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| **KYRGYZSTAN**

LAND TENURE AND PROPERTY RIGHTS ASSESSMENT FOR KYRGYZSTAN

APRIL 2005

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ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
ASSP	Agricultural Support Services Project
BASIS	Broadening Access and Strengthening Input Market Systems
CIDA	Canadian International Development Agency
CW	Chronically Weak (Enterprise Category)
DFID	Department for International Development
EGAT	Bureau of Economic Growth, Agriculture and Trade (USAID)
EU	European Union
FSU	Former Soviet Union
GDP	Gross Domestic Product
GOK	Government of Kyrgyzstan
GosRegister	Kyrgyzstan State Registration Agency
Goszemagentstvo	State Agency for Land Tenure and Land Resources
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit.
GyProZem	Land Design Institute
IFAD	International Fund for Agricultural Development
KGS	Kyrgyzstan Som
Kyrgyzgiprozem	State Institute for Land Resources and Land Engineering
LARC	Legal Assistance to Rural Citizens
LRF	Land Redistribution Fund
LTPR	Land Tenure and Property Rights
MAWR	Ministry of Agriculture and Water Resources

NGO	Nongovernmental Organization
NRM	Natural Resources Management
PG	Progressive (Enterprise Category)
PIN	Parcel Identifier Number
RCLAR	Republican Center for Land and Agrarian Reform
RDI	Rural Development Institute
RG	Regressive (Enterprise Category)
SDC	Swiss Agency for Development and Cooperation
SIDA	Swedish International Development Cooperation Agency
SUP	Superlative or Steadfast (Enterprise Category)
TACIS	European Community's instrument for cooperation with the countries of Eastern Europe, the Caucasus and Central Asia
TFP	Total Factor Productivity
USAID	United States Agency for International Development
WB	World Bank

EXECUTIVE SUMMARY

Kyrgyzstan was one of the first countries from the former Soviet Union (FSU) to privatize agricultural land and remains the only country of the five Central Asian countries that has distributed land to the former collective and state farm members and dismantled the majority of these large farms. It is, therefore, an excellent case study from which USAID might answer some key questions, such as: Which reforms worked and which did not? What would we change about the sequence of reforms? Was the outcome of the reforms as one would expect from a theoretical point of view? Which interventions should be emulated and which should not be? Where is there still work to do?

An impact assessment would ideally contain both a quantitative and qualitative review of outcomes. However, with limited funds and resources, a brief but thorough qualitative review can answer most of the questions listed above to a satisfactory degree for future planning and efforts. This review is based on a literature review of other studies related to Kyrgyzstan's land reform, two weeks of field research, and the experience of a team that consisted of both local and international experts who have worked on land issues in Kyrgyzstan since the beginning of the reforms.

Our review looks at five main issues as they relate to land tenure and property rights in Kyrgyzstan and the steps taken to deal with these issues both by the Kyrgyz Government and by international organizations (including, of course, USAID), and at the outcomes/impacts of these interventions.

A summary of our findings and recommendations follows:

Conflict/Instability

Trans-border conflicts have perhaps a greater impact on markets for agricultural produce than on issues related to land and property rights. The major disputes over land are related to inequitable land distribution and limited land use rights. In many parts of Kyrgyzstan there is a lack of land and a lack of non-agricultural employment, leading to an inefficient agricultural sector and limited ability to be economically successful in agriculture. Those who do not have land and are not employed are very vulnerable. At this point, more focused research would be necessary to determine whether this land pressure is leading to an increase in ethnic conflict or border conflicts.

Insecure Land Tenure and Property Rights

The major land-related concerns for farmers are the forms and methods for governance over land and the legislative and institutional structures that have been created to oversee land distribution and use. Both the state and local governments have rights to distribute state land for use, and monitor, control, and withdraw privately owned land. The rules governing these rights are unclear, too broad, and void of transparency and process that involves land owners.

A much greater emphasis should be placed on good governance. Legislation and regulations must include a process for rule-making that includes public notice and an opportunity for the public to have input. Local government should be required to function in an open and transparent fashion and *ajyl okmotu* level decisions should be required to be made in conjunction with village leaders. Rules and regulations, costs for services, and delineation of institutional duties should be widely published and as much information as possible made available to the public. Training related to land rights and obligations and to governance over land continues to be necessary.

Landlessness and Inequitable Land Distribution

There are three main issues related to land distribution. First, as did most other FSU countries, Kyrgyzstan chose to distribute agricultural land to members of the state and collective farms and not to those who

resided and worked in the *raion* centers. In addition, in Kyrgyzstan, people who live in *raion* centers and worked for now-defunct factories or businesses have no way to purchase agricultural land for subsistence farming because they are prohibited from doing so by the legislation governing the land market. Many of these would like to own land to subsistence farm, as they are extremely limited in their ability to otherwise support themselves.

The second issue has to do with land in Chui *Oblast* that has still not been privatized. Even though land share certificates with demarcated maps were to have been given to all members of state and collective farms, some farmers still do not have these certificates.

The third issue relates to the 25 percent of all agricultural land that is contained in the Land Redistribution Fund (LRF), held by the state and controlled by the *aiyl okmotu*. This land fills many needs, but it is managed and distributed in a non-transparent and often unfair way. Annual fees earned from auctioning this land are used to support local government. While by law some of this land should be going to poor and disadvantaged groups, the lion's share is allocated to the privileged and well-connected. Any policy changes would first need to deal with the governance of this fund, including the transparency of the process for distribution of the land. One possible policy option is to convert a percentage of annual and 5 year leases to 30 year leases, to extend duration of property rights, make leases automatically renewable and transferable, and charge an annual lease fee to continue the revenue stream of local government. Such policy would enable government to withdraw from the allocation of land except in the event that annual rental fees are not paid, in which case the land could be repossessed and auctioned. LRF land in the auction process could be bifurcated or segmented into two categories: those able to pay, and the disadvantaged based on proportions to be determined. Such policy would: 1) target more land to the poor; 2) increase long-term tenure security; 3) establish a property tax on land to continue support for local government, and 4) if leases could be easily traded, begin the process of establishing a land market and building land valuations. These and other policy changes would need to be carefully researched and monitored over time to ensure that goals of economic growth, governance, and sustainability are met.

Poorly Performing Land Markets

The “grey” or informal economy in Kyrgyzstan is sizable, providing some indication that the legal framework and judicial institutions are not adequately serving agricultural and business interests. It also provides an indication that economic growth is proceeding despite legal reforms and is outpacing legal change. In the presence of a rapidly growing grey economy, law avoidance has become a widespread response to punitive taxes and fees applied at multiple levels, corruption and economic rent seeking within the formal system of governance and land administration, and a legal framework in land that is not yet sufficiently nuanced or robust to accommodate economic change.

While major tenure forms have been put in place and major legal reforms have been enacted, there is perhaps another 10 years of significant land tenure reform that is needed with a focus on broadening and articulating property rights. The emphasis on land distribution and land sales should be considerably broadened and deepened to include: a) developing a land rental market in arable and pasture land; b) making it possible for legal entities to own land; c) opening the land market to outside capital/investors; d) supporting common property rights and institutions; and e) reforming share equity arrangements. There is arguably the need to move beyond legal aid clinics, or “know your rights” campaigns that primarily serve the interests of poor rural farmers, and begin to place a stronger emphasis on similar programs that improve governance and transparency of corporate entities and local government that currently manage the LRF and will inevitably need to assume the management of pasture lands.

Unsustainable Natural Resource Management

Immediately after the collapse of the FSU, Kyrgyzstan's herd size was reduced by as much as 60 percent due to distressed sales, consumption, and livestock losses. The policy framework has largely ignored common property rights issues with respect to pasture in Kyrgyzstan, and until recently, this issue was not pressing due

to lack of a rebound in livestock herd size. However, livestock has been and will continue to be a corner stone of the Kyrgyz economy as well as Kyrgyz culture, and now that herd sizes are beginning to rebound, common property management is becoming a concern with tightening land use pressure and capture of the best pastures by the elite. Kyrgyzstan has recently passed legislation governing use of pasture land that is both ineffective and ignored. A review of the legislative and institutional framework dealing with this critical natural resource is necessary.

This report focuses on land related issues exclusively. To more broadly assess the impact of the land reform on increased agricultural or economic gains or food security would require an in-depth study of upstream and downstream markets, credit availability and access, access to market information, agricultural enterprise, etc.

I.0 INTRODUCTION

I.1 COUNTRY CONTEXT

Over the past 10 years, the former Soviet Republic of Kyrgyzstan fashioned the legal framework for privatizing land and allowing it to be bought and sold on a market basis. The majority of agricultural land was distributed into the ownership of private farm households¹, and the vast majority of former state and collective farms were broken into smaller units. By 2001, approximately 80 percent of farmers identified themselves as owning a private, individual household farm.²

In 1999, with donor financial assistance, Kyrgyzstan created GosRegister, the state registration agency responsible for registering all rights in land and all transactions involving land. Systematic registration is ongoing and will continue for some years to come. The State Land Redistribution Fund is being distributed to private farmers who did not receive land during the course of earlier distributions and leased to those who need more land and are willing to accept a short-term lease. Pasture land is being leased out in short- and long-term use rights. Urban land is primarily privatized, both in terms of housing and in terms of the land under private enterprises.

