles and developed the methodology to transform a land share into a State Act. This methodology was simplified by ULTI, and will be followed in full by the World Bank/GoU subcontractors.<sup>20</sup>

To transform the land shares into State Acts on a mass scale, ULTI developed subcontracting procedures that have achieved significant savings in cost and time without sacrificing the accuracy of the data needed to support their legal status. Prior to ULTI, the SCLR had been working with a system in which individ-

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<sup>19</sup> Specific procedures were put into place so that ULTI did not make any payments to the previous subcontractors who had failed to perform, and no double payments were made to state or local agencies when citizens themselves had borne the fees previously.

<sup>20</sup> That is assuming that the land titling under the renegotiated World Bank loan with the GoU allows for the continuation of this activity.

ual land share holders or groups of them had to contract directly with survey firms and other technicians to prepare the geographic and legal documentation. This process was slow and costly, and problems were encountered when weak firms failed to complete the contracted work and some dishonest operators merely absconded with citizens' money. Under the ULTI system of subcontracting, with independent verification of work and payment for performance only when all work is completed, these problems have been eliminated.

As a result of its method of competitive bidding for survey contracts and its mass titling approach, ULTI has succeeded in lowering the cost of transforming a land share into a State Act from about 150 UAH to 35 UAH.<sup>21</sup> This very significant cost savings has made it possible to achieve the large volume of State Acts within the program budget. The evaluators did hear some criticism of the accuracy of ULTI's survey methods from persons linked to the SCLR who stated that the subcontracted surveyors achieved the low price by sacrificing accuracy. This criticism reflects the debate heard around the world among survey professionals, some of whom argue that only the most precise measurements are acceptable in order to avoid future disputes over boundaries and geodesic map overlap.

ULTI also introduced and developed the use of satellite data imagery as a supplemental quality control measure (together with the provision of training and technical assistance in satellite data processing techniques to a USAID NGO grantee, the Ukrainian Land and Resource Management Center) beyond the usual SCLR controls and raion administration approvals in order to ensure that surveys are performed within the correct field boundaries.

### 3.1.4 Land Survey

In any land titling program, the tasks of surveying and map and parcel plan preparation constitute a large proportion of the time and the majority of costs. Alternative technologies and field methods allow choices to be made between cost and accuracy. These choices should follow a clear policy of the government that, itself, should reflect an unequivocal definition of the purpose to be achieved. For *titling*, the purpose of survey is to provide a sufficient level of accuracy of measurement and precision of location that can substantiate decisions of the courts, administrators, and parties entering transactions. Unfortunately, in practice around the world, there is no agreement on the standards of accuracy; in Ukraine, the government has not made a definitive choice. Instead, the SCLR and the survey profession have been allowed to control the definition of technical standards.

In its surveying work, ULTI has surveyed and marked the outer boundaries of fields. For individual land shares within each field, however, it demarcates only the boundaries of land parcels on cadastral maps with accuracy of a meter or so, but without marking or pegging the parcel boundaries. ULTI, in seeking to reduce titling costs and introducing competitive subcontracting for survey services, has achieved a level of accuracy in survey which the evaluators believe is appropriate for the purpose of delivering a State Act subject to prevailing land use needs and demands of a rural clientele.

However, ULTI's approach also runs the risk of constraining or distorting land market development in rural areas, particularly among the poor. For example, consider the case of a landholder wanting to physically demarcate or alienate his parcel in order to initiate a land transfer via rental or inheritance (see Issue 2, section 4.9). Given the regulations (and steep fees) imposed by the administration of the Land Fund by the SCLR in physically surveying, demarcating, and re-registering the parcel, there is risk that land transfers either do not take place or slip off the books into the "grey" economy, a problem that arises from

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<sup>21</sup> As noted in section 5.0, the cost per State Act budgeted in the World Bank loan is nearly double ULTI's cost but includes the placement of ground markers for land plots that will be plowed in common.

management of the Land Fund, not ULTI. This problem will be further exacerbated by the significant downsizing of the World Bank loan (see section 5.5), which theoretically could have helped the GoU cover these fees in order to keep the cost of land market transfers affordable.

### 3.1.5 Registration of State Acts

At the beginning of the ULTI project, when the implementing agreements were worked out with agencies of the GoU and local administrations, the actions of signature by the local mayor and issuance of the State Act to the citizen were the final actions in delivering ownership rights to citizens. Subsequently, however, an additional procedural step was created involving the “registration” of the State Acts in the cadastre centers of the SCLR. Thus, the citizen does not receive the State Act directly after its signature by the mayor or other authorizing officer. Instead, two copies are transmitted to the registry office, where the citizen must file another application and pay a fee for processing, fixing of the registry stamp, and receipt of his/her copy. The fee for this has been set by government regulation at 15 UAH, thus adding nearly 50% more per State Act than the cost of all the preparatory technical work achieved by the ULTI contracts. On the basis of its prior agreement with the GoU, ULTI has not been willing to transfer funds from other project activities to cover this cost or to lower the number of State Acts under subcontract to free up funds. It has also opposed the SCLR’s requiring citizens to pay the fee, since the program has guaranteed them their State Acts without payment. The SCLR has continued to insist that the fee must be paid by someone other than the GoU, since the cadastre center has been chartered as a non-budgetary business entity, expected to be self-financing.



Photo courtesy of Julie Grygiel  
**Awaiting to get her State Act (Titling ceremony in Ivankiv Raion of Kyiv Oblast), March 31, 2006.**

In most oblasts and regions, the cooperative relationship of ULTI with local officials has not made this dispute an obstacle to the completion of the process of issuing the State Acts. However, in some places the cadastre centers are refusing to register, and local officials are holding off the issuance of the State Acts pending resolution.<sup>22</sup>

The design and function of registry systems is another area of land legal practice in which there is disagreement among professionals around the world. ULTI, with its focus on delivering State Acts to a maximum numbers of landholders and securing support for civil law/market transactions has, in effect, advocated the simplest possible registry system under management by legal administrators (rather than surveyors or land technicians).<sup>23</sup> Other professionals, both domestic and international, have offered more elaborate multipurpose models, and the World Bank loan for creation of the unified registry/cadastre ap-

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<sup>22</sup> See section 3.7, which indicates that this issue may now be resolved, allowing ULTI to complete its target of registering 1.8 million State Acts by the scheduled completion of the project in September 2006.

<sup>23</sup> According to ULTI, its focus has been “on utilizing the existing law in Ukraine for registering the first State Act for a parcel of land at the local level to facilitate early completion rather than delay the completion of land reform. ULTI supports the implementation of registering secondary transactions in a unified land and building registry, as detailed in the attached summary of urgent measures...” (see Annex 3). (ULTI comments, 19 April 2006)

pears to accept the vision of a wider, multipurpose system. For the evaluators, ULTI's point of view seems to be the more reasonable in terms of feasibility, cost, and timeliness. It would strengthen the status of the legal data in the system in balance with physical, survey, and other data and would result in far lower transaction costs for citizens and enterprises dealing with land.

### **3.2 SALES AND TRANSFERS OF OWNERSHIP RIGHTS IN NON-AGRICULTURAL LAND**

ULTI inherited the responsibility of non-agricultural land sales that were initiated under USAID's previous Enterprise Land Sales project. The ULTI Non-Agricultural Land Titling (NALT) contributed substantially to the establishment of good relations between ULTI and the responsible implementing partners within oblast administrations, oblast and raion units of the SCLR, raion administrations, oblast and raion Radas, and village Radas. NALT had the objective of issuing 13,500 State Acts for non-agricultural land. When the activity ended in November 2004, this goal was exceeded with a total of 15,547 State Acts resulting from 14,794 sales to private businesses acquiring land under their buildings and enterprise facilities. Of these, 1,741 were secondary sales of lands previously privatized by the enterprises. NALT also generated over \$90 million in revenues for local budgets throughout Ukraine through urban land sales and auctions. Funds are spent on social programs, economic development, and local infrastructure under locally controlled and administered budgets.

A total of 26 oblast-level enterprise land sales offices were also established under the previous USAID project. These offices under ULTI continued to provide real estate brokerage and related services to industrial and commercial enterprises previously reformed as private companies which have decided to acquire in ownership the land which they occupy. The process involved preparation of the land parcels (survey, legal documentation, and valuation) by the municipal administration and negotiation with the enterprise on terms and conditions of the purchase/sale agreement. Subsequent to the sale, the enterprises made application for their State Acts.

In its final report on this activity, ULTI stated the results of its post-land sale tracking of the enterprises it assisted.<sup>24</sup> The majority were reporting positive results of production and increasing sales revenues. A substantial number of secondary land transactions were occurring as the enterprises made portions of their land available for sale or lease to other enterprises. The success of this activity and USAID's multi-year assistance to enterprise land sales is attested to by the fact that the 26 enterprise land sales offices continue in existence without donor help today. The sales of enterprise land have been highly beneficial to the municipal administrations which, during the period of ULTI activity, gained over \$100 million in revenue from the sales.

### **3.3 PUBLIC EDUCATION**

ULTI has organized and funded an extensive program of seminars, radio, television, and print communication with the goal of helping citizens understand the scope and content of their ownership rights and the practical steps that they can take to protect these rights and advance their interests. Secondary purposes have been to strengthen broad public understanding of the issues of land reform and build an agenda of legislative and regulatory reform.

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<sup>24</sup> ULTI Monthly Report to USAID, December 2004.

The publicity and media activities fall into three major categories:

1. Publications of the project explaining its activities and highlighting its accomplishments. These brochures and periodicals are presented at meetings and events. They include the periodical magazine *Privatizatia Zemli* (Land Privatization), which contains articles prepared by named project employees. These articles report on the continuing progress in creating State Acts, other aspects of project activity, and general issues related to land ownership and leasehold rights.
2. Explanatory materials presented to citizen landowners at the Legal Services seminars and other events. These include the cartoon format *Poradi Celyaniny–Vlasniky Zemli*, which in very simple terms explains such procedures as how to make a lease, how to gain inheritance of a land parcel, or how to exchange ownership of a land parcel with a neighbor.
3. Materials prepared for publication in other media outlets that deal directly with substantive issues of land reform and citizen property rights. In the print media, articles by project staff appear in such national publications as *Zemlya Vlasnict* (Land Ownership), which has a weekly newspaper format. Scholarly articles are also prepared and placed in such publications as the new law journal *Zemelni Pravo v Ukrainini* (Land Rights in Ukraine) of Taras Shevchenko University.

Television and radio formats are also important components of public education. Each morning and evening, a 15-minute radio program featuring news of practical interest is broadcast nationally. The show often uses a “letter” format, reading letters sent in by listeners explaining their problems of dealing with bureaucracy or business or neighbor relationships. Lawyers from the legal aid staff or other presenters give a response of practical advice to the letter writer. People with the same problem are invited to contact the local office of legal services for help.

The project, on a weekly basis, also airs a 15-minute segment on the weekend television show, “Agricultural Life.” The usual format has project staff visiting a particular village where some problem or controversy related to land rights is highlighted. The problem is illustrated with strong visual images and interviews with local citizens and officials. People with expertise, often the legal services lawyers from the region, offer their solutions and frequently the intervention of the television team serves as mediation with a happy ending. A similar format of project staff participation in local television and radio programs is a part of the work of the legal services offices.

### 3.4 LEGAL AID CENTERS

LACs have been established in all 25 oblasts and the Republic of Crimea. They provide legal education and free legal representation to village people seeking help with their land-related problems. Each center has a staff of three lawyers who “ride circuit” around the rural districts of the oblast, implementing a three-stage process.

First, a team of two lawyers travels to the village on a pre-arranged date to conduct a seminar for the citizens on land-related legal topics. The lawyers make a presentation, in lay terms, touching on such topics as the procedures of registration and obtaining the State Act, leasing of the land parcel (shares), or taxes and inheritance.

Second, the citizens are invited to take part in the general discussion and raise general issues or problems. Frequently at this stage, the problems which affect the village population generally become clear such as arrears in the payment of rent by the farm enterprise to the citizen lease holders.

Finally, at the end of the seminar, individual citizens are invited to come forward to discuss their personal problems with one of the lawyers. At this stage, the citizens are encouraged to make application to the

LAC to request representation. For those citizens that come forward, a case file is opened in the legal aid office and the lawyers determine appropriate action.

As of 1 January 2006, the network of LACs had opened 11,621 cases, representing the interests of 190,092 rural residents (Table 3.1). Of these, more than 9,100 cases had received a positive outcome as the result of negotiation and 208 favorable decisions of the courts had been obtained. These results were of benefit to more than 153,600 clients.

As Table 3.1 shows, the land-related conflict experienced in rural areas is nearly equally split between problems or disputes in exercising the rights of ownership and problems and disputes in exercising transactions. Many of these cases involve citizens who encounter problems dealing with the management of the farm enterprise as lessee of their land parcel (shares). Usually, the lawyers first try negotiation with the farm management and often are successful in gaining payment of rent arrears, clarifying the amounts of rent and the form (in services, products, or money), and clarifying and re-drafting terms of the lease. Other general problems addressed by negotiation can involve the division of land parcels in their creation from land shares, and delays or refusals by local land agencies to take actions such as signing off on the citizens' State Acts. Many problems stem from disagreement over inheritance; a frequent problem is the removal of the dead person's name from the list of eligible shareholders, depriving heirs of the ability to transform the land share into a State Act.

Cases that cannot be resolved by negotiation and cases that present an important issue of legal interpretation can be brought to the courts. This is not done with great frequency; however, all of the LACs have litigated small numbers of cases and some precedent-setting decisions have been achieved. In particular, several courts have ruled that citizen landowners, who have been denied their rent payments by farm enterprises for a number of years are entitled to claim and collect "moral damages" above the amount of the unpaid rent.

**Transformation of the Legal Aid Center Network into an NGO:** The legal services network of ULTI has taken steps to transform itself into a non-commercial NGO to continue its legal services in rural areas by seeking funding from multiple sources after ULTI comes to an end. Project staff have prepared and submitted the applications and substantiating documents necessary for its license and other permissions. They have also set out a business plan which considers the alternatives of full charitable funding (includ-

**TABLE 3.1: PROBLEMS FACED BY LAND REFORM BENEFICIARIES REPORTED BY ULTI LEGAL AID CENTERS, 2003–2006**

NO.	Type of a problem	Number of cases	Number of beneficiaries	Number of cases %
<b>Land Ownership Dispute:</b>				
1	Obtaining ownership of a parcel	2642	119827	22.70
2	Realization of right to a land share	1070	7001	9.20
3	Protection of landowners' rights	660	5400	5.60
4	Violation of right to a land share	456	686	3.90
5	Preparing a State Act	13	332	0.10
6	Rejection of a land share	1	1	0.01
<b>Land Transfer:</b>				
7	Lease of a land parcel	1764	29439	15.10
8	Lease of a land share	1418	14431	12.20
9	Inheritance of a land share	1183	1423	10.10
10	Inheritance of a land parcel	928	1201	7.90
11	Exchanging a land parcel	163	882	1.40
12	Gifting a land parcel	174	449	1.40
13	Alienation of a land parcel	54	565	0.40
14	Disposal of a land parcel	12	12	0.10
15	Disposal of a land share	8	11	0.06
<b>Other</b>				
16	Taxation	543	3280	4.60
17	Technical aspects of land use	273	3848	2.30
18	Economic activity	256	1300	2.20
19	Social protection	3	4	0.02
		11621	190092	100.0

Source: ULTI. 2006.

ing international donor assistance) or a mix of charitable funding and for-fee services. At present, there is a preference to pursue the full charitable funding model in order not to lose the well-established identity of the LACs as dedicated to the service of the poor. If paid services are to be added, it is likely that clientele will need to be sought from the farms, other institutions, and wealthy persons, who until now have been the “defendants” in actions brought by the legal services. One possible linkage under consideration may involve legal services for the network of credit unions that are being established on behalf of rural small landholders and independent farm entrepreneurs.<sup>25</sup> ULTI’s staff anticipates the need for ongoing donor support for at least several more years until incomes improve and land valuations reach the point of covering the costs of legal protection. Ideally, the LACs will have sufficient resources and organizational capacity to do the following:

- Undertake more complex cases and pursue actions of a precedent-setting nature to advance the evolution of civil law on behalf of the rural poor.
- Ensure that abuses remedied in a one-time intervention by the LACs do not continue.
- Reach more villages and citizen landholders not just through informational seminars and general advice but with specific, case-related services.

### 3.5 LEGISLATIVE AND REGULATORY DRAFTING AND POLICY

The legislative and regulatory drafting component of ULTI has been carried out by a small staff of legal experts including short-term international consultants. They have assisted GoU agencies in drafting, reviewing, and commenting on new laws and amendments, regulatory and technical decrees, and other land-related policy documents. The legal team has also rendered service as a legal advisor to oblast and municipal administrations providing interpretation of laws and decrees and practical advice in applying these provisions. The legal consultants have sought to use the experience gained in the course of forming land parcels, issuing State Acts, and dealing with the legal problems of rural landowners as the basis for practical review of legislative and policy proposals. According to ULTI (19 April 2006), this work has been carried out in close collaboration with other stakeholders.<sup>26</sup>

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<sup>25</sup> This option was reinforced by Dr. Gary Reusche, team leader of the EU-funded Support to SMEs in the Rural Sector Project on 24 January 2006.

<sup>26</sup> From the beginning of the project, the senior ULTI attorney served as legal advisor to the Verkhovna Rada Committee on Agricultural Policy and Land Relations. In addition, both Pavel Kulinich and Mykhailo Cheremshynsky of ULTI are the only non-governmental officials appointed by Vice Prime Minister Melnik to the Cabinet of Ministers working group led by Melnik and including the Minister of Justice, Chairman of Dershkomzem, First Deputy Ministers of Environment, Finance, Interior, and Economy, and eight relevant department heads who have been tasked to improve the legal framework for the functioning of a unified registration system. The ULTI legal and regulatory team’s work has also coordinated with various constituencies; for example, work on the *Law on Peasant Farming* involved collaboration with the Association of Private Farmers and Land Owners of Ukraine; the work on the *Law on Delimitation on State and Communally Owned Land* was developed, debated in a public conference, and submitted to the VR in close collaboration with the Association of Ukrainian Cities and Towns and the active collaboration of Dershkomzem; the work on the *Law on State Registration of Rights to Immovable Property* was developed in cooperation and through sponsorship of a series of public conferences including regional and local governments as well as Dershkomzem, Ministry of Justice, Ministry of Construction, BTIs, and other interested counterparts. Additional governmental counterparts include many hundreds of oblast and raion departments and over two thousand village Radas fostered through on-the-job training and local seminars on carrying out the land reform in compliance with the law provided with direct ULTI support. The public education program also frequently collaborates with the NGO “KURE” on freedom of press issues and public information campaigns, particularly during the period 2001-2004 when the prior government routinely suppressed or blocked independent media and reporting by direct control over the press, attack articles called “Terniki,” and personal threats and acts of intimidation against independent journalists and broadcasters.

The ULTI project has been organized and managed based on close, strategic integration of land titling, legal aid, and public education implementation activities under the overarching legal and regulatory component of the project. This means that the legal and regulatory team is not only engaged in drafting, commenting, and advocating legislation in collaboration with central government and non-governmental bodies in Kiev. They are also constantly and actively monitoring implementation of ULTI's other programs while receiving detailed feedback from Ukrainian lawyers, industry specialists, and GOU counterparts at all levels about what legislation actually works well and what legislation needs to be revised so it works better. According to the ULTI legal team, this methodological extension of the scope and outreach ULTI's legal mission to monitor implementation of land reform laws and to target revisions of law through mass scale land titling is an ULTI project innovation that has dramatically and effectively expanded the impact of the legal and regulatory reforms supported by the project.

The main legal and regulatory team, which has worked for several years on issues identified in the draft assessment, including analysis and recommendations on the Land Code and legislation pertaining to registration of land rights, land markets, and land lease. The team has worked to support, revise, or stop a long list of legislative initiatives, some of which arose in various incarnations over the years. This legal and regulatory work has been effective in allowing the ULTI titling activity to continue within a legal and constitutional framework, and has contributed to preventing adoption of a number of laws that would harm development of the land market.

The 16 major legal and regulatory initiatives in Box C illustrate the extent of legal and regulatory work that has been accomplished by ULTI and that needs to be continued after the scheduled closure of ULTI in September 2006.

