

Chapter 3

Divergent Approaches to Reform: Land Policies

In the conceptual framework outlined in Chapter 2, transition “from plan to market” in former socialist countries should involve radical reconfiguration of the land resources and other productive assets, including changes in both property rights and use patterns. These issues are usually classified under the twin rubric of land reform and farm restructuring. Most of the attention is typically devoted to ownership and use of land, because of the emotionally charged and politically sensitive nature of this asset in all countries, but collective farms cannot be properly restructured into market-oriented entities unless policy-makers deal with ownership and use of non-land assets as well. The following two chapters discuss these topics. We first examine the land policies in transition countries, which lay the foundation for farm restructuring, and then proceed to consider the changes in farm structure.

The land policies of transition countries should be evaluated against the basic attributes of market agriculture, namely private land ownership, transferability of use rights, security of tenure, and individual or, more generally, non-collective organization of production. An examination of these attributes reveals that, despite far-reaching commonalities imposed by the communist regimes on societies and economies, the agricultural sectors in CEE and CIS are in fact following divergent paths of market reforms, which gradually create a sharp “East/West divide” between the two subblobs in the formerly Soviet-dominated region. As noted in Chapter 2, the common institutional and organizational heritage and the common objective of an efficiently functioning farm sector suggest a conceptually common framework for transition in all these countries. The divergence is thus associated with

differences in the specifics of the policies actually adopted and the implementation procedures. These differences stem from inherent cultural and social differences that persisted throughout the Soviet era, even if hidden under the surface by the common political and economic system.

Land Ownership Prior to Transition

Despite the universal collectivization of agricultural production in CEE and CIS, these countries entered the transition in 1990 with significant differences in the legal status of land ownership. In the Soviet Union, all agricultural land was state-owned, while in the CEE countries (with the exception of Albania) private ownership of land was never legally abolished and continued to co-exist with state ownership and uniquely also cooperative ownership.

Land in the original constituent republics of the Soviet Union (Russia and other parts of the former czarist empire) was nationalized within days of the Bolshevik revolution in October 1917. The famous Decree on Land (*Dekret o zemle*), transferring all land to the state and prohibiting private land ownership, was one of the first two decrees adopted by the new revolutionary government (the other decree put an end to Russia's involvement in World War I). The monopoly of the state on land ownership became firmly established in the USSR since 1917, although it was formally reflected in the Soviet constitution only twenty years later, when the Stalin constitution of 1936 articulated the classical Soviet formula for land ownership principles (Article 6):

The land, the mineral resources, the water bodies, the forests [...] are the property of the state, that is, belong to the entire people

These principles were echoed in the laws and constitutions of all the Soviet republics, and they were automatically extended to each new territory that joined the USSR after 1917. Transcaucasia and Central Asia were absorbed into the Soviet Union in the early 1920s, at the end of the era of "war communism", and private individuals in these countries immediately lost the ownership of land to the state. The three Baltic nations "applied" for admission to the Soviet Union in August 1940, following the de facto Soviet takeover in the wake of the

Molotov–Ribbentrop pact, and the private land in these countries became state-owned by virtue of the Soviet constitution and related laws. Similarly, in western parts of Ukraine, Belarus, and Moldova, agricultural land passed from private to state ownership when these formerly Polish and Romanian regions were integrated into the Soviet Union after World War II.

The CEE countries entered the Soviet sphere of influence as the Red Army drove the Nazi forces out in 1944-1945. The political regimes changed and these countries became People's Republics (and later Socialist Republics), legally acknowledging their adherence to socialist principles, including the adoption of socialist economy and agriculture. The principles of socialist organization of the economy are clearly formulated in the Hungarian constitution of August 1949 (Article 4):

The bulk of the means of production is owned, as public property, by the state, by public bodies, or by cooperative organizations. Means of production may also be privately owned.

This formula, giving priority to nationalization and at the same time allowing private property, is mirrored in one form or another in the constitutions of all People's Republics in Central and Eastern Europe. These countries did not follow the 1917 example of the Soviet Union and did not nationalize land when they moved to communist rule after World War II. The attitude of the new regimes toward private ownership of land was ambiguous, but private ownership was definitely tolerated in the CEE countries. Certain fundamental restrictions were imposed on private ownership of land. Agricultural land could only be owned by people who cultivated it: absentee ownership was not allowed, and land of absentee owners was expropriated by the state (as in the case of landowners residing abroad) or converted into cooperative property (as in the case of landowners migrating out of rural areas). Agricultural land could be privately owned only up to a certain limit: large landed estates were not allowed, and land in excess of the legal maximum was expropriated by the state. Moreover, the post-war constitutions in CEE generally stated that private property and private enterprise must be managed in a way consistent with the public interest, and that the state always had the right to nationalize private property if this were deemed necessary or socially desirable. Table 3.1 gives excerpts from the post-war constitutions of CEE countries that describe their attitude to land ownership.

Table 3.1. Constitutional Provisions on Land in CEE Countries after World War II

| Country | Date of the constitution | Provisions relating to land |
|----------------|--|--|
| Hungary | August 1949 | Means of production may also be privately owned (Article 4). The Hungarian People's Republic recognizes and guarantees the right of working peasants to land (Article 7(1)) |
| Czechoslovakia | June 1948 | The means and instruments of production shall be either national property, or the property of People's Cooperatives, or in the private ownership of individual producers (Section 146) ... Every citizen may ... acquire real and other property (Section 8) The largest area of land that may be held in private ownership by individual or joint owners or by a family working together shall be 50 hectares (Section 159(1)) The private ownership of land in respect of farmers who till the land in person shall be guaranteed up to the limit of 50 hectares (Section 159(2)) |
| Poland | July 1952 | The Polish People's Republic recognizes and protects ... individual ownership of, and the right to inherit, land, buildings, and other means of production belonging to peasants ... (Article 12) |
| Romania | April 1948 | Private property and the right of inheritance are recognized and guaranteed by law ... (Article 8) The land belongs to those who work on it ... (Article 9) |
| East Germany | 1949 | ... Peasants are guaranteed the private ownership of their land (Article 24) |
| Bulgaria | Dec 1947 | The land belongs to the people who cultivate it. ... Private ownership of large landed estates is not permitted (Article 11) |
| Albania | March 1946 (first post-war constitution) | Private property and private initiative are guaranteed by the state (Article 9). The land belongs to those who till it. ... Large estates may under no circumstances be owned by private individuals (Article 10) |

Sources: Albert P. Blaustein and Gisbert H. Flanz (eds.) *Constitutions of the Countries of the World*, Dobbs Ferry, New York: Oceana, various editions 1972-1993. Amos Jenkins Peaslee, *Constitutions of Nations*, The Hague: Nijhoff, various volumes 1965-1970.

The attitude toward private ownership of land grew more restrictive over time. Romania's second constitution adopted in 1965 drastically modified the scope of private land ownership. Land could now be privately owned only by "peasants who cannot associate themselves in agricultural production cooperatives" and only to the extent that this was land "which they themselves and their families are working" (Article

11). Land of agricultural production cooperatives, originally owned by the members, became cooperative property. Even the household plots of cooperative members became cooperative property, and only the land under the house and under ancillary farm buildings remained individual property (Article 9). Bulgaria's 1973 constitution omitted the previous explicit declaration of private ownership of land by people who cultivate it and substituted a watered-down clause, according to which "the citizens ... enjoy the right of private ownership over property and objects for meeting their own needs and those of their families" (Article 21(1)). The new language ruled out private ownership of land for commercial farming. In addition, the 1973 constitution declared forests and pastures in Bulgaria to be state property. Albania provides the most extreme example of gradual stiffening of the legal attitude toward private land ownership: the process started in 1945 with transfer of forests and pastures to state ownership (as at a much later date in Bulgaria) and culminated in 1976 with total nationalization of land and abolition of private ownership (see Box 3.1).

Despite the prohibition on private property in the USSR and the emphasis on nationalization and socialization in the People's Republics in CEE, all constitutions made explicit provisions for individual farming on so-called household plots—small subsidiary farms worked part-time by employees and pensioners of cooperatives and collectives. The assumption was that household plots would be used to supplement the subsistence needs of the rural population, leaving commercial agriculture to large collectives and state farms. Land allotted to household plots from state reserves or by the cooperative was never privately owned (in distinction from land that had always remained in the family, as in some CEE countries). In the USSR, the land for household plots was given in use rights, which over time evolved to the highest legal form of "inheritable lifetime possession". It had the security of tenure usually associated with private ownership, but none of the rights to transactions in land (except bequest within the family).

Box. 3.1. Albania's Road to Nationalization of Land

The first post-war constitution of the People's Socialist Republic of Albania adopted in March 1946 was very similar in its tone to the constitutions of other CEE countries. It stated (in Article 9), "Private property and private initiative are guaranteed by the state," and reiterated (in Article 10), "Land belongs to those who till it." This mild language, however, did not reflect the actual land and agricultural policies of the Albanian communist regime since its accession to power. In fact, the first agrarian legislation passed in August 1945 (months before the adoption of the first post-war constitution) declared forests and pastures to be state property. The same legislation also enforced the principle that "land belongs to the tiller" by expropriating all land from persons who had other sources of income. A year later, in June 1946, orchards, vineyards, olive trees, and fruit trees became state property. In November 1946, the government abrogated all earlier sales of municipally owned land to private individuals and the purchasers were required to return the land to the local authorities without compensation. Land that had been sold to private owners returned to the fold of the state (Skendi 1956). By 1950, only arable land remained in private ownership, despite the constitutional declarations.

The agrarian legislation of 1945-46 suggests that Communist Party leadership was considering the nationalization of all land simultaneously with the nationalization of industry, banking, and commerce immediately after the war. This option was abandoned, or rather postponed, because the leadership recognized the strong attachment of the peasants to the land and feared the social and political consequences of a sweeping land nationalization program (Prifti 1978).

Finally, after nearly 30 years of persistent socialist education efforts, came the 1976 constitution and imposed blanket nationalization of land. In an almost verbatim repetition of the 1936 Stalin constitution, Article 18 declared "the land and mineral resources, the mines, forests, pastures, waters..." to be the exclusive property of the state (*Portrait of Albania* 1982). All the items in this list, including most of the agricultural land in the country, had been in state ownership since before 1950. Like the Stalin constitution, the 1976 Albanian constitution simply took an existing situation and enshrined it in a constitutional language, adding the ownership of arable land to the list of state monopolies.