USAID, for its part, has dedicated a significant part of its program of technical assistance in Kyrgyzstan to fostering and facilitating a progressive and effective land reform program via legislative development, legal aid, and public education. However, at present, USAID possesses somewhat limited information related to the contribution and impact of these reforms on near and long-term national and USAID programmatic goals. Such goals include poverty reduction, farm household/enterprise growth, land improvement and investment, access to both formal and informal credit, improved land administration and land use, and management, mitigation of conflict, or participation in civil society and local governance.

I.2 OBJECTIVES

Development theory and experience show that land access and secure property rights in land and related resources are important, if not central, to poverty alleviation, economic growth, and social equity throughout the developing world. In countries where land access rights are distributed more equitably and property rights in land and related natural resources are secure, measurable improvements in investment and growth, transition to democratic government, and improved use of natural resources emerge. Conversely, where rights to land are limited, land distribution is skewed, or where land rights are insecure or otherwise fragile, poverty levels are frequently at their worst, marginalized groups are often egregiously excluded from social and economic opportunity, and the seeds of violent conflict are often present.

Increasing demand by USAID missions for work on land tenure and property rights (LTPR) issues is creating the need for mechanisms that help missions comprehensively and accurately discern and assess the scope of issues, and accordingly design appropriately-sequenced interventions. Past LTPR assessments commissioned by USAID frequently lacked consistency and depth or failed to adequately connect LTPR issues with project and program interventions. Moreover, past assessments shied away from addressing anticipated derivative impact of recommended programs or activities. With these problems in mind, in September 2003, USAID, through the Natural Resource Management Office (NRM) of the Bureau of Economic Growth, Agriculture

¹ Private farm households comprise individual households or groups of households.

² As reported by Renee Giovarelli in the executive summary of *Dispute Resolution and Land Use Survey*, presented at a USAID workshop in 2001.

and Trade (EGAT), initiated the Awareness Framework: Property Rights and Natural Resource Management Task Order.³ This task order is designed to provide USAID with an LTPR analytical framework and accompanying assessment tools that will assist in the development of its programming.⁴ To date, two analytical pieces are in development, based mainly on review of the literature and professional opinion: Land Tenure and Property Rights (LTPR) Framework (2005), which explains goals, purpose and overarching methodology; and the Land Tenure and Property Rights Glossary (2005), which explains key terms and concepts that provide the building blocks for the Awareness Framework.

An additional objective of the task order is to test and refine the assessment methodologies by subjecting the analytical framework to empirical validation in two case countries. The framework encompasses two dimensions: 1) LTPR issues; and 2) LTPR policy and program interventions, including appropriate sequencing of LTPR reforms. Kyrgyzstan was chosen as one country case study because of its long history of experience with LTPR reforms that enable articulation of the hierarchical relationship between policy change and impact, and the evaluation of reforms and how they have been sequenced.

The purpose of this paper is thus twofold:

- First, it seeks to provide a situational assessment of land tenure and property rights in Kyrgyzstan for purposes of articulating and assessing current land tenure issues and recommending remedial interventions as may be appropriate
- Second, it seeks to inform the development of the Awareness Framework as well as assessment tools to be developed.

Beyond providing the USAID country mission with a current situational assessment of land tenure issues and suggestions for future LTPR interventions, the Kyrgyzstan case will help pioneer and refine new assessment tools that will serve to benefit future country assessments.

1.3 AWARENESS FRAMEWORK

A more detailed description of the assessment tool referred to above can be found in Appendix B. Following is a brief description of the methodological framework developed for this case study.

1.3.1 Land Tenure and Property Rights Issues

Figure 1.1, the Land Tenure and Property Rights (LTPR) Awareness Matrix, conceptually illustrates the relationship between a stylized categorization of LTPR issues observed globally (columns) and a categorization of LTPR cross-cutting policy and program interventions (rows). Five issue categories are denoted in the figure: 1) conflict and instability; 2) insecure tenure and property rights; 3) landlessness and inequitable resource distribution; 4) poorly performing markets; and 5) unsustainable natural resources management. The matrix also denotes six categories of policy and program interventions that are drawn from the policy toolkit commonly applied by development practitioners:⁵ 1) good governance; 2) conflict or dispute resolution; 3) legal and regulatory framework; 4) redistribution of resources within society; 5) investing in land administration and the structures for implementing policy; and 6) enabling and strengthening

³ The Awareness Framework: Property Rights and Natural Resources Management Task Order was awarded to ARD, Inc. under the Broadening Access and Strengthening Input Market Systems (BASIS) Indefinite Quantity Contract (IQC), Contract No. LAG-I-00-98-00031-00.

⁴ For a more expansive discussion of this conceptual framework see "Land Tenure and Property Rights (LTPR) Awareness Framework: Concepts and a Guide for Evaluating LTPR Issues and Interventions in Land and Natural Resources (DRAFT)," 2005.

⁵ For detailed development of this framework, terms, and definitions, see its companion paper entitled "Tenure Primer and Glossary" (Marquardt et al 2005).

land use planning and conservation. Individual cells of the table represent critical intersections between land issues experienced and policy interventions; both issues categories and intervention categories while depicted as distinct, are in practice interconnected and sometimes fungible across categories.

Land issues in developing or transitional countries usually fall within one or more of five broad areas constituting categories of issues in the LTPR awareness matrix.

FIGURE I.1 LAND TENURE AND PROPERTY RIGHTS (LTPR) AWARENESS MATRIX



- **Conflict/Instability:** Political instability and lack of governance in post-conflict situations, or social and ethnic conflict over resources that arise in the course of economic, social, political or institutional change.
- **Insecure Land and Property Rights:** Insecure rights or unequal distribution of rights in land and property that create conflict, undermine economic incentives, and constrain property transfers.
- **Landlessness or Inequitable Land Distribution⁶:** Landlessness, inequitable land distribution, and insufficient access to land and related natural resources to secure livelihoods.

⁶ Land access relates to how a person or group enters onto and utilizes a physically defined area of land. The economic value of land and resources is obtained both from one's tenure security in the resource and the quantity and quality of the resource held. Certain tenure problems relate to the situation in which secure rights are held, but ownership of physical and natural resources is too limited to provide

- **Poorly Performing Land Markets:** Missing markets, segmented markets or undeveloped markets that affect a broad range of transactions including purchases and sales, mortgages, land exchanges, resource contract, temporary transfers and leases, long term and short term informal borrowing, resource pooling, and other informal arrangements.
- **Unsustainable Natural Resources Management:** Deforestation, land degradation, and unsustainable use of land, water, wildlife, forests, pasture and other natural resources due to conflict/instability, landlessness, poverty, insecure land and property rights, or poorly performing markets.

1.3.2 Land Tenure and Property Rights Interventions

Interventions aimed at reducing resource conflict, achieving political stability, securing property rights, reducing landlessness, achieving a more equitable land distribution, facilitating or enabling land markets and investment, and achieving more sustainable land use management typically fall into one of the areas described below and constitute intervention categories in the LTPR Awareness Framework.

- **Good Governance:** Preconditions of political will and pursuit of democratic governance aimed at restoring rule of law and developing sound institutional structure based on accountability, transparency, and mechanisms to encourage citizen participation.
- **Conflict or Dispute Resolution:** Formal and alternative dispute resolution methods and strengthening recourse to rule of law.
- **Legal and Regulatory Framework:** Creation of property institutions, both for individually- and communally-held property and for rural and urban uses, that secure rights of ownership, transferability, exclusiveness, and use.
- **Redistribution:** Land and agrarian reform, resettlement, farm restructuring, and privatization.
- **Land Administration⁷:** Efficiency improvements in the functioning of land administration systems along with decentralization and devolution.
- **Land Use Planning and Conservation⁸:** Land suitability assessments, land use planning, environmental regulations, zoning, taxation, and development incentives. Conservation is concerned with the sustainability or improvement of the natural resource base environment and includes land reclamation, set asides, conservancies, buffer zone management, protected areas management, reforestation, and soil conservation.

secure livelihoods or income. Alternatively, one's holdings of physical and natural resources may be relatively plentiful but tenure security is limited or uncertain to enable conservation or achievement of full productive potential.

⁷ Land administration refers to the process of recording and disseminating information about the ownership, value, and use of land and related resources. Public sector agencies play a role in land and resource management and administration, securing rights of ownership, transferability, exclusiveness, and use, and in defining and supporting markets. Although these agencies vary in organization, structure, size, locale, and scope of responsibility from country to country, they typically fill many of the same roles providing regulation, administration and services in the following areas: land demarcation and adjudication of rights; titling and registration; land (and property) registry development; surveying and mapping; recording of credit and mortgage transactions; real estate development; town and country planning; and taxation. While development of the legal and regulatory framework in intervention C above gives these interventions legal weight and *tour de force*, there is in addition the need for government to establish structures that deliver these services on the ground.

⁸ Land use planning is the systematic assessment of the potential of land and related resources, alternative patterns of land use and other physical, social, and economic conditions for the purpose of selecting land use options. Illustrative tools include land suitability assessments, land use planning, environmental regulations, zoning, taxation, and development incentives. Conservation is concerned with the sustainability or improvement of the natural resource base environment and includes land reclamation, set asides, conservancies, buffer zone management, protected areas management, reforestation, and soil conservation.

As gender, ethnic, or social marginalization are cross-cutting issues in Figure 1.1, LTPR policy and program interventions must have a dedicated focus on removing legal impediments that discriminate against these groups and on supporting policy and programs that strengthen their rights awareness, provide legal recourse, redress problems of landlessness, and broaden access to markets and services. Strengthening capacity is the second cross-cutting issue – the capacity of government to create and implement LTPR policy, the capacity of stakeholders to assist government in implementation, and the capacity of beneficiaries to know and understand their rights and act upon them.