According to ULTI, systemic conflicts of interest (and corrupt practices of officials that exploit systemic conflicts of interest at the expense of the public) have been rife in the SCLR, its subordinate cadastre centers, as well as in the BTIs associated with many local governments and the Ministries of Construction and Justice. There is also a 10-year-long institutional conflict among the SCLR, the MOJ, and their associated organizations, which continues to block meaningful legal reforms to end these conflict of interest abuses as well as to fulfill the integration and implementation of a unified building and land ownership transaction and record keeping system in Ukraine. The ULTI legal and regulatory team has formulated a number of legislative remedies aimed at curbing these systemic conflicts through open forums involving the

#### **Box C: Legislative Reforms Instituted by ULTI Lawyers**

1. Draft Land Code of Ukraine (alternative draft)—adopted.
2. Draft Law of Ukraine “On Procedure for Allocating Land Parcels in Kind to Land Share Owners”—adopted.
3. Draft Law of Ukraine “On Private Family Farm”—adopted.
4. Draft Law of Ukraine “On Protection of Constitutional Rights of Citizens to Land”—adopted.
5. Draft Law of Ukraine “On State Expertise of Land Survey Documentation”—adopted.
6. Draft Law of Ukraine “On Land Market.”
7. Draft Law of Ukraine “On Delimitation of State and Communally Owned Land” (alternative draft).
8. Draft Law of Ukraine “On Buyout of Privately Owned Land Parcels for Social Needs.”
9. Improvements to Law of Ukraine “On Land Lease.”
10. Improvements to Draft Law of Ukraine “On Protection of Land.”
11. Improvements to Draft Law of Ukraine “On State Control over Use and Protection of Land.”
12. Improvements to Draft Law of Ukraine “On Land Survey.”
13. Improvements to Draft Law of Ukraine “On State Registration of Rights to Immovable Property.”
14. Improvements to Draft Law of Ukraine “On State Land Cadastre.”
15. Improvements to Derzhkomzem proposals and recommendations on improving Draft Resolution of Cabinet of Ministers of Ukraine “On approving forms of State Act certifying the ownership right to land parcel and State Act certifying the right to permanently use land.”
16. Recommendations submitted to the MOJ on advisability of canceling the State registration of a number of Derzhkomzem Orders that established payment for registration of State Acts and thus blocked issuance of State Acts to land share owners. In 2001–2003, the MOJ cancelled the registration of such Derzhkomzem Orders, which were ultimately annulled.

active participation of the interested organizations. For example, ULTI supported the Ukraine Land Market Policy Conference in July 2005, which generated 14 urgent measures (see Annex 3) that have since motivated numerous draft laws by the GoU with the support of the ULTI legal and regulatory team.

### 3.6 PILOT PROJECTS

In the course of converting land shares to State Acts, ULTI came to realize that economic growth of villages and rural regions depends on the property rights status of all categories of land within the village, including housing, subsidiary farm plots, gardens, orchards, and non-agricultural commercial/industrial parcels. For rural families, whose economic security and opportunities depend on secure land rights to all their land holdings, issuance of State Acts was identified as a priority for experimentation and possible future intervention. Prior to ULTI, there was no program of mass or systematic issuance of State Acts for non-agricultural land parcels, although citizens have had the right to individually apply for their State Acts after paying all the relevant fees and costs of surveying and legal document formation.<sup>27</sup>

ULTI has sought to demonstrate in three pilots that significant savings can be achieved in the conversion of all land parcels into State Acts through efficiencies gained by deploying field teams to work on a series of contiguous land plots rather than scattered single units. The systematic work avoids the problem of having to later adjust borderlines and references to geodesic points when the piecemeal surveys do not fit together precisely. Two village-wide pilots were visited by the evaluation team:

In a small number of villages in Ivano-Frankivsk, Zhitomer, and Transcarpatia, the village-wide approach has been applied encompassing about 12,000 land parcels. The method was seen by the evaluation team in the small city of Korostan, where the pilot has involved a territory containing approximately 640 small citizen parcels (house plots and gardens). This territory was formerly under the jurisdiction of a rural village but recently has been incorporated within the territory of Korostan city. By the end of 2005, the ULTI team had taken all the steps to form the land parcels, survey and value them, and prepare the State Acts. By January 2006, the State Act forms were being completed and presented to the city mayor for signature. The subsequent steps would involve their entry into the registry and issuance to the citizens. The mayor was hopeful that these final steps would take place before municipal elections in March.

In Crimea, project teams have been at work in 2005 and 2006 to form land parcels and issue State Acts in six villages covering 11,300 land parcels. In this pilot, the local LAC is a strong participant and other methods of mediation have been incorporated because of the high degree of inter-ethnic tensions created by the in-migration of the Tatar population. The Tatars were not eligible to participate in the agricultural land-sharing program (since they were not collective farm members). They were entitled to receive subsidiary garden plots, somewhat larger than the average norm. Thus, their total land holdings are substantially smaller than those of local citizens who benefited from land sharing, but larger than those of other local citizens who had no land share claims. By proceeding with the village-wide approach, all land rights as they now stand will be fixed. This removes any expectation of further adjustment that different groups of landholders may have kept alive. Thus, careful social preparation and management of the publicity surrounding the work of surveying parcels and issuing State Acts has been required.

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<sup>27</sup> Many individuals and juridical persons have, in fact, claimed State Acts of ownership to non-agricultural parcels as evidenced by the *DerzhKomZem* statistics for mid-2005 which cite 3.7 million issued out of the total of 11.7 million citizen holdings (house lots, gardens, and subsidiary plots). See *DerzhKomZem*, 2005 Current Status of Land Reform in Ukraine, p. 45.

The village-wide approach, which is being refined and tested in the pilot projects, appears to be a significant improvement in the methodology of parcel formation and issuance of State Acts. Nevertheless, there continues to be a flaw in the approach because the lands belonging to the state (and subject to division into municipal ownership) have not been surveyed and fixed. On the resulting cadastre maps, these areas of state ownership appear as empty space in between the “private” land parcels. The areas include the lands and rights of way of utility lines and roads, sites of public buildings and facilities, and vacant land for future use and development. Although this omission is understandable, given the incomplete procedure of inventorization and delineation of state/municipal interests, it does present the risk of future land conflict.<sup>28</sup>

The village-wide approach of the pilot projects has additional significance for future land reform. If the pilots show positive results, the methodology should provide a foundation for a future program of urban systematic first registration where more complex patterns of land uses and tensions over competing land claims are problematic. Ukraine has so far avoided addressing the problems of urban land ownership and the conflicting issues of transition from rural to urban land uses on the city peripheries. Yet, it is precisely in these areas where the greatest abuses and distortions of citizen land rights and Land Fund management are taking place. Addressing the urban and peri-urban lands will require a combination of urban planning, land use regulation, and clarification of urban and rural municipal jurisdictions, along with the process of defining and fixing property rights.

### 3.7 ISSUES AND ASSESSMENT

***Issue 1: Responsibility for paying the fees associate with registration of State Acts has been a contentious issue between ULTI and the SCLR. While this issue now appears to have been resolved by Order No. 111 issued on 27 March 2006, there will be ongoing need for ULTI to carefully monitor its implementation to ensure that State Acts issued by ULTI are registered.***

As of January 2006, some 430,000 land shares were still in the process of transformation to State Acts with completion expected by the end of the project in September 2006. Most are moving along in routine fashion, but some have been held up by local officials and state agencies. Among these delayed are approximately 86,000 draft State Acts which have been fully prepared by ULTI and delivered to local officials for signing and subsequent registration and issuance to citizens, but await final registration due to the dispute over non-payment of the registration fees.

ULTI has been correct in taking the position that it is not responsible for these fees. Its agreement with the GoU worked out and signed before the step of registration was added does not give it this responsibility. It is preferable to use the program monies to maximize the number of land parcels formed and State Acts issued rather than reimbursing a more administrative process. After visiting several registry offices and reviewing the content of their documentation, it is clear that this process of registration adds no value in legal status of the State Acts or in linkage of ownership to the chain of title necessary for protecting the citizen. Indeed, the registry offices appear to have little purpose other than to further transform state data and services into commodities for sale on a monopoly basis.

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<sup>28</sup> At the time when the legal status of the state/municipal lands must be fixed, disputes over the border lines with the private parcels will inevitably arise. If the legal system of civil law ownership is to have integrity, the fixed borders (registered and noted on a State Act) cannot be changed. Nevertheless, it is quite likely that state and municipal entities and the utility services will assert the right not to be bound by the previous decisions in which they did not take part. If mistakes were made and border lines need readjustment, then compensation should be required for any private owner who loses part of his/her land. Since this result is unlikely, the problem threatens to undermine the integrity of the legal protection of property rights.

ULTI has offered an interpretation of the Presidential Decree *On Realizing Citizens' Constitutional Rights to Land*, which holds that the guarantee to the citizen of a land parcel without payment also exempts the citizen from responsibility to pay the administrative fee of registration. Representatives of both the SCLR and the MOJ interviewed by the evaluators have rejected this interpretation. In particular, since the registry was set up by law as a self-financing operation, it has no ability to receive government budget funds. The commitment to ULTI (tacitly or explicitly made) to carry forward the registration of its State Acts without payment of the fee leaves the registry with uncovered costs. In the team's discussion with the SCLR in February 2006, the SCLR indicated that the political debate was at an impasse.

Following the evaluation, USAID informed the team (on 20 April 2006) that further progress was made with respect to this issue:

On 27 March 2006, ULTI received a copy of a new order (No. 111) issued by SCLR noting that it will provide free of charge registration for State Acts issued via ULTI, and that the cadastral centers will be reimbursed (up to UAH 15 per title) from the State budget. Many oblasts have been holding titles waiting for the registration fee issue to be resolved. Now this backlog of titles (approx. 103,000 as of March 1st) can be issued and in time for the spring planting season. Also, ULTI should be able to conclude their remaining subcontracts and issue titles in a relatively timely manner through ULTI's end in September.

This appears to bring to an end a long and contentious debate between ULTI and the SCLR over the issue of payment of registration of State Acts, and to secure delivery of a large number of State Acts that were at risk. However, in light of the budget constraints noted in discussions between the team and the SCLR in February 2006, this situation will need to be carefully monitored to ensure that Order 111 is acted on and fully implemented.

***Issue 2: ULTI's supported LACs have been very effective in making citizens more aware of their new-found land rights, but they have not yet met the need for delivering legal recourse.***

From interviews with several of the LAC lawyers and review of the statistical record of the offices, the LACs have had significant success in securing one-time results for citizens in negotiated settlements. However, in more complex cases, the numbers of citizens represented individually and the cases brought to the courts has been quite limited. Furthermore, the offices have not been able to follow up after case resolutions to determine whether the citizens whom they have helped are continuing to benefit from the decisions. With the continuation of the legal aid services under an NGO format, these aspects of practice should be remedied.

Another weakness has been the limited analysis and reporting of LACs work in the context of influencing land policy, legislation, and judicial opinion through an upward flow of information to national levels. The LAC offices have been quite active in publicizing their work on a practical level within the rural community at large and in creating better understanding of landholder rights and responsibilities. However, the offices have done less in terms of systematic analysis and publication of their results, particularly the favorable rulings of the courts. In the civil law systems of Europe, the evolution of legal principles and practice comes about through a process of civil law commentary. Although this does not involve the direct principle of judicial precedent (as in U.S. common law), the reasoning of good court opinions and interpretive analysis is influential in giving meaning to law.

**Recommendation (3):** There is need to either reallocate existing resources to fewer oblasts, or resources of the legal aid centers must be augmented to enhance their reach to legal clients, take more "precedent-setting" cases, and tackle a wider range of citizen legal problems.

USAID should encourage through ULTI the formation of the NGO and work with other donors to extend financial support that enable free legal services for a period of up to two to three years with support being phased out thereafter as feasible and appropriate. If other donor funding is not forthcoming, the NGO

should be asked to propose options that either reduce its scope in terms of oblasts served or that improve its effectiveness in delivering legal aid. In giving assistance to a continued program, USAID should encourage the NGO to take on more precedent-setting cases and to tackle a wider range of legal problems. Also, in considering the level of resources needed for the NGO, there should be an expanded component of case monitoring and analysis and the ability to transfer the experience gained in the field into policy making to influence legislation.

***Issue 3: ULTI's interventions have proven effective in raising public awareness of people's land rights and its titling program, but its charge to battle corruption and the appearance of its "taking sides" in the press on policy issues may have also sometimes compromised its effectiveness in dealing with the SCLR at the national level.***

ULTI has had the difficult task of delivering large numbers of State Acts at the same time that it has sought to reform the methods of the agencies involved in their execution. Discussions with oblast, raion, and village Rada officials generally drew good marks—if not praise—for the ULTI services performed and the collaboration with ULTI staff.<sup>29</sup> Nevertheless, in seeking efficiency, transparency, and steps to combat corruption in the ranks of survey contractors and the SCLR,<sup>30</sup> staff have had to take public positions on issues of organization and definition of powers<sup>31</sup> that may have at times created bad feelings and distrust. Inevitably, people who have sought to defend the existing practices and people who have envisioned different mechanisms of administration have perceived (rightly or wrongly) that the project has taken sides in the policy debate.

USAID clearly points out (April 7 communication) that the ULTI office did not act independently; its interventions were undertaken in close coordination with USAID mission policy, and that mission personnel frequently intervened to help fight local corruption or support ULTI initiatives.

ULTI also rightly points out (April 19 communication) that it is also not clear that advocacy can or should be totally divorced from legal and regulatory assistance. Some of the most effective assistance takes place, for example, in official public forums attended by ULTI senior specialists, at which it is often necessary and appropriate to take a position in favor of one or another policy option that is being debated. The evaluation team agrees strongly with this point.

The problem arises when passage of legal and regulatory reforms by the GoU must be undertaken by agencies that find themselves distrusting the legal advice and motives of the lawyers proposing the changes, however real or fictional these may be. The fact that ULTI's lawyers are positioned outside the walls of the GoU's lawmaking apparatus further detracts from transparency and trust. The evaluation team is acutely aware of the allegations of impropriety and conflict of interest that the ULTI office and USAID have had to combat over the years. These struggles will no doubt continue in the future. But, there is need for a formula whereby those who strongly advocate against corruption and for progressive change are separated from lawyers who on a day to day basis must have their judgments perceived as honest, objective, and trusted by the government agencies responsible for their promulgation.

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<sup>29</sup> Indeed, a number of oblast and raion officials commented how ULTI legal aid center offices helped them understand new laws and regulations.

<sup>30</sup> It is clear that substantial weaknesses remain in the structure of government agencies, their definition of competencies, and their procedures and practice which create opportunities for ad hoc decision-making, rent-seeking, and corruption. For example, the cadastre centers as self-financing enterprises with quasi-independence under the SCLR appear to view the registry data as a commodity for sale, rather than registration as a public service.

<sup>31</sup> For example, press statements that the cadastre offices should be transferred from the SCLR to MoJ.

The body of law and its administration that defines rights, duties, and obligations is the same body of law that delivers increased transparency and legal recourse to fight corruption and injustice. While USAID's approach may be perceived by others as naïve, we believe that the process involved in creating law and its supporting institutions to battle corruption is different in tactics and approach. While the legal outcome may ultimately be the same, there is greater risk in settings of severe conflicts of interest that law's promulgation becomes compromised by allegations of ulterior motives by foreign interests or outside political meddling. Consequently, in section 6, the team proposes the continuation of both strong advocacy and legal and regulatory assistance components, but separated in physical space and by funding. By all means, forums must be promoted whereby legal and policy differences are freely and openly discussed. But, the team does not think it tenable that legal and regulatory assistance can serve two masters—one that espouses the tackling of corruption and conflict of interest, and the other that provides sound and objective legal advice that is trusted by government agencies charged with its implementation. Separating the two in space and funding will partially help to resolve this problem.

**Recommendation (4):** In the design of future TA, there will be need to carefully separate advocacy components from TA on land policy and legal and regulatory reform.

**Issue 4:** *While the ULTI project has assembled relevant data to monitor project activities, the project might have benefited from a stronger applied policy and research component to better evaluate ULTI's performance and contribute to public knowledge on constraints to land market development.*

The limited analysis of results achieved by the LAC offices has been noted above. Similarly, the project dropped the activity of monitoring the post-sale land market transactions of enterprises that were helped with their initial land privatizations. This assemblage of statistical data was one of the most important databases on "true" land market activity in Ukraine. With the combined data from both projects, and with the ongoing work of the 26 enterprise real estate brokerage offices, this data bank was growing to include a substantial portion of the commercial/industrial land. The activity of secondary transactions, which were also being monitored, might have been a key barometer of land and property market formation, and might have answered the fears of many Ukrainian professionals, academics, and political leaders that unregulated markets will be speculative and distorted.

**Recommendation (5):** Through subcontract mechanisms, invest in data gathering and analysis that rigorously monitor land tenure reforms and lifting of constraints on economic growth to help counter-balance or dissolve government's monopoly on knowledge generation and information dissemination.

**Issue 5:** *Because of the institutional impasse among the SCLR, MOJ, and their affiliated organizations over implementing the unified land and building registry, there is need for policy measures that end systemic conflicts of interest and mediation by a third party deemed by all to be an honest broker.*

ULTI in its response to the evaluation (19 April 2006), underscores the systemic conflicts of interest; the risk or appearance of corrupt practices arising there from; and the institutional impasse among the SCLR, the MOJ, and their associated organizations over implementing the unified land and building registry. In light of the ULTI project's planned termination in September 2006, there is urgent need for ULTI and all the above mentioned bodies to convene a forum that seeks to answer the following two issues raised by the ULTI legal team:

1. What concrete legal and regulatory measures need to be taken to end systemic conflicts of interest in the existing Dershkomzem and MOJ associated registration bodies (e.g., cadastre centers and BTIs)?

2. What concrete legal and regulatory measures need to be taken to organize and implement unified land and building registration, transaction, and record-keeping systems?

ULTI is correct in its assertion that its proposed policy measures to end systemic conflicts of interest and to enable real unification of land and building ownership registration, transaction, and record-keeping systems apply equally to all institutions engaged in the registration and protection of ownership rights to land and buildings. Hence, a solution once found, should create a win-win situation for all.

However, can ULTI or any donor project serve as the honest broker? The answer is “perhaps,” but the task will be difficult. For example, ULTI has taken a public position that the registry system should be removed from the jurisdiction of the SCLR and reassigned to the MOJ or ordered to reduce corruption and break up SCLR’s monopoly powers in land affairs. At least one government agency, presumably with its own self-serving agenda, made clear its view that ULTI and USAID should maintain neutrality and not be seen siding with one agency or another in areas of heated political debate.

# 4.0 LAND MARKET DEVELOPMENT AND CREDIT ACCESS

## 4.1 AGRARIAN STRUCTURE

Ukraine covers 60.3 million ha of land. Of this total, 69.2% (41.8 million ha) is agricultural land and 17.4% (10.47 million ha) is forest (Table 4.1).<sup>32</sup> The remaining 13.4% of the land area is classified for other uses, including “urbanized,” “scrub land,” “land reserve,” or unclassified. With regard to land use, most land is classified as “cultivated fields” (Table 4.2). This category refers to land with a capacity for cultivation as based on soil measurement and other physical factors.

The only category experiencing notable change over the period 1991–2005 is the percentage of “urban” land, which dropped from 5.8% to 4.1%, a seeming paradox given the tremendous growth of new housing around principal cities. However, because the data in Table 4.1 are administrative categories and not actual land use, it is difficult to read much of significance into this finding.

What is perhaps most remarkable about Ukraine’s land categorization, is the general observation that despite radical reforms in land ownership over the period 1991–2005, remarkably little seems to have changed whether in land structure (Table 4.1) or in land use (Table 4.2).

**TABLE 4.1: STRUCTURE OF THE LAND FUND BY USE**

Use Classification	In 1991		In 2005 (January 1)	
	Million ha (1)	% (2)	Million ha (3)	% (4)
Agricultural	42.0	69.6	41.76	69.2
Forest	10.2	16.9	10.47	17.4
Urbanized	3.5	5.8	2.45	4.1
Degraded scrub land	0.9	1.5	0.95	1.6
Open land reserve	1.3	2.2	1.05	1.7
Water	2.4	4.0	2.42	4.0
Unclassified	Not counted		1.22	2.0
Total Land Fund	60.32		60.32	

**TABLE 4.2: STRUCTURE OF AGRICULTURAL LAND USE**

Total Agricultural Land Fund Is 41.76 million ha		
Use classification	In 1991 (%)	In 2005 (%)
Cultivated fields	79.9	77.8
Pasture	12.4	13.2
Hayfields	5.2	5.8
Perennial orchards	2.5	2.2

Source: *DerzhKomZem, 2005*. Data reported for 1991 were revised to correct data inconsistencies based on extrapolations from 2005 data. Specifically, data for area in column (1) is inferred from percentages in column (2) multiplied by the Total Land Fund of 60.32 million ha.

