

Issues and Options for Improved Land Sector Governance in Ukraine

Application of the Land Governance Assessment Framework in Ukraine

Synthesis Report

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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.

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1. Introduction

As the largest country wholly within Europe, possessing an abundance of fertile soil, land governance in Ukraine holds great importance to future economic development and prosperity. Already the government has privatized urban housing units and three-quarters of its agricultural land, with provisions for citizens to apply for private land rights to certain categories of remaining public lands. However, key challenges in land administration remain, notably in the establishment of conditions for the lifting of the moratorium on agricultural land transactions. Likewise, ambiguities and overlaps in the functions of land management institutions require clarification, land policy formulation and implementation require greater public participation, and land dealings require additional mechanisms for transparency and accountability.

In order to evaluate and prioritize these issues more systematically, country experts utilized the Land Governance Assessment Framework (LGAF) developed by the World Bank and its partners. This chapter synthesizes and summarizes the key findings of the LGAF process in Ukraine and outlines proposals for moving forward. The next section explains the methodology of the LGAF, while the third section provides background information on Ukraine and key issues in its land governance. The fourth section presents the results of the Ukraine LGAF panel discussions and validation meetings. Part five offers recommendations for prioritizing land policy improvements, and the final section concludes.

2. LGAF Methodology

The LGAF is a diagnostic tool that is implemented in a collaborative manner at the local level in order to benchmark land governance. This process helps to establish a consensus and 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; and (iii) gaps in existing evidence. LGAF helps put in place a structure and process to systematically track progress in improving land governance over time.

The core version of the LGAF consists of 21 Land Governance Indicators (LGIs) covering 80 dimensions of land governance, grouped into five broad thematic areas:

1. Legal and institutional framework (LGI 1-6)
2. Land use planning, management, and taxation (LGI 7-11)
3. Management of public land (LGI 12-15)
4. Public provision of land information (LGI 16-19)
5. Dispute resolution and conflict management (LGI 20-21)

The LGAF also allows the inclusion of optional thematic modules that may be relevant to a specific country context. The Ukrainian LGAF process included a module on large-scale land acquisition (LSLA), which contains 16 additional parameters, as well as a forestry module that comprises 12 parameters. Each LGAF dimension is rated on a scale from A to D, with scoring options based on international best practice.

The LGAF was conducted by a three person team that included County Coordinator Oleksandr Muliar and consultants from the USAID AgroInvest Project. The assessment began in August 2011 with the preparation of background reports on land governance in Ukraine using existing

information and interviews with representatives of the state registry and land cadaster, other state bodies, local councils and research institutions, court officials, and notaries. The LGAF team then conducted nine one-day panels covering the thematic areas and subtopics with 3 to 5 experts. A total of 31 experts from the public and private sectors took part in the panels. Panel members were asked for their own preliminary ratings for the LGIs, which were then discussed until the panel achieved consensus in the scoring of each dimension. Afterwards, all the panelists and additional experts participated in a technical validation workshop in May 2012 to discuss the findings of the LGAF research, review the full scorecard, and generate policy recommendations. In June and July 2012, the team held regional meetings to discuss the complete assessment, and the LGAF process was concluded by August 2012.

3. Overview of Land Policy Issues in Ukraine Country

3.1 Ukraine: Background Information

3.1.1 Economy and geography

Ukraine is a country in Central and Eastern Europe. Kiev is the capital and largest city. The country is home to 46 million people, 77.8% of whom are ethnic Ukrainians, with sizable minorities of Russians (17%), Belarusians, and Romanians.

At 603,700 square kilometers (233,100 sq mi), Ukraine is the largest wholly European country. The Ukrainian landscape consists mostly of fertile plains and plateaus, crossed by rivers such as the Dnieper and Seversky Donets. Significant natural resources in Ukraine include iron ore, coal, natural gas, oil, timber, and a variety of other minerals. In addition, the country has an abundance of arable land.¹ Known for its high quality black soil, Ukraine has historically been popularly designated as the bread-basket of Europe. As of 2007, agriculture accounted for 70% of the total land area, 10% of GDP, and 19% of employment.²

Following independence in 1991, the economy fell into a period of hyperinflation and worsening poverty. Agricultural yields dropped sharply owing to insufficient inputs, and the country struggled to restructure an economy that was based largely on heavy industry under the former Soviet regime.³ Stabilization policies in the mid-1990s helped to improve economic indicators, although deeper structural reforms continued to proceed slowly. Deregulation, privatization, and public finance reform gained momentum in the late 1990s and mid-2000s. In 2012, nominal GDP stood at USD 176.3 billion, with a growth rate of 0.2% and an average unemployment rate of 7.5%.⁴

3.1.2 Governance system

According to Ukraine's constitution, Ukraine is divided into 24 oblasts (provinces) and the autonomous republic of Crimea, which are further subdivided into 180 cities and 490 rural raions (districts). The administrations of these divisions are collectively referred to as local self-government bodies and local states administrations. In addition, the constitution accords the cities

¹ The LGAF assessment did not uncover any concerns of resource competition between the mining and agriculture sectors.

² World Bank, Integrating Environment into Agriculture and Forestry: Progress and Prospects in Eastern Europe and Central Asia, Ukraine Country Review, November 2007

³ Source: Economist Intelligence Unit Country Profile, 2008.

⁴ Source: Economist Intelligence Unit Country Report, June 2013.

of Kiev and Sevastopol a special legal status that renders them directly subordinate to the national government.⁵

3.2 Land Issues and Land Policy

3.2.1 Tenure typology

| | Population | Land typology | Area (%) | Land ownership status |
|--|-------------------|----------------------------------|-------------------------------|--|
| State and communal ownership | 5,300,000 users | All state/communal land | 29,400,000 ha (49%) | |
| | | Agricultural land | 11,000,000 ha | |
| | | Non-agricultural land, including | 18,300,000 ha | |
| | | - Woods - Water | 10,600,000 ha 2,400,000 ha | |
| Private ownership | 22,400,000 owners | All private land | 30,900,000 ha (51%) | Privately owned land as envisaged by the Land Code of Ukraine |
| | | Agricultural land | 30,560,000 ha | Predominantly collective-owned land that was split into individual land shares |
| | | Non-agricultural land | 360,000 ha | Predominantly privately owned land under development |
| Use of land by non-locals⁶ | 1,500 entities | All foreign-use land | 101,500 ha (<1%) | |
| | | Non-agricultural land | 5,000 ha | May be privately owned |
| | | Agricultural land | 96,500 ha | Lease |

The total land area of Ukraine is 60.4 million hectares. About 70% of this area is devoted to agriculture, while forest and forest-covered areas account for 16%, built-up areas for 10%, and internal waters for 4%. The population is approximately 70% urban.

⁵ In March 2014, Crimea and Sevastopol each held a referendum and requested to join the Russian Federation. The Russian Federation acceded to the requests, though this was not recognized by Ukraine and widely criticized by various countries. The United Nations General Assembly passed a resolution that, inter alia, states that the referendum had “no validity [and] cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol.” Therefore the status of these territories is disputed, access to this area remains difficult and information may therefore be unavailable.

⁶ Joint ventures, international association and organization with the participation of Ukrainian and foreign legal entities and individuals, companies wholly owned by foreign investors. It should be noted that official statistics take into account the category of enterprises that have clearly indicated status of international joint venture. However, it does not take into account the enterprises that do not have an international status according to Ukrainian legislation, but where significant shares owned by foreign entities. Given such entities, land use by non-native groups may reach millions of hectares (primarily via rent agreements).