The state-owned land could be granted in use rights to enterprises, cooperatives, and even individual citizens, but only for their personal use (*Portrait of Albania* 1982). Like the 1973 constitution of Bulgaria, the new Albanian constitution did not envisage private individuals engaging in anything but subsistence farming. The permission to grant land to individuals for their personal use also echoes the Stalin constitution, in which Article 7 states that "every collective-farm household, in addition to the basic income from the collective farm, has for its own use a small plot of land attached to the house..."

Sources: Peter R. Prifti, *Socialist Albania since 1944: Domestic and Foreign Developments*, Cambridge, MA: MIT Press (1978); Stavro Skendi, Ed., *Albania*, New York: Praeger (1956); *Portrait of Albania*, Tirana: 8 Nentori Publ. House (1982).

Legal Attitudes Toward Land Ownership Since 1990

The Soviet Union recognized only one form of land ownership between 1917 and 1990: all land was owned by the state, while farm enterprises and individuals were given land in use rights. The CEE countries, on the other hand, recognized three forms of land ownership after World War II: state land, cooperative land, and private (individually owned) land.

The first step in market-oriented land reform in the former Soviet Union therefore required a very fundamental decision: should the state give up its exclusive ownership of land and transfer agricultural land into private ownership? This difficult decision had to be taken separately by each of 15 former Soviet republics, which became sovereign states after 1991, and in Russia alone by more than twenty autonomous federation members, which in the new era had constitutional freedom of action on the issue of land ownership.

Among the CEE countries, Albania was the only one that nationalized all agricultural land by its 1976 constitution and faced the same legal decision as the former Soviet Union. In all other CEE countries, private ownership of land did not cease after World War II. State land was typically created by confiscating the estates of socially and politically unfavorable elements, such as the nobility, Nazi collaborators, ethnic Germans, the church and monasteries, or by expropriating the holdings of relatively large farmers that exceeded the legal minimum (fixed fairly arbitrarily in each country based on local considerations). The property of most individual landowners remained untouched. Individuals entering the socialized cooperatives and collectives during the collectivization drive of the 1950s and the 1960s retained ownership of their land, and, however nominal this ownership became under the new socialist regime, their title was actually recorded in the cooperative's books and in the district land registry. Eventually, as some cooperative members or their heirs left the cooperatives and migrated to the city, their ownership rights in land were taken over by the cooperative or the state. Cooperative ownership of land, similar in a sense to joint ownership of household assets by members of one family, was a unique CEE phenomenon, and even there it was observed only in Romania (where it was explicitly introduced by the 1965 constitution) and in Hungary (where it apparently contradicted the constitution). The 1960 constitution of Czechoslovakia, on the other hand, specifically stated that "Land joined for the purpose of joint cooperative cultivation shall

be in the *joint use* of ... agricultural cooperatives” (Article 8(3); emphasis supplied: use, not ownership). The decision concerning post-1990 land ownership in CEE was thus fundamentally different from that in the former Soviet Union. There was no need to legislate for private ownership of land (except in Albania). It was only necessary to decide what to do with the ownership of state and cooperative lands.

Table 3.2 summarizes the land-ownership decisions of all the countries in which the state was the sole legal owner of land prior to 1990 (for a more detailed listing of land-related legislation in all transition countries see the annex at the end of the chapter). Albania is the only country outside the former Soviet Union that had to switch from exclusive state ownership to private ownership of land. The other 15 countries in Table 3.2—the Baltic states and the CIS members—are all former Soviet republics. In CEE countries not listed in Table 3.2 (i.e., Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia with other parts of former Yugoslavia), private ownership of land was allowed before 1990 and is of course allowed today.

In the CIS, the legal efforts to allow private land ownership began before the dissolution of the Soviet Union in December 1991 and the transition of its former republics to full independence. The beginning of the current phase of land reform in the former Soviet Union is traceable to the adoption of *Principles of Legislation of the USSR and Union Republics on Land* in February 1990, nearly two years before the final breakup of the Soviet Union (Nikonov 1995). Like all “principles of legislation” in the USSR, this law empowered the republics to adopt their own specific laws on land, which in fact constituted its main contribution to the beginning of the process of land reform.

Russia was the trailblazer in adopting a range of new laws, which included the Law on Land Reform and the Law on Peasant Farms in November 1990, the Law on Property and the Law on Enterprises in December 1990, and the Land Code in April 1991 (Lerman and Brooks 1996). Other republics soon followed with their own land codes and peasant farming laws. Russia legalized ownership of land by individual citizens, in addition to state ownership, in November 1990, more than a year before the dissolution of the Soviet Union. The 1993 Constitution of the Russian Federation reaffirmed that “land and other natural resources may be in private, state, and other forms of ownership”.

Table 3.2. Legal Attitudes to Land Ownership in the 16 Countries where All Land was State-Owned Before 1990

| Country | Potential private ownership | Relevant legislation |
|--------------|-----------------------------|--|
| Albania | All land | Land Law, July 1991 |
| Estonia | All land | Law on Land Reform, Oct. 1991 |
| Latvia | All land | Land Reform in Rural Areas Act, Nov. 1990 |
| Lithuania | All land | Law on Land Reform, June 1991 |
| Armenia | All land | Land Law, Jan. 1991 Law on Peasant and Peasant Collective Farms, Jan. 1991 |
| Georgia | All land | Law of Agricultural Land Ownership, Feb. 1996 |
| Azerbaijan | All land | Constitution, Nov. 1995; Land Reform Law, July 1996 Land Code, June 1999 |
| Moldova | All land | Law on Property, Jan. 1991; Constitutional Court Rulings on Amendments to the Land Code, Jan. 1996, Oct. 1996 |
| Russia | All land | Law on Land Reform, Nov. 1990 Constitution, Dec. 1993 Land Code, Jan. 2002 |
| Ukraine | All land | Supreme Soviet Resolution on Land Reform, Dec. 1990 Law on Forms of Land Ownership, Jan. 1992 Land Code, Oct. 2001 |
| Kyrgyzstan | All land | Referendum, June 1998; Presidential Decree on Private Land Ownership, Oct. 1998 Land Code, June 1999 |
| Kazakhstan | Household plots only | Presidential Decree on Land Reform, Feb. 1994 Land Code, Feb. 2001* |
| Belarus | Household plots only | Law on Land Ownership, June 1993 |
| Tajikistan | None | Land code, Dec. 1996; amended May 1999 |
| Uzbekistan | None | Land Code, April 1998 |
| Turkmenistan | All land | Constitution, May 1992 |

*New Land Code passed in June 2003 allows private ownership of potentially all land.

Yet even within the Russian Federation, ten constituent republics originally did not recognize private ownership of land within their territories (Tatarstan, Bashkiriya, Dagestan, Komi, Mari El, Kabardino-Balkariya, North Osetiya, Tuva, Yakutiya-Sakha, and Koryakiya). These republics based their position on article 72 of the Constitution, which affirms that questions regarding ownership, use, and disposition of land, mineral deposits, water and other natural resources will be decided

jointly by the Russian Federation and its constituent members. Some of these republics have since bowed to the winds of change and passed land reform legislation that recognizes private ownership of land. Others (e.g., Bashkiriya, Dagestan, and Tuva) remain in the dissenting minority, which appears to be shrinking all over the CIS.

Following Russia, Ukraine and Moldova legalized private ownership of land in 1991-92 (Table 3.2). Belarus, however, persisted with exclusive state ownership of land until June 1993, when a special Law on Land Ownership allowed household plots of up to 1 hectare to be in private ownership: additional land had to be leased from the state. Among the Transcaucasian countries, Armenia was the first to recognize private ownership of land in January 1991 and swiftly distributed most of its arable and perennial land to individual farmers. The neighboring Georgia delayed legal recognition of private ownership of land until February 1996, although a large proportion of arable and perennial land had been transferred by presidential decree to the individual sector back in 1992 (the legal delays in Georgia were attributable to civil unrest and dissent in border regions with large minority populations). Azerbaijan, the third Transcaucasian state, also passed legislation recognizing private land ownership in 1995-96, but unlike Georgia most of its land resources at that time were still managed by large collective farms and the new legal attitude only signaled intentions of decollectivization (which followed swiftly). Kyrgyzstan was the latest among the former Soviet republics to allow private land ownership following a referendum held in June 1998.

As of the beginning of the 21st century, the legality of private land ownership is less than universal only in Belarus and in three Central Asian states. Uzbekistan and Tajikistan retain full state ownership of land according to their respective constitutions, whereas Belarus and Kazakhstan restrict private ownership to household plots of up to 1 hectare. In these four countries, land for commercial-scale farming must be obtained in use rights from the state. This small minority of countries that do not recognize private land ownership is about to shrink even further as Kazakhstan finally appears to be moving toward privatization of land in its June 2003 land code. The last Central Asian country, Turkmenistan, is an anomaly among the CIS countries. Its post-Soviet constitution (adopted in May 1992) recognized private ownership of land. But in fact, the property rights of private land owners in Turkmenistan are limited to the most basic rights to usufruct: privately owned land may not be sold, given away as a gift, or exchanged. The

rights of private landowners in Turkmenistan are thus no different from the rights of state tenants in Belarus and Uzbekistan, who do not own the land they cultivate.

Private ownership of land is an emotionally charged issue in all CIS countries. Contentious attitudes are not restricted to the countries that still do not allow private ownership of land. Russia legalized private land ownership back in 1990, when the country was still a Federated Soviet Republic, and put it in the new constitution in 1993. Yet fierce debates raged in the Russian parliament for nearly a decade between conservative and reform-oriented factions on the nature and scope of private ownership of land. The parliament periodically came up with a land code that severely restricted the scope of private land ownership (as in Belarus and Kazakhstan, for instance), and this land code in turn was periodically vetoed by the president. Ukraine similarly failed to adopt a market-oriented land code under two presidents (Kravchuk and Kuchma) during the 1990s. In both Russia and Ukraine, the land policies and the prevailing concept of private land ownership had been shaped since 1991 by presidential decrees, not by permanent laws. The absence of permanent land laws at the federal level in Russia opened opportunities for regional legislation at the oblast level. In some cases, these regional laws were more restrictive than the federal conception of land policy (see the previous discussion of regions that did not allow private land ownership), while in other cases, regions adopted land laws that were much more liberal than the federal policy. Some examples of such liberal regional laws are presented in Box 3.2.

The dispute between the executive and legislative branches of government on the legal notion of privately owned land in Russia and Ukraine ended only recently with the adoption of new land codes in February 2001 in Ukraine and January 2002 in Russia. Moldova had been similarly embroiled in a long public debate concerning land rights and took until 1996-97 to overcome the political and legal obstacles to the concept of unrestricted private ownership of land. The most recent example of the passions surrounding the notion of private land ownership is provided by Kazakhstan, where the reform-minded prime minister was forced to resign in June 2003 because of unyielding opposition in parliament to some land privatization measures that the government was attempting to include in the new land code.