<sup>32</sup> This figure includes polluted land covered with radioactive fallout from the Chernobyl disaster, dryland in need of irrigation but not because of lack of money, land that has reverted to wetlands because drainage systems have collapsed, and land taken out of production due to soil degradation. USAID estimates that approximately 30% of former agricultural land is no longer in use (Communication with Bohdan Chomiak, USAID, 20 April 2006).

## 4.2 PRIVATIZATION

According to data provided by the SCLR (*DerzhKomZem* 2005), a total of 6.9 million eligible land share holders received agricultural land plots totaling 28.1 million ha. As of May 1, 2005, 5.4 million citizens are reported to have transformed their land shares into State Acts, representing 78.3% of the total. Another 677,500 village residents are in the process of transforming their land shares into State Acts.

In addition to agricultural land, citizens were eligible to receive personal land holdings (Table 4.3). According to official figures, 11.7 million citizens hold these plots (86.4% of citizens eligible to claim a parcel) totaling 16.4 million plots and 3.7 million ha. The total number of State Acts issued so far for these parcels is 3.7 million out of the total of 11.7 million citizens. ULTI's two pilot programs partially focus on titling these holdings.<sup>33</sup>

The kolkhozes and state farms were initially transformed into cooperative agricultural enterprises in the first stage of privatization and, since 1999, have been further transformed into several types of commercial enterprises (see Table 4.4). This number now includes 22,000 enterprises, of which 4,600 enterprises are private or leased from the state, 7,300 are limited liability companies, 4,700 are private (independent) companies, 800 are joint stock companies, 1,800 are cooperatives, and 2,800 remain unclassified.

**TABLE 4.3: STRUCTURE OF PERSONAL PRIVATE LANDHOLDINGS (NON-AGRICULTURAL LAND) BY CITIZENS ON MAY 1, 2005**

Land use classification	Ha	%
For housing and servicing other buildings	1,386,400	37.4
For personal farm operations (family farms)	2,188,500	59.1
For gardens	127,600	3.4
For dachas and garages	2,900	0.1

**TABLE 4.4: STRUCTURE OF AGRARIAN ENTERPRISES (WITH STATUS OF COMMERCIAL FARM ENTITIES)**

	No.	% of Total
Private/leased enterprises	4,600	20.9
Enterprises with limited liability	7,300	33.2
Farmer (personal) companies	4,700	21.4
Stock companies	800	3.6
Cooperative farms	1,800	8.2
Other	2,800	12.7
<b>Total number of enterprises</b>	<b>22,000</b>	<b>100.0</b>

Source: *DerzhKomZem*, 2005

**TABLE 4.5: DIVISION OF TOTAL LAND FUND BY OWNERSHIP**

Private (citizen) ownership	30,619,000 ha	50.7%
State ownership	29,600,000 ha	49.1%
Juridical person ownership	134,600 ha	0.2%

**TABLE 4.6: DIVISION OF AGRICULTURAL "LAND FUND" BY OWNERSHIP**

Private (citizen) ownership	30,289,000 ha	72.5%
State ownership	11,414,800 ha	27.3%
Juridical person ownership	51,800 ha	0.1%

Source: *DerzhKomZem*, 2005

## 4.3 LAND IN STATE OWNERSHIP

The amount of land retained in state ownership is depicted in Table 4.5 for total land and Table 4.6 for agricultural land. As of May 1, 2005:

- State ownership of agricultural land totaled 11.4 million ha, or 27.3% of total agricultural land (41.76 million ha in Table 4.1). Private citizens controlled 30.3 million ha, or 72.5% of total agricultural land.
- In addition, the state controls 18,185,000 ha of non-agricultural land including forest, urban, transportation, and open lands.

<sup>33</sup> With regard to criticisms raised in section 5.0 by ULTI against the World Bank approach, which excludes these parcels, and recommendations in section 6.0 for expansion of systematic, comprehensive registration in three to four oblasts, this population and these holdings are the target beneficiaries.

## 4.4 FARM SIZE

Private independent farm operations—previously classified as peasant (family) farms—have grown in number to 46,400 juridical persons operating 3,416,900 ha of land (some owned by the proprietors and others leased). The average size of an independent farm operation is 74.7 ha in 2005 as a result of steady growth in farm size over the years. The range of average farm size moves from west to east (as a result of topography and climate conditions). Among the western oblasts, average farm size is 7 ha in Zakarpatia Oblast and 13 in Chernivisti Oblast. In the eastern oblasts, Lugansk has an average of 142 ha and farms in Kharkivskii average 137 ha in size.

**TABLE 4.7: NUMBER AND SIZE OF INDIVIDUAL PRIVATE FARMS**

Year	No. of Farms	Average Farm Size
1993	14,700	19.9
1994	27,700	20.2
1995	32,000	21.9
1996	34,800	22.
1997	35,400	23.6
1998	35,900	25.9
1999	35,500	29.0
2000	35,900	32.4
2001	38,400	56.1
2002	41,600	62.2
2003	43,000	65.6
2004	43,000	71.9
2005	46,400	74.7

Source: Center for Ukraine Land Reform, 2005

Two noteworthy observations stand out from Table 4.7:

- The number of private independent farms grew rapidly from 1993 to 1995, then stagnated through the late 1990s. Growth in number of farms accelerated again in 2001 and has grown steadily since.
- There has been steady growth in average farm size throughout the 1993–2005 period, with rapid growth picking up in the late 1990s.

These changes in farm size are important because they reflect the workings of Ukraine’s rural land market. The land market dynamics that led to farm size growth since 1993 cannot be precisely discerned from these aggregate data, but one can reasonably assume the following:

1. These changes have been recognized and recorded by the SCLR, thus they must involve legal transactions. If so, they do not involve sales of land, since the moratorium has been in place since 2001.
2. They show that there are avenues to transfer and consolidate land in Ukraine’s agricultural land through leases, exchanges, and inheritance.<sup>34</sup>
3. There are forces of supply and demand, which are working to consolidate land holdings and reduce problems of land fragmentation, although the area affected for independent farms is only 8.2% of total agricultural land.
4. The trend is likely to continue because independent farm size in the aggregate has still not reached its optimum, and based on the data presented, is somewhere in excess of 75 ha/farm.

## 4.5 LEASING OF LAND

On 1 July 2005, 19.0 million ha were given in lease under 4.8 million lease agreements. Of the total lease agreements, 2.5 million were land plots (shares) of pensioners. Of the total number of lease agreements (4.8 million), commercial farm enterprises (typically large farms) held 64.3% (Table 4.8).

<sup>34</sup> These “official” figures do not reflect transfers, which are accomplished by the grant of a power of attorney, a practice that is periodically the subject of prosecution actions, reported in the press.

As a rule, most leases are for multiple years in duration (see Table 4.9). Of the total number of leases, 81.6% provide for rent payment in-kind, 12.8% provide for payments in cash, and 5.6% anticipate payment in the form of services. Total rent payments are estimated at 2.2 billion UAH equivalent value in 2003, and 2.3 billion UAH in 2005. The average value of rent is 122.6 UAH/ha for all of Ukraine, but ranges from a low of 65.4 and 64.6 UAH/ha in Rivne and Zhitomer Oblasts to a high of 140.8 and 153.3 UAH/ha in Kirovograd and in Cherkassy, respectively.

**TABLE 4.8: LAND LEASES TO VARIOUS TYPE**

Commercial farm enterprises	64.3%
Independent (family) farms	9.4%
Other types of enterprises	26.3%

**TABLE 4.9: LEASE DURATION**

1-3 years	23.3%
4-5 years	62.5%
6-10 years	11.6%
More than 10 years	2.5%

Source: Center for Ukraine Land Reform, 2005

## 4.6 LAND SALES AND TRANSFERS

Since land shares were first issued in 1994, an estimated 961,557 shares and parcels have changed hands for various reasons (Table 4.10), totaling 14.2% of the total number of shares (7 million). The vast majority of the land turnover involve inheritances (88.5%) and *inter vivos* transfers (9.9%). For a population that is elderly and aging, this figure represents a tiny percentage, and implies that a large number of transactions are taking place in the grey economy without re-issuance of the State Acts.

**TABLE 4.10: AGRICULTURAL LAND TURNOVER**

Form of transfer	Land shares	%
Inheritance	850,638	88.5
Donation ( <i>inter vivos</i> )	95,483	9.9
Sale	13,049	1.4
Exchange	2,387	0.2

**TABLE 4.11: SALES PER YEAR BY HECTARES AND AVERAGE PRICE PER HECTARE, NON AGRICULTURAL LAND**

	1 October 2000	1 January 2001	1 July 2001	1 Dec. 2002	1 May 2004	1 July 2005
hectares	54,400	59,400	64,200	89,900	114,300	105,600
Price/ha	1160	1486	1811	3733	6841	10,617

Source: Center for Ukraine Land Reform, 2005

The moratorium on sales of agricultural land prevents legal buying and selling. However, non-agricultural land can be bought and sold. During the first half of 2005, 2,718 land parcels totaling 1,425.3 ha of non-agricultural designation were sold at a total sum of 224,0 million UAH.

For the whole period of land reform, in the “first” market of paid-for transfers into private ownership, 23,137 parcels with area of 105,600 ha have been sold for the total sum of 1,121,270,000 UAH. These parcels, successfully sold, were from a group of 24,148 parcels prepared for sale (auction). The most active non-agricultural land sales have been in the west: 2,649 parcels in Lviv Oblast, 1,935 in Volyn, 1,120 in Rivne, and 1,114 in Zakarpattia. In two oblasts of the east there have been significant numbers of sales—1,574 in Lugansk and 1,317 in Donetsk. The fewest sales have been in the central oblasts. Data on sales of non-agricultural land are reported in Table 4.11 for the year prior to the dates indicated

## 4.7 INVENTORYING AND MONETARY VALUATION OF LAND

The amount of land of non-agricultural designation outside the borders of population centers (cities, towns, villages) is 11.1 million ha. By 1 July 2005, 54% of this land had been subject to inventorization,

or about 6 million ha. Outside the borders of population centers, only 94,680 ha have been subject to monetary valuation or 0.85% of the total.

Within the borders of population centers, 3,617,000 ha have been subject to inventorization or about 50.3% of the total. Also within these centers (of which there are 29,922), monetary valuation has been carried out in 17,378 cities, towns, and villages. From the total of 7,293,200 ha of land within these population centers, monetary valuation has been carried out on 4,666,700 ha—64%. Kiev, Sevastopol, and Donetsk have completed the valuation of 100% of their land inventories; other cities have substantial percentages completed; and towns and villages have small amounts done.

The importance of inventorization and monetary valuation relates to the ability of the municipal administrations to collect revenues for land, which consist of rent payments for land not privatized (leased by users from the state) and tax payments by persons who own private land or enterprises which hold state land by perpetual use. The monetary valuation consists of the assignment of UAH amounts to the relative value calculations made by the process of inventorying, which provides the qualitative data—size, location, level of infrastructure services, distance from city center, and other factors. The monetary valuation weights all the factors and assigns the monetary value to the weighted total for each parcel. As noted in Table 4.12, total tax and rent revenue has doubled over the six-year period, 1999–2004.

Year	UAH million
1999	1,104
2000	1,375
2001	1,618
2002	1,805
2003	2,032
2004	2,251

*Source: Center for Ukraine Land Reform, 2005*

The total normative value of agricultural land as calculated on 1 January 2004 was 365,198 million UAH, giving an average value of 8,733.2 UAH/ha for agricultural land and 9,204.8 UAH/ha of cultivated land. Some regional estimates are (in UAH/ha): 11,653.6 in Cherkasy Oblast, 10,814.0 in Crimea Republic, 10,201.4 in Donetsk Oblast, 10,158.3 in Poltava Oblast, and 10,127.0 in Kherson Oblast.

As Table 4.11 showed, the price being paid for non-agricultural land is surprisingly nearly identical with the normative value of agricultural land set by government on a per-hectare basis. As the value of urban land can be expected to exceed the value of agricultural land under prevailing land-use conditions, this perverse outcome suggests two factors at play: (1) the low residual value of buildings and property in the real estate market outside the main urban centers and (2) the gross overvaluation of normative rates used to monetize the value of agricultural land. This calculation runs the risk of both stifling the land market and increasing rental/tax payments beyond the ability to pay.<sup>35</sup>

<sup>35</sup> There are a number of ways to assess the value of property: (1) market value based on comparative market prices; (2) valuation based on present value of future economic profit; or (3) valuation based on construction costs (see for instance Peter Dale, and John McLaughlin, 2003, *Land Administration*). Information on the methodologies involved in implementing these and other approaches is large, and would be excessive if included in the report.

The essence of the problem is that land in a market economy is worth not what government says it is worth, but rather what someone is willing to pay for it. In the absence of an active land and property market, this is difficult to determine. Even if the land market is not robust and land prices are near zero, this does not mean that the land and property have no value, for the poor without the ability to pay still find utility in using the land and property and deriving livelihood from it. However, for purposes of valuation that affect the viability of commercial transactions (e.g., land valuations to serve as collateral for bank credit), “utility” alone does not suffice. For the value to the banker is not the value that the current holder places in the property, but rather, what someone else is willing to pay for it if foreclosed on. Neither does it suffice when the buyer and seller have negotiated a price of \$50/parcel based on what the buyer is willing to pay and the seller is willing to accept when the SCLR based on normative valuations asserts that the price should rather be \$200/parcel. The risk at present is either that the calculation based on normative value no longer has sufficient meaning to justify the costs that go into collecting and maintaining the data, the appearance that the SCLR wants to regulate land transactions through its approval of transfers (by assessing negotiated prices) thus unnecessarily increasing transaction costs, and/or that the SCLR imposes a property tax on the basis of \$200/parcel when the profitability of the parcel in the eyes of buyer and seller is less, leading to excessive taxation.

## 4.8 IMPACT OF LAND TITLING ON LAND RELATIONS AND RURAL FINANCE

The knowledge base on impact reviewed by the evaluation team is fragmented and superficial; this situation derives from a gross under-investment in research that contains rigor in methodology and data collection, and scholarship in analysis. A number of general statements on impact with regard to land tenure relations are possible as indicated in Box D.

### Box D: Review of Impact on Land Titling and Land Reform

**Farm Income and Profitability.** Sixty-two (62)% of farm enterprises surveyed by IFC (2005) either lost money or broke even in 2004 compared with 58% in 2001.

**Land Purchase** (Chemonics International 2002). In contrast with previous surveys by Chemonics (1999), International Finance Corporation (1999-2000), MINSTAT (2000-2002), International Private Capital Task Force Review, and BIZPRO (1999-2001) which were cautious about urban enterprise profits and economic growth, this study demonstrated clear potential for urban land market development. ULTI and its predecessor project in four years were able to generate 6,000 transactions generating more than \$30 million for local budgets. As indicated in Section 3.2, the municipalities concerned over the life of ULTI have now gained over \$100 million in revenue from sales.

**Lessor Income** (Rolfes 2003). Land reform has converted the majority of people working and living on farm enterprises during the pre-reform era into landholders, the majority of which are now lessors leasing land back to the enterprise. Based on a statistical survey administered to a random sample of 800 landholders in eight oblasts of Ukraine, the study reports that “State Act owners receive 40% more gross income than do Land Share Certificate holders, or 32% more income per hectare.” However, when the sample of State Act owners were asked to estimate how much more income they received compared with their previous status as land share holders, 46% reported no increase in income, 41% reported a 0-10% increase, and 13% reported a 10-50% increase. Two observations are noteworthy:

1. The fact that incomes of State Act holders are higher than the Land Share Certificate group, but are not measurably different within the State Act group between pre- and post-institutional change, suggests that it is differences in socio-economic status between the two groups, not institutional change, that is causing the income difference.
2. Even if institutional change is the cause, the increase in incomes come about from more favorable terms in rental income obtained from lease contracts, not from output obtained from independent farm production. No doubt, the substantial negotiations that took place in the community leading up to the issuance of State Acts may have had the effect of increasing transparency, rents, and enforceability, however given the pervasiveness of land conflict over leasing agreements reported by Legal Aid Center lawyers visited, and the land conflicts reported in Table 3.1, the sustainability of these income gains is still subject to question and merits further monitoring.

**Lessee Problems with Leasing Arrangements (IFC 2005).** Compared with 2001, 2002, and 2003 when 13%, 21%, and 27% of independent private farms and enterprises reported problems with leasing of land plots from lessors, this percentage fell to 14% in 2004. It further notes that “...Kherson...oblast demonstrated...improved...results with 90.9%...of respondents there reporting they face absolutely no problems with renting of plots. This finding contrasts with the Evaluation Team’s discussion with the Legal Aid Center lawyers in Kherson who report that the majority of their time is being spent working with Lessors on negotiating lease agreements, securing rent payments, and getting them registered.

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Normative valuations are thus based on both physical characteristics that define land quality and monetary weights that convert land quality characteristics into normative value. In the event that the monetary weights are carefully adjusted for inflation and comparative market value there isn’t a problem. The problem arises when normative land values greatly diverge from the price offered in the market place, a situation that until recently prevailed. However, in urban and peri-urban areas, there is evidence of convergence as land values based on land market value are converging toward land valuations based on normative values. This should enable the SCLR in coming years to drop the normative value calculations which are costly to maintain. However, in rural areas, the problem will remain until market prices become more robust.

Nevertheless, it has been difficult to get a clear read on empirical findings. Note, for example, in Box D the assertion of Rolfes (2003) that lessors' income from leasing agreements increased 32% with issuance of State Acts and the International Finance Corporation's (IFC) findings (2005) that problems with rental agreements had significantly declined suggesting that land titling is having a positive impact. However, while the IFC reported that over 90% of respondents in Kherson Oblast face absolutely no problems with renting of plots (Box C), ULTI's LAC office lawyers in Kherson reported spending a preponderance of their time on conflicts surrounding leasing and rental agreements. Box D concludes with a statement that the increased level of rents may not be sustainable in the face of pervasiveness of lease disputes, but ULTI argues that this finding is overstated.<sup>36</sup>

With respect to finance, the IFC (2005, p.25) reports:

[F]arm savings constitute the principal source of funding... [The] second most common source in 2004 was commercial bank loans with partial rebate of interest (18% of the overall number of respondents). [The]...third most frequently cited source of financing by agribusinesses was loans provided by individuals (12% of surveyed farms).

Has land titling led to a significant increase in credit expansion and in rural agricultural lending? The team did not make as much headway as it would have liked in this area, but there is also the sense that there is not much headway to make because of the weak land and rural financial market linkages that still prevail throughout much of Ukraine:

- Outside of land and real estate markets working in principal cities, the land market in rural areas is very weak.
- Enterprises that still manage agricultural production, input purchases, and supply and distribution of agricultural commodities cannot own agricultural land or leverage it for collateral.
- For the majority of rural landowners locked into leases, their land is of no value for agricultural finance as land values are low and the lending will not serve the financing needs of the enterprise as lessee that engages in production.
- There are examples of firms and enterprises buying agricultural land using lender finance, but these transactions typically involve a two-stage process: (1) applying for approvals to convert the status of agricultural land into residential or commercial land (allegedly with bribes paid) and (2) once converted, using land as collateral for construction loans.<sup>37</sup>
- For private independent farmers who can own land, a combination of factors detract from the suitability of using their land as collateral—weak profitability, the moratorium on sale of agricultural land, low land values that will discount land's collateral value even if the moratorium were lifted, a significant level of institutional inefficiency in transacting land and property in rural areas, and consequently high lender costs in foreclosure.

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<sup>36</sup> According to ULTI (19 April 2006 communication), "although there is a high volume of disputes relate to enforcement of lease agreements, the ULTI Legal Aid Centers only see the problem cases and do not necessarily come into contact with leases that are functioning without problem. It is equally reasonable to conclude that the rent gains are sustainable based on the fact that increases in rents appear to be significant in spite of widespread attempts by lessees to under perform on their obligations. One conscious objective of the legal aid centers is to make all villagers aware of the successful enforcement of lease agreements, thereby raising expectations among the general rural population that parties to lease agreements should feel bound to observe the terms of the lease as written. The hope and expectation is that the legal and moral environment in which lease relations function will improve over time, further sustaining the rent gains."