Tenure categories in Ukraine include state-owned land, communal land, and private land, as summarized in the table above. The state statistical agency combines data on state and communal land into a single category, although it disaggregates land owned or used by non-Ukrainian individuals or enterprises. Each tenure category is further disaggregated into agricultural and non-agricultural land.

3.2.2 History and current status of land policies

When Ukraine achieved independence from the Soviet Union in 1991, all land was owned by the state. Since the 1992, the government has undertaken a process of privatizing agricultural and non-agricultural land, in which lands from collective and state-owned farms⁷ are divided up equally among former workers, usually on the basis of simple grids. Land is divided without respect to gender; any person who is a member of a collective agricultural enterprise (CAE) at the time of the land sharing process receives the right to privatized land. The result has been the creation of 6.8 million parcels or land shares for a similar number of individuals, with an average size of 4.2 hectares per share.

To date, around 75% of agricultural land has been privatized.⁸ The household plot and smallholder farm sector has emerged as an important source of rural livelihoods, providing both market and subsistence food production.⁹ At the same time, a corporate farm sector with relatively large operations has developed as enterprises have been able to acquire annual and multi-year leases on individual holdings. Thus a dualistic farm structure has evolved in Ukraine; it is estimated that the corporate farm sector accounts for about 60% of all agricultural land, while the household plot and peasant farm sector employs the remaining 40%.

In urban areas, the majority of the population resides in apartments, which were also privatized in the 1990s and are now typically owned by their occupants. However, the land under most apartment buildings remains state property, and there has been no comprehensive policy for its privatization apart from applications by individuals and enterprises, as discussed below.

Although the country now has a functional non-agricultural land market, the agricultural land market is restricted by a moratorium on agricultural land sales that was introduced in the Land Code of 2002 and renewed in 2004. The moratorium was set to expire on 1 January 2013; however, recent amendments to the Land Code have extended it until 1 January 2016. Under the moratorium, privatized CAE lands and commercial agricultural lands cannot be sold, purchased, or transferred except in cases of inheritance and acquisition for public need. Additionally, there are exceptions for the lands of countryside gardening companies and some types of community lands used for personal farming, but these lands represent an insignificant portion of the overall agricultural land stock. Thus the agricultural land market operates almost exclusively through the leasing of plots. In fact, the overwhelming majority of land shares are transferred for lease to legal entities by their owners.

⁷ Under the Soviet system, collective farms were technically owned by the workers rather than the state. However, both state-owned and collective farms were privatized under the same system upon independence in Ukraine.

⁸ The remainder is still held by the state in a reserve fund, which includes public assets like seed growing and breeding farms.

⁹ Household farm plots are contiguous with the household itself and were already under private management during the Soviet period. By contrast, smallholder farms have arisen from privatized agricultural land shares since independence. Today, many farmers hold both household and smallholder farm plots.

The moratorium can only be lifted in 2016 if certain preconditions have been met, of which the primary two are the establishment of an electronic cadastral registration system and the passage of a Law on Agricultural Land Markets. The former is already underway, as discussed in Section 4.4.1. Regarding the latter, during the first half of 2012, a draft law was proposed in Parliament and then withdrawn for further consideration. This has culminated in a revised Draft Law on Agricultural Land Circulation currently before the Verkhovna Rada.¹⁰ Many of the issues identified by the LGAF panel on land legislation with respect to the 2012 draft remain pertinent to the 2013 version. In particular, the draft legislation contains several potential constraints on land market activity,¹¹ which include the following:

- Restricting individual landowners to 100 ha of agricultural land.
- Restricting opportunities for legal entities to own agricultural land.
- Restricting the opportunities of the rural population to buy agricultural land due to income declaration requirements.
- Giving the State Land Bank a major role in the provision of mortgage loans.
- Establishing an anti-speculative tax at the rate of 100% of the normative value of the plot, in cases where the plot is sold within the first year of its purchase. The tax rate then declines by 10% of the normative value each year following purchase.

In addition to these concerns identified by the LGAF panel, a study by the Razumkov Center suggests that more than 83% of Ukrainians believe that the creation of a free land market will benefit elites who already control much of Ukraine's farmland.¹² By contrast, less than 18% believe that small and medium farmers will benefit from the establishment of a free land market.

The State Land Bank was legally created in August 2012 in a special decree by Cabinet of Ministry of Ukraine. Its mandate and methods operation, however, have not yet been clearly specified, outside of the definition of an initial allocation of capital by the Government and a revision of the Law on Banking to permit the State Land Bank to consider land assets as a part of its capital. The actual operational mandate of the State Land Bank therefore remains an important question in the legal and policy framework for agricultural land as of the start of 2013.

LGAF panelists also raised concerns about the transfer of contiguous plots of land, which may be held by as many as 100 and more individual owners, to a single producer. Having multiple owners makes it difficult to ensure that one producer will be able to exercise control of the field, despite the fact that a field might be best utilized as a single production unit. In addition, there is the potential for conflicts of interest between a single producer and multiple landowners. The difficulty of consolidating land ownership suggests the need for mechanisms that allow multiple owners to be represented by a single entity, such as an owners association. The panel also discussed other land consolidation schemes, and noted the clear need for continued policy analysis and dialogue about collective action in land markets, the dynamics of farm structures and

¹⁰ This law does not affect existing codes on mining and forestry, as it applies only to land that has been designated as agricultural.

¹¹ The 2013 draft also introduces pre-emptive rights to the purchase of land for the government, the local community, and the State Land Bank, respectively. When combined with the restrictions noted above, such pre-emptive rights could create a situation of monopsony in which the State becomes the main purchaser of agricultural land in a non-competitive market, with no clear advantage as a land manager or producer.

¹² Razumkov Center. "National Security & Defence." No. 1 (130) 2012, p. 18.

their associated efficiencies, and the need to balance equity and efficiency interests in market transactions involving many owners of small land shares.

3.2.3 Land management institutions

The land management in Ukraine is carried out by central and local government authorities of general and special jurisdiction.¹³ Government authorities of general jurisdiction responsible for management of land resources include the Cabinet of Ministers of Ukraine, oblast and rayon state administrations. Government authorities of special jurisdiction include ministries and state agencies. Local authorities include village and city councils. Local authorities are designated to manage temporarily the state land and are responsible for communal land resources. They are authorized to dispose state and communal land by leasing or transferring to new owners, and to buying out private land for public needs. They also make decisions on change in the land use designation.

In addition, the Cabinet of Ministers is responsible for the governance of state authorities of special land management competence, which include:

- (1) **The State Agency on Land Resources**, which is responsible for (i) the administration of the state land cadastre which records the location and characteristics of land parcels; (ii) the issuance of licenses for land survey works to land survey organizations; (iii) the issuance of licenses to land appraisal organizations for land valuation activities (for determining the market value of land plots); (iv) state expert review of land survey documentation; and (v) land monitoring;
- (2) **The State Agriculture Inspection**, which exercises government control over use of agriculture and all the other land in Ukraine;
- (3) **The State Agency on Forest Resources**, which implements state policy regarding forests and hunting; and as to the land it issues permits for converting forest land into non-forest land;
- (4) **The Ministry of Agrarian Policy and Food**, which is responsible for overall management of the State Agency on Land Resources, State Agriculture Inspection and State Agency on Forest Resources; and
- (5) **The Ministry of Justice**, which manages activities of the **Technical Inventory Bureau** with respect to the stocktaking of buildings. The Ministry of Justice also oversees the **State Registration Service**, which administers (i) the register of immovable property rights, prohibitions on alienation of real estate and legal successions; (ii) the register of movable property (with regard to tax pledge of land and other immovable property); (iii) the register of mortgages; and (iv) the register of transactions with immovable property.