I.4 METHODOLOGY

The land tenure and property rights assessment was carried out for USAID/Kyrgyzstan from October 31 – November 13, 2004. The assessment team comprised Renee Giovarelli as Team Leader, Zina Alieva, Ivan Ford, Nurlan Isaev, Robert Morin, Michael Roth, and Asyl Undeland. Gregory Myers of USAID/Washington participated in the assessment.

Given the nature of the review, all data gathered was based on key informant interviews, qualitative interviews, field visits, and review of the secondary literature. The method employed for the field research was primarily rapid rural appraisal, which involves semi-structured interviews with rural people who have valuable knowledge regarding issues that affect their lives. In most instances, the team attended interviews as a whole group, although information was also gathered on a one-to-one basis. Field interviews were conducted with groups of rural farmers, NGOs, and donors working in the topical areas of interest, USAID projects associated with land issues, and local, regional, and national officials, including land specialists. As indicated in the list of meetings and contacts in Appendix A, interviews were held with representatives of the following groups:

- USAID projects including ARD/ Checchi Legal Reform Project, Legal Assistance to Rural Citizens, Chemonics Land Reform Project;
- ADB Chui Regional Development Project, Department for International Development (DFID)-funded Kalys Consult, World Bank Agricultural Portfolio leader;
- Federal Government Offices including GosRegister, Association of Rural Municipalities, Rural Advisory Service, Republican Center for Land and Agrarian Reform, Agricultural Committee Chair of Jogorku Kenesh, Chui Registration Office, Giprozem; and
- *Aiyl okmotu* offices in Tamga, Orgochor, Temir, Nairiman.

The team collected comparative data along a number of categorical dimensions, including: (1) regions within the country (north/south); (2) geographical setting (mountains/valleys); and (3) proximity to cities and markets, and visited :

- Chui Oblast:: Panfilov Raion, Frunze *Aiyl Okmotu*, farm NIVA; Sokuluk Raion, Jany Pakhta *Aiyl Okmotu*
- Issyk-Kul Oblast:: Orgochor *Aiyl Okmotu*, Tamga *Aiyl Okmotu*
- Osh Oblast:: Kara Suu Raion

An assessment of impacts of Kyrgyzstan's land reform on productivity, land markets, and credit, would not have been possible without prior research to tap into. The BASIS Collaborative Research Support Program (led by Principal Investigator Michael Roth) undertook a three-year program of research on Institutional Innovations to Improve the Viability of Equity Sharing Under Privatization and Farm Restructuring in Kyrgyzstan. The findings of this research along with commissioned papers were presented at the BASIS Collaborative Research Support Program conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development," held at the Cholpon-Ata,

Issyk-Kul, 27-29 October 2004. Papers presented at this conference helped synthesize research findings and consolidate thinking around key issues by conference participants. Another valuable piece of field research was the “Rapid Appraisal of Land Reform in the Kyrgyz Republic” by authors Childress, Giovarelli, Shimarov, and Tilekeyev. For assessments such as these that are few weeks in duration, the quality of the impact assessment is necessarily based on anecdotal evidence and the synthesis of research already completed. In the case of the assessment in Kyrgyzstan, there was a good body of empirical evidence to tap into, but even then, despite Kyrgyzstan’s decade and a half of experience with land reform, it is remarkable how little in-depth, longitudinal research has been done. Longer term assessments, well after completion of a project in a region would provide more rigorous understanding of the impacts of the project on men and women and what techniques and procedures did or did not work.

I.5 ORGANIZATION OF REPORT

The remainder of this report empirically implements the various elements of the LTPR awareness matrix, shown in Figure 1.1. Major sections of the report are organized according to issues categories (columns). Section 1 is introductory, Section 2 covers issues related to conflict/instability, and Section 3 relates to issues of insecure tenure and property rights. Issues related to landlessness/inequitable resource distribution and poorly performing markets are covered in Sections 4 and 5 respectively. Section 6 addresses issues related to unsustainable natural resources management. A final concluding Section 7 covers impact and synthesizes major recommendations made within the above sections and will be produced separately as a companion white paper.

Each of the above Sections 2 to 6 is subdivided into four sections:

- Issues of land tenure and property rights;
- LTPR policy and program interventions and related issues that stem from these;
- Impact of these interventions, where possible and substantive; and
- Recommendations.

Section 7 contains summarizes recommendations made for Sections 2 through 6.

Following the main body of the report are four appendices:

- Appendix A: List of meetings and contacts;
- Appendix B: Summary of the LTPR framework that was used to steer and standardize this impact assessment.
- Appendix C: Chronology of legislative enactments that support the discussion of the legislative framework in main sections of the report and LTPR policy and program interventions.
- Appendix D: Economic analysis of farm enterprise performance.
- Appendix E: Donor projects and program interventions. At a macro level, it is very difficult or impossible to attribute gains, for example in economic growth or food security, to the impact of any given project because the policy framework is complex and highly interdependent, and donor projects are generally narrowly focused on specific elements of the policy framework. In particular, the impact of the land reform on farm dynamics and enterprise productivity in Section 4 is the culmination of contributions made by the Government of Kyrgyzstan (GOK) and multiple donors. However, it is possible to make rather crude but useful statements about the culmination of these efforts based on the type of policy and program interventions undertaken and scale of funding involved.

2.0 CONFLICT/INSTABILITY

In common land tenure and property rights parlance, a dispute denotes disagreement while a conflict implies the existence of a threat or demonstration of willingness to use force to address the dispute. Sometimes disputes and conflicts over land are the source of minor and short-lived perturbations. To the extreme however, disputes and conflicts can lead to open hostilities and promote social disorder, negatively impact economic growth, and if unchecked, contribute to political instability.

To understand the roles disputes and conflicts play in either stabilizing or destabilizing the evolving land tenure systems and the extent of property security in Kyrgyzstan, this section of the assessment examines the issues that could lead to disputes or conflict and reviews land-related interventions.

2.1 ISSUES

2.1.1 Boundary Disputes

There are several types of land boundaries that pose a potential for dispute. Boundary disputes in Kyrgyzstan should be monitored, but as of yet, have not created major conflicts.

Trans-border Boundaries

Trans-border disputes in the Ferghana Valley between Kyrgyzstan, Uzbekistan, and Tajikistan were identified as an ongoing source of disputes. An unmitigated escalation to the level of conflict could entail displaced persons, ruined infrastructure, and regional economic decline in Kyrgyzstan.

At issue principally is the definition of national administrative boundaries. This problem came to the forefront following the break up of the former Soviet Union (FSU) and the creation of independent republics. Until the breakup, boundaries were not at issue, as goods, services, and people flowed freely among countries. With the recognition of international borders however, the elements of ethnic pride, nationalism, and resource availability came into play. Kyrgyzstan, Uzbekistan, and Tajikistan have each made historical claims over the others' land. For example, Kyrgyzstan is demanding that an Uzbek enclave in the Ferghana Valley be returned to Kyrgyzstan. Similarly, Tajikistan has claim on areas of the Uzbek territory. In both cases, residents are in these areas in effect isolated from their surroundings.

An enormous source of tension in the frontier area between Kyrgyzstan and Uzbekistan is the presence of mine fields. Mine fields have been established by the Uzbeks unilaterally. The Kyrgyz do not receive maps of these mine fields. Frequently, mine fields are in disputable territories or even in the Kyrgyz territory. There is great difficulty in transporting goods across borders and even within Batken *Oblast* in Kyrgyzstan because of this tense and unresolved situation.

In addition, ongoing disputes over water access rights continue to plague the region. Kyrgyzstan is an upstream country and the source of river water that flows through Uzbekistan and Kazakhstan. In exchange for water, Kyrgyzstan receives gas from Uzbekistan. There are constant disputes over payment and access to both water and gas. Left unchecked, these problems are capable of severely affecting the social and economic gains resulting from land reform initiatives in the respective Kyrgyz border areas.

Private Land Boundaries

“Private land boundary disputes are becoming more frequent since agricultural land has been privatized and citizens are investing in improving the land quality.”

Private land boundary disputes are becoming more frequent since agricultural land has been privatized and citizens are investing in improving the land quality. However, it is reported that the land tenure specialist in the *aiyl okmotu* can resolve most of these disputes by simply measuring the land share and getting agreement between the parties (usually extended family members) on the boundary location. According to local officials, few of these disputes need court intervention to resolve and are not a serious impediment to land use in Kyrgyzstan.

Administrative Boundaries

Administrative boundaries are boundaries that define the limits of the land rights that a governing body such as a municipality, local government, or *raion* has been assigned and is responsible for managing. Frequently, disputes over land boundaries occur between administrative bodies. This is particularly true in Kyrgyzstan and other FSU republics where more than one village shares a collective farm and the village boundaries pass through or border on the farm. The administrative boundary is generally defined by physical features such as roads, streams, forest boundaries, and other identifiable objects that are shown on a map. However, the maps are often outdated and the physical boundaries have been destroyed or moved (e.g., forest boundaries have shifted due to outgrowth or tree harvesting, or farm fields have been expanded or overgrown). As a result, officials argue over encroachments onto traditionally used territory and unequal distribution of the land resources.

Public/State Land Boundaries

Public or state/*oblast*/local government land boundaries are boundaries of lands that have not been privatized. Portions of these lands can be leased-out to private or legal persons for use over a predetermined period according to the lease agreement. Examples of public lands include forest areas, distant pasture lands, and national parks. The boundaries of these lands are defined on a small scale (usually 1:25,000) map and are not specifically demarcated on the ground. During the assessment, it was reported that disputes have been arising between lease holders of different land use categories. Because of the complex land management arrangements between various levels of government, these disputes are often difficult to resolve. As far as could be determined there is no effective mechanism in place to resolve these issues at the present time.