Box. 3.2. Regional Land Legislation in Russia in the 1990s

Saratov Oblast, on the Volga River, passed its own Land Law in November 1997. The Saratov Land Law departed from the federal legislation in that it explicitly allowed buying and selling of land. Land ownership was restricted to Russian citizens; foreigners could only lease agricultural land.

The neighboring Samara Oblast passed a similar land law in June 1998 and went further than Saratov by allowing foreign ownership of land. Tatarstan legalized buying and selling of land in April 1998 and then lifted the restrictions on foreign ownership in August 1998.

Perm Oblast, located farther to the northeast at the foot of the Ural Mountains, passed an investment law with special provisions explicitly allowing buying and selling of land by both Russian citizens and foreigners. Although this law was passed as early as August 1997, it was basically designed as an investment law and Saratov is accordingly regarded as the pioneer of regional land legislation.

The Saratov Land Law met with strongly conflicting reactions in Moscow. President Yeltsin was quoted as saying that he “fully and wholeheartedly supports” the Saratov initiative, and he encouraged other regions to follow the Saratov example. The Russian parliament, on the other hand, passed a resolution denouncing the Saratov Land Law as unconstitutional. Russia’s Prosecutor-General asked the Saratov Oblast Court to strike down the article allowing buying and selling of land, but the case was rejected in May 1998.

Kaliningrad Oblast – the small Russian enclave on the Baltic Sea – was on the verge of passing a liberal land law of its own in 1998, but in the end backed down and did not allow buying and selling of land. There were strong feelings in this isolated oblast that permission to buy and sell land would signal the beginning of the end of Kaliningrad as a Russian region by opening the way for takeovers by foreigners from Germany and the Baltic states.

Sources: E. Ivankina, I. Rtishchev, and E. Serova, “Regional Particulars of Land Relationships in Russia’s Agriculture,” <http://www.iet.ru>; *Chronology of Events: Russia*, NUPI Centre for Russian Studies, <http://www.nupi.no>

The legislative uncertainty in CIS has created a sense of lack of consistent progress. While Western experts are heatedly debating the success or failure of land privatization in CIS, there can be no doubt that the process so far has achieved at least one major goal: in most countries, it has eliminated the monopoly of the state in land ownership and produced a dramatic reduction in the share of agricultural land directly owned or managed by the state (Table 3.3). In Moldova, the share of the state in agricultural land ownership is down to 17%; in Russia and Ukraine, less than 40% of agricultural land remains in state ownership; in Armenia, the state owns about one-third of cultivable land (the new Land Code passed in 2001 makes specific provisions for the auctioning of state-owned arable lands to private individuals); and in Georgia, about half the arable land is in state ownership (mainly because

of obstacles to privatization in areas with continuing civil unrest). In the three Transcaucasian states, the extensive mountain pastures that are traditionally used as communal land remain in state ownership, and only Armenia is beginning to transfer state-owned pastures to village-level control. A similar policy concerning pastures is observed in Albania—the only CEE country where the state had a monopoly on land ownership, as in CIS. While all cultivable agricultural land has been privatized, pastures remain almost totally state-owned.

The situation is radically different in Belarus and Kazakhstan, where only the small household plots may be privately owned. In Belarus, 16% of agricultural land is in potentially privatizable household plots, and less than half of it (7%) has been actually transferred to private ownership; the remaining 9% is expected to be privatized in the near future, when administrative bottlenecks are overcome, bringing the total stake of the state in land ownership down to 84%. In Kazakhstan, the privatized household plots account for about 0.5% of agricultural land (mainly arable land, without desert pastures) and the share of state-owned land remains over 99%, even excluding pastures. In all likelihood this will change radically once the new land code recognizing private land ownership is implemented following its adoption in June 2003.

Table 3.3. Share of State-Owned Agricultural Land in CIS Countries Recognizing Private Land Ownership (in percent)

| | Pre-1990 | 2000 | Legal attitude to private land ownership |
|------------|----------|----------------------------|--|
| Russia | 100 | 35 | Potentially all land |
| Ukraine | 100 | 31 | |
| Moldova | 100 | 17 | |
| Georgia | 100 | 78 (54 excluding pastures) | |
| Armenia | 100 | 67 (35 excluding pastures) | |
| Belarus | 100 | 93 (potentially 84) | Household plots only |
| Kazakhstan | 100 | >99* | |

*Before the adoption of the new Land Code.

Source: Official country statistics.

Transferability of Land and Security of Tenure

Private ownership of agricultural land is the norm in market economies, and incentives associated with property rights in privately owned land are usually regarded as one of the factors conducive to efficient agriculture. Privatization of land is therefore a major component of the transition agenda. Yet another important source of productivity gains in agriculture is associated with the flow of resources to more efficient producers through the medium of the land market. This flow is enabled by a variety of land transactions, which include buying and selling of land, as well as various leasing and renting arrangements, which many farmers substitute for outright purchase. Transferability of land and development of land markets are as important as privatization of land in analyzing the impact of land policies on productivity and efficiency in transition countries. If land transactions, be it sale or leasing, are restricted, there are no mechanisms for transfer of land to better, more efficient operators and farmers are prevented from adjusting their operations to a more efficient scale. In Poland, for instance, the land reform immediately following World War II created a highly fragmented farm structure by distributing the land of the large estates to a multitude of individual farmers. The land was in private ownership, but legal restrictions on transfer of property rights in land (high transaction costs, unwieldy administrative procedures) produced a “frozen” land-use pattern and prevented the badly needed adjustment of farm sizes. The Polish experience after World War II proves that transferability restrictions are an obstacle to efficiency improvement, regardless of the legal form of land ownership.

We have seen that most transition countries allow private ownership of potentially all farmland, and agricultural land remains largely state-owned only in Belarus and parts of Central Asia. However, as we discuss private ownership of land in transition economies, we should bear in mind that the semantics of private ownership in these countries has a distinctly different shading from the usual meaning of this concept in the West, and especially in North America. Most notably, private ownership in transition countries is not synonymous with the right to transfer land among users: some transition countries circumscribe the right of land owners to engage in transactions in privately owned land, while other countries ensure full transferability of use rights although the land remains state-owned (Table 3.4). Even in countries that do not

impose legal restrictions on transfer of land, land transactions are often severely restricted in practice due to high transaction costs or complex administrative procedures. A detailed discussion of legal restrictions on property rights in land in CEE and CIS is provided by Prosterman and Hanstad (1999).

Table 3.4. Characteristics of Land Relations in Transition Countries

| | Region | Potential private ownership | Legal attitude to transferability |
|--------------|--------|-----------------------------|--|
| Poland | CEE | All land | Buy-and-sell, leasing |
| Romania | CEE | All land | Buy-and-sell, leasing |
| Bulgaria | CEE | All land | Buy-and-sell, leasing |
| Estonia | CEE | All land | Buy-and-sell, leasing |
| Latvia | CEE | All land | Buy-and-sell, leasing |
| Lithuania | CEE | All land | Buy-and-sell, leasing |
| Czech Rep. | CEE | All land | Buy-and-sell, leasing |
| Slovakia | CEE | All land | Buy-and-sell, leasing |
| Hungary | CEE | All land | Buy-and-sell, leasing |
| Albania | CEE | All land | Buy-and-sell, leasing |
| Armenia | CIS | All land | Buy-and-sell, leasing |
| Georgia | CIS | All land | Buy-and-sell, leasing |
| Azerbaijan | CIS | All land | Buy-and-sell, leasing |
| Moldova | CIS | All land | Buy-and-sell, leasing |
| Russia | CIS | All land | Leasing, buy-and-sell dubious* |
| Ukraine | CIS | All land | Leasing, buy-and-sell dubious** |
| Kyrgyzstan | CIS | All land | 5-year moratorium on land sales lifted only in 2001 |
| Kazakhstan | CIS | Household plots only# | Use rights transferable; buy-and-sell of private plots dubious |
| Tajikistan | CIS | None | Use rights transferable |
| Turkmenistan | CIS | All land | Use rights non-transferable |
| Uzbekistan | CIS | None | Use rights non-transferable |
| Belarus | CIS | Household plots only | Use rights non-transferable; buy-and-sell of private plots dubious |

*Buying and selling of land allowed by the Law on Agricultural Land Transactions passed in July 2002.

**The October 2001 Land Code imposes a moratorium on buying and selling of land until 2005.

#New Land Code passed in June 2003 allows private ownership of potentially all land.

The ten CEE countries and the four “small” CIS countries (Armenia, Georgia, and Azerbaijan in Transcaucasia, Moldova in the European CIS) recognize private ownership of land and have no legal barriers to land transactions. In this respect, these 14 countries have the most liberal land policies, although various pre-emptive conditions (specifying that land must first be offered for sale to particular interest groups) may make it difficult to sell one’s private land in the open market). Yet even in some of these “liberal” countries buying-and-selling of land was initially not allowed in the early 1990s. Thus, Albania is notable among the CEE countries in that it took until mid-1998 to pass legislation allowing transfer of all ownership rights in agricultural land. Georgia passed such a law in 1996, while land sales in Moldova and Azerbaijan began possible only after 1998.

Russia and Ukraine, which control the bulk of farmland resources in the region, legally recognize private land ownership, but buying and selling of land is legally restricted despite the recent passage of new land codes (October 2001 in Ukraine, July 2002 in Russia). The Ukrainian land code imposes a moratorium on buying and selling of land until 2005, whereas the Russian land code (or more specifically the July 2002 Law on Agricultural Land Transactions) allows regional authorities to set limits on both maximum and minimum size of holdings and grants them preemptive purchase rights that effectively block dynamic negotiation of land prices between the parties. As a result, land transactions in Russia and Ukraine have been and are still mainly limited to leasing. Nevertheless, there is evidence of a brisk trade in household plots, but primarily as part of a package that involves also the sale of the house standing on the plot.