<sup>37</sup> Anonymous conversation with a commercial bank.

Not surprisingly, the feasibility of using land as collateral to leverage agricultural finance has not been realized. Nevertheless, there has been growth in agricultural credit. Over the period 2000–2004, total lending (agricultural lending) to the agro-industrial complex grew from 1.8 (0.45) to 7.7 (2.9) billion UAH,<sup>38</sup> but nearly half of the 2004 total lending remained subsidized (3.2 billion UAH).<sup>39</sup> However, much of this credit expansion has gone to larger-scale enterprises and not to private individual farmers. According to USAID (2005, p. 32):

Since 2000, the number of farm enterprises and household plots borrowing from lending institutions increased almost three times, among private farmers four times and household plots another threefold. The share of individual farmers and household plots in the overall amount of borrowing, however, remains insignificant, i.e., only 6 percent and 0.2 percent, respectively. (World Bank/Organization for Economic Cooperation and Development [OECD] Report).

USAID Development Credit Authority loan guarantees offer potential support in this area, but, to date, the progress has been modest.<sup>40</sup>

An even more recent study was undertaken by the U.N. Food and Agriculture Organization (FAO) that examined shifts in land and farm policy after 2000 (Lerman and Sedik, 2006). For the most part, the study lauds the accomplishments of the private individual farm in the Ukraine and the establishment of markets. These findings suggest that the combined efforts of the GoU, USAID, and other donors have had a significant impact on reversing the economic regress of the 1990s and laying the foundation for future growth.

But, the agrarian transition is also far from completed. Significant problems remain that are echoed in the previous analysis—the number of private farms in Ukraine is leveling off and has not been able to replace corporate farming altogether despite the latter’s inefficiency. Many rural families are not able to yet extricate themselves from the political power of corporate farming in rural areas, while those that do become private individual farms are yet constrained from achieving their full-scale economies.

As argued elsewhere in this paper, Ukraine is mid-stream in its land reform program, having achieved significant milestones in issuing land shares and State acts, but the present dual system of civil law and the Land Fund will require ongoing attention under a fourth stage of land reform. In addition, as Lerman and Sedik point out (see Box E), there is also need to work on broadening access of all producers to economic resources and opportunities in order to narrow the duality in agrarian structure that has evolved.

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<sup>38</sup> More than 60% of the credit was up to one year in duration and used for operational cost. Nearly 30% of the loans were up to a three-year term and were used to purchase mainly machinery and equipment. The average interest rate used in 2005 was 19%. It is estimated that Ukrainian agriculture needs about UAH 10 billion of operational costs for one crop season. Source: Personal communications with Oleksandr Muliar, USAID, February 2006.

<sup>39</sup> In 2005, the GoU allocated UAH 350 million to subsidize the interest rate on loans given to the agro-industrial complex. Source: Personal commentary offered by Oleksandr Muliar, USAID, 2006.

<sup>40</sup> Cumulatively through 2004, Nadra Bank has disbursed 130 loans to small farmers totaling \$1.7 million.

## Box E: Shifts in Land and Farm Policy after 2000

### Positive changes since 2000:

1. The 1990 decree was a watershed for land ownership and farm holdings in Ukraine. The collectivized agriculture that existed prior to reforms has evolved into an agriculture characterized by a clear dominance of individual farms that controls 40% of agricultural land and 70% of agricultural output. Within the individual sector, the main contribution to production is from household plots.
2. Total farm income and income/capita increase with farm size in the individual farming sector. Average farm size has increased from 25–30 ha in 1998 to 70–80 ha in 2003–2004.
3. Perceptions of well-being in the study were categorized as low (subsistence); medium (family income sufficient for basic needs), and comfortable (family in addition is able to afford purchase of durables and does not experience material difficulties). Individual farmers achieved a higher well-being than the families of other rural households. Family well-being, like family income, also increases with the area of land.
4. Agricultural production growth has been spectacular after 2000 primarily due to growth of individual farms.<sup>1</sup>
5. The move toward private farming has brought many features of normal market-oriented agriculture to Ukraine. In particular, the portion of the rural population connected to the corporate farm in rural areas has fallen, household plots and corporate farms are more and more connected by paid service relations, most social services have been transferred to local governments, and agricultural inputs are widely available and used by all types of farms.
6. Land leasing is widespread. In household plots, the land used for farming is 36% of the family's total land holdings and the rest is leased out. Peasant farmers use all their available land and tend to lease in land to augment their holdings, while corporate farms rely nearly entirely on land leased from individuals (members, shareholders, and rural landowners).
7. Commercial credit: 63% of corporate farm managers and 34% of peasant farmers report actually borrowing, although only 15% of rural households report doing so [suggesting that credit use is highly correlated with urban infrastructure]. Access to credit has improved over time, with banks and input suppliers being the main sources.
8. Private trade has replaced state supply and procurement. Managers of corporate farms are far less constrained by the directives of regional authorities and have more freedom in decision making.

### Despite these positives, Ukraine still faces appreciable challenges:

1. Families in rural areas have little non-farm income.
2. Ukrainian farms have significant problems with competitiveness compared with the new EU countries. Three-fifths of agricultural land is still in corporate farms, which have significantly lower land productivity than household farms, and many are still not profitable.
3. Agrarian structure in Ukraine still manifests strong duality manifested by lack of mid-sized farms. Experience has shown that the most viable farms internationally are not the smallest (< 5 ha) or large corporate farms (>1,000 ha) but mid-sized farms 15–300 ha in size.
4. The future of the Ukrainian village remains bleak. Children want to leave; the Ukrainian village is in danger of being left with land but without a generation of farmers to farm it.

Source: Lerman, Zvi and David Sedik, *Ukraine after 2000: A Fundamental Change in Land and Farm Policy*, 5 June 2006.

<sup>1</sup> There appears to be an error in the paper. While the authors conclude that constant agricultural output from both individual and corporate farms made a spectacular recovery since 1999, the data presented in their Figure 5 indicate that the dramatic growth in Gross Agricultural Product of 45% took place for only individual farms. Growth in income for the corporate sector was much more modest (11% between 1999 and 2004). In addition, the fact that the income growth curves for all farms tracks the corporate sector demonstrates the dominance of the corporate sector to total agricultural growth.

## 4.9 ISSUES AND ASSESSMENT

**Issue 1: Performance of the agricultural sector has improved since the inception of land privatization, but attribution of benefits is extremely difficult because of the economy's tendency to bounce back after the severe economic shocks of the 1990s and the multiplicity of reforms undertaken by GoU, USAID, and other donors.**

Performance of the agricultural sector has improved since the inception of land privatization although performance has not yet achieved production levels of the late Soviet Period. For example,<sup>41</sup>

- Purchases of buildings, machinery, and equipment for agricultural production had practically ceased in the late nineties. In 1999, capital expenditures represented less than 5% of farm expenditures. Following the introduction of the first real agricultural reforms (December 1999–March 2000), capital purchases by the year 2005 represented a third of farm expenditures. Also, the total volume of farm expenditures rose from roughly \$1 billion in 1999 to over \$3 billion in 2005.
- Cereal production has risen from 25 million metric tons in 1999 to approximately 38 million in 2005. While less than the 52 million metric tons in 1991, it is still impressive because there is 25–30% less land under production, subsidies are now considered neutral to negative by OECD (when they once represented 128% of the cost of production), and irrigated cereal production is no longer practiced.
- Given that the entire economy collapsed by over 50% from 1990 to 1999, agriculture has recovered to approximately 75% of 1990 levels. In five years, they have managed roughly 5% real growth annually.
- Access to food has increased significantly because waste is no longer the norm. Between 1990 and 1995, stores were bare of food; today that is no longer the case. In rural areas bread was delivered once a week, and today it can be purchased every daily without interruptions in supply. The change is significant and started after monetary stabilization (September 1995) and then took off after the incomplete land reform started (December 1999).

Did land privatization have a positive impact on these outcomes? The answer is, “certainly.” Can we say that the impact is big or small? The answer is, “no, but meaningful.” How much can be attributed to land privatization versus other sector and/or macroeconomic reforms? The answer is, “not much singularly,” but land privatization complemented by a complex of other agricultural policy and factor market reforms enabled important impacts, however difficult attribution to land privatization may be.

Following the severe economic shocks that accompanied the breakup of the Former Soviet Union (FSU), a rebound in the economy would be expected regardless of policy change as the severe economic dislocations and disruptions began to ease. In addition, the Ukraine’s aggregate production function embodies a complex set of agricultural relations and constraints that have been unequally affected by multiple policy interventions. Simply put, a lot has happened with policy reform and land privatization since the 1990s, and aggregate performance has improved, but tracing the causal linkages is particularly difficult in Ukraine’s case for reasons that the team does not entirely understand.

For example, the tendency is to compare Ukraine with the privatized economies of Eastern Europe, but if one looks further east to Kyrgyzstan, it is also noteworthy that economic growth there has reclaimed about 75% of the agricultural performance it lost upon the break-up of the FSU (about the same as Ukraine). This has been the case despite land reforms that are more advanced than in the Ukraine, and agricultural markets (and reforms) that are less advanced and developed. However, unlike Ukraine, studies of total factor productivity in Kyrgyzstan (Roth, Cormier, Mogilevsky, and Mazvimavi, 2004) have helped to reveal the following:

- Over the period 1999–2001, the Kyrgyz economy showed a very dynamic adjustment of farms and enterprises to harsh economic conditions as nuclear households joined or left enterprises, land was rented in or out, smaller enterprises consolidated in name, while larger enterprises fragmented. In addition, growth and dynamics were not uniform among farm sizes or farm typologies.

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<sup>41</sup> Based on communication with Bohdan Chomiak, USAID, 7 April 2006.

- Among farms categorized as “chronically weak” or “regressive” in terms of changes in net returns per hectare over the period 1999–2001 (about half in number), they were located throughout Kyrgyzstan, but were more frequent in Chui (the least progressive Oblast in terms of land reform and privatization), had consistently low returns to land and labor, were shedding workers, and were exhibiting minimal land size adjustments.
- Among farms categorized as “progressive” or “steadfast” (also about half in number), they tended to also be located throughout Kyrgyzstan but were more frequent in Osh Oblast where reforms were implemented aggressively and early-on, showed solid improvement in returns to land and labor, and showed general downsizing in terms of size of land holdings over time.
- However, even among the best performing enterprises, agricultural growth or performance is at best modest, reflecting ongoing adjustments in factor (land, labor, capital) proportions in face of weak markets and continued economic uncertainty.

Coming back to Ukraine, what do we know about the nature of reforms in terms of who has benefited the most or the least, and what changes in agrarian structure and farm dynamics are occurring that are improving agricultural performance? Unfortunately, on the basis of the documentation reviewed by the team, the evidence is rather scanty, as noted by the review of literature in Box D. The growth in number of private farms is noteworthy, but there is little that can be said about the characterization of these enterprises in terms of their size, application of technology, profitability, or dynamics. Growth in the number and acreage of private farms is the result of both changes in the enterprises themselves (spinoffs and consolidations) as well as improvements in land rental contracts, both of which have been enabled by privatization. However, overall it is difficult to move beyond generalization.

What can be reasonably concluded is that privatization, combined with other reforms, has had a positive influence on agricultural performance; land reform and privatization in Ukraine have a long way to go; the benefits of the reforms passed in the 1990s will continue to accrue and accumulate with the passage of time; and the multiplicity of reforms combined with the complexity of Ukraine’s economy will continue to hamper and confound efforts at attribution requiring ever more sophisticated methods of measurement and causality to untangle.

As noted in section 2.0, Ukraine is working its way through the “third stage of land reform.” Beyond this, there will be a “fourth stage dealing with legal consolidation and removing remaining limitations on ownership, and beyond even this will be yet more stages dealing with agrarian reform that strengthen market integration (e.g., land and financial markets, and input and output markets). The real benefits of land reform will be demonstrated once real rights are demonstrated under the fourth stage of land reform, and real economic opportunity is provided under the fifth and subsequent stages.

***Issue 2: Land and agrarian reform in the Ukraine has not yet been fully achieved measured by people’s legal and economic freedom to exercise their rights in land and property.***

Prior to the land reform, workers and pensioners on kolkhozes and state farms received wages in cash and in-kind, as well as many social service benefits. With land reform, workers and pensioners received land shares and now State Acts, but the majority continue to lease land back to the enterprise for cash and in-kind payments. As of 2005, a total of 6.9 million eligible land share holders received agricultural land plots totaling 28.1 million ha, but 19.0 million ha were being leased back to enterprises, the majority in the form of leases four to five years or longer in duration (Table 4.9). There of course has been growth in the number and area of private independent farms, but these represent only 3.4 million ha and 42,000 families or small groups of independent farmers.

Thus two-thirds of the private landholders in Ukraine remain locked into agrarian relations that are dependent on large farms and enterprises. In addition, while former workers and pensioners on large farms who once earned their livelihoods through wage payments now have land entitlements for which they re-

ceive lease payments, their structural relations with farm enterprises are arguably little different than a decade ago. This situation is consistent with Ukraine's agricultural policy, which promotes large-scale commercial agriculture and views land ownership as a social security mechanism.<sup>42</sup>

The problem with this reasoning is that exercise of legal rights in promoting a land market is placed into a perpetual wrestling match with large-scale enterprises that benefit from the status quo. Arguably, land and agrarian reform is accomplished when the majority of people have the legal and economic freedom to exercise their rights. However, in the context of Ukraine today, there is good reason to doubt whether these conditions are yet present on sufficient scale:

- In most villages there are not competing farm enterprises (small or large) that are seeking to rent-in land.
- Even if a pensioner or small landholder is able to choose to create an independent holding, the 85 UAH (to as high as 150 UAH according to anecdotal evidence) cost that must be paid to retitle, re-issue, and re-register the State Act can be a serious constraint. While peasant landholders now have legal rights of ownership, it is difficult to argue that they have economic freedom of choice in exercising their rights to transfer the parcel to whomever they want. For someone with the wherewithal and economic means, then the resurvey and titling costs can be paid for, but this is land reform for the well-to-do, not the poor and disadvantaged.
- It may be argued that, for pensioners who lack productive labor, their best choice is to continue renting out land to farm enterprises; for some, this is certainly sensible. However, as illustrated in Table 3.1 and section 3.0, and reaffirmed in conversations with the LACs visited by the evaluation team, an inordinate amount of time and effort is being spent by LAC lawyers on dealing with the conflict that surround these arrangements.
- From the standpoint of enterprises, similar economic constraints are found, because they cannot own agricultural land or be formed on the basis of a land contribution into the Land Fund, denying them the ability to use land assets as collateral for credit.
- With respect to urban land, other constraints hinder development and investment. For the mayors of cities, they neither have effective legal or economic freedom to act. Cities have the right to sell non-agricultural land, but only within the context of a complex system of planning and control that results in highly risky development projects. Land classified for urban development cannot be bought outright by an investor (developer)—instead, it must be acquired from city ownership in a procedure that links the issuance of planning and project design permits with temporary rights to occupy the land. The ownership or long-term lease is not given until the end of construction—thus, use of the land as collateral for a construction loan is impossible. Other planning requirements, including the necessity of cities to finalize their municipal boundaries and create general plans, also hinder the ability of cities to choose sites for development and offer them (by tender or auction) for development.

There are of course other examples where land reform has worked and is working, but the above examples also reinforce the view that Ukraine is, at best, midway through the process of meaningful land and agrarian reform.

**Issue 3: *ULTI's approach to land survey without establishing boundary markers to delineate individual parcels is more cost effective than the World Bank approach, while the latter is technically superior, but only marginally.***

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<sup>42</sup> Arguments that pensioners living on these farms benefit from pension income earned on lease agreements lends credence to the argument that this arrangement should be maintained.

The ability of a peasant landowner to choose to farm independently or transfer his/her land is also dependent on the ability to identify the land on the ground. Thus, the issue arises of whether to place survey pegs in the process of forming the parcel and issuing the State Act. According to the World Bank (2003, p. 23):

There are two schools of thought on whether parcels should be demarcated...at the time of allocation. The first...claims that there is a significant psychological impact from new landowners seeing exactly where their land parcel is located and that the demarcation process identifies errors or practical problems in the allocation plans and corrects them before the allocation process is completed. If the boundary marker is maintained, it also saves the cost of hiring a surveyor to return to...individually demarcate the field if the owner wants to begin farming the parcel or rent it to a different renter. Avoiding the high cost of individual survey is one of the primary reasons for carrying out systematic surveys. The second approach claims that putting pegs in the ground to mark parcels is a waste of time and money because most of the land is leased out in large blocks anyway and the pegs are ploughed over in the first season. Based on...problems that have arisen in Moldova and...Ukraine with the second approach, particularly errors in allocation plans and boundary disputes which only show up years later, the technical specification for land survey in the Procedure Manual [to be used under the World Bank loan]...include physical demarcation of all parcels.

The World Bank has elected to follow the first approach in its programming of funds, whereas USAID has elected to follow the second approach. Both have implications for cost, tenure security, and land market development.

In the first approach, pegging is not costless, and surveying each new parcel and marking with boundary markers impose a significant cost that the GoU ultimately must pay back because the funding involves a loan (not a grant) mechanism. As indicated above, a significant percentage of the agricultural land is still locked into long-term contracts between lessors and the farm enterprise. The land rented-in by the farm enterprise is cultivated as fields much as it has always done in the past. In this system of agrarian contracts and large-scale mechanized land use, the rigorous survey and placement of markers by surveyors would be undone within one season. Should the exercise be costless to the GoU, this would not be an issue, but at costs of \$3 to \$7/parcel (hypothetically), this effort imposes a waste of resources that the GoU must ultimately bear.

In the second approach, consider the case of an individual wanting either to cultivate the parcel him- or herself or to lease that parcel out to a neighbor or outsider. Knowing that the plot on the cadastre map is accurate within a meter in ULTI's approach is of little value if the landholder cannot easily and without cost connect the lines on the map to precise boundaries on the ground. Both the landholder and the new lessee will want to avoid disputes with neighbors and authorities when doing the plough lines, but will also want to cultivate the full land that is their due. For many landholders wanting to cease leasing arrangements with the large farm and set out on their own, the costs of independent survey to demarcate and mark the boundaries of a parcel are formidable.

***Issue 4: What is more appropriate than technical superiority is the prevailing regulatory framework governing administration of the Land Fund that influences private incentives to survey and register transactions in first and secondary transactions.***

To a considerable extent, neither of the approaches highlighted under Issue 2 is right or wrong but rather the utility of each is highly dependent on the legal and land policy environment that govern the execution of land rights. The answer to the problem of “pegging” versus “not pegging” cannot be derived from the technical field of survey itself, but in addition requires understanding of the legal and regulatory framework that impose costs on transactions, and the economic realities that give these regulations meaning and content. For example,

1. If the agricultural policy remains geared to supporting large-scale, commercial, mechanized agriculture, pegging of individual parcels is at best a very costly exercise as the majority of landholders will continue their leasing arrangements with enterprises.

2. If the agricultural policy is instead reoriented to giving individual landholders legal and economic freedom to exercise their rights of exiting current leases with large-scale enterprises, pegging with boundary markers makes sense. Because the timing of these transactions may not take place for years, however, what is needed is “affordable” transactions and low-cost surveying on demand.<sup>43</sup>
3. If the costs of transacting a parcel and the costs of follow-up independent survey are low (approaching zero), ULTI’s approach would make the most sense, since any lessor at a future date deciding to exit and set out on his or her own would have the means to do so.
4. If transaction costs are high, neither precise nor general boundary approaches would facilitate development of the land market for the majority of people, although the well-to-do would have more favorable standing than the poor.

It is in the situation where transaction costs are low and independent survey costs are high that the World Bank approach offers benefits, and only then in the event that pegging survives the plowing season. Under the current situation of large-scale agriculture and the majority of parcels locked into long-term leasing agreements with these farms, the general boundary approach employed by ULTI is “weakly” preferred. However, the general boundary approach would be considerably strengthened if mechanisms are put in place that reduce transaction costs involved in transacting, issuing, and re-registering the State Act.