2.1.2 Inequitable Land Distribution

Among those who received agricultural land (former collective and state farm members) a minimal number of disputes or conflicts over the land distribution were reported during field visits. However, a project supported by a World Bank Development Marketplace grant revealed that there was extreme unrest on some farms, especially in Chui *Oblast* where people still do not have a land certificate with a demarcated land share. These farmers have been battling with the farm bosses for years, are aware of their rights but have not been able to exercise them, and now some are willing to take up arms to force their rights.

Other complaints related to land distribution center on the issues of uneven land quality, an unrecognized right to receive land, and accusations over nepotism where authorities assigned the best parts of the fields to family members and close friends.

The Land Redistribution Fund was established to provide a fall-back for “mistakes” or oversights made during the initial land distribution. However, this land is often captured by local and national government

officials and their families. Capture of land by elites has become a major issue recently as state land, such as land in the Land Redistribution Fund and pasture land is being sold or given to those in power. There are many rumors of the president's family and others selling off land surrounding Issyk-kul, for example, and reports of anger over this obvious land-grabbing are on the increase. Many farmers do not have enough land, and they feel powerless in the face of the local government authorities.

Another issue flagged during this and earlier field research concerns urbanites and their lack of access to land. In Kyrgyzstan, "urban" is a relative term. People who lived in rural *raion* centers and worked for factories or the government and were not a part of a collective or state farm were not eligible for agricultural land. Soon after the collapse of the economy, however, most of these people were out of jobs with nowhere to turn. They are still not eligible to purchase agricultural land unless they live in an *aiyl okmotu* for two years. With no resources and no job, these rural urbanites are unable to even subsistence farm. Rural governments (*aiyl okmotu* and *raion* heads) discussed this situation as unfair, even though the law was written to protect rural farmers from relatively wealthy urbanites out of a fear that farmers would lose their land.

"Another issue flagged during this and earlier field research concerns urbanites and their lack of access to land."

2.1.3 Limited Land Use Rights

Another area of underlying conflict is between the north and the south. Land plots in the south are significantly smaller than in the north, land prices are much more expensive, and even at that, there is little land for sale or lease. The provision in the law that requires that a person live in an *aiyl okmotu* for two years before having the right to purchase agricultural land was established, in part to discourage people from the south from moving north and buying land. The lack of ability to move about the country and purchase land where it is available has been a source of frustration for many southerners.

One of the major observations related to land distribution is that, although the land has been distributed relatively equally among former members of the collective and state farms, and people have ownership rights to specific land parcels, there is still minimal possibility to exercise the full extent of their rights. Local authorities often dictate what should be planted on the land, how much land in a given area should be planted in a certain crop type, where and from whom to get inputs such as seed and fertilizers, and to whom to sell the products. In addition, strict restriction on use of land for its designated purpose, limits the ability to get unproductive land back into use. This frustration over lack of freedom of choice related to land rights leads to increased disputes between farmers and the *aiyl okmotu* heads or *aiyl okmotu* land managers.

2.1.4 Pastures

Pastures have not been privatized and are presently managed by three levels of government as follows: near pasture lands (*aiyl okmotu*); intense pastures (*raion*); and distance pastures (*oblast*). Several disputes associated with the distribution of pasture lands were reported. As livestock herds rebound and near-in pastures are over-used, there is concern at the *aiyl okmotu* level that there will be an increase in pasture disputes.

2.1.5 Easements

Unfortunately, when land shares were allocated, easements were not established. When the state now undertakes infrastructure improvement projects (water pipes, electrical lines, roads) requiring public land, a state taking must occur. Where land is already in short supply, these public purpose takings by the state are unwelcome and cause tension that is likely to increase as more land is needed for public works.

2.2 INTERVENTIONS

2.2.1 Governance

There are several donor projects that support empowerment of local communities and local community leaders, in an attempt to use governance principles to resolve disputes. For example, the Peaceful Communities Initiative works principally in the conflict-prone Ferghana Valley area of Kyrgyzstan, Uzbekistan, and Tajikistan. Their aim is to seek local solutions to conflict and empower communities to deal with issues through citizen involvement and participation. The initiative uses a system of conflict early warning indicators to assist in identifying communities where assistance may be required.

Resolution of land disputes requires that rural citizens appeal to those whom they see as endowed with authority. There are three considerations related to disputes, listed here in descending order of importance: 1) Who is the relevant authority for the dispute?; 2) Is there a need to avoid external parties in order to save expense and time?; and, 3) Is there any trust in formal authority vested in law?

The degree to which a governing entity is seen to be reflective of the interests of the local community and the accountability of the entity vis-à-vis the local population are the two key factors related to governance and dispute resolution. The written law and formal dispute resolution are less effective than a local trusted authority figure.

“The degree to which a governing entity is seen to be reflective of the interests of the local community and the accountability of the entity vis-à-vis the local population are the two key factors related to governance and dispute resolution. The written law and formal dispute resolution are less effective than a local trusted authority figure.”

Many of those interviewed noted that social capital at the very local level plays a significant role in most rural areas in Kyrgyzstan. Many donor programs support community mobilization and capacity building. These include self-help groups and other micro-credit operations, which rely substantially on social capital in order to operate. USAID has funded community mobilizers and local NGOs, local government capacity building, and micro-credit programs—all aimed at improving the capacity of local leaders.

At the same time, rural governments lack the legal authority to handle many types of disputes, and these must be referred to state agencies, primarily the *raion* level GosRegister offices and, to a lesser degree, the Republican Center for Land and Agrarian Reform (RCLAR). Both of these agencies are funded by the World Bank.

2.2.2 Conflict and Dispute Resolution

USAID has focused much of its attention over the past five years in the area of conflict and dispute resolution. These programs deal with all levels of dispute resolution. Local *aksakals* and *aiyl okmotu* have been trained in land legislation. Legal aid centers, concentrating specifically on land issues, have been established in every *oblast*. These centers not only directly represent people who have disputes, they also provide ongoing legal education and service to local governments. The judicial reform program provided training and support to the judiciary and courts.

The World Bank financed a pilot project that trained locally identified leaders on land rights and advocacy. The project aimed to empower informal leaders to deal with recalcitrant collective farm bosses or local government officials. The program was quite successful, and USAID followed suit by working with locally-identified leaders.

DFID has been working on third-party arbitration courts which can adjudicate land cases; however, there are very few such courts and their impact has so far not been great.

2.2.3 Legal and Regulatory Framework

The legal framework allows for informal community leaders to resolve disputes (see, Decree of the President of the Kyrgyz Republic, “On Approval of Temporary Regulations on Courts of Elders in the Kyrgyz Republic,” [January 25, 1995]). However, complex disputes that require technical expertise and formal authority would not be referred to local informal community leaders but rather, interviewees noted, to the heads of rural local self-government who combine greater local legitimacy and enforcement capacity. This is a recent phenomenon, largely because it was only following the December 2001 popular elections that *aiyl okmotu* had real legal and moral authority. However, the *aiyl okmotu* do not have staff lawyers or the means to employ them, and therefore their capacity to deal with land related disputes, which requires knowledge of legislation, is limited.

USAID has attempted to change the Law on Administration of Agricultural Land to remove some of the restrictions discussed above, but the changes have been rejected by Parliament.

2.2.4 Land Administration

One of the most effective methods of minimizing land boundary disputes is to delineate and demarcate the boundaries on assignment of the rights to the land. However, this is not always possible due to the relatively high cost associated with surveying and mapping. Systematic registration of agricultural land shares is currently taking place in Kyrgyzstan with funding from the World Bank Agricultural Services Support Project. The land shares defined in the land share certificates are delineated in a plan of the parcel and are being demarcated on the ground as part of the titling and registration process.

2.3 IMPACT OF INTERVENTIONS

Determining the causal impact of dispute and conflict resolution interventions is, in large part, problematic due to the current state of monitoring and evaluation mechanisms for most projects. Past and on-going projects have, to varying extents, collected and processed data related to the day-to-day implementation of their activities, but these same systems did not take into account collecting the appropriate data to address impact-related questions. Nevertheless, based on interviews conducted throughout this assessment exercise, it is possible to identify several important impacts resulting from the collective contribution of donor activities.

2.3.1 Knowledge Acquisition

Attention to land reform issues at the local level focused predominantly on enhancing access to and knowledge of land legislation and its application. To achieve this goal, projects programmed various type of technical assistance either through advisory services to communities as a whole or through one-on-one technical or legal services. In those communities served by these projects, citizens are at the very least cognizant of the existence of their land rights. More often than not they have acquired sufficient knowledge to build an information base about their rights and responsibilities. In some cases however, communities may not have the most current information on land legislation or the information they do have may be blatantly wrong. This was shown to be the case early on in applying land reform legislation. Whether out of ignorance or malicious intent for example, some local authorities tasked with land share distribution inappropriately assigned rightfully due parcels of land.

2.3.2 Attitudinal Change

Interviews in several communities revealed that with the acquisition of knowledge on individual and community land rights, citizens appear to be adopting a sense of empowerment to act on their individual or collective behalf. In many cases, this is manifested by the increasing number of people seeking resolution to disputes through both informal and formal mechanisms, the majority of which are reported to be between individuals and government. Evidence that this is a pervasive phenomenon throughout Kyrgyzstan is unclear, but from reports of projects tracking such cases in specific areas (in particular projects dealing with third party dispute resolution), substantiated data are available. Anecdotal information obtained during this assessment validates project reports. Secondly, the developing sense of empowerment seems to also be enhancing solidarity among community member. Community members are mobilizing to collectively act on their common priority interests.