4. Assessment of Land Governance in Ukraine

4.1 Legal and institutional framework

4.1.1 Continuum of rights

| Recognition of a Continuum of Rights | | | | | | |
|--------------------------------------|----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 1 | i | Land tenure rights recognition in rural areas | | | | |
| 1 | ii | Land tenure rights recognition in urban areas | | | | |

¹³ Non-government institutions do not play any significant role in land management in Ukraine.

| | | | | | | |
|---|-----|--|--|--|--|--|
| 1 | iii | Rural group rights recognition | | | | |
| 1 | iv | Urban group rights recognition in informal areas | | | | |
| 1 | v | Opportunities for tenure individualization | | | | |

The most prevalent land rights recognized under current legislation in Ukraine are rights of ownership, permanent use, and lease. Buying agricultural land is prohibited for foreign citizens and foreign legal entities. Although condominiums associations are eligible to request private land rights, they have been established in only about 10% of apartment buildings. Moreover, current procedures for privatizing condominiums' ownership of land plots are viewed as burdensome, depending on sometimes arbitrary local government decisions.

Similarly, citizens have the right to apply for private land rights for the land under their dwellings, motor-garages, and other utilities in non-agricultural areas. Thus far this process has proceeded incrementally, as individual requests for privatization are made. The rights of other users, such as those who have built structures on urban land that is not directly under privatized buildings, are not stipulated in the legislation.¹⁴

Likewise, the land under industrial enterprises often state owned, with the property owner exercising perpetual use of the land. The tax burden that comes with the registration of land ownership or lease somewhat reduces the incentive of enterprises to apply for privatization, which in turn negatively affects public revenue.

4.1.2 Enforcement of rights

| Enforcement of Rights | | | | | | |
|-----------------------|-----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 2 | i | Surveying/mapping and registration of claims on communal or indigenous land | | | | |
| 2 | ii | Registration of individually held properties in rural areas | | | | |
| 2 | iii | Registration of individually held properties in urban areas | | | | |
| 2 | iv | Women's rights are recognized in practice by the formal system (urban/rural) | | | | |
| 2 | v | Condominium regime that provides for appropriate management of common property | | | | |
| 2 | vi | Compensation due to land use changes | | | | |

The land legislation of Ukraine guarantees the equal land rights to men and women. In addition, the Constitution of Ukraine of 1996 (Article 24) and the special Law "On Providing Equal Rights and Possibilities for Men and Women" dated September 8, 2005 state that men and women in Ukraine have equal rights.

Most apartment buildings are still state-managed, as under the Soviet system. This creates ambiguities about the status of communal spaces in apartment buildings, which (unlike the apartments themselves) are not privately owned. Although the municipal government holds the responsibility for maintenance of these areas, in practice this responsibility is not always

¹⁴ This is particularly common as spillover or in-fill development occurs near existing apartments and buildings.

exercised. In response, residents in some buildings have established owner-run condominium associations to manage buildings and maintain communal spaces.¹⁵

Losses caused by restrictions on the rights of land owners and users (including lessees) or by deterioration of the land quality are subject to compensation, and the Land Code established a procedure for determining such losses. In cases where compensation must be paid by government bodies, budgetary allocations may be a limiting factor, since annual budget programs do not generally provide enough funds for loss compensation.

4.1.3 Mechanisms for recognition of rights

| Mechanisms for Recognition of Rights | | | | | | |
|--------------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 3 | i | Use of non-documentary forms of evidence to recognize rights | | | | ■ |
| 3 | ii | Formal recognition of long-term, unchallenged possession | | | ■ | |
| 3 | iii | First-time registration on demand is not restricted by inability to pay formal fees | | | ■ | |
| 3 | iv | First-time registration does not entail significant informal fees | | | | ■ |
| 3 | v | Formalization of residential housing is feasible and affordable | | | ■ | |
| 3 | vi | Efficient and transparent process to formally recognize long-term unchallenged possession | | | ■ | |

Theoretically, several codes in Ukrainian legislation allow the use of non-documentary forms of evidence for obtaining full recognition of property claims when other forms of evidence are not available. However, the LGAF panel noted that in practice, courts do not always give non-documentary evidence sufficient weight.

As discussed below, the fee structure for registration services is publicly available. While the LGAF panel did not believe the fee schedule was unreasonably high, it noted that fee levels might be burdensome for some, especially for the low-income population. In addition, informal fees may be charged, particularly for long and complicated procedures.

Ukrainian legislation does provide for the formalization of the rights to housing in cities; yet many households have not applied for privatization, since they have not needed to transfer ownership or complete a housing-related financial transaction. This creates the potential for insecurity and the violation of their land rights.

The Civil Code of Ukraine provides the ownership rights to a person who openly and conscientiously continuously uses a real estate object for 10 or more years. In practice, however, the procedure for land rights acquisition through acquisitive prescription remains ambiguous and inefficient.

¹⁵ As noted above, these associations also frequently apply for rights to the land to facilitate market transactions and create clearer lines of responsibility for property management.

4.1.4 Restrictions on rights

| Restrictions on Rights | | | | | | |
|------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 4 | i | Restrictions on urban land use, ownership, and transferability | | | | |
| 4 | ii | Restrictions on rural land use, ownership, and transferability | | | | |

The legislation of Ukraine specifies a number of provisions regarding restrictions on the rights to land use and the rights of ownership, including both general restrictions and special zones. General restrictions include restrictions for sublease and the definition of terms for construction or cultivation, among others. The legislation also stipulates the formation of conservation zones, sanitary protection zones, and special land use regime zones. Local authorities may impose restrictions on specific land plots on an individual basis, in addition to restrictions on land use and the placement of industrial or housing facilities in accordance with city development plans. While these restrictions may be justified in many cases, the panel noted the risk that some restrictions may be applied without sufficient accountability or oversight.

Additional provisions place permanent and temporary restrictions on the use of agricultural land. Permanent restrictions include a requirement for buyers of agricultural land to be a Ukrainian physical person with the necessary experience in agricultural production or an agricultural legal entity Ukraine. Temporary restrictions include the requirement that privately owned agricultural plots must not exceed 100 hectares, which is in place until 2015.

4.1.5 Clarity of institutional mandates

| Clarity of Mandates | | | | | | |
|---------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 5 | i | Separation of policy formulation, implementation, arbitration roles | | | | |
| 5 | ii | Differentiated mandates across institutions | | | | |
| 5 | iii | Differentiated responsibilities across levels of government | | | | |
| 5 | iv | Information sharing across institutions | | | | |

Parliamentary hearings in 2005 confirmed the overlap in competencies of the State Committee on Land Resources (now the State Agency of Land Resources) with other land management institutions, including the Ministry of Justice, the Ministry of Environmental Protection (now the Ministry of Ecology and Natural Resources), and local government bodies. Existing legislation contains inconsistencies about the delineation of organizational functions and about the assignment of court jurisdiction in dispute cases, as discussed in Section 4.5.1.