**Issue 5: *ULTI’s and the GoU’s accomplishments will have only a modest and gradual effect on development of the land market in rural areas until encumbrances imposed by administration of the Land Fund are mitigated.***

The steps involved in obtaining and registering a State Act are laid out in Annex 3; not unexpectedly, the fees and costs involved are substantial. Without a project like ULTI to facilitate, the new landholder must pass through a labyrinth of bureaucracy replete with legal fees, rent-seeking by officials, high-priced contracting firms, and potential corruption.

Consider in addition the steps required to transfer a State Act that has already been issued and registered (see Box F summarized from section 2.2). The process involved is no less burdensome. In addition—and what is most worrisome for the land market—is that the procedures involved create space for the state to influence the type of land use, appropriateness of the seller, reasonableness of the price, and, in effect, whether the transaction ought to take place. Whether or not these powers are acted on, there is risk in rural areas where enterprises seek to protect the land they rent-in, or officials demand fees for services provided, that the transaction is held up or not processed for one reason or the other.

#### Box F: Transactions Involving State Acts

1. Landholder must obtain Right to Transfer the Land Parcel document from the SCLR.
2. Notary must approve subject to review and verification of substantiating documents and capacity of the seller in intended land use.
3. Notary must draft and certify the transaction document.
4. If land contains a building, authorization and substantiating documentation must be obtained from BTI.
5. Notary directs the transaction documents to the MoJ.
6. If the transaction creates a new owner, the person must return to the Cadastre Center to obtain a new State Act. If instead the transaction results in a lease, this is registered separately.
7. The Cadastre Center refers the file back to the SCLR which may require new technical documentation – survey, plans, valuation, and environmental measurement.
8. New file is created.
9. New State Act is Issued.
10. New State Act is registered.

<sup>43</sup> This is true for both precision” and general boundary approaches, for once pegged and ploughed under, the landholder would still require another survey to demarcate his holdings.

**Issue 6: *ULTI and GoU accomplishments have not yet materially helped contribute to the development of a land market in urban or rural areas.***

Within the framework of conditions laid out at the outset of section 2.1 that are essential to the emergence of land and property markets, only two (or three) of the seven conditions have been met. Unfortunately, the team was unable to obtain detailed information on land markets and land valuations, but some general observations are possible:

- Land sales in urban and peri-urban areas of principal cities are proceeding at a brisk pace. Unfortunately, data that used to be collected by the enterprise centers under the former USAID project are no longer analyzed or reported.
- There are a large number of anecdotal reports of large commercial interests obtaining farms many thousands of hectares in size. The reports sound sensible but the evaluation team was unable to discern the contractual conditions under which these transactions are taking place.<sup>44</sup>
- Land sales in small cities are reportedly few in number and constrained by the complex requirements of planning, project permitting, the setting of municipal boundaries, and inventorying of state- and municipal-owned parcels.
- Private farms have been growing in size due to the operation of the land market (see Table 4.5), but surprisingly the number of farms in 2005 is only about one-third larger than the number a decade earlier (34,800). If indeed the land market was successful in spinning off new farms from old enterprises, this figure appears stunted.<sup>45</sup>
- A substantial number of transactions are taking place in the form of inheritances as the elderly population bequeath their land assets (Table 4.10). As Table 3.1 indicates, these transactions are far from trouble-free.

**Issue 7: *Lifting the moratorium on agricultural sales will have an effect, but only on the fringes of agricultural land and only for the well-to-do who can navigate the Land Fund bureaucracy.***

When the moratorium is lifted, it is likely that its effects will be seen at the fringe of agricultural areas in anticipation of the conversion of agricultural land into urban or industrial uses. If restrictions on enterprise ownership of land are lifted (or long-term leases are deemed secure), one will likely see the beginnings of old farm enterprises being bought out, or new one's consolidating land from those currently leasing. This trend toward large-scale enterprises, however, will depend less on efficiencies in capital ownership than the ability to navigate and manage transactions through the Land Fund bureaucracy.

There is also concern that the distributional gains from land reform will become lost through massive consolidation on the cheap by outside investors and "oligarchs" who have the means and can take advantage of low land values in rural areas. As noted in an attitudinal survey conducted by the IFC (2005), sentiments toward the land market encouraging effective land use and attracting investment are improving, but a significant number of producers remain concerned about land concentration (Table 4.13). Surprisingly these concerns are nearly equal between private farms that average 45 ha in size in 2004 versus agricultural enterprises that averaged 1,688 ha/ enterprise.

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<sup>44</sup> For example, these may be taking the farm on the basis of long-term leases issued by government from state land.

<sup>45</sup> According to USAID (Bohdan Chomiak, 7 April 2006), "When we compare private farming in Ukraine with that of Poland or Lithuania we need to consider that both countries repatriated land to private citizens immediately while Ukraine did not. Both Poland and Lithuania favored private farmers with state support while Ukraine to this day provides less than 4% of its support to private farmers. Given these varying approaches it is remarkable that private farmers now manage 10% of productive land."

**TABLE 4.13: PRODUCERS ATTITUDE TO THE POSSIBILITY OF SALE AND PURCHASE OF LAND PLOTS (% OF RESPONDENTS)**

	2002		2004	
	Private Farms	Agricultural Enterprises	Private Farms	Agricultural Enterprises
Will encourage effective land use	29	12	31	23
Will attract additional investments	14	8	18	26
Will lead to land concentration in small number of landowners	39	54	35	31
Will lead to the sale out of national wealth	44	10	23	31

Source: IFC (2005, p. 40). Study supported by Canadian CIDA and Swedish SIDA.

**Issue 8: *Until the Land Fund bureaucracy is dealt with, the risk is not slow land market development, but rather a dynamic market that drives transactions into the grey economy that ultimately undermines the currentness of the register.***

It would be incorrect to draw the conclusion that the above data suggest a sluggish land market. Quite to the contrary, turnover of land in inheritances, leasing, rental, and informal land sales (using power of attorney transfers) appears to be strong. The team heard on a number of occasions of informal contracts being drawn up to document the transfer of property. The dynamics of the market suggests two disturbing trends that will ultimately undermine the integrity of the land register and titling effort:

- Because of high cost in resurveying and re-registering transactions, many transactions are taking place “off the books.”
- As a result, it will be impossible to maintain the chain of ownership necessary to protect the rights of landowners and efficiently supply proof for future transactions.<sup>46</sup>

These predictions are not inevitable, particularly if the steps involved in transacting land are simplified and fees are lowered, not only for first registrations but also for secondary registrations in the foreseeable future. Without this, however, Ukraine could find itself in the position in 10 years’ time of needing to re-register as first registrations what has already been done once.

**Recommendation (6):** Urgent attention needs to be given to liberalizing the land market and eliminating the encumbrances on land ownership imposed by administration of the “Land Fund.”

Until the GoU sets forth a path that minimizes the inconsistency and frictions caused by its pursuit of dual civil law and state control of the “Land Fund,” there will be few alternatives to stimulate a formal land market that serves the majority of landholders. A substantive policy debate is needed that reconciles this conflict and gives consideration to the following options:

- The cadastre offices are separated from the technical functions of the SCLR, effectively decoupling land rights from SCLR technical services.
- The legal and regulatory framework with regard to land and property in practice is simplified to identify and maintain only the critical functions required by the SCLR.

<sup>46</sup> For example, a pensioner bequeaths land to a niece, who in moving to the city for work decides to informally give the land to a brother, who also unable to cultivate it, gives it to a friend who sells it for a low price to an entrepreneur who recoups its cost in a season or two before moving on.

- Rather than simplification, much of the administration of the Land Fund is done away with, including many of the roles, functions, and responsibilities now practiced by the SCLR.
- A “Transaction Fund” is established to assist landholders with secondary registrations for a time period to be established in which all costs are covered by the GoU from survey to issuance of State Acts to re-registration.

None of these options at present look likely or affordable, but the cost of inertia is also very high once there is validation of the finding that a dynamic land market is moving ownership off the register.



# 5.0 LAND TITLING PROJECTS AND LAND REFORM INTERVENTIONS

Two organizations—USAID and the World Bank—have historically provided (and continue to provide) the majority of assistance to the GoU in areas of land survey and mapping, land tenure reform, land titling, and land registration. Important complementary work is being carried out by other bilateral donors, but these efforts are less substantial in scope and focus.

## 5.1 USAID COUNTRY PROGRAM, 1999–2007<sup>47</sup>

Since 1992, USAID has sought to assist the GoU with its transition from a centrally planned to market-based economy and from an authoritative to democratic society. Its programming throughout the 1990s was heavily targeted toward interventions that supported International Monetary Fund (IMF) structural reforms aimed at achieving macroeconomic stability. However, Ukraine's long and crippling economic decline throughout the 1990s, precipitated in part by the GoU's slow pace of structural reforms, fomented a new change in USAID/Kiev's 1999–2002 strategy. While continuing to emphasize the importance of economic stabilization, USAID/Kiev adopted a greater emphasis on programs at the local level as a means to improve people's lives and build demand for reform from the bottom up. A number of notable achievements from this period have bearing on this evaluation.

**Creditor Rights.** “USAID advisors developed in 1998 an amended law and an operational pledge registry for movable property that is subject to the claims of creditors. This registry is now in use by banks and notaries on a nationwide basis and provides rapid, low-cost information to inform lenders whether the property in question has already been pledged.” (p. 5)

**Land Titling.** “Ukraine's agricultural sector was radically transformed by the elimination of the collective farm system. [Between 1999 and 2002,] USAID assisted in this effort by supporting the restructuring of collective agricultural enterprises and the issuance of some 224,657 land titles [State Acts]....[Ten National Farmer Associations established by USAID] were instrumental in the development and passage of the landmark Land Code, which lays the groundwork for the creation of a land market and limits governmental control over land.” (p. 5)

**Democracy and Governance.** “USAID programs achieved demonstrable success...in democratic reform and decentralization. Success was most evident at the municipal level...in which cities were increasingly autonomous.... USAID helped Parliament become increasingly independent and transparent.... USAID's support for an independent media helped to promote citizens with better access to information so that they could be constructively involved in decision-making.” (p. 6)

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<sup>47</sup> This section is extracted from USAID/Ukraine's Country Strategic Plan for FY 2003-2007.

Beginning with USAID/Kiev’s Five-Year Country Plan, 2002–2007, USAID envisioned further progress in deepening reforms and broadening participation in economic growth based on Ukraine’s economic rebound beginning in 2000:

[P]rivatization of urban real estate and industries has stimulated ... recent growth [5.9% growth of GDP in 2000 and 9% in 2001]. In the agricultural sector, the collective farm system has been eliminated and 6.75 million former collective farm members have received the right to hold land titles [State Acts]. More industry is...being privately managed, particularly in agribusiness, where privatization of medium-sized companies is now virtually complete. (pp. 1–2)

It established a new strategic goal of *Increased Social and Economic Well-Being for all Ukrainians within a Framework of Democratic Governance* to be achieved through successful implementation of five SOs (see Box G). To accelerate Ukraine’s democratic transition, work was continued on two fronts: “empowering civil society so that Ukrainians...increasingly demand transparency and accountability from...government; and...improving the responsiveness of government...to constituent needs and strengthening the democratic system of checks and balances, particularly by strengthening the rule of law...” (p. 7). It is through USAID’s SO2 (Accelerated Growth of SMEs and Agriculture) that ULTI’s activities covered in section 3.0 most directly apply. SO2 is targeted to the alleviation of four major constraints: (1) poor and inefficient policy, legal, and regulatory environment; (2) lack of business and management skills of entrepreneurs; (3) insufficient access to land and credit; and (4) lack of organized input and commodity markets.

#### Box G: USAID Strategic Objectives, 2002–2007

- SO1: Improved Investment Climate
- SO2: Accelerated Growth of SMEs and Agriculture
- SO3: Citizenry Increasingly Engaged in Promoting their Interests and Rights for a more Democratic Market-Oriented State
- SO4: Government Institutions are More Effective, Transparent and Accountable
- SO5: Improved Social Conditions and Health Status

## 5.2 USAID PROJECTS CONTAINING LAND AND FINANCIAL MARKET INTERSECTIONS

A number of USAID projects are aimed at supporting the development of a land market through land privatization and increasing the capacity of domestic lenders to supply credit to Ukraine’s SMEs and farmers, in particular targeted to problem areas (1) and (3).

### Ukraine Land Titling Initiative (ULTI)

**Dollar Amount: \$ 22,492,149**

**Duration: 2001–2006**

Assists the GoU with legal and regulatory reforms aimed at facilitating the process of agricultural land titling, lifting obstacles to land transactions, and supporting systems for civil law transactions; the issuance of 1.8 million agricultural State Acts; pilot projects on creating a unified land registry; and public education and legal aid with respect to strengthening land rights awareness and protection (see section 3.0 for elaboration).

### Access to Credit Initiative<sup>48</sup>

**Dollar Amount: \$ 13,724,958**

**Duration: 2004–2009**

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<sup>48</sup> Based on personal conversation with David Lucterhand, Project COP, 24 January 2006.

Helps develop Ukraine's commercial legal framework and financial market institutions, including mortgage (primary and secondary), municipal bonds, collateralization of assets, commercial banking, credit bureaus, bankruptcy law, agricultural financial leasing, and public information in order to develop the credit culture, create a hospitable legal and regulatory environment, and broaden access of Ukraine's SMEs and farmers to financial capital. Potential synergies:

- Helped develop the Mortgage Bond Law passed in December 2005. Currently working with four banks to issue mortgage bonds. Work in the year ahead will focus on implementing rules and regulations.
- Consultancy anticipated in the spring of 2006 to explore the ability to use agricultural land as collateral.
- Through the Ukraine Association of Realtors, will begin work on certifying the approximately 20,000 realtors in Kiev and another 20,000 realtors in the rest of the country. Of the 275 members currently registered in the Association, only 75 are certified. An assessment is planned for February 2006 to explore options.
- Working on registry development and collateralization of property with respect to developing the agricultural leasing market. Because of the moratorium on agricultural sales, agricultural land is not viable collateral. For the foreseeable future, work will focus on residential real estate development.

### **Ukraine Local Economic Development (ULED) Project<sup>49</sup>**

**Dollar Amount: \$ 10,286,718**

**Duration: 2004–2009**

Assists municipalities with localized economic development using participatory land-use planning and capacity building to strengthen local institutions and complete municipal plans. Land is “always an issue,” but the project is ill equipped with tools or mechanisms to resolve the problems experienced, specifically:

- With regard to urban investments, communities have little to offer—no tax holidays, limited infrastructure, and no investment capital. Land is the only asset they have to offer outside investors.
- The ability to make land available is constrained by the need to first carry out the planning process, which includes fixing the city boundaries; inventorying sites under state/municipal ownership; creating a general plan and detailed plans; and preparing land parcels for auction, tender, or negotiated sale.
- The process of offering development sites is further complicated by the inability to determine and settle (buy out) existing interests in the land, which are frequently overlapping among agencies and state enterprises.
- Cities try to avoid carrying the costs of planning and preparing the sites themselves by placing this responsibility on investors, but this merely moves the risks and costs to burden the investment projects.<sup>50</sup>

### **Agricultural Policy, Legal and Regulatory Reform Project<sup>51</sup>**

**Dollar Amount: \$ 8,824,323**

**Duration: 2005–2009**

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<sup>49</sup> Based on personal conversation with Howard Ockman, Project COP, and Vocodya Nosik, 1 February 2006.

<sup>50</sup> Cities lack the financial flexibility to deal with this problem; they lack the money to survey the boundaries themselves, and the main way to grow their budgets is by bringing property onto the tax register but this requires that the boundaries be surveyed. Investors are able and willing to pay, but this solution is not without risk as cities may give away or sell land that has been identified or demarcated, only to find that the investor may face claims in future years because the rights are unenforceable or the sporadic registration has failed to fully adjudicate all claims.

<sup>51</sup> Based on personal conversation with Robert Krause, Project COP, 1 February 2006.

Assists the GoU with legal and regulatory reform, tax and subsidy policy, and privatization, the latter mainly focused on liberalization and restructuring of the Academy of Science monopoly on genetic resources and agricultural extension. Unlike the ULED project in which land issues are intertwined with city land-use planning at localized levels, this project touches on land at a macro regulatory level, specifically:

- How land is valued for tax purposes affects tax policy reform. Too much land is held in reserve for seed farms, varietal testing, and agricultural experimentation.
- Land market reform was recently added as a theme to the project’s SOW, and two of the project’s Ukrainian staff have been assigned responsibility to analyze its significance to economic growth, develop recommendations, and operationalize them to achieve impact.
- The theme will focus on clarifying property rights, achieving transparency, developing a functioning market, and promoting market information with respect to land.
- As land is part of the economy’s aggregate production function, the project will focus on strengthening the linkage between land and credit mechanisms to accelerate agribusiness growth.
- Many subsidies are going to agribusiness that distort profitability and competitiveness. Credit access depends on the track record of the farmer, inputs used, experience, and financial solvency; collateralizing land can make a difference if the loan decision is on the cutting edge.
- Removing the moratorium on agricultural land while not addressing the net subsidies going to larger agribusiness can result in land being gobbled up at the expense of the poor.

### 5.3 THE WORLD BANK<sup>52</sup>

As elaborated in its 2003 Project Appraisal Document (PAD), the World Bank loan to the GoU anticipated spending \$195.13 million (Table 5.1) over the period 2004–2012 on the following seven components:

**A. International Development and Legal Reform.** This component provides the SCLR with resources to reorganize and change its function from Soviet-style land-use planning to land-use regulation better suited to a market economy. The financing will focus on improving the land management and environmental advisory services provided by the SCLR, and improving the legal environment for property rights.

**B. Public Awareness.** Public information and education will inform recipients of State Acts and small landholders of their new-found rights and obligations in land through mass media campaigns; public meetings; and distribution of pamphlets, leaflets, newspapers, and periodicals on a mass scale. Information will be supplied

	<b>Indicative Costs</b>	<b>Bank Financing (US \$M)</b>
A. Institutional Development and Legal Reform	5.42	4.42
B. Public Awareness	3.19	2.67
C. Training	3.44	2.92
D. Land Survey Works	87.49	84.35
E. Cadastre System Development	221.86	75.78
F. Farm Restructuring Services	19.03	15.81
G. Project Implementation	8.13	7.23
<b>Total Project Costs</b>	<b>348.56</b>	<b>193.18</b>
<b>Front-end fee</b>	<b>1.95</b>	<b>1.95</b>
<b>Total Financing</b>	<b>350.51</b>	<b>195.13</b>

<sup>52</sup> This section draws heavily from the World Bank’s PAD, 2003. Note that the World Bank loan was substantially downsized in negotiation with the GoU in March/April 2006 (see Issue 2 in section 5.5). Consequently, some of the PAD elements mentioned in this section are no longer supported by the World Bank loan. In addition, some of the ULTI criticisms of the loan raised by ULTI in the next section no longer apply.

on farm management, the legal framework related to land, and leasing of land parcels.

**C. Training.** Training will be provided by Ukrainian educational institutions in the form of one- to six-week short courses to lawyers and surveyors who will be involved in the restructuring of farms and in the issuance of as many as 4 million State Deeds<sup>53</sup> for Land. As advised by the SCLR, funds will be provided to four agrarian universities in Odesa, Lviv, Kharkiv, and Kyiv to equip faculties with further development of courses and their long-term training capacity. Current, university courses are based on pre-reform principles that will not equip graduates with the skills they need once they join the SCLR, cadastre centers, or the private sector.

**D. Land Survey Works.** This component includes the systematic subdivision of the land of former collective farms and the issuing of State Deeds for Land free of charge to individual rural landowners.<sup>54</sup> The work will require the preparation of base maps, preparation work including investigation and consultation with the owners of former collective farms, an environmental assessment, agreeing on farm restructuring and subdivision plans, land survey work, and ultimately the issuing of State Deeds for Land.<sup>55</sup>

The number of State Acts to be issued are calculated in the PAD as follows:

[The] project would finance the conversion of 4 million land share certificates to State Deeds for Land. This estimate is based on...6.5 million land share certificates...[being] issued to farm members...and...1 million additional parcels on irrigated and perennial crop farms where no land share certificates were issued, making an estimated total of 7.5 million land share certificates (LSCs) that would require conversion.... According to official statistics, 2.5 million State Deeds for Land have already been issued under previous government and donor initiatives, and USAID plans to finance the issuing of an additional 1.0 million. However, most land share certificate owners receive multiple land parcels for each certificate. In some areas separate State Deeds for Land have been issued for each land parcel while in other areas State Deeds have multiple parcels on them, making it difficult to calculate the number of land share certificates actually converted. It is estimated that by the beginning of the project there would be 5 million land share certificates left to convert.... The...conversion of...4 million land share certificates...[assumes] that 20 percent of the farms would not be willing or able to restructure within the time frame of this project.... This component would be managed by the Project Management Unit of the SCLR...[and would be] contracted out to surveying/consulting components. There would be about 26 contracts (one for each oblast) of about US \$3 million each. (p. 44)

The cost per State Act is more than double the cost of ULTI's surveying costs of \$5-6/parcel, but includes the placement of ground markers, registration fees, and presumably the full range of soil and environmental monitoring as practiced by the SCLR (as elaborated in Annex 4):

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<sup>53</sup> Throughout much of this section, "State Deed" is used interchangeably with "State Act."