2.3.3 Poverty Reduction and Enhanced Food Security

Poverty reduction and enhanced food security are key objectives of Kyrgyzstan's national development strategy, and one aim of land reform is to contribute to these objectives. Concrete evidence that donor funded dispute-oriented interventions have played a role in reducing poverty and enhancing food security appears to be lacking although this assessment learned that DFID's Land and Agrarian Reform Phase 2 Project is undertaking the examination of such a link.

2.4 RECOMMENDATIONS

- Boundary disputes have the potential to increase, but they are not currently a major problem. Monitoring and evaluating data related to the day-to-day implementation of USAID activities in the area of land and dispute resolution would be an effective tool for identifying problem areas before they accelerate.
- The key areas where land and property conflicts have arisen and will continue to be a problem are related to access to land and the ability to be productive on the land:
 - Urban dwellers, who were not eligible to receive agricultural land under the initial distribution, are disadvantaged by legislation and have a difficult time getting access to land;
 - Use and distribution of land in the Land Redistribution Fund are not transparent, and there is capture by the elite;
 - Southerners cannot own land in the north because of legal restrictions on who can buy land;
 - Some farmers, especially in Chui *Oblast*, still do not have a land certificate giving them a right to a specific parcel of land; and
 - The ability to increase productivity is limited by local interference.

2.4.1 Recommended Focus Areas

The key areas for USAID to focus attention are to:

- Work with local government bodies to increase transparency in relation to the distribution of land from the Land Redistribution Fund and pasture land;
- Work with Parliament to address the issue of the lack of land for urban dwellers and limits on purchase of agricultural land;

- Address the issue of designated use of land as a possible way to put unused land back into production; and
- Assist farmers who are blocked from receiving a share of land by recalcitrant farm bosses to exercise their legal right to land.

3.0 INSECURE LAND AND PROPERTY RIGHTS

3.1 ISSUES

Land tenure refers to the bundle of rights held in relation to a specific parcel of land, including but not limited to the right to sell, subdivide, mortgage, and bequeath the parcel, as well as the right to plant crops, cut trees, bury dead, and construct homes on it. Insecure land and property rights create conflict, undermine economic incentives, and constrain property transfers. Kyrgyzstan faces a situation where rights security is being jeopardized by weak governing structures and inadequate institutional support.

3.1.1 Ineffective Governing Structures

Security of land tenure and property rights refers to the ability of a land right holder to protect that right within community sanctioned structures. In Kyrgyzstan, there are four main issues that affect land tenure and property rights security: 1) there are no clear rules related to the state's right to take land from private individuals; 2) there are no clear rules about who has the right to use specific areas of common property (pastureland); 3) formal recognition of land rights may not reflect the situation on the ground causing land disputes; and 4) the state's right to control use of private land is too far-reaching.

Weak Governing Structures

The current governing structures are either unclear or too far-reaching, severely curtailing citizens' rights to private land and common property such as pastures.

State's right to take private land is overly broad.

The state has two types of rights with which to take land from private individuals: 1) the right to acquire private land for a public purpose; and 2) the right to take land for legal infractions such as non-use (use that is not according to its targeted purpose) and the failure to pay land tax (Land Code Art. 66). The Land Code does not specifically define public purpose, and the provisions related to targeted use are vague. There are very limited regulatory procedures for takings, although the Land Code does provide that only the court can decide that the state can withdraw land (Land Code, Art. 67-68).

The Agrarian Committee of Parliament has wanted to write regulations for the state's compulsory acquisition of land for over 5 years. Both USAID projects and World Bank projects have assisted in drafting such legislation, although it has not yet passed out of Parliament.

Rights to use common property are unclear.

Until 2001, the process of using and monitoring pastures was less administratively controlled and based on pre-existing local usage. Since 2001, producers are increasingly establishing lease agreements for the most desirable pastures, which feature good road access and water sources. There is a large reserve of both near and intensive pastures, some of which are reported to be in use. Authorization, decision making, and pasture management are spread over various levels of government, adding to the confusion. The *aiyl okmotu* provides either open access or leases to near pastures, but producers seeking additional pasture leases approach the *raion* administration. Although in some cases the *aiyl okmotu* handles all pasture leases, most of the funds from these leases go to the *raion*. The *raion* administration in turn, seeks technical help from GosRegister to define specific areas on the ground and prepare the rental agreements. Neither GosRegister nor the *raion* administration collects information on the status of the pasture to be rented, but simply allocates pasture

leases on the number of animals possessed by the lessee. Due to the lack of resources, the traditional nomadic pasture rotation systems and institutions that used to govern the use of rangelands have disintegrated. Access to and use of pasture land is a source of an increasing number of disputes, due in large part to a lack of a clear official policy on allocation of pastures in line with variable seasonal carrying capacities. This has led to overgrazing on rangelands adjacent to the village and capture of the distant pastures by the elite. Additionally, forest enterprises are encroaching on land perceived to have been reserved for pasture use and disputes over rightful access are prevalent.

It is reported that the question of easements will be the subject of an increased number of disputes in the future. The source of the problem dates to the distribution of land shares, during which time future local-level infrastructure development (roads, canals, boundary markers) was not foreseen and subsequently not taken into account in allocating land shares. Local governments, particularly in the south, now face the dilemma of dealing with this issue. A highly-placed interviewee sees the potential for disputes to elevate to the level of conflict.

Formal recognition of rights to registration may not reflect the situation on the ground.

Land shares were distributed, starting in 1991. At the beginning of the land reform, the land share certificates were not delineated on paper, nor were they demarcated on the ground until the family withdrew their land share to farm independently. When groups of families withdrew from a farm, often their individual land shares were not demarcated. Even when the land share had a map, the withdrawing farmer may have received a different piece of land, one that was on the perimeter of a field. Moreover, changes in families have generally not been registered. For example, when a family member died, the land certificate was not changed. Transactions were not registered, and many people moved away. GosRegister is re-registering land in the name of the people who are actually using it and changing the maps to match the land on the ground. However, the person using the land has to have some documentation of this right. For those who purchased land and do not have documentation, they either need a letter from the seller or they need to wait 15 years until they have a prescriptive right to the land. Disputes are generally resolved by GosRegister, with no outside oversight.

State's right to control use of private land is far-reaching.

There are many legislative restrictions on the use of private agricultural land. Land legislation that is overly restrictive can decrease the depth of the land rights held and allow little ability to make independent economic choices about use or transfer of that land.

The major legal issues affecting the state's control over land use are as follows.

- Household land shares are indivisible under the law, no matter how large they are or whether or not they are one contiguous plot (Law on Administration of Agricultural Land [December 18, 2000] and Regulation #427, "On the Procedure of Purchase and Sale of Agricultural Land" [approved by the GOK Resolution of 08.13.01]).
- Article 9 of Regulation #427 states that, "The land parcel consisting of land shares of the members of one-family, allocated in the procedure established by the GOK, shall be indivisible. The partition of a land parcel and separation of an in-kind land share from it shall not be allowed – the partitioning member shall be entitled to the payment of the value of his share. A part of an indivisible land parcel may not be purchased or sold." As is the case all over the world, this provision is difficult to enforce. People will divide property informally if it suits them, and in fact, many communities are allowing division of household land shares in spite of the legislation. These transactions, however, cannot be formalized in many cases.

- Only those people who have lived in a rural area for two years can purchase agricultural land in that area. Most rural people stated that anyone (rural or urban) should be able to purchase or receive agricultural land as a gift because urban dwellers also need a way to survive with high unemployment and a lack of industry. Also, most people wanted that those with less land should be able to purchase in those areas with land more is available. The depression of land prices was mentioned as an issue.
- Banks are not allowed to hold agricultural land for any period of time after a foreclosure, forcing them to sell it at whatever price they can get. This provision seriously restricts banks' willingness to take agricultural land as collateral. Again, such restrictions limit the depth of private land rights.
- Some farmers reported that they were strongly encouraged by local government to plant certain crops. Local government has no legal right to dictate what farmers choose to plant on their fields. However, local governments vary as to their involvement in such decisions. Under customary law, local leaders have great authority, and a strong suggestion is equivalent to a command.
- Building houses and barns on pastures or other dry land is restricted. Opinions expressed to the appraisal team tended to suggest a desire by users to make it easier, especially for long-term leaseholds, to build structures on far away pastures or dry land. Without the right to build a structure, this land goes unused because it is too expensive to drive back and forth to improve the land.

3.1.2 Inadequate Institutional Support for Land and Property Rights

There is a lack of local capacity to implement land reform.

Land redistribution (from collective and state farms to individual farmers) was to be carried out by newly established *raion* and village councils. Unfortunately, in the beginning, they were nominal structures with no capacity to implement policy in rural localities.

Actual land allocation to peasant farms was undertaken by the management of state and collective farms with two outcomes. First, in many cases rights to the best land and property in terms of agricultural machinery, facilities, livestock, and other assets of state and collective farms were allocated to the management of collective and state farms and their technical staff (e.g., accountants, veterinarians, agronomists). Second, particularly in the north, these same managers sought to preserve the collective farms, which they dominated by blocking individual farmers' receipt of use rights to a workable land parcel. The lack of administrative oversight from above and rural citizens' limited knowledge of their land rights aided in this process. Moreover, when necessary, the old bosses easily resorted to intimidation, manipulation of information, refusal to accept documents, or, to accept the law itself. There are still farms, especially seed breeding farms in Chui *oblast*, which effectively resist farmers' decisions to take their land shares out of the enterprise.