Ukraine has a dual system of land records management: the State Agency of Land Resources is responsible for maintaining the cadastre, while the State Registration Service (SRS) is responsible for registration of the land rights. Furthermore, records for land rights and for immovable property (such as buildings) located on land plots are held by separate institutions. The SRS and the State Land Cadastre began automatically linking data in January 2013, and it is hoped that this linkage will resolve many of the problems resulting from the institutional dualism of these functions. Still, the legacy of the previous fragmentation in property registration continues to create uncertainties which these agencies must now resolve, as discussed in Section 4.4.1.

Furthermore, the overlapping powers of state and local authorities have led to disputes and conflicts between the two. For example, in Kyiv, Sevastopol, and a number of other cities, the local councils set up their own managerial structures to manage land resources, assuming some of the land management functions of central executive bodies. Other disputes have arisen as a result of the incomplete demarcation of public and communal lands, as when a public entity would like to change the use of lands currently under occupation, or when lands are privatized potentially in violation of their communal status.

4.1.6 Equity and nondiscrimination

| Equity and Non-Discrimination in the Decision-Making Process | | | | | | |
|--|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 6 | i | Clear land policy developed in a participatory manner | | | | |
| 6 | ii | Meaningful incorporation of equity goals | | | | |
| 6 | iii | Cost of implementing policy is estimated, matched with benefits, and adequately resourced | | | | |
| 6 | iv | Regular public reports indicating progress in policy implementation | | | | |

Although the legislation of Ukraine specifies some avenues for public participation in land policy formulation, full participation is rarely achieved. In part, this is due to the lack of civic groups representing rural dwellers and land share owners, who represent nearly one-third and one-seventh of the total population, respectively. As a result, their interests may be left out of policy drafting and review processes. Similarly, policymakers tend not to consult additional interested subjects who may be outside the immediate field of land management. Moreover, although draft regulatory acts are generally published, they are rarely accompanied by careful analysis of their potential impacts, and the criteria for accepting proposals are not specified.

Certain priority areas within land policy receive more adequate resources than others. In particular, financing has concentrated on the free provision of land share deeds and the development of the cadastre system, while significantly fewer resources have been devoted to the demarcation of public and communal lands, the inventory of lands, and the supply of materials to land management institutions.

Land management institutions do not issue comprehensive reports regarding policy implementation. Some statistical data on land are posted on the website of the State Agency of Land Resources; however, they primarily relate to the implementation of the land cadastre, decisions about soil fertility and crop selection, and the functioning of the land market, rather than potentially more useful information on land values and yields.

4.2 Land use planning, taxation, and management

4.2.1 Transparency of restrictions

| Transparency of Land Use | | | | | | |
|--------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 7 | i | Urban land use plans and changes to these are based on public input | | | | |
| 7 | ii | Rural land use plans and changes to these are based on public input | | | | |
| 7 | iii | Public capture of benefits arising from changes in permitted land use | | | | |

The LGAF panel highlighted the fact that the public in Ukraine has very limited access to community master plans for land use and future development. More than 80% of such plans are designated as “for official use,” and some descriptive parts are classified as secret. As a result, the ability of the public to judge and affect city development is limited. This lack of public access to city plans creates the potential for government officials to act arbitrarily without public recourse. For example, in one of Ukraine’s largest cities, different investors were shown different versions of planned land use for the same site.

The public is also rarely engaged in the development or revision of city plans, in contradiction to existing legal provisions. The law “On the Regulation of City Planning” obliges authorities to submit draft city planning documents for public discussion. In practice, however, municipalities frequently finalize land use plans without providing public disclosure or creating forums for public dialogue.

A common practice is to publish a general city plan, with critical details remaining in unpublished explanatory notes. These general plans may lack any mention of a proposed change, or they may fail to provide analyses of the anticipated costs and benefits of a change (if such analyses exist). Therefore, quite often local and regional authorities make decisions about land use and allocation without having sufficient information about the ecological and social concerns of the population. Residents and other land market actors are also not always well-informed about development prospects for territories where they obtain land plots, and may later discover that their rights to lands are limited (for instance, because a protected area was established without their knowledge) or land plots are damaged (due to the construction of an industrial or transport facility close to the land plot).

4.2.2 Efficiency in the planning process

| Efficiency of Land Use Planning | | | | | | |
|---------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 8 | i | Process for planned urban development in the largest city | | | | |
| 8 | ii | Process for planned urban development in the next 4 largest cities | | | | |
| 8 | iii | Ability of urban planning to cope with urban growth | | | | |
| 8 | iv | Plot size adherence | | | | |
| 8 | v | Use plans for specific land classes (forest, pastures, etc.) are in line with use | | | | |

Land use planning is undergoing a process of change in Ukraine. In 2011, the law on “Regulating City Planning” was adopted to facilitate reforms in city planning, specifically by introducing zoning regulations. Despite the fact that the law stipulates that after January 1, 2013 municipalities are prohibited from allocating land plots without reference to zoning, at the time of the initial LGAF assessment in May 2012, zoning plans had not yet been ratified by any municipality in the country. State assistance to municipalities to assist with creation of zoning plans is necessary for the acceleration of this process.

The state has allocated insufficient funding for the development, correction, and updating of city planning documents at the regional and local levels. As a result, authorities have not been able to control urban spatial expansion effectively, not only in the largest cities but in smaller cities as

well. City plans for the largest four cities have doubtful cartographic accuracy, and lands set aside for natural or cultural use (such as parks and cemeteries) may not be depicted covered. This lack of comprehensiveness may contribute to encroachment and difficulties in enforcement. Indeed, violations of land legislation are common. In 2011, in Donetsk oblast alone, there were 2,650 violations committed.

4.2.3 Speed and predictability

| Speed and Predictability | | | | | | |
|--------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 9 | i | Requirements for building permits are affordable/transparent | | ■ | | |
| 9 | ii | Time to get building permit | | | ■ | |

Although there is a new, considerably simplified process for getting approval for construction, information on this process has not yet been widely disseminated. Moreover, the process for acquiring a construction license remains unnecessarily long and complicated, creating uncertainty for builders and planners. For someone with lease or ownership rights to the plot, it may still take up to 100 days to receive a building permit. If a person lacks rights to the land, it may take years to acquire both land rights and permission for construction. Occasionally, for commissioned construction projects, officials may stipulate additional requirements beyond those specified by law, sometimes for justifiable reasons and sometimes to extract additional informal fees. In addition, as noted by LGAF expert group member, there are complaints about unreasonable rejection in declarations on the start of construction or refuse in registration.

4.2.4 Transparency of valuations

| Transparency of Valuation | | | | | | |
|---------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 10 | i | Clear process of property valuation | | | | ■ |
| 10 | ii | Public availability of valuation rolls | | | ■ | |

In Ukraine the property tax is based upon government-provided estimates of values, known as normative values. These may differ substantially from market prices, and the LGAF panel noted concerns about fairness, transparency and their vulnerability to manipulation. In some big cities, such as Lviv and Odessa, the normative value of land has exceeded its market price by as much as 10 times. LGAF panelists recommended that market values should be employed to provide an equitable, transparent basis for taxation, expropriations, and other government actions associated with land and property. Although the law “On the Access to Public Information” provides for public availability of the valuation rolls, such access is generally not provided.