<sup>54</sup> "The process would start with informing inhabitants of the enterprise about the program...followed by preparation of base maps for the area and surveying of boundaries of a former collective farm. The next step would require the identification of...land share certificate holders and developing lists of the people who have a right to a physical land parcel. Land and assets to be transferred to municipal ownership (hospitals, schools, parks, and roads) would be identified and the outer boundaries delineated...[In addition,]...The outer boundaries of blocks of land already occupied by rural residents as household plot or garden plots would be identified. Land not allocated to municipal ownership, environmental protection, already occupied by rural residents or owned in common by other groups of individuals or legal entities would be sub-divided such that each eligible person receives an area of equivalent value [to adjust parcel size for land quality differences]... according to existing legislation and procedures...required by the Manual for Land Subdivision and Issuing of State Deeds for Land. This process can take up to a year or longer...There would also be procedures for objections and appeals....The final steps of demarcating land parcels and issuing certificates [will]...take about six weeks, once the land distribution plan has been agreed. The Procedure Manual has been developed based on the experience gained by the SCLR and the programs financed by USAID, IFC and British Know How Fund..." (p. 43)

<sup>55</sup> A procedure manual defining a standardized methodology for systematic land subdivision and issuing of State Deeds for Land has been developed for the project, and would serve as the technical specifications for contracting out this work.

Currently, the maximum fee that may be charged for a “State Deed for Land” is 85 Hrivyna (about \$12) and is set by law. The average cost charged is about 65 Hrivyna, but cost varies.... The easier and less expensive work has already been completed and will be targeted by the USAID [ULTI] project. Also, in most cases, existing contractors [including the USAID ULTI project] do not place ground markers to show owners their boundaries, thus reducing cost, even though it is a requirement under the law. The more complicated (and expensive) sites would remain for this project, although it is hoped that the cost can be kept below 85 Hrivyna through the use of more competitive tendering procedures and removal of inefficiencies in the existing titling procedures.... It is estimated that about 60% of owners in rural areas are ...unable to pay a fee for their State Deed for Land documents making cost recovery...from recipients difficult. The Cabinet of Ministers has confirmed in a letter to the Bank that it would be the policy of the Government to issue all initial titles under this project for free to land owners. (p. 45–46)

**E. Cadastre System Development.** This component will support the development of a national land cadastre which would be managed by the cadastre center and will have multiple purposes. It will provide the basis of the title registry system which will record the legal rights in ownership, and transfers of ownership, mortgages, and restrictions on the property. In addition, the cadastre system could be used for the implementation of land taxes, regional planning, and providing information to public service activities. As noted in the World Bank’s PAD:

The project would support the...cadastre center as a self-financing, government-owned, company that would provide both registration and cadastre services. An appropriate charter for this company has been agreed upon...[and will] ensure that the company is limited to providing cadastral and registration services on a cost recovery basis, at prices and minimum standards regulated by the Government. (p. 5)

With regard to scope,

The project would finance the upgrading of 662 cadastre center offices, including regional administrative centers and the headquarters. Costs includes renovation of offices, computer equipment, software purchase and deployment. The upgrading of the cadastre center network of offices and installation of the computerized cadastre and registry system would occur in three phases. The first phase would establish an “interim system” at each of the 26 Oblast centers of the cadastre center, in order to...ensure that the information received from the systematic survey contracts under Component D is processed, checked and stored.<sup>56</sup> The second phase [first 3 years of project] would develop the computerized cadastre system and rehabilitate and equip the network of cadastre center offices in rural areas. The third phase would upgrade the title registration “module” of the computerized cadastre system and rehabilitate and equip cadastre center offices in urban areas. (p. 46–47)

The project would...finance data entry of the up to 50 million records of land parcels available at raion registration offices. These include parcels for Dachas, garden plots, urban plots, commercial plots, etc. as well as the rural State Deeds for Land that have already been issued. (p. 48)

The following conditions for disbursement have material bearing on Component E related to cadastre development:

Amendments shall have been adopted by the Cabinet of Ministers Resolution number 689 of May 15, 2003 on “measures for Creating a Single System of State Registration of Land and Immovable Property and the Rights to them within the State Land Cadastre” providing for the phase out of various existing registration system activities involving...land...real estate and other immovable property rights... and consolidation within the Cadastre Center of the unified registration system...satisfactory to the Bank...In addition,...the following condition of disbursement shall apply to Part E3 (Cadastre Development in urban areas)...i) the Borrower shall have promulgated a cadastre and/or title registry law satisfactory to the Bank establishing a unified cadastre and reg-

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<sup>56</sup> “In order to ensure that a system is in place by the beginning of the project, a simple software package...would be developed for capturing both geographic and attribute data generated from completed systematic land surveys. A simple computer system would be set up in each Oblast Center...The data format used for the interim system would be convertible to any new system developed in phase 2.” (p. 47)

istry system, assigning institutional responsibility for managing the registry of both land and buildings in a unified manner, and establishing adequate registration procedures... (p. 35)

In the ideal scenario a cadastre and/or title registry law would be in place soon after the date of project effectiveness so that Phase 2 and Phase 3 could be implemented simultaneously. However it is likely that the passage of a cadastre and /or title registration law would lag behind the design and...installation of the cadastre system, ...a “second best” solution would need to be sought. This would require that the cadastre system design has additional flexibility to allow alternative institutional arrangements... (p. 47)

**F. Farm Restructuring Services.** This component will provide advisory services to new or potential landowners including explaining legal rights and obligations, advice on rental agreements, technical support in cases where there are disputes between parties over division of land and non-land assets, and advice on the development of plans for land use where land is used in common. It will also provide advice to former collectives in transferring social assets to municipal authorities and former collective entities in dealing with debt problems, and to municipalities on how to manage the land reserves and social assets placed under their control as a result of farm restructuring.

**G. Project Implementation.** This component includes a Project Implementation Unit (PIU) in Kiev, and up to three regional representatives in each of the 24 oblast offices and the Autonomous Republic of Crimea. The PIU is temporary and designed to absorb the large incremental load on SCLR management created by the project.

## 5.4 ULTI CRITICISMS ON IMPLEMENTATION OF WORLD BANK LOAN

ULTI has been critical of components D and E of the World Bank loan; its principal concerns are conveyed in an official memo to the SCLR commenting on the bidding documents used to tender the land titling activity (Dobrilovic, Cheremshynsky, and Klose, 2005).

**1. *ULTI states: The World Bank excludes a substantial portion of land share holders from receiving State Acts with World Bank funding, including those who have received their State Acts earlier or have made arrangements outside the scope of the ULTI Project.***

Some 2 million land share holders find themselves bound by contracts where surveys have been started (or completed) by private contractors, but the State Acts have not been documented/issued due to unacceptable work or financial difficulties of land share certificate holders.

***ULTI Solution:*** ULTI recently implemented land titling in several pilot cases to complete the preparation and issuance of State Acts for approximately 100,000 land share holders stuck in pre-existing contracts. The cost per title of such contracts has been low (about \$3.00 per land share certificate) and the implementation completed quickly (about three months in most cases). The ULTI methodology is tested and can be easily adopted and implemented by the World Bank project, thus including all remaining land share certificate holders as beneficiaries of the project.

**2. *ULTI states: The World Bank has failed to establish adequate safeguards for rural citizens whose land shares are being converted to State Acts.***

There is bias toward mapping over establishing rights to rural land parcels (e.g., while payments for work are performance-based, 60% of the contract value is paid on completion of the parcel design map, and another 20% is paid for registration of State Acts and completion of the land book). In total, 80% of the contract value is paid prior to issuance of the State Act. ULTI, by contrast, reserves 35% until the State Act is issued. In addition, payment on completion of issuance of State Acts is based on statement from the PIU that State Acts have been issued, but the PIU does not have the resources to verify issuance, and there is no verification by an independent third party. Contractors bear too much of the public information

and education burden when (1) there is no activity enabling the contractor to engage NGOs to assist in public information and education has yet to begin and (2) land survey organizations experience a conflict of interest between completing the survey work for which they are best suited and advising citizens on the land allocation process that typically slows completion of survey and titling work. It is also questionable whether land survey firms are qualified to advise citizens about their legal rights in the process of titling land and issuing State Acts.

**ULTI Solution:** ULTI has proposed a number of mechanisms to better preserve and safeguard the rights of land share holders. First, independent verification (adding less than 10 cents) per issuance of State Acts should be a requirement for final payments to contractors. Second, a change in the performance-based payment structure, reserving a greater percentage of the contract value for final payments, would establish stronger incentives for contractors to ensure that citizens receive their State Acts in hand.<sup>57</sup> Finally, requirements for land survey firms to deliver information and hold village meetings on land rights should be minimized and such work implemented by third-party organizations without a stake in the payment for work to prepare State Acts. The ULTI legal aid program has proved that information and legal advice to citizens from an independent source is essential for citizens to protect themselves from official abuse and exploitive transactions.

**3. ULTI states: The World Bank does not include systematic titling and registration of land of rural settlements as part of its project.**

The project description document makes it clear that completion of such work is not contemplated using World Bank funding. Development of a viable real property registration system requires valid legal data on ownership of all land parcels. World Bank contractors converting land shares to State Acts are best suited to provide such information by complete titling and registration of village settlement lands concurrently as they title and register land allocated to land share certificate holders. The \$85 million budget allocated under the World Bank Project Component D (land survey works) is sufficient to complete titling and registration of all remaining land shares as well as the lands (land and buildings) of village settlements. USAID methodologies tested in the region show that surveying, titling, and registration of rural settlement land and buildings can be conducted for \$6.00 per parcel.<sup>58</sup> The World Bank project as currently planned misses an important opportunity to systematically map, title, and register all rural land in Ukraine, including agricultural land, village houses, garden plots, and all other properties in rural areas.

**4. ULTI states: The substantial resources dedicated to preparation of base maps for each work area and overview cadastral maps for each oblast could better be spent to deliver a more useful product to Ukraine—fully registered, tradable land titles.**

With the moratorium on sale of agricultural land set to expire in 2007, the urgency of completing the titling and registration of *all* rural land increases.

**ULTI Solution:** The orthophoto basemaps currently planned should be produced as quickly as possible and used not merely for control and data management, but as the key tools in a systematic titling process covering all agricultural land, village houses, garden plots, and all other properties in rural areas. All rural land would be privatized and formally registered in a short period of time, offering individuals security in their land rights. For individuals entitled to a physical parcel

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<sup>57</sup> For example, for payments made by work area (i.e., village Rada) for conversion of a LSC to State Act: 10% advance; 20% payment upon completion of geodetic survey; 30% payment upon preparation of a final parcel design map, with landowners and cadastral numbers assigned to each parcel; 20% payment upon registration in the land book of all parcels titled (*registration of State Acts*); 15% percent upon statement from PIU that all State Acts have been issued to landowners in a work area; and 5% payment upon Certificate of Completion issued by the respective Cadastre Center.

<sup>58</sup> The USAID Albania Registration Organizational Improvement Project conducted initial registration of land of rural settlements, including survey, for an average cost of \$5.94 per parcel.

of agricultural land, the formalization of rights allows them to cultivate that land or lease to an active farmer for additional income. For local governments in rural areas, systematic registration of land establishes a complete property tax base and comprehensive information for land management purposes.

## 5.5 ISSUES AND ASSESSMENT

### ***Issue 1. The nexus of land reform and access to financial capital among projects in USAID's program might benefit from integration.***

USAID funding supports four projects that have either a land market development or credit access focus: ULED; ULTI; Access to Credit; and Agricultural Policy, Legal, and Regulatory Reform. While each project is tailored to producing impact, each quickly comes up against the next binding constraint—for example, the absence of credit and economic opportunity to give land value in the case of ULTI's titling of agricultural lands; lack of land demarcation (including village boundary surveying) and financing mechanisms to enable better land use planning; and emergence of urban land markets in the case of ULED,<sup>59</sup> or lack of land titling in urban areas that enable collateralization of property for the expansion of agricultural leasing in the case of the Access to Credit project.

While each project has the potential to benefit others, there are also multiple constraints related to geographics, timing, and state of market development that work against these synergies being achieved. Ukraine is an extremely large country, and no donor can be everywhere and assist with all aspects of economic development. However, if resources and timing permit, USAID might identify pilot areas of confluence where a portion of resources from each project will be programmed to achieve targeted and integrated impact.

**Recommendation (7):** If resources and timing permit, USAID should identify pilot “areas of confluence” where a portion of resources from each project will be programmed to achieve targeted and integrated impact. For example, three sites might be chosen where ULTI's pilots and ULED's municipal planning are joined, the Access to Credit project works on municipal financing and agricultural leasing, and the Agricultural Policy project works with private agribusiness to accelerate investment.

### ***Issue 2: Slow implementation of the World Bank loan with the GoU has until recently limited space for USAID engagement and confounded USAID programming on what it might contribute in the area of land market development. Now that the World Bank loan has been scaled down in size to approximately \$30 million, there is urgent need to reassess the implications in terms of gaps created and USAID priorities.***

The evaluation team believes that USAID has been too optimistic about Ukraine's progress with land reform and the characterization and state of its land market development program. While USAID is anticipating ULTI's closure in September 2006 without commitment of follow-on funding, the team feels a sense of urgency that Ukraine's land reform program has a long way to go, and that donor assistance is critical in light of Ukraine's fragile economy and risk of backsliding on reforms and progress already made.

The World Bank program—until March 2006 in theory—had presented an all too easy panacea for this problem; with funding of \$195.13 million, the program was both well funded in the activities it supported,

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<sup>59</sup> ULTI's pilots, with the village-wide approach, may offer some solution to the problems of identifying and preparing urban sites for development. However, the project is ending, and pilots focusing on non-agricultural land have only recently been introduced.

and its massive scope covered nearly all the activities where other donors might lend TA: legal reform, public awareness, training, land survey and mapping, land registration and cadastre development, and farm restructuring. Consequently, there was little space where USAID might continue to lend assistance, if indeed it wanted to continue its TA in the land area. This problem was further exacerbated by a number of uncertainties or contingencies:

- The slow pace of implementation of the World Bank loan and now its retrenchment and downsizing (see below).
- The pace of implementation was also tied to uncertain events:
  - The MOJ’s refusal to sign off on the release of loan funding
  - Charges of the SCLR operating as a monopoly under state anti-monopoly law
  - Lack of regulations on siting the cadastral offices (whether under the SCLR or MoJ) that enable the loan to proceed.

Since the evaluation took place in January and February 2006, the team has heard that the World Bank has renegotiated the terms of the loan. According to USAID (19 April 2006), “the latest news is that the registry component is dead and the mapping and privatization component will be downsized to approximately \$30 M.” Since USAID and the World Bank are the two largest donors in the land area, this situation is now potentially problematic, as USAID had decided (prior to this decision) to discontinue ULTI and follow on work with land reform, and now the World Bank in negotiations with the GoU has decided to downsize the size and scope of its loan well. On the basis of the team’s evaluation that work on land reform needs to be continued (section 6.0), this situation now calls for even greater collaboration and coordination between the two donors who are best positioned and able to ensure that land reform in Ukraine moves forward, and certainly does not regress.

**Recommendation (8):** USAID is advised to organize a mini-roundtable attended by the SCLR, MoJ, the World Bank, and other donors as appropriate to raise issues of timing and opportunities for USAID technical assistance.

# 6.0 RECOMMENDATIONS FOR FUTURE PROGRAMMING OF USAID FUNDING

## 6.1 ACCOMPLISHMENTS AND LESSONS LEARNED FROM THE ULTI PROJECT

ULTI has been able to demonstrate that, within the framework of the current Ukrainian law, documentation of the ownership status of citizens to land can be achieved on a mass scale, with adequate accuracy and at reasonable cost. In terms of volume of land parcels created from land shares, the project has made a significant contribution. ULTI's activity has helped Ukraine to achieve what has been described in this paper as the "third stage of land reform" in which individual citizen ownership of agricultural land, with the opportunity to lease it or work it independently, has been established.

It must also be recognized that there is need for a fourth stage of land reform in which some or all of the existing limitations on the use and disposition of land will be lifted. As of today, Ukraine has not fully defined the principles, institutions, procedures, or practices that will characterize its future land system. It may achieve over time a full system of civil law and market relations following the models of European civil law. Alternatively, it may pursue a system in which the state retains a stronger role as manager of land use and overseer of transactions and market activity. Critical decisions made in the near future will have a significant influence on the direction of land policy and on the nature of land and property rights in the Ukraine. These decisions include the conceptual and practical definition of the "unified registry/cadastre." They also include consideration of the draft law *On the Land Market* and other legislation. The "moratorium" on the sale of agricultural land is scheduled to end in January 2007.<sup>60</sup> The state should be considering the policies and preparing the actions that it will take in response to these events.

These decisions will affect the nature of property rights and their protection that ULTI has helped secure for citizens. They may strengthen rights or erode them through continued implementation of burdensome regulatory requirements and transaction costs that create opportunities for ad hoc interference by state/municipal officers in dealings with land. USAID should not forego the opportunity to influence the policy debate. At the least, it should be mindful of the need to protect the "investment" that it has already made. At best, it can help steer the trend of future land reform in the positive directions that the past activity has achieved.

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<sup>60</sup> A decision could be made to extend this moratorium.

## 6.2 NEED TO REVIEW TECHNICAL ASSISTANCE PRIORITIES

The GoU has become complacent in implementing its land titling and land reform program, and excessively discounts the fragility of land institutions put in place over the past decade. Given the Herculean task of what this evaluation team sees in terms of a need to fortify these institutions and create for the majority of people the legal and economic freedom to exercise their land rights, expanded breadth in partnership is not a cliché but an imperative.

However, simply stating that needs are imperative does not make it easy to identify the programming areas where USAID can assist the GoU in future project and program interventions. The World Bank loan to the GoU, for example, in its massive scope, covered nearly all the activities where other donors might have lent TA, including legal reform, public awareness, training, land survey and mapping, land registration and cadastre development, and farm restructuring. Now that the World Bank loan has shrunk in size from \$195.13 million to approximately \$30 million, USAID will need to rethink the implications both for Ukraine's land reform, and for its own programming.

Two or three joint meetings would both help to define what USAID might do in this area and facilitate further development of collaboration with partners. The following mechanisms are suggested to facilitate dialogue.

- Host a mini-roundtable attended by USAID, the WB, the SCLR, and the MoJ to discuss areas of focus for each agency and donor.
- Host with partners a national policy conference that draws in the scientific community to review the pace of Ukraine's land reform and clarify the needs and strategies for moving forward.
- Finally, develop a new project that is consistent with the strategies, mechanisms, and protocols worked out above and continues support for Ukraine's land market development.

The following section anticipates the opportunities that will be identified by these mechanisms and attempts to marry the needs identified by this evaluation (and anticipated from the national conference) with USAID's strengths and comparative advantage.

## 6.3 FUTURE USAID INTERVENTIONS

### 1. Continue the work of the LACs and Outreach in Rural Areas through Direct USAID Grant to the NGO—All-Ukrainian Union for Legal Assistance to Rural Population

With few exceptions, nearly everyone the team spoke with, in and outside the GoU, praised the work of the LACs in extending information on land rights to rural citizens. A number of well-placed informants went so far as to say that if any component of USAID's work continues, it should be the work of the LACs, for "they have helped bridge a critical gap between policymaking in Kiev and lives of rural citizens." However, the LACs at present are overextended, and continuing to work in all 25 oblasts is unrealistic without increased budgetary and technical support. Forming the NGO (as described in section 3.0) and decoupling the LACs from USAID will help diversify funding, and lend them greater autonomy. As noted in section 3.0, many of the problems that stemmed from combining political and legal advocacy along with policy and technical work under the one roof of ULTI could be resolved by spinning off the legal aid component to the NGO. However, USAID's funding will need to continue for at least another three years with gradual phase-out thereafter as feasible, until such point that rural incomes of the majority of the rural poor enable the NGO to charge fees without prejudice. This component should:

- Continue public outreach by helping to assemble and translate the legal and regulatory framework from above to better inform the public of their land rights and obligations.
- Expand legal assistance for the rural poor and socially and politically disadvantaged.
- Undertake applied research on land tenure reform implementation, good court opinions, and interpretive analysis to influence the evolution of legal principles and law making in Kiev from below. This research should feed into Component 2 below.