At the other extreme, Belarus and three Central Asian states—Kazakhstan, Uzbekistan, Tajikistan—generally do not recognize private land ownership, but they differ in their attitude toward land transactions. Land use rights are secure and transferable in Kazakhstan (since 1994) and in Tajikistan (since 1999). Uzbekistan and Belarus, on the other hand, prohibit any transactions in land. The two remaining Central Asian states—Kyrgyzstan and Turkmenistan—both recognize private land ownership, but severely restrict transactions in land. Kyrgyzstan recognized private land ownership in the June 1998 referendum, but immediately imposed a 5-year moratorium on all transactions in privately owned land. It thus moved backward by measures of transferability compared with the pre-referendum period, when land was state-owned but use rights were secure for 99 years and

fully transferable (by a 1994 presidential decree). The moratorium was lifted in 2001, only to be replaced with another administrative restriction: only persons who have lived in rural areas for a minimum of two years will be eligible to buy land. Turkmenistan is a special case: its post-Soviet constitution (adopted in May 1992) specifically recognizes private ownership of land, yet land owners are not allowed to transfer their holdings in any way, not even by swapping or giving as a gift to a relative. The transferability status of privately owned land in Turkmenistan is thus virtually identical to the status of state-owned land in the neighboring Uzbekistan.

It is important to note that despite different attitudes toward land ownership and transferability, the use rights in all CEE and CIS countries are characterized by a high degree of formal security of tenure (which, of course, does not guarantee against “sovereign risk” involving sudden reversals of policy by the state). The security-shattering “redistribution” mechanism, as applied periodically in Chinese villages, is unknown in CEE and CIS: once allocated in ownership or usufruct, land remains in lifetime possession of the beneficiary, at least as long as it is actively farmed. Use rights in land are universally inheritable, even in countries where land is otherwise non-transferable.

Successful market agriculture can develop on state-owned land (it suffices to recall the case of Israel, where most land is leased by the state to farmers for terms of 49 or 99 years). Security and transferability of tenure appear to be more important determinants of productivity and efficiency gains than legal ownership. The experience in developed market economies indicates that many farmers are “operators” and not “landowners”; they cultivate land that they do not own. Farmers in Belgium, France, and Germany rent more than 60% of the land they cultivate, while the overall “tenancy rate” in EU15 is 40% (Table 3.5). In Canada, 30% of farmed land is not owned by the farmers, and in the US, only one-third of farmed land is fully owner operated: another 55% is a mixture of own land with land leased from others and 10% is cultivated by farmers who do not own any land (Table 3.6).

An important conclusion regarding farm sizes emerges from the data for both the European and the North American countries: land leasing is definitely conducive to larger farms (Tables 3.5, 3.6). In Europe, the average farm size is almost 40 hectares in countries where farms operate with more than 30% of leased land, compared with 18 hectares in countries where farms have less than 30% of leased land; in Canada farms with leased land are 40% larger than farms operating with

own land; and in USA farms operating with a mixture of own and leased land are more than three times as large as farms that use own land only. Transferability is important no less, and perhaps even more, than private ownership for the development of land markets that enable the farmers to adjust the size of their holdings and allocate resources to the most efficient producers.

Table 3.5. Share of Tenant-Farmed Land and Average Farm Size in the EU

| Country | Owner farmed land, % | Tenant farmed land, % | Average farm size, ha |
|--|----------------------|-----------------------|-----------------------|
| Belgium | 32 | 68 | 19 |
| France | 37 | 63 | 39 |
| Germany | 38 | 62 | 30 |
| Luxemburg | 47 | 53 | 40 |
| Sweden | 55 | 45 | 34 |
| United Kingdom | 65 | 35 | 70 |
| Countries with more than 30% tenant-farmed land | 46 | 54 | 39 |
| Netherlands | 71 | 29 | 18 |
| Portugal | 72 | 28 | 9 |
| Greece | 75 | 25 | 5 |
| Spain | 77 | 23 | 20 |
| Denmark | 77 | 23 | 40 |
| Finland | 78 | 22 | 22 |
| Italy | 78 | 22 | 6 |
| Austria | 80 | 20 | 15 |
| Ireland | 88 | 12 | 28 |
| Countries with less than 30% of tenant-farmed land | 77 | 23 | 18 |
| European Union (15) | 61 | 39 | 18 |

Source: Eurostat

Table 3.6. Share of Tenant-Farmed Land in Canada and USA

| | Percent of farm area | Percent of farms | Average farm size, ha |
|-------------------------------------|----------------------|------------------|-----------------------|
| Canada | | | |
| Farm area owned | 70 | | 164 |
| Farm area rented/leased from others | 30 | | 224 |
| USA | | | |
| Operated by full owners | 34 | 60 | 112 |
| Operated by part owners | 55 | 30 | 358 |
| Operated by tenants | 12 | 10 | 229 |

Source: For Canada, *Historical Overview of Canadian Agriculture*, Statistics Canada (1997); for USA, *1997 Census of Agriculture, United States Summary and State Data*, USDA (1999).

While restrictions on land transferability are a real barrier to flow of resources from less efficient to more efficient users and thus an obstacle to overall efficiency improvement in agriculture, pragmatic considerations suggest that temporary moratoria on buying and selling of land in transition countries may be necessary from political or social considerations. Policy makers in CIS and CEE are often concerned that immediate exposure of the new landowners to the full range of land market transactions after decades of collectivism may lead to negative social consequences, which may involve excessive concentration of land in the hands of speculators and foreign owners. Thus, Kyrgyzstan motivated the moratorium imposed simultaneously with the introduction of private land ownership in 1998 by the need to let the new landowners get used to the entire set of their property rights and fully recognize the implications of their decisions. The same considerations probably motivated the Ukrainian lawmakers when they renewed the moratorium on land sales until 2005 while in principle allowing buying and selling of land in the October 2001 land code. Psychologically, people need a delay period to adjust to the new reality before making irrevocable decisions.

To borrow an example from an area outside of agriculture, many recipients of mass privatization vouchers in Russia in the early 1990s blindly rushed to sell them to speculators and professional investors. They did not recognize the long-term value of the new asset and precipitously converted it into something familiar—cash. These early “voucher sellers” understood the implication of their irrevocable decision only much later, when gradual normalization had led to steep increases in the value of stock of the privatized companies, which they could have owned had they only desisted from selling the vouchers. In Kazakhstan, managers of farm enterprises took advantage of the total lack of asset management experience among the rural population to entice the new shareholders to sell their land shares. Large segments of the rural population hastily gave up their main asset, and land was concentrated in the hands of a small number of farm bosses. This negative effect probably could have been avoided had the government of Kazakhstan temporarily restricted buying and selling of land rights and instead limited transferability to short- or perhaps medium-term lease transactions. Such approach to transferability of land would allow rural people to postpone irrevocable decisions to a later stage, when the economic situation had normalized and individuals had become more cognizant of the implications of land transactions. To ensure that the

temporary moratorium quickly achieves the intended educational effect, it should be accompanied by appropriate information campaigns explaining property rights and land market transactions to the new landowners.

After a decade of transition in CEE and CIS, we can schematically divide the 23 countries into three groups by their attitude to ownership and transferability of land (see Table 3.4). The first group includes countries that legally allow private ownership of potentially all land. These are the CEE countries, Russia, Ukraine, Moldova, the three Transcaucasian states (Armenia, Georgia, Azerbaijan), and since very recently Kyrgyzstan—a large majority of 18. In principle, private ownership in these countries implies freedom to transfer the ownership rights to others, although in practice this freedom is circumscribed (one hopes temporarily). At the other extreme, there are the hard-core countries that retain exclusive state ownership of farmland (all or most of it) and do not allow the individual use rights to be transferred (other than by inheritance). These are Belarus, Uzbekistan, and actually also Turkmenistan, as the notion of private ownership in this country looks like a semantic misunderstanding. Finally, there is an intermediate group of countries (Kazakhstan, Tajikistan) that retain exclusive state ownership of practically all farmland, and yet allow the use rights to be freely transferable, like standard property rights in a market economy. Unfortunately, no statistical information is available at this stage on actual land transfers in these two countries.

An important caveat is in order concerning transferability. Even in countries that do not impose legal restrictions on transfer of land, land transactions are often severely restricted in practice. Restrictive factors include high transaction costs (registration fees, transfer taxes), complex administrative procedures (requirement to present a long list of documents, difficult access to land registry offices), or even social-policy limitations (such as the ruling in Poland that persons with more than 2 hectares of land lose their unemployment benefits from non-farming occupations). Local and foreign observers in Russia are concerned that various bureaucratic barriers and traditionally obstructionist attitudes, which are endemic to former Soviet societies, will in all likelihood severely constrain the emergence of buying and selling of land, which is now allowed by the new land code. As a result of such constraints, land markets are developing quite sluggishly even in the CEE countries. Yet the basic legal attitude toward transferability of land definitely has an impact on land market development. Countries without legal restrictions

on land transfers register a higher frequency of transactions (both leasing and purchase) than the rest. In this respect, the new land code in Russia is a major step in the direction of ensuring transferability of farmland.

Emergence of Land Transactions

As a result of the various restrictions that prevail in one form or another in many CEE and CIS countries, land markets have not really developed across the region during the decade of transition. The frequency of buying and selling of land is very low. Only 5% of Polish farmers participating in the 2000 World Bank survey report buying or selling land in the last five years. A similar rate of buy-and-sell transactions (5-7%) is reported in Romania in two consecutive rural surveys conducted in 1998 and 2001. According to very rough (and probably highly subjective) estimates prepared for the European Union (Baldwin 1998), the frequency of land transactions is around 2.5% in Hungary and around 1% in the Czech and Slovak Republics, Latvia, Poland, and Slovenia (here the frequency of transactions is measured by the transfer rate, defined as the ratio of the number of titles transferred to the total number of titles in cadastral registry). These estimates of transaction frequencies are substantially lower than the EU average transfer rate of 7%.

In CIS countries, farmers interviewed in numerous World Bank surveys have so far failed to provide indication of significant numbers of buy-and-sell transactions in farm land. Even in Armenia, where buying and selling of land has been completely legal since 1992, two large surveys covering 6,000 farms in 1996 and 1998 did not detect any significant transfers of land ownership through market mechanisms. National-level data from Georgia, where land sales have been allowed since 1996, report a total of 9,236 registered buy-and-sell transactions among more than 1 million private owners of agricultural land between October 1999 and July 2002—a 3-year cumulative transaction rate of about 1% (private communication by Jaba Ebanoidze, Association for the Protection of Landowners' Rights, Tbilisi). These transactions covered 3,236 hectares, i.e., a mere one-third of a hectare per transaction on average. A 2003 USAID/BASIS survey of commercial private farmers in Russia reported zero incidence of buy-and-sell

transactions. In Russia, Ukraine, Moldova, and probably other parts of the CIS buying and selling of land usually involves the household plot, which is basically purchased together with the house, and not as a separate piece of farmland.