4.2.5 Tax collection efficiency

| Tax collection efficiency | | | | | | |
|---------------------------|----|-----------------------------------|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 11 | i | Property tax exemptions justified | | | ■ | |
| 11 | ii | Completeness of tax roll | | | ■ | |

| | | | | | | |
|----|-----|---------------------------------------|--|--|--|--|
| 11 | iii | Assessed property taxes are collected | | | | |
| 11 | iv | Taxes higher than cost of collection | | | | |

Ukraine does not exempt categories of land from property taxes, but it does create exemptions for certain categories of persons. Although some of these exemptions may be justified, their application is not always based on the principles of equality and efficiency, and these provisions are not always applied transparently and consistently.

All registered land owners and users must pay land tax, except for lessees. However, if a plot is not registered, its owners and users are not obliged to pay land tax.¹⁶ Currently, the land cadastre still lacks information on some land plots and owners: around 17 million plots have been entered into the cadastre, compared to some 25 million documented land owners and users. This implies that the tax roll remains incomplete.

4.3 Management of Public Land

4.3.1 Identification of public land

| Identification of Public Land | | | | | | |
|-------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 12 | i | Public land ownership is justified and implemented at the appropriate level of government | | | | |
| 12 | ii | Complete recording of publicly held land | | | | |
| 12 | iii | Assignment of management responsibility for public land | | | | |
| 12 | iv | Resources available to comply with responsibilities | | | | |
| 12 | v | Inventory of public land is accessible to the public | | | | |
| 12 | vi | Key information on land concessions is accessible to the public | | | | |

LGAF experts estimated that only between 30 to 50% of public and communal lands have been clearly demarcated on the ground and assigned management responsibility. Records of public lands are most frequently made when a land plot is transferred from public or communal ownership. This results in a situation in which there is a lack of transparency over significant fractions of public and communal land. New laws on the responsibilities of local and national government bodies in discriminating and demarcating public lands have been introduced, along with measures on land auctions; however, these laws are only beginning to be implemented.

Even with these improvements in the legislative framework, the demarcation of state and municipal land has been slow due to insufficient funds. Funding constraints stem partly from the high cost of demarcation projects, which itself is the result of complicated procedures and favoritism in the hiring of public surveying companies over private ones. A draft law has been registered in the Parliament, which would lower these costs and streamline procedures. This draft law was adopted on September 6, 2012 and became effective on January 1, 2013.

According to the LGAF panel, the media tend to publish little information on public land concessions. In general, they report information such as the announcement of a concession on

¹⁶ This does create a disincentive to registration. However, the rate of land taxes is reasonable low and the benefits of registration – namely, legal protection and the ability to transfer ownership – are considerable.

coal mines or the decisions of local authorities on a land concession. However, information on concessions for investment-attractive resources or lands already under concession is not published.

Another specific issue within public land management is the use of the 530,000 ha of agricultural land held by the National Academy of Agrarian Sciences of Ukraine. Much of this land is not currently being used for scientific research, due to a lack of funding. At the same time, this land has not been leased out to generate funds for the Academy.

4.3.2 Justification of expropriation

| Incidence of Expropriation | | | | | | |
|----------------------------|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 13 | i | Transfer of expropriated land to private interests | | | | |
| 13 | ii | Speed of use of expropriated land | | | | |

Expropriation of land for public uses remains problematic. There are frequent reports of cases in which land plots allocated to a private party for perpetual use are expropriated in the name of the public good, only to be transferred to another private user. Similarly, in some cases local authorities have initiated the cancellation of lease agreements on public and communal lands, later transferring such lands to private parties. According to experts, less than 10% of lands expropriated from private owners in the last 3 years are being used for private purposes. Still, public monitoring of expropriated parcels could further reduce the potential for abuse in this area.

4.3.3 Transparency of expropriation procedures

| Transparency of Expropriation Procedures | | | | | | |
|--|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 14 | i | Compensation for expropriation of ownership | | | | |
| 14 | ii | Compensation for expropriation of all rights | | | | |
| 14 | iii | Promptness of compensation | | | | |
| 14 | iv | Independent and accessible avenues for appeal against expropriation | | | | |
| 14 | v | Appealing expropriation is time-bounded | | | | |

As noted above, evaluations of properties to be expropriated for social needs are not based on market indicators but on normative valuations. In some instances, authorities have used their control over normative value calculations to facilitate the expropriation of land and provide compensation at a fraction of true market prices (as was reported to have occurred in some expropriations for the Euro 2012 games). The LGAF panel also found that even where people have formalized land rights, they may fail to receive compensation for expropriated lands. Payments may also be significantly delayed: LGAF research suggested that less than half of expropriated land owners receive compensation within one year.

4.3.4 Allocation of public land

| Transparent Processes for Divestiture | | | | | | |
|---------------------------------------|---|-----------|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |

| | | | | | | | |
|----|-----|--|--|--|--|--|--|
| 15 | i | Openness of public land transactions | | | | | |
| 15 | ii | Collection of payments for public leases | | | | | |
| 15 | iii | Modalities of lease/sale of public land | | | | | |

Between 2001 and 2012, there was no law containing provisions for the auctioning of public lands, although local regulations on public land auctions did exist in some areas. This decreased transparency in the use and transfer of public and communal lands. Starting in 2012, nine oblasts held land auctions, and in mid-2012 a law on land auctions with clearly specified procedures was finally promulgated.

Additionally, public land transactions remain slow: LGAF research suggests that privatization requests take an average of 540 days to complete, and sometimes last as long as 750 days. Recently introduced legislation has simplified procedures for lease renewals, but the both the renewal decision and the speed at which that decision is reached are subject to the discretion of public officials, which raises issues of transparency and incentives for rent-seeking.

Evasion of payment for the lease of public lands is a significant problem, stemming partly from widespread non-compliance with the terms of renewal of land-lease agreements concluded under previous government authorities. Conversely, in Kyiv, authorities have a high degree of control over rent receipts; however, property income is aggregated with other forms of income in the Kyiv budget, complicating the monitoring of property income receipts.

4.4 Public provision of land information

4.4.1 Completeness

| Completeness of Registry Information | | | | | | | |
|--------------------------------------|-----|-----------------------------------|---|---|---|---|--|
| LGI | # | Indicator | A | B | C | D | |
| 16 | i | Mapping of registry records | | | | | |
| 16 | ii | Relevant private encumbrances | | | | | |
| 16 | iii | Relevant public restrictions | | | | | |
| 16 | iv | Searchability of the registry | | | | | |
| 16 | v | Accessibility of registry records | | | | | |
| 16 | vi | Timely response to requests | | | | | |

The dual system of a land register and national cadastre complicates the registration process for all individuals and entities, particularly given data discrepancies between the two. Moreover, until the implementation of the registration law that took effect on January 1, 2013, the rights to land plots, buildings, and structures were recorded in 7 separate registries maintained by different institutions on the basis of different regulatory acts with different volumes of information. In some instances, multiple records containing contradictory information exist for the same plot. Correction of errors and cross-checking of systems is difficult. Even after the initiation of the new cadastre and registration laws, information on rights to land and buildings held by the State Land Cadastre, the State Registration Service (SRS), the Bureau of Technical Inventory (BTI), and notaries have not been fully reconciled.