## **2. Support Independent Analytical Research on Constraints to Land and Agrarian Reform and Land Market Development in Ukraine.**

USAID over the course of the land reform program has supported local capacity building by sending staff to conferences and seminars abroad and by experiential learning via numerous short term ex-pats who worked collaboratively with Ukrainian counterparts. The issue raised here is that these efforts alone are not sufficient to enable the generation of objective knowledge, understanding, and dissemination of information about the impacts of land reform in Ukraine. In the team’s view, there is a need for improved checks and balances that improve understanding of land reform constraints and accomplishments, but in a way that helps prevent or dissolve government’s monopoly on knowledge generation and information dissemination.

There is a critical need to deepen the analytical work on land and agrarian reform in Ukraine. Too much emphasis is currently given to “spot” assessments and consultancy reports, and too little emphasis to scientific rigor and transparency in understanding policy and generating knowledge. Similarly, ULTI discontinued the activity of monitoring the post-sale land market transactions of enterprises that were helped with their initial land privatizations. With the combined data from both projects, and with the ongoing work of the 26 enterprise real estate brokerage offices, this data bank was growing to include a substantial portion of the commercial/industrial land. The activity of secondary transactions, which were also being monitored, might have been a key barometer of land and property market formation and might have answered the fears of many Ukrainian professionals, academics, and political leaders that unregulated markets will be speculative and distorted. Moreover, when studies were conducted, the work was generally carried out by the international ex-pats without co-authorship or a dedicated effort to invest in local research institutes outside government. The team believes that what is needed is not investment in Ukrainian institutions to the exclusion of outside experts, but rather genuine two-way collaboration between U.S. and Ukrainian professionals that enhances the rigor and sustainability of knowledge generation. The management of ULTI agrees with this need; in comments made on early revisions of this evaluation report, the ULTI office notes (19 April 2006): “ULTI would readily agree that there is need to provide continuing and increased donor support of genuinely professional and independent research and professional associations focused on land market development in keeping with EU accession criteria.”

Local research center, MYLAND, is a good example of the perils of lack of donor support; while once an independent think-tank, they are today an information service NGO that depends on the SCLR, using its premises and supporting its policy. Consequently, despite a decade or more of reforms in Ukraine, the knowledge base is meager, of questionable bias when released by government, and shallow when carried out on the basis of short-term consultancies. Possible mechanisms for support:

- Under a new project, form a subcontract with the newly formed NGO—All Ukrainian Union for Legal Assistance to Rural Population—to monitor land tenure reform implementation constraints and report upward to government. Careful monitoring will be needed to ensure that the advocacy mission of the network of LACs does not cloud the objectivity of its analysis and reporting.

- Develop a competitive grants program with one or more independent centers to carry out objective research on land and agrarian reform in Ukraine. If these centers and institutes do not exist, USAID and other donors need to help create and nurture them.

### 3. Support Ongoing Development of the Legal and Regulatory Framework with Regard to Land and Land Market Development in Ukraine

Both the SCLR and the MoJ have expressed the imperative that USAID continue its work in the areas of land policy and legal and regulatory reform. This work should be expanded to broaden TA beyond law to include other subject disciplines (e.g., land economics and sociology of land relations). The SCLR believes it has sufficient technical support in the areas of survey and land titling through TA provided by the World Bank and other donors (SIDA, CIDA).<sup>61</sup> The ULTI project is ending in September 2006. USAID’s Agricultural Policy, Legal and Regulatory Reform project has begun, but does not have sufficient resources to tackle the nuances of land policy in the Ukraine with the depth and focus needed. USAID’s Access to Credit project is working on ways to tighten linkages between credit and land (by improving its utility as collateral), but also lacks sufficient focus to handle the magnitude of need discerned by this team. This component would form a policy unit in Kiev that would manage, oversee, and implement the following activities.

- **Support Technical Expertise in the GoU:** Unlike the current ULTI project, which is housed in separate premises, the new project should be more closely tied to one or more government agencies. The two obvious candidates are the MoJ and SCLR. While development of law would seem to favor establishing the project within the MoJ, the need for regulatory reform touches on the activities of both the MoJ and SCLR.
- **Promote Public Awareness:** Promote improved public awareness of new and existing legal reforms. The LACs in (1) above will require public information and education materials on an ongoing basis. The World Bank loan provided resources for development of public information, but the status of this activity is now unknown. The new project will help assemble and distribute the best materials produced by donors and in return produce other materials as deemed appropriate.
- **Promote Development of Improved Policy on Land and Property Rights:** Create a learning policy cycle where legal reform from the top is piloted and implemented, and where learning from implementation is used to inform policymaking. Subcontract out research so there is a bottom-up flow of rigorous knowledge and understanding of land rights constraints on the ground to continuously create demand for legal reform.
- **Support Development of New Law and Regulations:** Long- and short-term TA should be provided to assist the SCLR and MoJ with legal and regulatory reform and with streamlining, simplifying, and easing the burden of implementing the prevailing legal framework on the citizens of Ukraine.
- **Develop Confluence Pilots to Capture Synergies of USAID Project Activities:** TA should work proactively to create “field pilots” or “areas of confluence” (see Component 4 below) to strengthen linkages among USAID’s ULED project; Access to Credit project; Agricultural Policy, Legal and Regulatory Reform project; and Development Credit Authority mechanisms.

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<sup>61</sup> However, this sentiment was expressed prior to the significant retrenchment of the World Bank loan. In the wake of the World Bank loan retrenchment, the evaluation team encourages USAID to resume discussions with the SCLR and continue this dialogue further as the evaluation team is no longer in a position to do so.

#### **4. Undertake Comprehensive, Systematic Land Mapping, Titling, and Registration in Three to Four “At Risk of Conflict” Oblasts Where Land Tenure Solutions Will Need to be Carefully Linked to Conflict Mitigation Strategies**

**Both ULTI and the World Bank loan (until its downsizing) emphasized the mapping, titling, and registration of agricultural lands. The land tenure issues in the Autonomous Republic of Crimea require a more comprehensive and integrated approach.** The Tatars were not eligible participants in the agricultural land-sharing program (since they were not collective farm members). They were entitled to receive subsidiary garden plots, somewhat larger than the average norm. Thus, their combined land holdings are substantially smaller than those of local citizens who benefited from land sharing, but their land holdings are larger than other local citizens who had no land share claims. The resulting inter-ethnic tension is stoking ongoing land conflict that singularly focused land interventions risk worsening rather than helping.

It is thus recommended that USAID, in negotiations with the World Bank, take a more focused regional approach than was implemented under ULTI and focus on village-wide systematic, comprehensive titling and registration. Land rights as they now stand will be fixed. ULTI’s careful social preparation and management of the publicity surrounding the work of surveying parcels and issuing State Acts along with the skills it has developed with mediation of conflict would serve this new project well. This project as currently envisioned would help overcome the following constraints:

- The SCLR in Crimea has indicated that its highest priority is the titling and re-registration of agricultural plots. Since Tatars were not given agricultural plots, they may view the priority being given to titling agricultural plots as a threat to their own rights on household plots. Comprehensive registration would enable benefits being provided to both Russian and Tatar populations, simultaneously, thus helping to minimize conflict.
- Land reallocation, mapping, titling, and registration will need to carefully marry technical approaches with mediation, public information, and legal aid services. Lessons learned from the ULTI project will help provide solid foundations for this work and should be deepened.
- Comprehensive mapping and registration of village Rada lands would also enable better land use planning and commercial development. USAID as feasible should create areas of confluence that bring to bear the potential synergies of its existing portfolio of projects.

Thus, while under ULTI, USAID focused on the titling and registration of agricultural lands in all oblasts, under this new project, its focus would shift to comprehensive, systematic registration in fewer oblasts, and would have a much stronger conflict-mediation focus.

## **6.4 CROSSCUTTING ELEMENTS**

The above project has a number of crosscutting themes that connect with various elements of USAID’s mission:

- Anticorruption through emphasis on liberalizing the existing legal and regulatory framework with regard to land and property rights, promoting greater transparency, and investing in rights advocacy.
- Through the work of the LACs, improve democracy and governance in rural areas through greater empowerment and participation of rural citizens in government and decision making.
- Continue to strengthen land institutions and property rights to enable land market development and economic growth through deepening land and financial linkages, agribusiness expansion, and municipal development.

- Finally, continue to assist land tenure reform and land reform in “at risk” settings to resist slippage into fragile or conflicted states through mediation and land-based solutions.

# ANNEX 1: BIBLIOGRAPHY OF DOCUMENTS REVIEWED

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# ANNEX 2: SCHEDULE OF MEETINGS, INTERVIEWS, AND CONTACTS

## Sunday, 22 January 2006

- 14:00 International Travel: Michael Roth arrives in Kiev  
15:15 International Travel: Bill Valletta arrives in Kiev

## Monday, 23 January 2006

- 9:30 Bohdan Chomiak, Chief of Agricultural Division, Office of Economic Growth, USAID/Ukraine. Contact: 19/21 Nyzhny Val St. 04071 Kyiv, Ukraine. <http://www.usaid.kiev.ua>. Tel: (380 44) 537 4620. Email: [bchomiak@usaid.gov](mailto:bchomiak@usaid.gov).  
with  
Allen Slipher, Chemonics Ukraine Land Titling Project. Contact: 36 Ivana Franko St., No. 3 (3<sup>rd</sup> floor), Kyiv, 01030, Ukraine. Tel: (380 44) 238 6086.
- 16:15 Pavlo Kulinich. Chemonics Ukraine Land Titling Project. Contact: 36 Ivana Franko St., No. 3 (3<sup>rd</sup> floor), Kyiv, 01030, Ukraine. Tel: (380 44) 238 6086. Email: [Pavel@ulti.kiev.ua](mailto:Pavel@ulti.kiev.ua).

## Tuesday, 24 January 2006

- 9:30 David Lucterhand, COP of USAID/Kiev funded Access to Credit Initiative. Contact: Olympic Business Center, 72 Velyka Vasilkivska St., 1<sup>st</sup> Entrance, 5<sup>th</sup> Floor, 03150. Telephone: (380 44) 537 09 66. Email: [chief@pragmacorp.kiev.ua](mailto:chief@pragmacorp.kiev.ua).
- 11:30 Alexander Kaliberda, Senior Projects Officer, The World Bank. Contact: 2, Lysenko St. Kyiv, 01034, Ukraine. Tel: (380 44) 490 66 71/72/73. Email: [akaliberda@worldbank.org](mailto:akaliberda@worldbank.org).
- 16:30 Gary Reusche, Team Leader, European Union Support to SMEs in the Rural Sector Project. Contact: 19-21 Khreschatyk St., Office 46, 3<sup>rd</sup> Floor, Kiev, 01001. Tel: (380 44) 278 63 13 OR 278 15 08. <http://www.rural-sme.org.ua>. Email: [Gary.Reusche@rural-sme.org.ua](mailto:Gary.Reusche@rural-sme.org.ua).

## Wednesday, 25 January 2006

- 9:00 Bohdan Chomiak, Chief of Agricultural Division, Office of Economic Growth, USAID/Ukraine. Contact: 19/21 Nyzhny Val St. 04071 Kyiv, Ukraine. <http://www.usaid.kiev.ua>. Tel: (380 44) 537 46 20. Email: [bchomiak@usaid.gov](mailto:bchomiak@usaid.gov).

- 9:45 Bohatyrchuk Olga, Legal Aid Center Manager, and Snozooaya Larissa, Interpreter, Chemonics ULTI project.
- 11:00 Olena Kochunlynska, Head of Public Information and Outreach Department, Chemonics ULTI Project.
- 1:00 Natalya Korchakova, Project Manager, Agriculture and Rural Development, European Union, Delegation of the European Commission. Contact: 10 Kruhlo-Universytetska St., Kyiv, Ukraine 01024. Tel: (380 44) 253 30 20. <http://www.delukr.cec.eu.int>. Email: [natalya.korchakova@cec.eu.int](mailto:natalya.korchakova@cec.eu.int).
- 15:00 Earl Gast, USAID Mission Director. USAID/Ukraine. Contact: 19/21 Nyzhny Val St. 04071 Kyiv, Ukraine. Tel: (380 44) 537 46 20. <http://www.usaid.kiev.ua>.

### Thursday, 26 January 2006

- 7:00 Regional Travel: Depart for Field Visit to ULTI Pilot Project on Creating a Unified Property Registry, Korosten.
- 9:45 Volodymyr Vyhivsky, First Deputy Mayor, Korosten City, Executive Committee. Contact: Crushevsky St. 22, Korosten, Zhitomir Region, Ukraine, 11500. Tel: (380 41) 424 15 24. Email: [vigovsky@kr.com.ua](mailto:vigovsky@kr.com.ua).
- 11:00 Korostenska City Rada. Meeting with Moskalenko Volodymyr Vasyliovych, City Head (Mayor), Vygivski Volodymyr Vasiliovych, First Deputy Mayor with the participation of Vygivska Paisa Petrivna, Head of City Land Resources Department.
- Korosten Raion State Administration: Ozerchuk Andriy Mykolaiovych, Head of Raion State Administration, Kostiuhenko Sergiy Vasyliovych, First Deputy Head, and Melnichenko Vitaliy, Head of Raion Land Resources Department.
- Korosten Department of Zhytomir Regional Branch (affiliation) of State Land Cadastral Center.
- 15:00 Korosten BTI: Kudrynska Kateryna Stepanivna, Head of BTI, Ivasenko Ganna Miphodieвна, Chief Engineer.
- All the above meetings were also attended by Vlasiuk Iliia Andriovych, acting Head of Zhytomir Oblast land resources department, and Rudnik Volodymyr Ivanovych Head of land survey department of oblast land resources department.
- 16:15 Regional Travel: Depart for Return to Kiev.

### Friday, 27 January 2006

- 8:30 Regional Travel: Depart for Field Visit to ULTI Legal Aid Center, Chernigiv Oblast.
- 11:00 Roman Barabash. Lawyer and Legal Aid Center Coordinator, ULTI Nikolayevich office. Contact: Telephone (046 22) 442 87. Email: [rbarabash@ulti.kiev.ua](mailto:rbarabash@ulti.kiev.ua).
- 13:00 Attend Seminar on Legal Land Rights, Village of Birkinivka, with Alla Barabash, Lawyer, Chernigiv Center for Juridical Assistance to Village People. Contact: Telephone (046 22) 442 87.
- 16:15 Regional Travel: Depart for Return to Kiev.

## **Saturday, 28 January 2006**

Writing and Reading Day.

## **Sunday, 29 January 2006**

Writing and Reading Day.

Regional Travel: Depart for Field Visit to ULTI Second Pilot Project on Creating a Unified Property Registry, Crimea. Depart by Rail (5:50 pm). Arrival (30 Jan, 7:00 am).

## **Monday, 30 January 2006**

8:30 Dmytrusenko Volodymyr Mykolayovych, Deputy Head of Chairman of Republican Committee on Land Resources of the Autonomous Republic of Crimea (RCLR).

Dzemaliadinov Enver Safetovich, Deputy Chairman of RCLR.

Palchikov Mykhail Fedorovich, Director of Crimea Land Survey Institute of RCLR.

Nedviga Valentina Vladimirovna, Head Department on Land of RCLR.

Kopylova Olga Aleksandrovna, Chief Accountant of RCLR.

9:00 Balura, Svetlana Igorovna, Deputy Director of State Cadastre Center for Crimea Republic.

Dolianovskaya Asia Nikolayevna, Deputy Head of Legal Department.

Regional Travel to Bilogirski Raion.

11:00 Lugovik Konstrantin Ivanovich, Chairman of Bilogirski Raion State Administration.

Gomeniuk Vasiliy Ivanovich, Head of Bologirski Raion Land Resources Department.

14:30 Kolobov Alexandre Mikhailovich, Head of Zelenogorski Village Rada.

Lobovetski Valiliy Leontievich, Director of Private Agricultural Enterprise “Agrofirma Zelenogorsk.”

Regional Travel to Crimea.

16:30 Koblev Ruslan Kazbekovich, ULTI Coordinator of Crimean Legal Aid Center.

## **Tuesday, 31 January 2006**

8:30 Regional Travel from Crimea to Kherson Oblast.

12:00 Domkiv Vasyl Romanovych, Director of Private Land Survey Company “Novi Technologii.”

14:30 Skopich Oleksiy Vasiliovych, Deputy Head of Kherson Oblast Land Resources Department.

16:00 Berezniak Andriy Anatolievich, ULTI Coordinator of Kherson Legal Aid Center.

Regional Travel from Kherson Oblast to Kiev. Depart by Rail (8:40 pm). Arrival (1 Feb, 9:30 am).

### **Wednesday, 1 February 2006**

- 9:30 Team arrives in Kiev.
- 14:00 Robert Krause, Director, Agricultural Policy, Legal and Regulatory Reform Project. Contact: Telephone (490-7078). Email: [robert-krause04@yahoo.com](mailto:robert-krause04@yahoo.com).
- 16:00 Howard Ockman, Chief of Party, and Vocodya Nosik, The Ukraine Local Economic Development (ULED) Project. Contact: 25 Borychiv St., Kyiv 04070, Ukraine. Telephone: (380 44) 425 44 33. Email: [hockman@erum.org.ua](mailto:hockman@erum.org.ua).

### **Thursday, 2 February 2006**

- 9:30 Bohdan Chomiak and Chemonics ULTI staff (Allen Slipher, Angus Olson, Julei Grygiel and Pavlo Kulinich).
- 13:30 Olexiy Yanov, Director, and Maxym Fedorchenko, Executive Director, Center for Land Reform Policy in Ukraine. Contact: 3 Narodnogo Opolchennya St., Office 107, Kyiv, 03151, Ukraine. Telephone: (380 44) 275 18 03. Email: [myland@iatp.kiev.ua](mailto:myland@iatp.kiev.ua).
- 15:00 Volodymyr Zhumutsky, Deputy Head, State Committee of Ukraine for Land Resources. Contact: 3 Naronoho Opolchennya, Kyiv 06151, Ukraine. Tel: (380 44) 249 96 72.

### **Friday, 3 February 2006**

- 10:00 Allen Slipher, Pavlo Kulinich, and Misha Cheremshynsky. Chemonics Ukraine Land Titling Project. Contact: 36 Ivana Franko St., No. 3 (3<sup>rd</sup> floor), Kyiv, 01030, Ukraine. Tel: (380 44) 238 6086.
- 12:00 NADRA Bank, 15 Artema Street. Telephone: 481 09 55.
- 14:30 Inna Zavalna, Director of the Civil Law and Entrepreneurship Department, Xeniya Volkova, Head of Division, and Natalia Kovalchuk, Head of Division, Ministry of Justice of Ukraine. Contact: 13, Gorodetskogo St., Kyiv, 01001, Ukraine. Tel: (380 44) 271 17 22. Email: [Zavalna@minjust.gov.ua](mailto:Zavalna@minjust.gov.ua).

### **Saturday, 4 February 2006**

Writing and Reading Day.

- 19:00 Working Dinner. Allen Slipher (ULTI), Bohdan Chomiak (USAID), and Gregory Myers (USAID/Washington).

### **Sunday, 5 February 2006**

Writing and Reading Day.

### **Monday, 6 February 2006**

Writing and Reading Day.

## **Tuesday, 7 February 2006**

Writing and Reading Day.

## **Wednesday, 8 February 2006**

8:30 Writing and reading at ULTI project office.

13:30 Round Table on Land Titling and Land Market Development in the Ukraine, organized by USAID and hosted by the World Bank.

## **Thursday, 9 February 2006**

8:30 Writing and reading at ULTI project office.

15:00 Meeting with Bohdan Chomiak, Oleksandr Muliar, and Gregory Myers of USAID.