Land institutions compete and conflict.

Land reform implementing institutions included the Republican Center for Land and Agrarian Reform (RCLAR), the State Property Fund, the Ministry of Agriculture, the State Agency for Land Tenure and Land Resources (Goszemagentstvo), and the State Institute for Land Resources and Land Engineering (Kyrgyzgiprozem). Each of these institutions also had *raion*-level subdivisions involved with the land reform process.

In practice, cooperation was often poor, leading to delays in issuance of land use documents, incomplete land documents, and procedural uncertainties that constrained subsequent formal land transactions. Much of the land reform and land administration duties are now concentrated in GosRegister (formally, the State Agency for Land Tenure and Land Resources and the State Institute for Land Resources and Land Engineering) giving GosRegister almost unrestricted power over land issues. The process for deciding which agencies

would have specific duties related to land was not transparent and did not involve the legislative process. Rather, it was almost exclusively decided through the administrative process.

There is inconsistent enforcement of land laws.

Many legislative provisions are unclear, and in some cases, local authorities are not interested in clarification of the law because it works to their advantage for the law to be uncertain or complicated. Legislation that is unclear or does not reflect the local situation provides no guidance to local government. Field research found the implementation of legislation to be quite varied. In many cases, legislation is ignored or modified to suit the local situation.

Legislation is Unclear or Ignored

Implementation of legislation is quite varied. At times it is unclear, and guidance is not provided to local government. At other times, local authorities take advantage of ambiguities or modify legislation to work to their advantage.

The evolving land reform process in Kyrgyzstan regarding marital property and inheritance law continues to be the source of misunderstanding and contention, often leading to disputes. Anecdotal information obtained through interviews suggests that the incidence of disputes over divorce and division of property are on the increase. At the core of the issue is the imbalance between written and customary law. Written law is generally more favorable to women in the division of common joint property during a divorce settlement. However, the predominant number of cases appears to be handled through customary law, which varies by region and ethnic affiliation and more often than not favors the position of the man. In the division of joint property under written law, the court transfers property to each spouse. Unequal distribution of joint property requires a corresponding monetary reimbursement. Customary law generally mandates that the property (land and house) stay with the man unless the man leaves the village to remarry. In most cases, the woman returns to her family with her children. The application of written law is problematic for women in that they must first understand their legal rights, have easy access to court, incur state fees charged for property division, and bear the social stigma of divorce. The implication of these barriers is that women rarely apply to court for divorce.

The application of inheritance and division of property law introduces additional circumstances that can be the issue of disputes. As with marriage law, written inheritance law provides for an equitable distribution of property. A surviving spouse has the right to inherit the deceased spouse's common share of common property, and they are allowed to keep their share of the common property. Russian households tend to follow the written law, while traditionally, Kyrgyz households recognize customary law. According to Kyrgyz and Uzbek tradition, a woman's dowry is recognized as her pre-mortem inheritance. The surviving children, except for the youngest son, are also provided for in a pre-mortem manner. Generally, the youngest son inherits the property as well as the responsibility of caring for the elder parents.

Disputes over the surviving spouse's right to inherit a land share are becoming more common and were expected to increase over time. In part, there is a connection between the introduction of the relatively recent notion of land shares and the level of disputes. Land shares were not conceived under customary inheritance laws, therefore the disparity between written and customary law is at issue.

Legislation is developed and adopted without input from the village-level.

For legislation to be effective, the people who implement it must have the capacity and incentive to do so. Unfortunately, in Kyrgyzstan, there is little opportunity for input or feedback from lower levels of administration. Legislators who only receive information from the elite will not be able to write legislation that has a positive impact on the poor. Moreover, feedback is essential to good decisions. Feedback allows the government to evaluate its own performance and to institutionalize its learning through understanding the consequences of its decisions. A public and transparent process for feedback from remote and rural populations would greatly improve the legislative process and outcomes.

3.2 INTERVENTIONS

3.2.1 Governance

Most land tenure and property rights issues can be managed with good governance. Not surprisingly, moving from state ownership to private ownership raises a large number of governance concerns. Kyrgyzstan made many efforts to create a good governance framework, but it was not always successful. This section discusses the institutions that were created to address the issues raised in Section 3.1.

Establishment of Land Reform Implementation Agencies

In an effort to stem the power of collective and state farm bosses in the farm reorganization, a Presidential Decree in 1992 set up farm-level, elected rural committees, which were to be responsible for implementation of the farm reorganizations. The decree prohibited heads of collective and state farms from serving as chair of these rural committees.

In addition, in 1994, several decrees and government resolutions (see Appendix C) tried to address bottlenecks in land reform and farm restructuring. Responsibility for reforms was transferred to the Ministry of Agriculture which established RCLAR to implement policy with respect to farm restructuring and land allocation. RCLAR had branches at the *oblast* and *raion* levels and was paid out of the republican budget rather than the local budget in an attempt to increase transparency and fairness in farm restructuring.

A Presidential Decree in 1996 converted the rural committees, established in 1992, into rural, or village, administrations (*aiyl okmotu*) to serve as executive local self-government entities for rural areas. The *aiyl okmotu* were also charged with taking care of social infrastructure which had previously been built and maintained by the collective and state farms. The *aiyl okmotu* were given much power over farm restructuring and farm inputs, including farm services such as plowing and harvesting.

Establishment of an All-Inclusive Land Agency

The 1998 Land Code did not specifically state which agencies would have control over specific aspects of land administration. In part, the Land Code was intentionally vague because agreement between the State Land Agency and the Ministry of Agriculture could not be reached. This vagueness allowed these critical decisions to be made, not as a part of the legislative process, but rather as a part of the agency rule-making process. In 1999 a new agency, the State Registration Agency (GosRegister), joining Goszemagenstvo, Kyrgyzgiprozem, and three other government agencies, was established to deal with land matters (funded by the World Bank). Through administrative regulations, this agency captured most of the land administration functions. The GosRegister combined broad authority to develop and implement policy and legal reforms with regard to land, implement reforms, monitor regulation of land use, take land which is not being used properly, perform titling, and otherwise maintain the state land cadastre. The purpose of consolidating land functions was to create a more streamlined, efficient land administration system.

The consolidation of these functions has not brought about noticeably greater efficiency. Moreover, one agency now functions as legislator, regulator, surveyor, registrar, and a dispute resolution body. Field research indicated that rural people believe that GosRegister has too much power and that it abuses that power.

3.2.2 Conflict or Dispute Resolution

Introducing a land reform program in Kyrgyzstan, one of the few countries in the Central Asia region to undergo this process, brought with it a myriad of challenges for government and citizens. At times these

challenges, as they pertained to questions of land and property rights, were addressed and resolved in the short term but challenges remain that continue to result in varying degrees of disputes.

Seeking resolution of disputes over rights requires that rural citizens appeal to one of the following bodies endowed with the authority to undertake a mediation process of either a formal or informal character:

- Community bodies, including informal leaders, elders in the community, and informal ‘justices of the peace,’ especially in areas which have more developed social capital;
- Local formal bodies, particularly the popularly elected heads of local self-government at the rural level; or,
- Formal state bodies, including the third party courts where they are established.

In practice, citizens choose the avenue of resolution they feel is expedient and represents the best interests of the community, that is, they turn to informal community bodies.

The government of Kyrgyzstan and the donor community are responding to the increasing prevalence of conflict through a series of initiatives principally aimed at fortifying citizens’ understanding of the reform. USAID, DFID, Helvetas, and the World Bank are working to address

dispute resolution through informal and formal mechanisms. The ways and means to resolve disputes now exist and are increasingly being used. Despite these efforts, there remain individuals who are unaware of their rights or for whom formal dispute resolution is seen as shameful. The notion of taking action against another individual is seen as unacceptable and only practiced in extreme cases.

Avenues of Dispute or Conflict Resolution

In Kyrgyzstan, rural citizens have three possible avenues of dispute or resolution: informal community-based entities such as informal leaders or elders; formal local entities that may include popularly-elected heads of local government; or formal state entities invested by law, including third party courts. The avenue taken is almost always a function of the extent to which an entity is perceived by the citizen to reflect the interests of the community.

3.2.3 Legal and Regulatory Framework

Legal Framework

The legal framework for land tenure and property rights has been developed over the course of the last 14 years and is quite substantial. While land reform was primarily mandated from the top down, those instituting the land reform (the president and reformers in the Ministry of Agriculture) made changes to the legislation as issues and concerns arose. This effort to correct the course of the land reform helped correct some major problems, but also created a somewhat confusing legislative base for land tenure and property rights.

The first three years of independence (1991–1994) were marked by a decline in economic growth, lower agricultural productivity, an increase in poverty, and the collapse of social safety mechanisms. The early reforms (1991–1993) principally focused on voluntary reorganization of failing state and collective farms where members of those farms were unable to subsist on the farms production or earnings. Individuals who wanted to leave such farms were allowed to withdraw from the farm with land and property (including sheep and other animals) and set up private farm enterprises. Boundaries of settlements, towns, and *raions* were also established.

The later reforms (1994–present) encouraged all farms to wholly reorganize and gave members of the former state and collective farms land use rights that they could sell, lease, mortgage, and bequeath.