Adding to these complications, most information on land and property is not accessible to the public. Instead, current legislation gives access to such information only to plot owners/users, law enforcement bodies, and the state supervisory authority. Moreover, the newly adopted laws of

Ukraine “On the State Land Cadastre” and “On the State Registration of Property Rights to Real Estate and their Encumbrances” will maintain these restrictions on public access to land information. Still, the State Agency of Land Resources now publishes the Public Cadastral Map online, making information on plot location and characteristics publicly available. The site also includes a feature for users to submit corrections. However, data on land ownership is not published, on the grounds that access to personal information is proscribed by law.

4.4.2 Reliability of Registry Records

| Reliability of Registry Records | | | | | | |
|---------------------------------|----|---------------------------------------|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 17 | i | Registry focus on client satisfaction | | ■ | | |
| 17 | ii | Cadastral/registry info up-to-date | | | ■ | |

The above-noted data discrepancies make it difficult to identify and search for information on a property, increasing the opportunity for fraud and corruption and raising transaction costs for property owners, financiers, and developers. The buyer of an enterprise has to register separately the rights to land with the State Land Agency and the rights to the building in the Bureau of Technical Inventory, which makes the registration process more complicated, prolonged, and expensive. Moreover, inconsistencies in the means of identifying locations have led to situations in which a building that is registered with the BTI is not located on the land plot specified in the title. This has prompted the formation of an industry of private fixers who handle these complications for significant fees.

4.4.3 Cost-effectiveness, accessibility, and sustainability

| Cost Effectiveness, Accessibility, and Sustainability | | | | | | |
|---|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 18 | i | Cost of registering a property transfer | | ■ | | |
| 18 | ii | Financial sustainability of registry | | | ■ | |
| 18 | iii | Capital investment in the system to record rights | ■ | | | |

Underfunding of public land information agencies has exacerbated the above problems. The State Land Agency and the Center of State Land Cadastre Services are funded from the state budget fund, and funding levels have been significantly less than required to carry out their mandates. Indeed, for the first third of 2012, the state budget allocated the State Land Cadastre Services less than a third of the revenues the agency had generated and transferred to the state budget.

4.4.4 Transparency of service costs

| Transparency of Service Costs | | | | | | |
|-------------------------------|----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 19 | i | Schedule of fees for services is public | ■ | | | |
| 19 | ii | Informal payments discouraged | | | ■ | |

The State Agency of Land Resources and its regional offices have specified fee amounts and procedures for the collection of payments for paid administrative services, as approved under Cabinet Resolution No. 835. Unofficial payments for land management services may also be charged, especially for long procedures. Sometimes certain officials may deliberately delay the land right formalization process or charge excessive fees for the provision of non-critical or routine administrative services.

4.5 *Dispute resolution and conflict management*

4.5.1 Assignment of Responsibility for Dispute Resolution

| Assignment of Responsibility for Dispute Resolution | | | | | | |
|---|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 20 | i | Accessibility of conflict resolution mechanisms | | | | |
| 20 | ii | Informal or community based dispute resolution | | | | |
| 20 | iii | Forum shopping | | | | |
| 20 | iv | Possibility of appeals | | | | |

According to land legislation in Ukraine, the institutions that are formally authorized to resolve land disputes at a local level are judicial bodies, local councils, and executive bodies on land resources. Within communities, self-government bodies typically resolve plot boundary disputes, neighborliness complaints, and conflicts over the demarcation of raions.

Still, the majority of land disputes are considered by the courts. Disputes concerning illegal acts or the failure of state bodies to perform their duties are typically adjudicated by administrative courts according to the Code of Administrative Legal Procedure. By contrast, property disputes should be adjudicated by courts of general jurisdiction or by economic courts. However, this division of powers within the court system creates some ambiguities around jurisdiction, especially in cases that involve some combination of administrative, civil, and criminal elements.

Some land dispute cases are resolved through informal mechanisms, including mediation. This approach may be particularly useful for land disputes involving neighbor relations. However, at present there is no legislation to regulate mediation processes, and the technique is typically applied to individual and family disputes rather than land cases.

Non-compliance with court decisions remains an acute problem. Local government bodies sometimes ignore rulings entirely, either by failing to enforce them or by taking illegal actions in defiance of a court outcome. In addition, in rural areas, long distances to district centers, financial limitations, and low levels of legal awareness limit access to the judicial system for many rural dwellers. This in turn increases their vulnerability to deceptive or abusive practices, particularly regarding leases for their land.

The appeals process depends on the court jurisdiction. Appeals may be lodged within 10 days of a judgment (i.e. final decision) of a local economic court or within 5 days of a court ruling (i.e. decision during the process).

4.5.2 Pending conflict level

| Low Level of Pending Conflicts | | | | | | |
|--------------------------------|-----|---|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| 21 | i | Conflict resolution in the formal legal system | | ■ | | |
| 21 | ii | Speed of conflict resolution in the formal system | | ■ | | |
| 21 | iii | Long-standing conflicts (unresolved cases older than 5 years) | ■ | | | |

Court statistics indicate that in the first half of 2011, first-instance courts considered approximately 3,822 land dispute cases in accordance with civil proceedings, out of a total of 38,857 complaints received. LGAF panelists estimated that the total share of land disputes considered in first instance courts for more than 1 year will remain within 10%. The cost of lodging a complaint depends on the court jurisdiction, whether or not the complaint involves property considerations, the amount of the property claim in cases that do, and lawyers' fees.

4.6 Large-Scale Land Acquisitions

| Large-scale Acquisition of Land Rights | | | | | | |
|--|----|--|---|---|---|---|
| LGI | # | Indicator | A | B | C | D |
| PLI | 1 | Most forest land is mapped and rights are registered | | | ■ | |
| PLI | 2 | Conflicts generated by land acquisition and how these are addressed | | | | ■ |
| PLI | 3 | Land use restrictions on rural land parcels generally identifiable | ■ | | | |
| PLI | 4 | Public institutions in land acquisition operate in a clear and consistent manner | | | ■ | |
| PLI | 5 | Incentives for investors are clear, transparent, and consistent | | | ■ | |
| PLI | 6 | Benefit sharing mechanisms for investments in agriculture | | | ■ | |
| PLI | 7 | Direct and transparent negotiations between right holders and investors | | ■ | | |
| PLI | 8 | Information required from investors to assess projects on public/community land | | | | ■ |
| PLI | 9 | Information provided for cases of land acquisition on public/community land | | | ■ | |
| PLI | 10 | Contractual provisions on benefits and risks sharing regarding acquisition of land | | | ■ | |
| PLI | 11 | Duration of procedure to obtain approval for a project | | ■ | | |
| PLI | 12 | Social requirements for large scale investments in agriculture | | | ■ | |
| PLI | 13 | Environmental requirements for large scale investments in agriculture | | ■ | | |
| PLI | 14 | Procedures for economically, environmentally, and socially beneficial investments | | | | ■ |
| PLI | 15 | Compliance with safeguards related to investment in agriculture | | ■ | | |
| PLI | 16 | Procedures to complain if agricultural investors do not comply with requirements | | ■ | | |

As noted in Section 3.2.2, most agricultural land in the country has been privatized, and today the majority of land shares are operated by agricultural enterprises on a lease basis. A number of large-scale agricultural producers have acquired sizeable acreages by negotiating lease agreements with most private landowners.

In 2011, 55% of leases on agricultural land had terms of 5 years or less. Although this is a decline from 87% in 2001, the widespread use of short term leases remains a concern, since such leases do not provide incentives for the lessee to make investments and adopt environmentally sound tillage practices. Uncertainty about the lifting of the agricultural land sales moratorium is believed to be a significant reason for the persistence of shorter-term leases.

