

## POLICY BRIEF

### Issues and Options for Improved Land Sector Governance in Ukraine

This policy brief is based on the Land Governance Assessment Framework (LGAF), a diagnostic tool that was implemented in Ukraine in 2011 and updated in 2013. LGAF helps to establish a consensus and defines priority actions on (i) areas for regulatory or institutional change, piloting of new approaches, and interventions to improve land governance on a broader scale; (ii) criteria to assess the effectiveness of these measures; (iii) gaps in existing evidence and (iv) help putting in place a structure and process to systematically track progress in improving land governance over time.

*This report was prepared prior to the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, and covers the entire territory of Ukraine; this report does not intend to make any judgment as to the legal or other status of any disputed territories or prejudice the final determination of the parties' claims.*

### Recommendations for prioritizing land policy improvements

#### 1. Legal and institutional framework

1.1. A structure and legal framework for an efficient agricultural land market need to be developed, which would minimize market-distorting elements. Issues for further consideration include:

- Lifting the moratorium on the sale-purchase of agricultural land in a phased manner, so as to allow for the development of implementing regulations, institutions, and the conduct of public education campaign; providing for pilot implementation of the proposed institutional arrangements with careful evaluation of implementation results before scaling up;
- Imposition of restrictions on rent levels and areas of agricultural land that may be leased need to be justified, given the effect of such restrictions on competition, transparency, and transactional efficiency of the market;
- Justifying restrictions to eligibility of legal entities to purchase agricultural land for commercial agricultural production;
- Developing a land market monitoring system to track land policy implementation;
- Developing a private sector land mortgage market, including consideration of an owner-finance mechanism allowing lessees to purchase land over time.



1.2. Development of practical measures to enable unification of ownership of buildings and the land located beneath them, including:

- Privatization of land located under multiple apartment buildings through the declaration of co-owners' private ownership of the land;
- Privatization of land located under buildings through the declaration of private ownership of land where related payments are respected.

1.3. Consideration of simplifying the mechanism of extending lease agreements on state and communal land and property by applying the principle of "Qui tacet consentit" (silence implies consent).



## 2. Land use planning, management and taxation

2.1. Consideration of possible strategies for creation of a single registry for land and property in order to avoid duplication of state registration, increase public trust in registration services, ensure saving of state funds and increase efficiency of relevant state institutions. The unified registry should function as a self-financed agency, which would ensure sustainability of the system, high quality services, and sufficient staff motivation.

2.2. Where changes are made to land use designation within populated areas, the benefits of such changes should be made public to the communities affected. Likewise, the decisions of local governments on changes to land use designation should clearly identify the benefits to the community in terms of the economy, environment, etc.

2.3. Introduction of land taxation based on market valuation.

2.4. Identification of additional mechanisms for taxation based on declarations of actual land use. This approach would allow tax collection from increases in the number of land parcels currently physically not identified and therefore not subject to land tax.

2.5. Consideration of land tax exemptions for properties, land parcels, or land categories rather than entities (owners), and the replacement of tax preferences with targeted assistance to those who need it.

## 3. Management of public land

3.1. Provision of the support and acceleration of demarcation process for state and communal land.

3.2. Adoption of legislation on land auctions, with transparent and streamlined procedures, and inclusion of city planning terms and restrictions in the package of documents for land parcels brought to the auction.

3.3. Provision of clear and timely access to information on state and communal land available for rent/use and on the conditions for its acquisition and use. Consider expanding the functionality of eservices through the State Land Cadaster portal, including information on land availability throughout the whole country, down to the oblast and rayon levels.

#### 4 Public provision of land information

4.1. Introduction of an electronic system to manage the registration of land and titles. In particular, transfer the BTI database of registered buildings and structures, as well as the databases of the State Agency for Land Resources of registered land titles, into an electronic system. This will significantly improve efficiency and the quality of services provided by State Land Cadastre authority as well as the registration of real property titles.

4.2. Expediting the transfer of land survey and inventory functions to the private sector.

4.3. Introduction of an electronic filing system for registering property applications, handling requests for information, including electronic signatures, etc.

4.4. Support of public access to land/property registry information, with the exception of sensitive personal information.



#### 5. Dispute resolution and conflict management

5.1. Conducting a review aimed at eliminating ambiguities in the delineation of land dispute jurisdictions, since the lack of a clear definition of such powers often deprives individuals of access to judicial protection. The priority should be given to protection of rights of land owners and land users.

5.2. Analyze and expand the institutional and legal framework for pre-trial consideration of land disputes. There is a clear need to specify in detail what government authorities are entitled to consider land disputes in addition to courts, and what legal implications their decisions have (i.e. whether or not their decisions are binding). Such an initiative would relieve the existing burden on the judicial system and facilitate the settlement of land disputes.

5.3. Provision of public access to information on court rulings at all levels and in all categories.

#### 6. Large-scale land acquisitions

6.1. Introduction of clear mechanisms to support the establishment of social partnerships between farmers and village communities.

6.2. Support of the acceleration of clear and transparent land auction procedures.

6.3. Consideration of requiring large-scale farmers to provide local authorities with information on land lease terms and conditions, which should be made publicly available.

6.4. Encouragement of land consolidation in both the land-lease and sale-purchase markets, including establishment of land share holder associations to allow the lease of larger parcels as single units and for better protection of share holder rights.

6.5. Reconsideration of articles in the draft Law of Ukraine On Agriculture that establish excessive state control over crop selection, set areas under crops, and crop rotation.

## 7. Forestry

7.1. Full completion and updating of the forest fund land inventory and its incorporation into the State Land Cadaster. This will permit a more effective and transparent system of management.

7.2. Provision of public access to decisions of forestry authorities and the determination of mechanisms for increasing community participation in the decision-making process.

## Conclusion

Ukraine has an abundance of land and forestry resources which, if managed effectively, can contribute significantly to sustained and broad-based economic growth. The country has already made considerable progress in the privatization of urban apartment units and agricultural land plots, has established a widespread agricultural land leasing market, and has begun to establish mechanisms for the creation of a purchase/sales market for agricultural land. Still, additional policy challenges remain, including the need for identification of the structures of agricultural land market, the need for clarification of the roles of state land management institutions, the need for greater public participation in land policy development and implementation, development of land governance monitoring system which would respond to the need for greater transparency and public accountability in land transactions. The LGAF process has helped to highlight a number of these issues, as well as to develop policy priorities for their amelioration. Taken together, the recommendations presented offer a set of steps that can contribute to a more efficient balance of state, community, and private involvement in the land sector, laying the foundation for future growth and investment in both urban and agricultural markets.



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