The first comprehensive law on agrarian and land reform in the Kyrgyz Republic was the law “On Land Reform” (April 19, 1991). This law sought to provide, among other things, a framework for the “equitable development of various forms of farming” and began the process of redistribution of land. Land commissions were established at the local level to consider requests for distribution of land within the locality.

After President Akayev was elected, most of the land reform legislation was promulgated in the form of presidential decrees, which sought to overcome resistance to agricultural reforms by local officials and directors of collective and state farms. The presidential decrees mandated the reorganization of unproductive farms with land and assets distributed to farm members in the form of land shares and property shares. The decrees also allowed individual members of non-reorganized state and collective farms to withdraw a share of land and property (non-land assets) from the farm to start a private farm enterprise. Eventually, 75 percent of the arable land was distributed in land shares, and approximately 25 percent of arable land is still held by the state in the Land Redistribution Fund. The focus of the early reforms was to allow individuals to farm privately to ensure that people would at least be able to feed their families. Without subsidization, many of Kyrgyzstan’s state and collective farms could not continue.

On October 17, 1998, a nationwide referendum was held to introduce the concept of private ownership of land to the Constitution in the hopes that such a constitutional amendment would provide the impetus for much needed land legislation. However, the speed with which the referendum was held and the fact that six questions were put to a single yes/no vote (of which ownership was only one issue) meant that there was little time or forum for public discussion or input.

Prior to the referendum, a presidential decree was passed that outlined the concept of private ownership of land and provided that seven laws should be promulgated (if the referendum passed) that would establish and encourage a land market. They include a Land Code, Peasant Farm Law, Mortgage Law, Law on Cooperatives, and a law introducing land-related amendments to the Civil Code.

Following the referendum on changing the Constitution to allow private ownership of land, the Land Code was passed imposing a 5-year moratorium on the sale of agricultural land. The moratorium was imposed to allow people time to understand what private ownership of land means, to provide wide-spread public education on how a land market would work, and to protect people from selling their land without such understanding and losing their only income generating asset.

Many donors pushed for the moratorium to be lifted early, and in December 2000, only 18 months after the Land Code passed, the moratorium was lifted by the “Law on Administration of Agricultural Land.” The law lifted the moratorium while restricting the right to purchase and sell land. The restrictions were put in place to protect farmers from selling their land and losing their ability to feed their families.

The major legal issues affecting the purchase and sale land market are in the Law on Administration of Agricultural Land (December 18, 2000) and Regulation #427, “On the Procedure of Purchase and Sale of Agricultural Land” (approved by the GOK Resolution of 08.13.01). While several of the restrictions in these laws are acceptable and even considered desirable by most farmers, other restrictions are harmful to the newly emerging land market. Moreover, the legislation is unclear in several places leading to misinterpretations that are more restrictive than intended by the law.

These privatization efforts were supported by various donors such as USAID, IMF, and the World Bank. The support was provided in terms of financing, technical assistance, consultation with various stakeholders, and piloting of various activities testing land reform processes. USAID projects directly assisted in the development of land legislation, beginning in 1996. Local and international technical assistance was provided to the president’s office, parliamentarians, and the ministries associated with land reform (State Land Agency and the Ministry of Agriculture). The ARD/Checchi Commercial Law Project lead the effort to draft the Land Code, the Law on Registration, the Civil Code, the Law on Peasant Farms, the Law on Cooperatives,

and the Law on Mortgage. USAID funded field research studies and surveys to gauge the situation in rural areas and feed that information back to legislators.

Legal Land Rights Education

USAID began implementing legal rights education programs immediately following the passage of the major land laws. However, many rural residents still do not know their land rights or understand the land legislation, even though there has been a great effort by donors to provide information. In focus groups, rural residents stated that they would like more in-depth information about their land rights and that they need to be able to ask questions and get answers as conflicts or issues arise.

There have been several attempts to educate local leaders who remain in the village and can provide ongoing support. While this method has been successful, some projects do not pay these leaders for their assistance, impeding the implementation of these programs.

Public Consultation and the Legislative Process

There were and still are no formal processes to obtain feedback from the rural population and conduct public consultations. During focus group interviews, many rural residents noted that this lack of a bottom up approach to legislation often results in laws which don't work effectively or are not accepted in rural localities. Much information could be gleaned from projects that function at the lowest administrative levels in terms of policies, but there is as yet no mechanism for feeding information back to central-level policymakers.

“During focus group interviews, many rural residents noted that [the]... lack of a bottom up approach to legislation often results in laws which don't work effectively or are not accepted in rural localities.”

3.2.4 Land Administration

Registration of Land Rights

The Kyrgyz government embraced the principle that providing a state guarantee of property rights through a unified registration system would increase utilization of real property as capital and hence spur economic growth. The government received substantial donor support in the design of their registration system (from USAID, the World Bank, SIDA, and CIDA), and funding for GosRegister to engage in an active program of titling of real property.

The land/real property registration system in Kyrgyzstan is a land title, parcel-based system that registers all rights and interests in land and real property. It should be noted that more than one parcel was shown on some land share certificates shown to the assessment team during a field visit. However, according to GosRegister, when systematic registration takes place the individual parcels are assigned unique parcel identifier numbers (PIN) and individual titles.

According to the land registration law, the act of registering real property title documents in the system provides guarantee of the entitlement of the rights to the registered owner(s). It is mandatory to register all real property transactions to constitute ownership of the transacted rights. However, registration of any transactions, including the transferring of agricultural land shares from the state to individual or joint owners, conducted prior to the establishment of the registry system is not compulsory in order to constitute ownership of the rights to the land.

GosRegister has been designated by the GOK as the authority for land administration and consists of three departments: the Land Tenure Department; the GosRegister Department; and the Land Inspection Department. GosRegister is operated at three levels of government: state; *oblast*; and *raion* levels. Actual registration takes place at the *raion* level.

GosRegister does better than most state agencies in providing public information, and there is a conscious effort to be oriented to recipients of its services, at least with regard to its registration function. It does not, however, function as a fully open agency—it continues in practice and in policy to block attempts at making the registry of property rights fully accessible to the public. Furthermore, GosRegister is not seen by rural citizens as being accountable to them. The centralized hierarchy of the agency allows for more rapid implementation of central directives, but it means that local GosRegister officials answer for their actions upwards to the central office, rather than downwards to the citizens in their jurisdiction.

Land Title Certification

Land title certificates have been prepared and registered for the approximately 1.5 million properties in the urban areas of Kyrgyzstan. It is estimated that a further 1.5 million properties, including agricultural land shares, are left to be certified and registered.

Land title certification is proceeding under the systematic registration work currently underway in 18 *raions* of the Republic. These *raions* are expected to be completed by the end of 2005. Kyrgyzstan has applied to the World Bank for further funding to complete the remaining 22 *raions* and is hoping to secure the funds prior to the end of the current systematic registration project.

Land Registration System

The registration system has minimal technology but functions well. There is computer technology in each office that was visited but it is used in duplication with a paper-based system and the paper documents are the official evidence of title. An electronic spreadsheet is created, and the data for the properties in the *raion* is organized by a row for each parcel and a column for each parcel attribute. The parcels can be searched by PIN, owner name, village name, or farm name.

The base maps that are used to reference the properties are outdated (mid-1970s to mid-1980s), but they are being updated through field measurements as the property documents are prepared for registration. The technical data for the property is obtained from the records of the former Bureau of Technical Inventory and land records are obtained from the Land Design Institute (GyProZem). Both the Bureau of Technical Inventory and the GyProZem have been integrated into the GosRegister organization.

Systematic Registration of Land Share Certificates⁹ commenced in some areas in late 2003 with funding from a World Bank loan. Sporadic registration of the village lands and buildings has been ongoing for the past four years. Approximately 50 percent of these properties throughout the Republic have been registered.

Revenue Generation

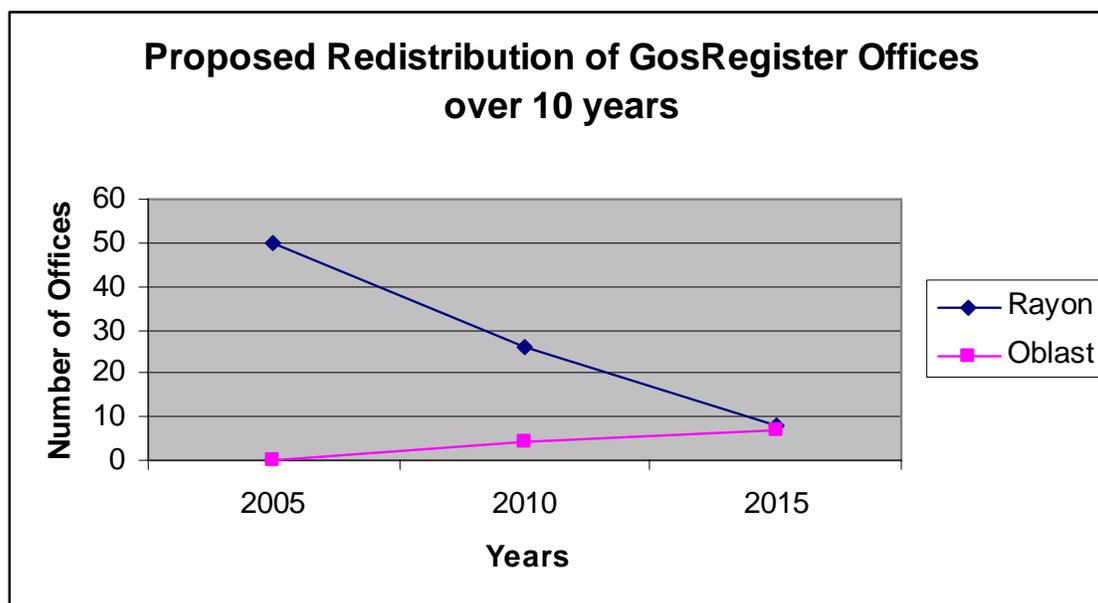
Of concern is the sustainability of the GosRegister offices. Kyrgyzstan has 50 registry offices (40 in *raions* and 10 in large towns). The rationale for establishing a registry office in each *raion* is to provide easy access. However, considering that most rural citizens will not use the registry system more than once or twice in a lifetime, the cost of providing such a convenience is high and is being reflected in the service fees for using the registry offices. In the rural areas of the country where the local transportation system is weak and there are few personal vehicles, the citizens have difficulty traveling long distances to register property. The offices are also over-staffed relative to the number of transactions taking place. This is true even if one considers the lack of technology in the offices.