Yet despite the country's agricultural potential, on-farm investments remain relatively low. Because of the moratorium on agricultural land sales and frequent changes in agricultural export procedures, agribusiness investors experience substantial and unpredictable losses; this appears to be preventing greater investment in Ukrainian agriculture.

Conflicts often arise between landowners and leaseholders, typically over the issue of rent amounts and forms of payment (i.e. in cash vs. in the form of agricultural products and services). The failure to register at least 10% of agricultural land leases contributes to these conflicts. Moreover, the monopoly power of some agricultural enterprises implies that they may be able to dictate unfavorable lease terms to village landowners. Ukrainian legislation does provide mechanisms for pre-trial and court resolution of conflicts related to the failure of agricultural producers to comply with the terms of land-lease agreements. However, plot owners generally have a low level of legal awareness, and these mechanisms are not widely used. Thus agricultural producers may delay rent payments.

Although the state does not require agricultural producers to contribute to the maintenance of public goods like schools and health systems, many enterprises have been willing to support village development in order to establish fruitful relationships with local rural communities. A few have transferred funds to the accounts of village councils; however, the risk of misuse of these funds remains a challenge.

Experts and agricultural producers are also concerned about the governments' attempts to legislate standards with regard to crop rotations, livestock densities, crop selection, etc. Cabinet Resolution #1134, which came into force on January 01, 2013, requires land survey plans to provide environmental and economic justifications for crop rotations. Administrative and even criminal liability for non-compliance with state standards has been proposed in the draft Law of Ukraine "On Agriculture."

Representatives of large agricultural producers also expressed concern over the tendency of some state officials to change lease agreements for state-owned agricultural lands. Lease terms may be altered or disregarded, and in some cases the lessee may even be changed, often motivated by corruption. In addition, land governance decisions often lack transparency. Village councils typically do not make public announcements regarding the transfer of state land to investors, nor is this required by law. Indeed, such secrecy and information inaccessibility have intensified since the adoption of the 2010 Law "On the Protection of Personal Data." State officials have interpreted the principle of non-disclosure of personal data to apply to information on plot owners and users who have committed illegal actions in the course of land acquisition or use. Still, authorities do regularly audit lessees of state and communal lands.

In terms of conservation, Ukrainian legislation outlines only general provisions for the protection of agricultural lands and the environment. Responsibilities for the protection of land and other natural objects are assigned to agricultural landowners and users; however, they are not specified

in ownership decisions and land-lease agreements. Thus a significant fraction of agricultural lands are becoming progressively degraded, with neither agricultural producers nor government officials bearing legal responsibility for the quality of degraded soils. Moreover, the granting of leases to state and communal lands depends solely on rent levels, rather than including potential social or environmental benefits.

4.7 Forestry

The total forests covered area in Ukraine is 9.4 million ha, or 15.6% of Ukraine's territory. Forests in Ukraine are predominantly state-owned: 66% of the forest fund is managed by the State Committee of Forestry, 26% by the Ministry of Agrarian Policy, and the rest by more than 50 other government ministries and agencies. Less than 1% of forest land is private.

| Commitments to Sustainability and Climate Change Mitigation | | | | | | |
|---|----|--|---|---|---|---|
| FGI | # | Indicator | A | B | C | D |
| 1 | i | Country signature and ratification of international conventions | | | | |
| 1 | ii | Incentives to promote climate change mitigation through forestry | | | | |

Ukraine is party to a number of international conventions on sustainable forestry management. Ukrainian legislation on forest management conforms to certain treaties better than others. For example, the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora are well-incorporated into Ukrainian legislation; however, legislation regulating the establishment of an environmental network and the protection of natural habitats (settlements) requires more significant changes to conform to international guidelines. This in turn implies that the degree to which the principles of international conventions are implemented likewise varies.

The Ukrainian government is attempting to manage its forest resources for the provision of ecosystem services (a general term for the range of natural processes and resources that ecosystems provide), as outlined in the State Environmental Policy and the National Action Plan on Environmental Protection for 2011-2015. International technical advisors and the scientific community have discussed the idea of introducing payments for ecosystem services, and this concept has received some sympathy among the Ukrainian population.

Although the state recognizes that carbon absorption is an important ecosystem service, it has not yet introduced large-scale afforestation as a measure to prevent climate change. A key impediment to development of afforestation projects under the Kyoto Protocol and within green investment schemes is the absence of a methodology to establish a price for carbon credits. Additional legislation on the ownership rights to deposited carbon is a necessary precondition for the conclusion of credit transfer agreements.

| Recognition of Public Goods Aspects and Promotion of Sustainable Use | | | | | | |
|--|----|---|---|---|---|---|
| FGI | # | Indicator | A | B | C | D |
| 2 | i | Public good aspects of forests recognized by law and protected | | | | |
| 2 | ii | Forest management plans and budgets address the main drivers of deforestation and degradation | | | | |

The social significance of forests has been affirmed in both legal and normative texts. Additionally, there are procedures for the support of the social and environmental functions of forests within forestry activities. However, norms for safeguarding forests have led to an additional 1 million ha of forest land being excluded from economic use. This exclusion may have a negative impact in terms of foregone benefits from forest usage.

| Supporting Private Sector Sustainable Investment | | | | | | |
|---|----------|--|----------|----------|----------|----------|
| FGI | # | Indicator | A | B | C | D |
| 3 | i | Commitment to forest certification and chain-of-custody systems to promote sustainable harvesting | | | | |
| 3 | ii | Commitment to SMEs as a way to promote competition, income generation, and productive rural employment | | | | |

Ukrainian legislation only regulates part of the timber circulation process. The law requires record keeping for raw timber materials, as well as export transactions. However, there are not sufficient regulations on the legal circulation of timber within a domestic market, and a market for certified products has not yet developed.

Planned spending for the State Target Program on the “Forests of Ukraine” significantly exceeds actual expenditures for afforestation. This suggests although afforestation is a political priority for the government, the amount of funds actually allocated to it is insufficient. Moreover, despite noted annual increases in afforestation of lands withdrawn from agricultural use, an analysis of the effectiveness of afforestation measures has not yet been conducted.

| Livelihood of Forest-Dependent Communities | | | | | | |
|---|----------|--|----------|----------|----------|----------|
| FGI | # | Indicator | A | B | C | D |
| 4 | i | Legal recognition of traditional and indigenous rights to forest resources | | | | |
| 4 | ii | Sharing of income and benefits from public forests with local communities legally provided for and implemented | | | | |

The status of these forests requires further legislative regulation and implementation to ensure traditional rights of territorial communities are recognized and to facilitate their sustainable management. Under Ukrainian law, there is no forest tenure category to protect the traditional rights of rural communities to forest resources, since all forests that are not privately owned are considered public. The state does recognize the right of citizens to stay freely in public forests, although there is no enforcement mechanism in cases where this right has been restricted or violated. Legal entities are able to use forests under a special regime, termed temporary long-term use; however, this regime often effectively restricts public access to such forest lands, since there are no criteria for limitations. The National Action Plan for 2012 for the implementation of the Program of Economic Reforms for 2012-2014 envisaged the adoption of criteria for the limitation of free access to public forests, including temporary long-term use, but this has not yet been implemented.