Table 3.7. Leasing of Land by Individual Farmers in Transition Countries

| | Percent of farms | Total size, ha | Leased land, ha | Farms without leased land, ha |
|--------------|------------------|----------------|-----------------|-------------------------------|
| Armenia | 14 | 2.6 | 1.0 | 1.3 |
| Georgia | 2 | 8.7 | 7.8 | 0.7 |
| Moldova 1996 | 6 | 16.9 | 13.5 | 2.8 |
| 2000 | 51 | 196 | 191 | 3.7 |
| Romania | 7 | 4.1 | 1.7 | 3.0 |
| Bulgaria | 9 | 4.8 | 3.3 | 1.1 |
| Hungary | 8 | 19.6 | 8.8 | 3.4 |
| Poland | 17 | 25.7 | 11.9 | 7.3 |

Source: World Bank surveys for Armenia, Georgia, Moldova, Romania, and Poland; Phare ACE surveys conducted by the Catholic University in Leuven for Bulgaria and Hungary.

As in market economies, it is the leasing of land from various sources and in various guises that emerges as the main practical mechanism for adjustment of farm sizes in both CIS and CEE (Table 3.7). Although the percentage of individual farms that lease in land is relatively small, farms reporting some leased land are significantly larger than farms that rely entirely on own land. Moreover, large farms rely almost entirely on leased land for growth, as is clearly demonstrated by the case of Moldova in Table 3.7. They do not purchase additional land, probably because of bureaucratic restrictions and the general thinness of buy-and-sell markets. Instead, they prefer to lease land – mostly from the state, but in some cases also from private landowners.

An interesting phenomenon of farm enlargement through leasing is observed in Georgia, where a substantial share of agricultural land remains state-owned and may not be sold, only leased. Large collective and state farms have ceased to function in Georgia, and the average individual farm is very small (less than 1 ha). Yet a painstaking search through district-level land registries conducted by a World Bank team in 1998 unearthed some 3,000 farms with more than 10 ha of land. Most of this land is leased from the state on terms of one or two years, although Georgian law of land leasing allows much longer lease terms. National-level data indicate that this phenomenon may in fact be much

more widespread than previously thought. Thus, in 1998, about 4% of Georgian farms (42,900 entities) were leasing nearly 1 million hectares from the state, i.e., 22 hectares per lease contract on average (Jaba Ebanoidze, private communication). This is much more than the average amount of privately owned land per farm or the amount exchanged in buy-and-sell transactions in Georgia.

Table 3.8. Transactions in Agricultural Land: Russia 2001

| | Number of transactions, '000 | Percent |
|---|------------------------------|---------|
| Leasing of state land to households | 1,695.6 | 93.0 |
| Leasing of state land to agricultural producers | 81.4 | 4.5 |
| Sale of state land to households | 2.6 | 0.1 |
| Sale of private land to households | 44.5 | 2.4 |
| Total transactions in agricultural land* | 1,824 | 100.0 |

*Transactions in agricultural land constitute 33% of the total number of 5.57 million registered land transactions in Russia in 2001.

Source: Estimated by Natalya Shagaida, Agrarian Institute, Moscow, from official data on land transactions published by the Federal Land Cadastre Service.

Table 3.9. Characteristics of Households Participating in Land Leasing Transactions: Romania 1998-2001

| | 1998 | | 2001 | |
|----------------------------------|----------|-----------|----------|-----------|
| | Lease in | Lease out | Lease in | Lease out |
| Number of adults | 3 | 2 | 3 | 2 |
| Age of household head | 53 | 67 | 54 | 64 |
| Frequency in the sample, percent | 7 | 17 | 7 | 18 |

Source: 1998 – Phare/ACE survey (n=1676); 2001 – World Bank ASAL survey (n=806).

The predominance of land leasing from the state is illustrated by the situation in Russia, where 93% of all registered transactions in agricultural land in 2001 involved transfer of state-owned land to individual use and another 4.5% involved leasing by the state to agricultural producers (Table 3.8). Buy-and-sell transactions accounted for a mere 2.5% of the total. Unfortunately, official records in Russia (and in most other transition countries) do not capture land-lease transactions between private individuals. Yet such transactions exist, as is evident from farm surveys that include specific questions about leasing out of land by rural households. Data from several repeated surveys in Romania indicate that about 15% of respondents lease out land (compared to about 7% leasing in land). Households that lease out

land are characterized by an older age composition and fewer adults than households that lease in land—an easily understandable finding (Table 3.9).

In line with the Western conception of land markets, our discussion so far has focused on transactions involving physical land plots. However, in the core CIS countries (Russia, Ukraine, Moldova, Kazakhstan), most of the land is allocated to individuals in the form of “land shares”—paper certificates of entitlement. The mechanism of privatization by land shares in CIS has necessitated the adoption of numerous presidential decrees, government resolutions, and laws to regulate the disposition and transferability of these abstract land proxies (see the entries for Russia and Ukraine in Table A3.1 in the annex). This has naturally led to emergence of transactions in paper shares alongside conventional transactions in land plots. Land shares can be leased from individuals, bought and sold, or invested by their original owners in the equity capital of a legal entity (usually a farm enterprise).

Table 3.10. Structure of Agricultural Land in Russian Farms by Sources of Origin (percent)

| | Enterprises | Individual farms | |
|--|-------------|------------------|----|
| Leased land | 61 | 57 | |
| Leasing of land shares | | 46 | 32 |
| Leasing of land plots | | 15 | 25 |
| Own land | 36 | 42 | |
| Purchase of land shares | | 2 | 30 |
| Purchase of land plots | | 1 | 11 |
| Land shares invested in equity capital | | 33 | 1 |
| Other | 3 | 1 | |
| Total | 100 | 100 | |

Source: USAID/BASIS survey of commercially oriented farms in Russia, 2003, including 136 farm enterprises and 222 private farms in 3 oblasts.

Table 3.10 presents some survey-based results on the use of transactions in both land shares and land plots by Russian farms of different organizational forms. Farm enterprises and commercially oriented private farms mostly rely on leased land, which accounts for about 60% of their holdings (this is in stark contrast to household plots, where 93% of the land is privately owned). In farm enterprises, three-quarters of the leased land comes from leasing of land shares and only one-quarter from leasing of physical plots. Private farms show a greater reliance on leasing of physical plots, which account for more than 40%

of leased land; the rest is obtained by leasing of land shares. Own land in private farms is primarily created by the purchase of land shares and occasional purchase of land plots. In farm enterprises, on the other hand, own land originates primarily from land shares invested by individuals in equity capital. These results indicate that, at least in Russia and Ukraine, leasing is more important than buying land; and transactions in paper shares are on the whole more important than transactions in physical land plots.

Disposition of Socialized Land: Restitution versus Distribution

While the former Soviet republics (and Albania) had to decide in 1990 whether or not to allow private land ownership in parallel with state ownership, the rest of the CEE countries—Bulgaria, Czechoslovakia, Hungary, Romania, and to a certain extent Poland—had to decide the fate of land held in state and cooperative ownership. Because of this difference in the starting decision, privatization of land in CEE and CIS followed two fundamentally different procedures: restitution to former owners and distribution to workers.

Restitution to former owners is the procedure adopted by most CEE countries (except Albania) and by the Baltic states among the former Soviet republics. By contrast, the CIS countries and Albania adopted the “land to the tiller” strategy: land ownership was distributed to workers without any payment and in an equitable manner. Hungary and Romania are two CEE countries that used a mixed strategy: land was restituted to former owners and some of it was also distributed to agricultural workers in the interest of social equity. Landless workers in Romania and Hungary received relatively small plots of 0.5–1 hectare, but they received them for free, without any payment. In other CEE countries, agricultural workers have priority in acquiring land, but they must purchase it for a full payment. The restitution vs. distribution dichotomy of land privatization in transition economies is summarized in Table 3.11.

Poland is an exception to the restitution strategy among the CEE countries, as the previous post-World War II land reform in this country distributed most of the estate land to smallholders. Any demand for the Polish smallholders to give up their allotments in favor of

former large estate owners would be politically and socially untenable, and the state accordingly focused on privatizing, through auctions and sale, the 20% of land that had been nationalized and transferred to state farms. For similar social reasons, the CEE countries did not extend their restitution programs to ownership rights before World War II and accepted the outcomes of the land reform that was implemented by the new regimes immediately after World War II.

Table 3.11. Distribution vs. Restitution

| | Distribution to workers | Restitution to former owners |
|------------------------|---------------------------------|------------------------------|
| CIS (12 states) | ● | |
| Albania | ● | |
| Hungary | ● | ● |
| Romania | ● | ● |
| Bulgaria | | ● |
| Czech/Slovak Republics | | ● |
| Baltics (3 states) | | ● |
| Poland | Mainly individual land holdings | |
| Slovenia | pre-1990 | |

The common explanation attributes the restitution/distribution dichotomy to the different length of time since nationalization or collectivization—80 years in CIS and 50 years in CEE. This explanation, however, is not easy to accept due to the existence of obvious counter-examples. Three CIS countries—Moldova, Ukraine, and Belarus—rejected the concept of restitution, although their western parts were integrated into the Soviet Union after World War II, at the same time as the Baltic states, and the memory of private land ownership was much fresher than in Russia. In CEE, Albania deviated from the general practice of its neighbors and opted for equitable distribution instead of restitution. The choice of restitution over distribution in CEE was probably a strictly political decision, driven more by the desire to make a clean break with the socialist past than by the memory of former land ownership.

Under the restitution strategy, title to land was returned to the original pre-collectivization owners or their heirs. However, restitution encompassed only one of three categories of land that were the subject of the post-socialist land reform in the 1990s. The largest category

comprised agricultural land that had always remained in the ownership of identifiable private individuals, but was being used by cooperatives in accordance with the socialist practice that recognized primacy of collective use rights over individual ownership rights. The second category comprised land that was expropriated from “enemies of the state” (e.g., Nazi collaborators, ethnic Germans, large estate owners) during the land reform implemented immediately after World War II in 1945 and that was largely used to create state farms. The third category comprised land expropriated from “socially undesirable elements” (e.g., political opponents, landowners with holdings in excess of some specified maximum) starting in 1946-48 and given by the state to cooperatives and state farms for cultivation. Only land in this third category was subject to restitution. Typical proportions of land in the different categories are shown in Table 3.12 for the particular case of Slovakia at the end of the active restitution phase.