## **Friday, 10 February 2006**

8:30 Writing and reading at ULTI project office.

13:00 USAID debriefing with Mission Director and Mission Staff.

## **Saturday, 11 February 2006**

Writing and Reading Day.

Bill Valleta Departs Kiev.

## **Sunday, 12 February 2006**

Writing and Reading Day.

## **Monday, 13 February 2006**

15:00 Kryvliov Voldymyr Niktorovych, Key Legal Adviser, Bendersky Pavlo Grygorovych, Head of Corporate Banking, and Kulyk Yevheniy Yuriiovych, Head of Credit Products, Aval Bankval Bank, a member bank of Raiffeisen International.

## **Tuesday, 14 February 2006**

10:00 Inna Zavalna, Director of the Civil Law and Entrepreneurship Department, Ministry of Justice of Ukraine. Contact: 13, Gorodetskogo St., Kyiv, 01001, Ukraine. Tel: (380 44) 271 17 22. Email: [Zavalna@minjust.gov.ua](mailto:Zavalna@minjust.gov.ua).

16:00 Alexander Kaliberda, Senior Projects Officer, The World Bank. Contact: 2, Lysenko St. Kyiv, 01034, Ukraine. Tel: (380 44) 490 66 71/72/73. Email: [akaliberda@worldbank.org](mailto:akaliberda@worldbank.org).

**Wednesday, 15 February 2006**

10:00 Final meeting with Bohdan Chomiak, USAID, and ULTI staff.

**Thursday, 16 February 2006**

Michael Roth departs Kiev.

# ANNEX 3: URGENT MEASURES TO IMPROVE THE IMPACT OF LAND REFORM

(Prepared by ULTI's Legal Team, 23 September 2005)

## **Urgent Measures Needed to Reduce Costs and Increase Investment and Incomes of the Citizens and the State as a Result of Land Reform: Proposals by the Ukraine Land Titling Initiative (ULTI) at the Ukraine Land market Policy Conference from July 2005.**

The ULTI project has supported the work of the Verkhovna Rada of Ukraine by helping to prepare drafts of several laws related to land privatization, including the Law on Withdrawal of Land Shares in Kind, the Law on Private Family Farms, and the Law on Protecting the Constitutional Rights of Citizens to Land. In addition, the project has assisted with preparation of drafts and commentaries for many other land and mortgage market related laws and regulations.

A well-functioning market for land and buildings is a fundamental necessity for growth of the national economy, as can be seen in all developed economies in the world. Registration of such rights allows citizens to conduct transactions with confidence, while increased investment in land and buildings strengthens economic activity at the local level, increases the value of land and increases the property tax base for local budgets.

Completion of the land reform, registration of rights to land and buildings, and the delimitation of state and communally owned lands, will bring benefits to citizens and their local governments, and will strengthen local economies. With these objectives in mind, the project worked closely with Ukrainian public and private representatives to develop the following 14 major policy, legislative, and regulatory goals:

1. It is vital to complete preparation and issuance of State Acts certifying the right to land parcels for the 7 million citizens who are waiting to convert their land shares, and to prepare and issue State Acts for house plots and subsidiary plots owned by 6 million rural households, all of which will increase rural incomes. In some cases no work has begun to support issuance of these State Acts, while in other cases technical works are partially complete or the process has excluded heirs who have the right to inherit land shares. Conditions of the loan agreement between the World Bank and the GoU should be improved to assure that the \$85 million reserved for rural land titling will be used to complete this work more rapidly.
2. Registration of rights to land and buildings in the State Registry of Rights to Immovable Property should be consolidated and conducted by one state organization not involved in any conflicting activities. For example, the state organization responsible for registration of rights to land and buildings should not be in the business of selling land survey works, selling technical inventory works, or regulating land use designation. These functions are inconsistent with the integrity of the state registry of rights to land and buildings.

3. Charters of local land registry organs should be reformed to emphasize that registration of rights to land and buildings is not a profit-making undertaking, but is instead performed in the interest of the public. Operation of the state registration system to produce profits will block both use of the system and development of the economy.
4. The Law on State Registration of Rights to Immovable Property should be amended to provide that in regions where the registry is not yet fully functioning, owners who possess a State Act may transfer ownership according to procedures in force prior to adoption of the law. This change would reduce costs and reduce confusion regarding validity of the State Act. During the transitional period, it is extremely important to protect the natural development of the land market.
5. The Law on State Registration of Rights to Immovable Property should be amended to add transitional provisions for mass registration of ownership rights received during privatization. It is much less expensive to register all privately owned village land at the same time during “mass registration” than to register such land on a “sporadic” parcel-by-parcel basis.
6. The state budget should finance the first registration of rights to land and buildings villagers received during privatization. Villagers cannot afford registration fees and the process of first registration will be long delayed in rural areas if villagers are forced to pay.
7. The Law on State Registration of Rights to Immovable Property should be amended to add a unique process for conducting first registration of rights to land and buildings so that discrepancies among right-confirming documents can be discovered and solved at the time of first registration. In some cases the State Acts or other right-confirming documents may not correspond to maps or ownership documents for adjacent parcels prepared during land privatization. State organization and finance of mass-scale first registration of rights will solve these problems while reducing costs and accelerating new investment in land and buildings.
8. The Law on State Registration of Rights to Immovable Property should be amended to add transitional provisions for gradually integrating records on ownership of buildings and apartments with records on ownership of land. As a first step in the creation of a unified registry of rights, it is necessary to introduce cross-references in the existing ownership documents so that, for example, ownership documents for buildings can reference the unique identification number assigned to the associated parcel.
9. The Law on State Registration of Rights to Immovable Property should be amended to define the content and legal significance of parcel boundary maps used in registration of rights to land and buildings. Parcel boundary maps used in registration of rights to land and buildings are not mere technical documents, but are legal documents necessary to describe the location and physical scope of property rights. The law should provide a clear process for the creation of such legal documents and their approval by local authorities.
10. The Law on State Registration of Rights to Immovable Property should be amended to state that the general public may view all registry records identifying the owner of land and buildings and description of such objects, with the exception of certain personal information that is protected from disclosure. If the general public cannot know the general contents of the land registry, the registry will not fully protect the interests of all property owners and the efficiency of the land market will be reduced. At the same time, it is appropriate that certain personal information is withheld from public view.
11. The Law on State Registration of Rights to Immovable Property should make clear that the state registry of rights to land and buildings shall not contain extraneous information that is not directly related to property rights. Collection and storage of extraneous information on soils, composition of buildings, personal tax identification number, etc. will only make the state registry more expensive to operate. These unnecessary costs will be passed on either to the state budget or to property owners.

12. The Law on Delimitation of Boundaries of State and Communally Owned Land contains an inefficient process that unnecessarily delays completion of delimitation, and greatly increases the cost. Delay in delimitation of communally owned land prevents local governments from obtaining the full economic benefits of communal lands. The current law requires delimitation of far too many land parcels, thereby consuming public resources and diverting funds from completion of works for the few parcels that really require delimitation. If the law is changed, many technical works could be eliminated and the delimitation could be done faster and much more cheaply.
13. The Law on Lease of Land should be amended to provide protections to impoverished rural land owners. The Law on Lease of Land favors lessees of agricultural land, which typically lease land from villagers. The law unfairly deprives rural landowners of important rights to influence the terms on which land will be leased. These unfair provisions reduce the rents paid for such land and reduce the value of such land.
14. The Land Code should be amended to provide that the moratorium on sale of agricultural land should be lifted with respect to a particular oblast after the Oblast Rada adopts a resolution recognizing that a sufficient proportion of all State Acts have been issued to owners of such land in the oblast. Because the privatization of land has proceeded at a different pace in different oblasts, it may be best to adopt a process that allows for lifting the moratorium at different times in different regions.

# ANNEX 4: ROUNDTABLE ON LAND TITLING AND LAND MARKET DEVELOPMENT IN UKRAINE

**Organized by USAID**

**Venue:**

**The World Bank**

**8 February 2006**

**1:30–4:30 PM**

USAID and other donors, including the World Bank, are assisting the GoU with the distribution of State Acts of Land Ownership and the development of a Land Market. Since USAID's ULTI project will come to an end in September 2006, USAID has commissioned a Team to review the lessons learned from this project and the current status of land ownership, leasing and market activity in Ukraine. Based on this assessment, the Team will advise USAID on its possible future land projects. USAID invites you to this Roundtable to share your knowledge on the current status and future needs of Ukraine. USAID's assessment team will begin each of the sessions below with a 5-minute issue assessment to kick-off the discussion. A Chair will be appointed for each session to facilitate exchange and dialogue.

<b>Time</b>	<b>Session</b>
<b>1:30</b>	<b>Opening Remarks</b> Roundtable Chair: Michael Roth
<b>1:45</b>	<b>Conversion of Land Shares to State Acts for Agricultural Lands</b> Session's Chair: To be determined.
<b>2:30</b>	<b>Survey Standards to Delineate Land Parcels in Preparation of State Acts</b> Session's Chair: To be determined.
<b>3:00</b>	<b>Break</b>
<b>3:15</b>	<b>Land Market Development in Rural and Urban Areas of the Ukraine</b> Session's Chair: To be determined.
<b>3:45</b>	<b>Credit Access, Investment and Economic Development</b> Session's Chair: To be determined.
<b>4:30</b>	<b>Synthesis and Concluding Comments</b>

# ANNEX 5: SCOPE OF WORK— MIDTERM EVALUATION OF UKRAINE LAND TITLING INITIATIVE AND PROPOSED NEXT STEPS FOR LAND MARKET DEVELOPMENT IN UKRAINE

## I. BACKGROUND

USAID's program to privatize land has been at the heart of efforts to develop a property market, revitalize Ukraine's agricultural economy and to provide the rural poor and retired a social safety net. Development of a property market will enable SMEs and agricultural enterprises to use frozen capital assets as collateral to obtain credit necessary for growth.<sup>62</sup> This in turn would allow the agricultural sector, whose output has collapsed by 40% since independence, to recapitalize, and in turn power the growth of value added food processing.<sup>63</sup> Lastly by transferring ownership of land to rural individuals who have become eco-

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<sup>62</sup> Our current estimate is that there are 35 million pieces of real estate with an average cost of \$10,000, or \$350 billion in assets which are not employed in the economy.

<sup>63</sup> Based on USAID's notional estimates, Ukraine can not dramatically increase its agricultural GDP unless increased agricultural productivity increases output and increased access to markets adds value to increased supplies of raw commodities. We estimate that "modern production technologies and best practices" might increase output by 60 percent; this would boost agricultural GDP no less than 50 percent. We estimate that full exploitation of domestic, regional and international markets with Ukrainian processed food products would increase agricultural GDP another 50 percent in 3-5 years from now, with an additional 25 percent 7-10 years from now.

USAID projected baseline annual growth rate of SME employment and GDP share estimates growth of 1.45% and 1.5% respectively without an improved regulatory environment or improved access to credit. We also estimate that SMEs account for 26.2% of total Ukrainian employment and GDP. For Ukraine to achieve the OECD average of 70% share of SME employment and GDP within ten years the baseline growth rate needs to increase by 400%. Entrepreneurial access to real property mortgages would increase available business credit by at least 50% and thereby double baseline growth rates.

nomically disenfranchised during the transformation from a planned to a market economy we will ensure improved living standards for the rural poor, most of whom are elderly.<sup>64</sup>

Accomplishing these development objectives hinges upon successful completion of land privatization and coordination with a range of other USAID programs. USAID also assumes that this requires implementation of a complementary program of the World Bank, and that the GoU will provide legislative and regulatory support. Ukraine's recent orange colored politicization has strengthened our belief in the assumption that actions of World Bank and GoU will become more complementary to our program.

We propose to conduct a mid-term evaluation of the land reform program (ULTI) and make recommendations for (1) USAID next steps, (2) capitalize on opportunities to better collaborate with the World Bank land reform program, and (3) improve USAID's approach to land reform as a component of economic development.

## **II. PURPOSES OF THE EVALUATION**

### **A. ULTI Midterm Evaluation**

The purpose of the midterm evaluation is to assess the effectiveness of land privatization as the fundamental first step towards development of a land market in Ukraine. The information from the evaluation will be used for future planning.

Approximately 10% of the level of effort shall focus on the performance of the Ukraine Land Titling Initiative (Chemonics), and particularly the success the project has had in laying the foundation for a land market through the accomplishment of the objectives laid out in their task order, and their contribution to achieving the Mission's Strategic Objective 2.3 "Increased Access to Land and Credit". The evaluators shall determine the status of the current activity, and provide recommendations for USAID how to implement the lessons learnt in Ukraine and elsewhere.

### **B. New Land Reform Directions and Program Coordination**

Approximately 90% of the level of effort will focus on assisting USAID to consider new directions in the land reform activities, whether pilot privatization activities are providing direction for completion of land privatization, the impact of land reform on economic development, and coordination between USAID and the World Bank land reform privatization activities. An overall objective will be to formulate a strategy to support development of a land market, and subsequent investment in the agricultural sector. The evaluation will recommend what programmatic steps, if any, should be considered by USAID.

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<sup>64</sup> The Impact of Land Titling in Ukraine Survey, conducted in September 2003 demonstrated that by assisting rural individuals to transform their right to land ownership into real ownership their income increased by 32%.

### **III. PROPOSED INITIAL QUESTIONS TO BE ANSWERED BY THE EVALUATION**

#### **A. ULTI Contract Performance**

1. The contract requires the issuance of 1.8 million agricultural land titles and 13,500 commercial land titles. To a large extent this task will be accomplished. To what extent has this stimulated the development of a land market?
2. USAID has provided significant assistance for land privatization throughout the E&E region and following the conclusion of assistance contracts encountered questions regarding the validity and accuracy of survey work performed. Is the methodology used by the contractor to verify survey work sound?
3. One of the central reasons for extending and modifying the task order was the need to provide legal aid and public education to new landowners. Has this work strengthened the capacity of new landowners to protect their rights?

#### **B. Land Market Development**

1. One of USAID's strategic objectives is to improve Ukrainians access to land and credit and thereby stimulate economic growth of agriculture and business. Within this strategic objective one of the first programs was ULTI. Based on ULTI's progress in simplifying regulations, developing legislation and privatizing land USAID has developed other projects. Is there a good link between ULTI and Access to Credit and Local Economic Development projects, or is it a virtual link? If not, how can it be improved? What should be the legacy that ULTI leaves for USAID, for other projects?
2. ULTI's network of legal aid offices appears to provide needed support for people to benefit from land ownership. Can this network support implementation objectives of other USAID projects in the future? How can they facilitate land market transactions, more productive land uses and investments? Should the legal aid centers be unified into a self-sustaining organization?
3. ULTI has undertaken a number of pilot privatization activities including privatizing rural residential land, municipal land, developing procedures to create a unified property registry, developing procedures to title land that communities distributed amongst them selves, and others. As a result of undertaking these pilots they have developed procedures which will enable privatization of all non-government lands. Should future land privatization efforts focus only on agricultural lands or should future attempts deal with both agricultural and non agricultural lands? Which types of land privatization are more important for developing a land market?

#### **C. Donor Coordination: USAID and The World Bank**

1. One of the major players in developing a land market in Ukraine is the World Bank. Under the ULTI memorandum of agreement between USAID and the GoU ULTI is expected to interact with the World Bank in implementing land market reforms. However, the Bank's program appears at times to be less than effective, and the new government dissolved the agency which was to have been the Ukrainian implementer of the loan. As a result the bank has suspended implementation of the loan. Should USAID provide assistance to ensure that GoU takes the appropriate steps to reinstate the

World Bank? What would be the most effective assistance within the context of developing a land market?

#### IV. TEAM COMPOSITION

The evaluation team will consist of three people from USAID/Kyiv, one specialist from USAID/Washington and two external specialists (an economist and a land survey/registration specialist).

The four persons from USAID may include:

<u>Team Members</u>	<u>Level of Effort</u>
1. Bohdan Chomiak, Agriculture Division USAID Kyiv	Three Weeks
2. Kevin Sharp, Deputy Director OEG, USAID Kyiv	One Week
3. Bill Schlankser, Local Government Division USIAD Kyiv	Two Days
4. Gregory Myers, USAID/Washington (EGAT/NRM/LRM)	Two weeks

External consultants proposed are

1. Economist, ARD (proposed Team Leader)	Three Weeks
2. Land Registration and Titling Specialist, ARD	Three Weeks

The external Team must have work experience in land policy and reform issues, and in land market development in the NIS region. He/She must have experience managing Teams in the field and must have excellent writing and presentation skills.

The Team Leader will be responsible for the overall management of the assessment including the coordination, scheduling and assignment of Team members to the tasks necessary for the completion of the assessment; coordination of Team discussions of findings and conclusions; preparation and submission of draft outlines, findings and reports; preparation and timely submission of the final report; and consultation with and briefing of USAID Ukraine.

#### V. METHODOLOGY

Prior to arrival in Kyiv, the Team members should review the following background materials: USAID will provide these upon the selection of the Team.

- USAID Ukraine’s strategic plan
- Task Order between USAID/and Chemonics (ULTI)
- Contract between USAID/and Pragma (Access to Credit)
- Contract between USAID/and Chemonics (LED)
- Work plans and annual reports of the above

- World Bank documents and other papers related to the World Bank land program in Ukraine

Other documents may be provided as needed upon the arrival of the Team leader.

- USAID shall provide the Team with names and contact information for key individuals to be interviewed in Kyiv and other cities of Ukraine.
- USAID/Kiev will also assist with setting up meetings, local transport, translation and other logistical requirements.

The Team will travel to selected cities/villages to interview appropriate individuals. Detailed schedules for all site visits and interviews should be developed by Team members, together with the Team Leader, prior to the commencement of the evaluation.

## **VI. DELIVERABLES: REPORTS AND BRIEFINGS**

1. The Team shall conduct weekly briefings for relevant USAID officials in order to keep them current on the progress of the evaluation and to resolve any issues that may arise.
2. The Team shall submit a draft outline for the evaluation report by COB of the tenth workday in Ukraine. USAID and the Team leader shall agree on the report outline within three workdays after start of the evaluation.
3. The Team shall conduct a ‘Key Client Meeting’ to discuss tentative recommendations and possible action plan for implementing the recommendations. The feedback from this meeting will be part of the final report.
4. The Team shall present their findings to USAID during a debriefing for all interested USAID staff at the end of the third week in Ukraine. These findings will be presented both verbally and in a written document.
5. A final evaluation report, incorporating both comments from the debriefing and written comments received within five workdays after the debriefing from USAID Ukraine staff, shall be completed by the Team leader and submitted to USAID Ukraine within ten workdays after receipt of the written comments from USAID Ukraine.

The final report (not more than 30 pages) shall contain the following:

- An executive summary not to exceed one page in length. The summary shall also be translated into Ukrainian to enable presentation of findings to local partners. The executive summary should present the major findings, observations, conclusions and recommendations for each program evaluated and a summary of recommendations for changes, improvements and possible synergies that can be achieved in USAID land and credit program;
- An introduction and background section for the overall evaluation;
- A separate section of detailed findings and observations of the evaluation. This should not exceed 20 pages;
- A discussion of conclusions and recommendations, not to exceed ten pages. This shall include recommendations and a detailed discussion of strategic opportunities for USAID programming.

The final evaluation report will be submitted in electronic form to CDIE. Three paper copies and three electronic copies in Word 2000 format final report should be submitted to USAID (for the CTO, the Evaluation and Contracting Officers), and should include the following Annexes:

- SOW,
- Description of evaluation methods used,
- Data collection instruments,
- Schedules,
- Lists of persons contacted/interviewed,
- Statistical tables,
- Charts and/or graphs,
- Bibliography of documents consulted,
- Glossary of acronyms used.

## **VII. WORKWEEK AND LOCAL COSTS**

The Team leader is authorized to work six days a week for this evaluation while in Ukraine. Local costs, such as transportation, interpreter services, per diem and other administrative costs will be covered by USAID/Ukraine.

## **VIII. IMPLEMENTATION**

This activity is estimated to cost approximately \$50,000 to \$70,000 (for the two proposed external specialists, and includes costs for Gregory Myers). It will be implemented through the Land Tenure Task Order, (#13) under the RAISE IQC (PCE-I-00-00001-00). It can be funded via a MAARD to the task order. The CTO on the task order is Gregory Myers ([gmyers@usaid.gov](mailto:gmyers@usaid.gov)). See attached budget.

**U.S. Agency for International Development**

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