Local benefits from public forest lands come primarily in the form of tax revenues to local budgets. The Budget Code of 2010 shifted revenues from charges for the special use of forest resources (excluding timber felling) from central to local budgets. This change supports the

interests of local self-government bodies in developing forests and promoting the effective use of forest resources.

| Forest Land Use, Tenure, Conversion | | | | | | |
|--|----------|---|----------|----------|----------|----------|
| FGI | # | Indicator | A | B | C | D |
| 5 | i | Boundaries of the countries forest estate, the classification into various uses, and ownership are clearly defined and demarcated | | | | |
| 5 | ii | In rural areas, forest land use plans and changes in these plans are based on public input | | | | |

Forest lands are not fully demarcated or inventoried in Ukraine, and there is considerable ambiguity about the differentiation between community, private, and public forests. Even the land rights of state bodies with land claims are often not documented. As of 2012, the State Committee of Forestry had acts for only 28% (2.1 million ha) of lands in use by its enterprises.

A state inventory of forests was begun in 2011; however, this effort remains incomplete. Declarations by users and owners of forests have not yet been compiled, and a normative evaluation of forest plots was not conducted. Ideally, the forest cadastre could be resumed and integrated with the state land cadastre as a compatible layer. At present, without a clearer national inventory and cadastre, it will be hard to ensure that management and monitoring of forest resources is being carried out in full accordance with the development goals of the sector.

While the state has tried to implement policies that protect the social benefits of forests, it has generally failed to establish effective mechanisms of public co-management. Although the systems of public notification and consultation are widely used for forestry management, actual public influence on managerial decision-making remains weak.

| Controlling Illegal Logging and Forest Crimes | | | | | | |
|--|----------|--|----------|----------|----------|----------|
| FGI | # | Indicator | A | B | C | D |
| 6 | i | Approach to controlling forest crimes, including illegal logging and corruption | | | | |
| 6 | ii | Inter- and intra-agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors | | | | |

Illegal felling of forests may be considered a misdemeanor or a felony, depending on the amount of damage caused, offenses that fall under the Code of Ukraine on Administrative Offences or the Criminal Code of Ukraine. Cabinet Decree #665 of 2008 establishes a mechanism for the calculation of the level of damage from illegal felling and harming trees and shrubs. In practice, the control system focuses on the recovery of damages instead of the detection of offenders. When illegal felling occurs, the forest service may assess fines for damage on the forestry enterprise in whose vicinity the felling occurred, rather than tracking down and fining the illegal loggers themselves. Forestry enterprises may thus incur significant penalties for actions that may or may not be the result of their own negligence. This reduces investment levels in forestry without directly protecting forest land from illegal logging.

5. Policy Priorities

The following are the key policy implications that LGAF expert panels derived for each thematic area. These policy priorities are recommended for further consideration by relevant government authorities.

5.1 *Legal and institutional framework*

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 an improved mechanism for preventing land speculation, such as through the introduction of a capital gains-type tax;
- 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.

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.

3. 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). Currently there are cases in which the process of extending a lease agreement has taken several years.

4. Development of regulations providing for the conduct of public hearings on all key issues concerning land use in populated areas. In particular, public consultation should be required by regulation for the elaboration and adoption of urban planning documents, planning schemes for territories beyond but adjacent or directly affecting populated areas, land expropriation or mandatory sale of land for public good, and the construction of structures for protection against natural disasters.

5.2 Land use planning, management and taxation

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. Development of government support to and coordination of executive bodies and local government on issues relating to the development and updating of town planning documentation, including the introduction of liability for municipal and oblast authorities failing to comply with procedures established for the development of related documentation.
3. 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.
4. Introduction of land taxation based on market valuation.
5. 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.
6. 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.

5.3 Management of public land

1. Provision of the following support and acceleration of demarcation process for state and communal land:
 - a. Adoption of legislation regarding demarcation of state and communal land;
 - b. Definition of the roles and responsibilities of state and local authorities in relation to land issues.
2. Adoption of legislation on land auctions, with transparent and streamlined procedures, and the inclusion of town planning terms and restrictions in the package of documents required during land auctions.
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 raion levels.
4. In relation to the valuation of property subject to expropriation for public needs or necessity, valuation methods based on market indicators should be considered. Notions such as “public needs” and “public necessity” are open to interpretation and should therefore be clearly defined by law to eliminate over laps in the scopes of these two terms.

5. Revision of applicable laws regarding the objectives, terms, procedures, and legal consequences for conducting and for failing to conduct public consultation for the use and protection of state and communal property land, in order to ensure a balance between private and social interests concerning land and other natural resources.

5.4 Public provision of land information

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.

2. Introduction of differentiated tariff systems for different services, for example, offering expedited services at a higher price than standard services.

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

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

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

5.5 Dispute resolution and conflict management

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.

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.

3. Introduction of a program of free legal support to individuals involved in land transactions or disputes.

4. Encouragement for local governments to exercise their authority to address land disputes in a timely and efficient manner.

5. Introduction of mediation as an approach to land dispute settlements. To this end, a legislative framework for mediation should be developed in Ukraine.

6. Provision of public access to information on court rulings at all levels and in all categories should also be considered.

5.6 Large-scale land acquisitions

1. Introduction of clear mechanisms to support the establishment of social partnerships between farmers and village communities. In particular:

- a. Simplification of procedures and mechanisms for territorial communities' social assistance by large scale farmers;
- b. Provision of clear and accessible information to village communities regarding such assistance;
- c. Village councils' ensuring implementation of social programs funded by large scale farmers.

2. Establishment of clear and transparent land auction procedures for acquiring large land plots for rent or ownership.

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.

4. Consideration of privatization through land auctions of excess land formally in use by the National Academy of Agricultural Sciences but not used for research and development. An alternative would be permitting the long-term lease of such land by the Academy.

5. Encouragement of land consolidation in both the land-lease and sale-purchase markets, including consideration of establishing associations of land share holders to allow the lease of larger parcels as single units.

6. 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.

5.7 Forestry

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.

2. Development of a system requiring the elaboration and implementation of action plans upon the signature and/or ratification of international agreements, particularly those relating to regulatory amendments and performance supervision.

3. Consideration of international obligations when drafting forestry regulations. Regulations should include an appendix with references to international conventions and agreements, showing which articles or provisions are being implemented under the given regulation.

4. Consideration of economic and legal incentives for forest carbon sequestration, conservation of ecosystem services, and green investment schemes.

5. Development of mechanisms for carbon unit price determination and improvements to the system of greenhouse sinks inventory in forestry.
6. Support for public consultation in the decision-making process during the elaboration of forestation plans.
7. Ensure that forestry authorities monitor the implementation of forestry plans.
8. Consideration of additional normative acts to confirm the legitimacy of wood origin in the process of its circulation within the internal market.
9. Consideration of the interests of small and medium businesses in the development of forest resources access rules, including by way of improving tax and trade mechanisms.
10. Introduce legal responsibility for obstructing free access to forests under state and communal ownership.
11. Creation of a mechanism to apply local budget funds to forestry management.
12. Adjustment of the accounting categories within the forest cadastre to correspond to those of the land cadastre.
13. Provision of public access to decisions of forestry authorities and the determination of mechanisms for increasing community participation in the decision-making process, for example, through public hearings.

6. Conclusion

Ukraine has an abundance of land and forestry resources which, if governed and 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 the 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.