Table 3.12. Ownership Structure of Agricultural Land: Slovakia, December 2000

| Categories of agricultural land | Thousand hectares | Percent |
|---|-------------------|---------|
| Uninterrupted private ownership (category I) | 1,575 | 65 |
| Restituted to former owners (category III) | 280 | 11 |
| Land retained in state ownership (category II) | 108 | 4 |
| Land of unidentified former owners managed by State Land Fund (categories II+III) | 478 | 20 |
| Total agricultural land | 2,441 | 100 |

Source: State Land Fund, Bratislava.

Land in the first two categories did not present any special difficulties in the process of restitution. Cooperative members who over the years retained uninterrupted private ownership of their collectively cultivated land got their plots re-surveyed and received updated title documents reaffirming their ownership rights. State-farm land would remain in state-ownership, as generally there was no intention of restoring it to pre-1945 owners. The CEE countries (with the exception of the Baltic states) did not extend their restitution programs to ownership rights before World War II, and the restitution laws set the relevant date of land ownership after the completion of the post-war land reform in each country. The Hungarian Compensation Law prescribed restitution of property lost after June 1949; the Czech and Slovak restitution rules applied to property lost after February 1948; Bulgaria chose to return to the land ownership pattern of 1946. In this

way, the restitution programs in CEE countries effectively exempted the state land that was being used by state farms since the post-war land reform and at the same time covered the land that was confiscated and absorbed for cooperative use during the collectivization phase of the 1950s and 1960s. Only the Baltic states set the starting date for restitution in August 1940, the date when they had been annexed by the Soviet Union and all land had been nationalized. In these three countries no distinction was made between the land of state and collective farms: all nationalized land was subject to restitution claims.

Different restitution mechanisms were devised in different CEE countries. Hungary based its restitution on a quasi-money mechanism: former land owners received value-denominated certificates which could be used to bid for plots of land anywhere in the country through a market-driven auction process, or even purchase non-land assets in privatization auctions. This mechanism is sometimes characterized as a compensation mechanism rather than a restitution mechanism, and the Hungarian restitution law is appropriately known as Compensation Law (or in full “Law on Partial Compensation for Damages Unlawfully Caused by the State to Properties Owned by Citizens in the Interest of Settling Ownership Relations”). Estonia and Lithuania gave beneficiaries the choice between receiving land or money-denominated vouchers that could participate in privatization of urban land or various assets. Romania generally returned land in the original location, but not in the original boundaries. Bulgaria attempted to return land in the exact former boundaries or to substitute quality-equivalent plots in other locations. Poland and Slovenia did not have to devise full-scale restitution schemes, because state and cooperative land ownership had always been marginal in these countries.

The land restituted to a single former owner was usually fragmented into several parcels in different places in the fields of one village. In Estonia and Bulgaria, which adhered to restitution in old boundaries, a former owner would receive anywhere between five and ten scattered plots. As a concrete illustration, we can mention the case of a 19 hectare farm in the village of Allika in Estonia, which is divided into 10 parcels spread all over the local territory (Jaan Kivistik, private communication). But even in Hungary, where the national auction-based process was not linked to the old boundaries, the restitution procedures produced a highly fragmented pattern of long and thin strips, and a single former owner would typically end up with several such strips in different places in the village. Cooperative land was set aside for restitution in large

contiguous tracts of several tens or hundreds of hectares. These tracts were then split mechanically by computer into individual strips running the full width of the field. A one-hectare parcel might consist of a very long and narrow strip of land. An individual realizing his or her entitlement for two–three hectares in a public auction would typically end up with several such strips in different places. A unique situation is observed in Slovakia, which traditionally adheres to the inheritance principles of the Napoleonic Code, instead of the primogeniture principle that governs the inheritance of agricultural land in other transition countries. Thus, each passing generation in Slovakia irrevocably increases the fragmentation of private agricultural holdings, and today there are known instances when a 20 hectare plot, say, has to be divided among 1,500 restituteds.

Restitution proved to be a long and tortuous process plagued by difficulties with establishing the rights of claimants and dealing with properties fragmented into noncontiguous parcels and strips. The purely technical tasks of registering the privatized plots and issuing titles to beneficiaries also were a cause for considerable delays. Political indecisiveness and frequent course changes in some of the countries (e.g., Bulgaria) were not conducive to smooth progress of restitution either. In retrospect, the Hungarian strategy of transferable value-denominated certificates allowing the beneficiaries considerable freedom of choice among a wide range of assets other than land appears to have been the most successful: Hungary was the first among the CEE countries to reach successful completion of the restitution process.

At the end of the decade, the restitution process has been largely completed in practice across the CEE countries, although final ownership titles have been issued to a relatively small proportion of claimants. In some cases, much of the state-owned land has not been claimed by former owners and governments have targets for further reduction of state land reserves through continuing privatization, mainly by auction (Table 3.13). Even in Poland, where more than three-quarters of land remained privately owned after World War II and only about 20% in total had to be privatized, the progress with privatization has been less than satisfactory and the state still owns 15% of land.

Each CEE country has a special state agency responsible for managing the land under state control. This is the State Land Fund in Slovakia, the State Domains Agency in Romania, the Agricultural Property Agency in Poland, and similar institutions in other countries. This agency manages the land retained in state ownership (category II in

our nomenclature) as well as the unclaimed land remaining after the restitution deadlines (residual of category III).

Despite the lack of formal titles and deficiencies in registration of ownership that often prevent further progress with land privatization, all countries have procedures that allow users to lease plots from the large pool of state-controlled land. Many corporations take advantage of this option by leasing land from the state. Many individuals use land that they have received through the restitution process although they still do not have a final title to this land and it is not counted as privatized in the official statistics. The available figures for privatization of agricultural land (Table 3.13) therefore understate the actual use of land by private producers. It is quite clear that, at present, state-owned land is not cultivated by the state. Most of the land still registered as state-owned is in fact cultivated by private individuals and private corporate farms (companies), because the formerly powerful state farms have been dismantled or transformed into private organizations.

Table 3.13. Privatization of Agricultural Land in Selected CEE Countries (1997-98 status)

| | Privatized (final title) | State-owned (incl. disputed) |
|------------|-----------------------------------|-----------------------------------|
| Albania | 63% (100% arable, 0% pastures) | 37% (0% arable, 100% pastures) |
| Lithuania | 37% | 63% |
| Estonia | 57% | 43% (target 36%) |
| Romania | 71% | 29% |
| Slovakia | 76% | 24% |
| Bulgaria | 80% | 20% |
| Czech Rep. | 81% | 19% (target 9%) |
| Poland | 85% | 15% |

Source: Country land authorities.

The land used by cooperatives was intended for restitution to former owners who had left agriculture and for restoration of ownership rights to cooperative members who had remained active in agriculture. A different fate was envisaged for land in state farms, which was not subject to direct restitution claims. Basically, the governments in CEE countries were planning to privatize the state farms as going concerns, possibly splitting them into several autonomous units in the process. Initially, however, there was no intention of selling the land of the state farms. Only the non-land assets would be sold to the highest bidder, while the land would be leased by the new entrepreneurs from the state. The implementation of these privatization plans for state

farms was delayed for a number of years, because all countries kept the state-farm land in a contingency reserve for the eventuality that the cooperative land resources would not be sufficient to meet the restitution claims. The CEE governments moved ahead with the privatization of state farms only when the restitution process had advanced sufficiently and the extent of potential contingency claims on state-farm land had been clarified. The realization that large residual areas of unclaimed land remain under state control has led to a revision of the initial policies: state land agencies are beginning to consider the sale of state land by auction to private investors.

Poland did not have a restitution program, because collectivization efforts had largely failed in this country after World War II and Polish agriculture had remained an agriculture of individual farms all through the decades. The previous post-World War II land reform in this country distributed most of the estate lands to smallholders. Any demand for the Polish smallholders to give up their allotments in favor of former large estate owners would be politically and socially untenable, and the state focused on privatizing, through auctions and sale, the 20% of land that had been expropriated in 1945-46 and used to create state farms. The efforts to privatize the Polish state farms as going concerns ran into difficulties because of their debt burden. The government transferred the ownership of the former state farms to a special agency—Agricultural Property Agency, or APA—whose responsibility was to sell or lease the land and the assets of the state farms with the objective of repaying the old debt from the proceeds. The process was long and cumbersome, but APA's activities, however inefficient, definitely expedited the release of state-owned land to the private market in Poland.

Albania departed from the CEE pattern and did not opt for formal restitution to former owners. It adopted a strategy of direct distribution of ownership to all rural residents. Land previously cultivated by collective farms in use rights from the state was directly privatized to all rural residents without payment. Privatization by distribution covered only cultivable land, i.e., arable land and land in orchards and vineyards, but not meadows and pastures, which remained in state ownership. Many of the beneficiaries of land distribution simply happened to be former owners who had never left the village, but the land they received through the distribution process was not in the original location and probably not in the original amount. Absentee former owners who had moved from their villages and did not get any land in the distribution

process were compensated with state bonds. The land in state farms (as distinct from collective farms) was not subject to distribution: as in all CEE countries, it had originated through confiscation in 1944 of large estates owned by foreigners (Italian and German investors) or by the church and monasteries. The fate of this land—about 25% of cultivable land in the country—had to await special legislation, but eventually state farms ceased to function and their land was also distributed among all rural residents (or simply remained in an unclaimed reserve because of very poor quality).

The CIS countries did not recognize the rights of former landowners. In most of the former Soviet Union land had been nationalized more than 70 years before the beginning of transition, and the search for former owners was not a realistic proposition. Yet the concept of restitution was rejected (after some national debate) even in regions that were absorbed into the Soviet Union after World War II (Moldova, western Ukraine). In CIS countries that allow private ownership of land, the first step was to transfer land from exclusive state ownership to collective ownership of the peasants living and working in collective farms. State farms were generally transformed into collective farms, which then became part of this general “privatization” pattern. The entire process was conducted without requiring beneficiaries to make any payment: land and state-owned assets were transferred freely to the collective. This procedure resulted in large scale “privatization” of land, but to collectives and not individual owners. It therefore had to be followed by a second stage, in which individuals received certificates of entitlement to land in collective ownership (in practice, the two stages often occurred simultaneously). These certificates are usually called “land shares”, but they are basically “paper shares”, and not physical plots of land.

Land Allocation Strategy

Another dimension of land policy in transition countries is the land allocation strategy. Privatized land can be allocated to beneficiaries directly in the form of physical plots or in the form of paper certificates of ownership that may eventually be converted into physical plots.

In Russia, Ukraine, Kazakhstan, and other CIS countries, beneficiaries usually receive paper shares that certify their entitlement to

a certain amount of land, without specifying a concrete physical plot (in addition to paper shares, rural families in CIS cultivate small household plots of less than 1 hectare—a long-standing tradition in the former Soviet Union that dates back to the 1930s). Individuals wishing to take physical possession of the land they own generally have to declare their intention to become an independent private farmer and leave the collective. The land laws in CIS provide explicit mechanisms for the conversion of a paper land share into a physical plot in such cases.

Two CIS countries—Armenia and Georgia—deviate from the general two-stage allocation procedure. The land privatization mechanism in Armenia was formally similar to that in Albania. By special legislation of January 1991, the state directly transferred the ownership of cultivable land (excluding mountain pastures) to individuals. In Georgia, the collective and state farms largely ceased functioning during the first years of independence, which were a time of civil war and social unrest, and much of their land was effectively given in use, although not in ownership, to the rural population. These use rights in cultivable land are now being converted into individual private ownership under the 1996 legislation.

Moldova and Azerbaijan initially adopted the strategy of Russia and Ukraine, issuing paper land shares to rural households. In 1998, these countries started converting the paper certificates of entitlement into physical plots on a mass scale, and the process had been virtually completed by 2001. Ukraine launched a similar conversion program for land shares in 2000, and 40% of land shares had been converted into physical plots by mid-2003 (Leonard Rolfes, private communication).

Although the distribution of land-share certificates does not endow individuals with specific land plots, it is a prerequisite for further adjustments in former socialist farms. It opens the way for internal restructuring of the large collectives by allowing the newly divided resources to be regrouped by shareholders in smaller autonomous and, hopefully, market-oriented functional units. It may also ultimately lead to allotment of physical plots of land to individual shareholders. Initially, the individual shareholders prefer to keep their land shares in collective cultivation, because allocation of a physical land plot under existing legislation typically requires withdrawal from the collective, a drastic break with the past for which many rural residents are not yet ready. To avoid a situation in which all the privatized land remains locked in collectives, some CIS countries, in parallel with privatization of land to collective ownership, have created a reserve of state-owned

land intended for privatization to individuals “by application”. This reserve generally provides a pool of land for creation of family farms outside the collectivist framework. Given the potential importance of individual land share certificates as a starting point for further organizational changes in agriculture, it is encouraging to note that, according to official statistics, the process of distribution of land shares to individual beneficiaries is virtually complete in Russia, while Ukraine and Moldova are actually in the midst of converting land shares into physical plots. The stage is now set for meaningful restructuring of large farms in these countries.

While most CIS countries chose to distribute paper certificates of entitlement, allocation of physical plots is the common practice in all CEE countries. The Albanian process was similar to that in Armenia and Georgia: collective land was swiftly and equitably distributed in physical plots to rural households. The restitution process in other CEE countries generally started with the submission of a claim by a former owner or an heir and ended with allocation of a physical plot of land to the successful claimant. Under the Hungarian procedure, the successful claimants received a certificate of entitlement denominated in “gold crowns”, i.e., units of basic land value, and these certificates were then redeemed for land (or traded for other assets) in public auctions organized by the state. Although the Hungarian “gold crowns” were paper certificates, they were completely different from the paper land shares in CIS: they existed only in the interim stage until the official land auctions were held, and they had to be unconditionally converted into land (or other assets) at one of the auctions.

Allocation of physical land plots is clearly a better option in terms of the impact on potential transferability and land markets. The owner of a physical plot of land can directly decide on the preferred course of action: farm the plot individually, sell the plot and give up the property rights in return for a one-time lump sum, or perhaps lease the plot to somebody who can farm more efficiently, thus retaining the property rights “just in case” while earning a stream of future returns. A paper land share, on the other hand, represents fractional ownership in a large tract of jointly owned land, which in reality is managed and controlled by somebody else (typically the former collective farm in the village). The options of a shareholder are much more difficult than the options of a plot owner. The easiest way is simply to leave the land share in the large farm that is already cultivating the land (as it always did in the past). Any other alternative will require negotiating with the current

operator to identify, survey, and mark a physical plot of land that can be withdrawn for individual use from the jointly shared tract. Eventually, if the negotiations go well, the shareholder will end up in the same place as a person in a country that allocated land plots to beneficiaries from the start. Only this will have taken much longer and may have involved considerable uncertainty as to the final outcome.

If, on the other hand, we look at the impacts of restitution versus distribution, we do not discern anything that recommends one strategy over the other. Both are guided by clear justice and equity principles, although the beneficiaries turn out to be different (former owners under restitution, “the tiller” under distribution). True, restitution typically ends with allocation of physical plots of land, which is the preferred allocation strategy according to our reasoning, but distribution is not necessarily restricted to paper shares. Albania, Armenia, and Georgia followed a strict “land to the tiller” strategy, and yet it took the form of distribution of physical plots to individuals. Moldova and Azerbaijan have recently completed a large-scale “share conversion” process allocating physical plots to individuals holding paper entitlements. Whether a country adopts restitution to former owners or distribution to agricultural workers, the major determinants remain the allocation strategy (plots or paper shares), the legal status of private ownership, and the transferability or tradability of use rights and property rights.

Ranking the Land Policies of Transition Countries

The ECA countries show considerable diversity in their major land-policy characteristics: the attitude toward private ownership of land, transferability of property and use rights, allocation of land in the form of physical plots or paper shares, privatization by restitution or distribution. We will derive a composite land-policy score based on these characteristics and use it to rank the countries in CEE and CIS. To this end, we start with a table of 22 transition countries that contains their “profiles” by the four land-policy attributes (Table 3.14).

The ideal model of agriculture in market economies assumes private ownership of land with full transferability of use rights. These two attributes are the first two components of the land-policy profile, and the land policies of each country should be evaluated in relation to the market ideal. Countries in which potentially all land can be privately

owned, as in market economies, get the highest score (2); countries that do not recognize private land ownership at all get the lowest score (0); countries that partially recognize private land ownership (i.e., only household plots can be privately owned, while the rest of farmland is in state ownership) get an intermediate score (1). Similarly for the transferability component: the highest score (2) is assigned to countries that approach market-type transferability of land by allowing leasing as well as buying and selling without special restrictions; the lowest score (0) is assigned to countries in which ownership or use rights are non-transferable, either permanently or by virtue of an ad-hoc moratorium; countries that allow leasing of land while restricting buy-and-sell transactions or countries that only allow transfer of use rights (as distinct from ownership rights) get an intermediate score (1). These scores are entered in the country profiles next to the descriptive attributes for the first two components, attitude to private ownership and transferability.

The other two attributes—the allocation strategy and the privatization strategy—are unique to the transition environment, and have no direct analogs in market economies. Yet these attributes can have a direct impact on transferability and development of land markets, and this impact may be used for ranking. As discussed in the section on *Land Allocation Strategy*, allocation of physical land plots is a better option in terms of the impact on potential transferability and land market development. The owner of a physical plot of land has substantially greater flexibility and immediacy in decisions concerning the disposition of property than the owner of a paper share. We accordingly assign a higher score to countries that allocate physical plots of land and a lower score to countries that allocate paper land shares. Examination of the different options under land allocation strategy in Table 3.14 shows that we actually have five distinct levels of this attribute: allocation in physical plots is the highest of the five levels and it gets the score 4; the next best option involves allocation of shares followed by mass conversion of paper certificates into plots of land – and this option gets the score 3; the standard option of allocating shares without accelerated conversion into plots is assigned the score 2; and the option of giving people land in leasehold instead of shares is assigned the score 1; finally the worst option is the one does not involve any allocation of land or use rights and it gets the lowest score 0.

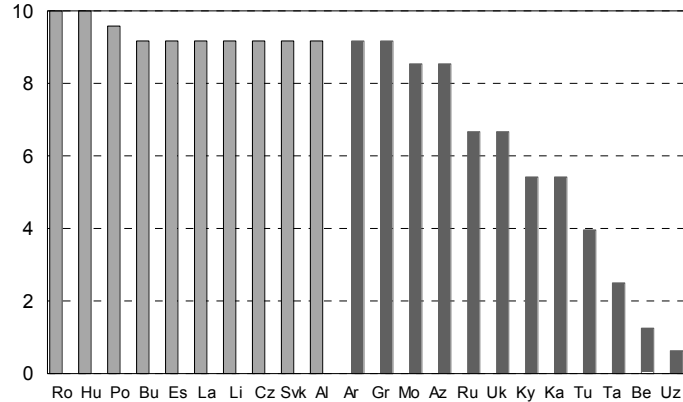
Table 3.14. Land-Policy Scores in Transition Countries

| | Private ownership | | Privatization strategy | | Allocation strategy | | Transferability | | Composite land policy index* |
|-----|----------------------|---|------------------------------|---|---------------------|---|-----------------|---|------------------------------|
| Rom | All | 2 | Restitution + distribution | 3 | Plots | 4 | Buy/sell, lease | 2 | 10.0 |
| Hun | All | 2 | Restitution + distribution | 3 | Plots | 4 | Buy/sell, lease | 2 | 10.0 |
| Bul | All | 2 | Restitution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Est | All | 2 | Restitution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Lat | All | 2 | Restitution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Lit | All | 2 | Restitution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Cz | All | 2 | Restitution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Svk | All | 2 | Restitution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Alb | All | 2 | Distribution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Arm | All | 2 | Distribution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Gru | All | 2 | Distribution | 2 | Plots | 4 | Buy/sell, lease | 2 | 9.2 |
| Mol | All | 2 | Distribution | 2 | Plots/shares | 3 | Buy/sell, lease | 2 | 8.5 |
| Az | All | 2 | Distribution | 2 | Plots/shares | 3 | Buy/sell, lease | 2 | 8.5 |
| Rus | All | 2 | Distribution | 2 | Shares | 2 | Lease | 1 | 6.7 |
| Ukr | All | 2 | Distribution | 2 | Shares | 2 | Lease | 1 | 6.7 |
| Kyr | All | 2 | Distribution/conversion | 2 | Shares | 2 | Moratorium | 0 | 5.4 |
| Kaz | Household plots only | 1 | None | 2 | Shares | 2 | Use rights | 1 | 5.4 |
| Taj | None | 0 | None | 0 | Shares | 2 | Use rights | 1 | 2.5 |
| Tur | All | 2 | None; virgin land to farmers | 1 | Leasehold | 1 | None | 0 | 4.0 |
| Uzb | None | 0 | None | 0 | Leasehold | 1 | None | 0 | 0.6 |
| Bel | Household plots only | 1 | None | 0 | None | 0 | None | 0 | 1.3 |
| Pol | All | 2 | Sell state land | 1 | Plots | 4 | Buy/sell, lease | 3 | 9.6 |

* On a scale of 0 to 10: land policy index 10 corresponds to ideal market attributes, 0 to no market attributes. In the transferability category, the ranking does not reflect the existence of practical restrictions, such as high transaction costs or bureaucratic barriers. The scoring for Kyrgyzstan and Kazakhstan predates the recent removal of the moratorium and the new draft law allowing private land ownership.

It now remains to score the privatization strategy, which is characterized by four descriptive levels: restitution, distribution, restitution with distribution, and no privatization strategy. As discussed in the previous section, there is really nothing between restitution and distribution that recommends one strategy over the other in terms of its impacts on land holding and transferability. Restitution and distribution accordingly get the same mark on our scorecard (2). The countries that adopted a strategy involving both restitution to former owners and distribution to workers have obviously achieved a higher level of social equity than countries that used only restitution, and this strategy accordingly gets a higher score than pure restitution (3). Countries that implement a partial privatization strategy, such as Poland that only sells the state-farm land or Turkmenistan that only allocates non-irrigated virgin land in private ownership to peasant farmers, score lower than countries that implement full-scale restitution or distribution (1). Finally, countries without any privatization strategy score 0.

Fig. 3.1. Land Policy Index: Private Ownership, Transferability, Privatization, and Allocation Strategy



The scores assigned to the four attributes are used to construct a composite land policy index that reflect private ownership, transferability, privatization strategy, and land allocation procedures. Since the four attributes are scored on different scales reflecting the different number of qualitative levels for each attribute (for instance, from 0 to 2 for private ownership and from 0 to 4 for allocation strategy), the component scores are first normalized on a scale of 0 to

10 and then summed and averaged (with equal weights) within each country profile. The normalized average score is a land-policy index on a scale of 0 to 10, where 10 corresponds to the ideal attributes: private land ownership, full transferability, allocation in the form of physical plots, and equitable privatization that combines both restitution and distribution. In this ranking of land policies, the CEE countries as a group get a score of 9 out of 10 and the CIS countries a score of 6. Four of the twelve CIS countries—Armenia, Georgia, Moldova, and Azerbaijan—are clearly closer to the group of CEE countries than to the rest of the CIS by their land policy scores. There is indeed significant divergence in land policies, which is visually demonstrated in Figure 3.1.

Land policies are constantly changing. During the last few years we are witnessing a clear trend toward more liberal land policies across the region. Georgia and Albania initially did not allow buying and selling of agricultural land, and then passed laws that legalized all ownership transfers (in 1996 and 1998, respectively). Russian legislators agonized for more than a decade over the issue of full private ownership and transferability of agricultural land, and then passed a new Land Code and a special law for agricultural land transactions (2002). Moldova, Azerbaijan, and Ukraine initially privatized land by distribution of paper shares, and then adopted legislation enforcing conversion of paper shares into physical plots (1996-98 in Moldova and Azerbaijan, 1999-2001 in Ukraine). Kyrgyzstan switched from exclusive state ownership of agricultural land to recognition of private ownership in 1998-99 and then abolished (in 2000) the initially conceived moratorium on buying and selling of land. Kazakhstan is the latest country in the region to finally recognize private land ownership (2003). In Tajikistan land remains totally state-owned, but as of May 1999 land use rights are transferable, i.e., tradable. Today, Belarus, Uzbekistan, and Turkmenistan are the only three transition countries that adhere to very conservative land policies that allow neither private land ownership nor any transactions in land other than leasing from the state.

Because of these dynamic changes in land policy, the assessment scores in Table 3.14 and Figure 3.1 are doomed to become outdated even before they are published. Yet the arithmetic of our scoring is quite transparent and everyone can easily adjust the scores and the composite land policy index to allow for any new changes in policy.

Annex to Chapter 3

Table A3.1. Land Reform and Farm Restructuring Legislation

| I. Countries that recognize private land ownership | |
|---|--|
| Albania | Law on Land (July 1991) Distribution of Property of Agricultural Cooperatives (Aug. 1991) Distribution of State Farm Land (Oct. 1992) Compensation of Former Agricultural Land Owners (April 1993) Law on Pasture and Grazing Land (April 1995) Transfer of Ownership in Agricultural Land (April 1998) Law on Undistributed Agricultural Land (Aug. 1998) |
| Bulgaria | Law on Ownership and Use of Land (Jan. 1991, March 1992) |
| Czechoslovakia | Land Law (May 1991, Feb. 1992) Law on Transformation of Cooperatives (Dec. 1991) |
| East Germany | Agricultural Adjustment Law (June 1990, April 1991) Establishment of privatization trust (June 1990) |
| Hungary | Constitutional Court rules against immediate restitution (Oct. 1990) Compensation Law (April 1991) Law of Transformation of Cooperatives (Jan. 1992) Law of Cooperatives (April 1992) Land Law (April 1994) |
| Romania | Land Law (No. 18, Feb. 1991; No. 169, 1997) Law on Agricultural Companies and Other Types of Agricultural Associations (No. 36, April 1991) Law on Land Leasing (No. 16, 1994; No. 65, 1998) Law on Land Transactions (No. 54, 1998) Governmental Resolution on Organization of State Domain Agency (No. 46, 2000) |
| Poland | Law on Utilization of Agricultural Property of the State Treasury (Oct. 1991) |
| Estonia | Law on Principles of Property Reform (June 1991) Law on Land Reform (Oct. 1991) Law on Agricultural Reform (March 1992) Law on Land Leasing (June 1992) |
| Latvia | Law on Land Reform (Nov. 1990) Law on Privatization of Assets in Collective Farms (June 1991) Law on Land Reform (June 1992) |
| Lithuania | Law on Land Reform (1991, 1993) |
| Armenia | Law of Peasant Farms and Collective Peasant Farms (Feb. 1991) Land Law (Feb. 1991) Law on Privatization (June 1992) Law on Entrepreneurship and Enterprises (March 1992) Land Code (March 2001) |
| Georgia | “Land privatization decree” (Jan. 1992), Law on Agricultural Land Ownership (March 1996; May 1997) Law on Land Leasing (June 1996) Law on Land Registration (Nov. 1996) |

| | |
|------------|---|
| Azerbaijan | <p>Constitution (Nov. 1995) Land Reform Law (July 1996) Law on Land Leasing (Dec. 1998) Law on Land Cadastre (Dec. 1998) Law on Land Market (May 1999) Land Code (June 1999)</p> |
| Russia | <p>Law on Land Reform (Nov. 1990) Law on Peasant Farms (Nov. 1990; new version June 2003) Land Code (April 1991) Decree on Implementation of Land Reform (Dec. 1991) New Constitution (Dec. 1993) Decree on Regulation of Land Relations and Development of Agrarian Reform (Oct. 1993) On the Practice of Agrarian Transformations in Nizhnii Novgorod Province (April 1994) On Reforming of Agricultural Enterprises in the Light of the Experience in Nizhnii Novgorod Province (July 1994) New Civil Code (Oct. 1994) Resolution No. 96 on Procedure for Realization of the Rights of Owners of Land and Asset Shares (Feb. 1995) Land Code 2002 Law on Agricultural Land Transactions—"Land Turnover Law" (July 2002)</p> |
| Moldova | <p>Law on Property (Jan. 1991) Law on Priority Social Development of the Village and the Agro-Industrial Complex (Feb. 1991) Land Code (Dec. 1991, Feb. 1995) Law on Peasant Farms (Jan. 1992) Law on Cooperation (Jan. 1992) Law on Normative Price of Land (Dec. 1994; July 1997) Resolutions on Purchase and Sale of Land Plots (June 1995; Nov. 1995; June 1997; Feb. 1998) Constitutional Court Rulings on Amendments to Land Code (Jan. 1996; Oct. 1996; May 1997; Oct. 1997) Law on Cadastre (Feb. 1998)</p> |
| Kyrgyzstan | <p>Law on Peasant Farms (Feb. 1991) Law of Land Reform (Apr. 1991) Land Code (June 1991) Measures for Continuing Implementation of Land and Agrarian Reform (Dec. 1992) New Constitution (May 1993) Measures on Deepening Land and Agrarian Reform (Feb 1994) Referendum (June 1998) Presidential Decree on Private Land Ownership (Oct. 1998) Land Code (June 1999) Lifting of the moratorium on land sales (March 2001)</p> |

| | |
|--------------|--|
| Turkmenistan | Land Code (1991) Law on Destatization and Privatization of Property (Feb. 1992) New Constitution (May 1992) Law on Peasant Farms (March 1994) Law on Peasant Associations (June 1995) Law on Allocation of Land Ownership to Citizens for Commercial Farming (Dec. 1996) Presidential Decree on Improvement of Lease Relations in Agriculture (Feb. 1999) |
| Ukraine | Resolution of the Supreme Soviet of Ukraine "On Land Reform" (Dec. 1990; amended May 1993) Law on Forms of Land Ownership (Jan. 1992) Law on Collective Agricultural Enterprises (Feb. 1992, May 1993) Law on Peasant Farms (Dec. 1991; June 1993) Presidential Decree "Regulations for Division into Shares of Land Transferred to Collective Ownership of Agricultural Enterprises and Organizations" (Aug. 1995) Presidential Decree "On immediate measures to accelerate reform of the agricultural sector of the economy" (Dec. 1999) Land Code (Oct. 2001) |

II. Countries that do not recognize private land ownership

| | |
|-------------|---|
| Belarus | Land Code (Dec. 1990; amended Jan. 1999) Resolution of the Supreme Soviet on Land Reform (Dec. 1990) Law on Peasant Farms (Feb. 1991) Law on Land Ownership (June 1993; amended Jan. 1999) |
| Kazakhstan* | Law of Land Reform (1991) New Constitution (Jan. 1993) Law on Peasant Farms (April 1993) Presidential Decree on Land Reform (February 1994) Land Law (Feb. 2001) |
| Tajikistan | Law on Property (Dec. 1990) Land code (Dec. 1996; amended May 1999) New Constitution (Nov. 1994) |
| Uzbekistan | Allocation of Land for Subsidiary Household Plots (Aug. 1989) Land Law (June 1990, May 1993) Law of Property (Oct. 1990, May 1993) Law of Entrepreneurship (Feb. 1991) Law of Cooperatives (June 1991, Dec. 1993) Further Strengthening of Peasant Farms (Nov. 1991) Law of Peasant Farms (July 1992) Land Code (April 1998) |

*The new Land Code adopted in June 2003 allows private ownership of potentially all agricultural land.