Once systematic registration is completed, the major source of revenue for these offices will disappear. Although there is some evidence that the real estate market is developing, only the larger centers are showing the volume of transactions that would justify full time registration offices. If the offices are to be self-financing, the fees for services will have to be increased to the point that the cost of using the system will

⁹ 560,000 household certificates were issued for 2,600,000 land shares, an average of 4.6 shares per household.

outstrip the benefits and citizens will avoid using the services. It is highly unlikely that, in all but a few of the offices, the level of transaction activity will increase to sustain the operating expenses of the registration division of GosRegister in the foreseeable future. Bishkek reported a surplus of revenues over expenditures but said it can not transfer any funds to subsidize offices with deficits.

One way to reduce costs and still provide a relatively good quality of service is to reduce the number of offices over a period of time. As the transportation system improves, as more technology is affordable and introduced, and as the land market becomes more developed, it is possible to provide the same, or even better, level of service with 20 percent of the facilities.



3.3 IMPACT OF INTERVENTIONS

Creating an environment in which secure and stable land and property rights prevail is one necessary precursor to enhancing national economic growth. The causal link between rights and growth is strong. Secured rights, real and perceived, figure prominently in influencing the extent to which citizens are willing to invest in increasing productivity through improvements in currently held or planned land and property acquisitions. Since the breakup of the FSU and throughout the ever-evolving land reform program, progress toward achieving a state of secured rights in Kyrgyzstan in order to positively impact economic growth has proven a challenge and will continue to remain so in the near future. Attempting to capture and measure the extent to which secure rights impact economic growth is equally challenging and based on information obtained during the course of this assessment, work in this area has been minimal. Nevertheless, the GOK and international donors have collectively effected change through various land and property security interventions.

Legislation

The legislative framework for secure property rights is basically in place. The rights to own, transfer, and mortgage land are provided for in law. The legislation has promoted and encouraged the individualization of

agriculture. Furthermore, lawmakers have a greater understanding of the depth of rights necessary for secure tenure. USAID projects have trained lawyers throughout the country in the area of land rights.

Legal Knowledge

Projects designed to provide legal information and assistance have enhanced citizens' knowledge and understanding of land rights and have favorably impacted attitudes in the geographic zone covered. Acquiring knowledge, however, is but one of the first steps necessary to transform individuals into agents of change and the process for doing so is of long duration.

Empowered Citizenry

While local government is still interfering with rights in land, people, with more knowledge of rights and experience in the positive aspects of private ownership of land, are beginning to assert their rights and require good governance over land. In general, people know they have a right to own agricultural land and to use it to their benefit.

3.4 RECOMMENDATIONS

- The inability to build either popular or political consensus prevails in Kyrgyzstan. The transfer of use rights and then ownership to individuals and the passage of key legislation were marked by strong political will on the part of President Akaev and the national-level reformers. However, their strategy involved developing policy and drafting legislation without significant input from the beneficiaries of the reform. In part, this was due to the customary hierarchical structure of governance among the Kyrgyz, and, in part because the central government was concerned about failing and non-productive farms and food security. A mechanism for feedback and input from rural areas has still not been developed, but such a process should be.
- Weak institutions and resistance among local power brokers hamper implementation. Kyrgyzstan still suffers from poor discipline in implementing policy on the ground. The entire post-independence period has been marked by a search for effective institutions that could push for enactment of reforms at the local level. The vision was undermined by mundane implementation issues. Local formal government institutions in the 1990s at times blocked or delayed the implementation of reforms, even if the heads of their agencies (GosRegister, RCLAR) were reformers.
- Government did not effectively explain its policy and legislative initiatives, contributing to a lag in popular support for and embrace of the reforms. Government was unable to articulate a program of reforms that was comprehensible to broad segments of the population. This reflects the government's difficulty in finding a vehicle to implement its reforms on the ground (indeed, the message was consistently distorted) as well as the endemic problem of disseminating public information in a poor, mountainous country. It is also indicative of the fact that public expectations of involvement were still low. This lack of popular information reinforced the problems of implementation.
- State institutions and regulation suffer from overlapping mandates, unaccountability, and over-restrictiveness. The national and local governments need to determine their proper role in helping private owners maximize utilization of land resources. This requires having a capable institution for limited and appropriate regulation

“There is a positive governance dynamic occurring in rural areas with the election of local leaders . . . Communities are using this structured process to deal with land issues within the context of their immediate surroundings . . . However, whereas communities are able to enter into frank and open dialogue on legislation and to some extent resolve issues locally, a mechanism to transmit community concerns to the national level appears to be lacking. No donor-funded project to date has incorporated a citizen-concern feedback loop into its program.”

of use of private land but which is customer-conscious and provides useful help to private entrepreneurs.

- Rural local self-governments have promised to deliver better, more relevant governance following the direct elections of the full time heads in 2001, but there remains much capacity building to be undertaken. There is a positive governance dynamic occurring in rural areas with the election of local leaders. However, these leaders require rigorous training on legal and practical matters related to land administration and regulation that they may undertake. There is a need to strengthen accountability and transparency mechanisms as well. Communities are using this structured process to deal with land issues within context of their immediate surroundings. Land legislation and the application of the legislation are counted among the issues discussed locally. However, whereas communities are able to enter into frank and open dialogue on legislation and to some extent resolve issues locally, a mechanism to transmit community concerns to the national level appears to be lacking. No donor-funded project to date has incorporated a citizen-concern feedback loop into its program.
- Community governance appears to be recognized as good governance. Rural Kyrgyz citizens demonstrate substantial trust in their community leaders. This trust should be built upon to create stronger, more accountable institutions. Community-driven development can help to promote institutional change, support decision making, and improve social capital. In several locations visited during this assessment, where donor interventions are underway, community citizens are beginning to recognize their confidence and abilities to identify problems, prioritize them, and develop solutions. Collective action appears to be taking hold. This social dynamic is not new in Kyrgyz villages but community informants indicate that the structured problem/priorities/solution process introduced represents a new and effective way for orienting local development.
- To varying extents, most donor-funded land projects undertake data collection and analysis exercises. These exercises tend to focus on collecting performance or process data that indicate the extent to which the project has reached benchmarks in service provision or funding. Land projects in Kyrgyzstan have generally not identified or collected data that permits determining how interventions have positively or negatively effected individuals, groups, or institutions in either the near- to long-term. Monitoring and evaluation must be seen as a crucial element in project intervention, moving beyond answering questions associated with day-to-day implementation. Questions surrounding anticipated impact and data requirements to determine impact must be raised in the project design phase and avidly followed throughout the life of project.

3.4.1 Recommended Focus Areas

Community Governance and Institutional Capacity Building

Local government has been tasked with a wide array of governance tasks for which it has no funding and limited capability, including management of the Land Redistribution Fund, pasture management, dispute resolution related to land, and arable land management. Working with and educating locally elected officials to encourage transparency, openness in governance, and a process for input and comment will be a critical next step in the land reform process.

Public Awareness/Ability to Exercise Land Rights

There is potential to increase public awareness and to leverage popular support for further reforms. The government, with assistance of various donors, including USAID, mounted a large public information campaign in support of the 1998 referendum and then again in 1999 to explain the new land legislation. At the same time, the prospect of land ownership mobilized the most effective implementers of the reforms—the rural farmers themselves. But the gap between national policy and the countryside remains significant, with some legislation simply being ignored. The time has arrived to:

- Design campaigns that effectively reach rural communities in the Kyrgyz context through the use of local institutions like elders, traditional neighborhood committees, or village leaders;
- Promote the development of local-level advocacy skills and devise mechanisms for feedback from the rural communities to the central policy-makers; and
- Given the generally favorable outcomes of legal aid interventions, continuing work in existing zones and expanding activities to include other geographic areas merits attention. In this vein, communities that have demonstrated an enhanced ability to mobilize as a result of legal aid programs should now be the subject of advocacy assistance. This assistance will provide citizens with the requisite skills and tools to articulate their concerns and protect their interests at local and national levels.

4.0 LANDLESSNESS AND INEQUITABLE LAND DISTRIBUTION

4.1 ISSUES

Access to land and natural resources relates to how a person or group enters onto and utilizes a physically defined area of land. The economic value of land and resources is obtained both from one's tenure security in the resource and the quantity and quality of the resource held. Certain tenure problems relate to the situation in which secure rights are held but ownership of physical and natural resources is too limited to provide secure livelihoods or income. Alternatively, one's holdings of physical and natural resources may be relatively plentiful, but tenure security is too limited or uncertain to enable conservation or achievement of full productive potential. Section 3 focused on tenure security and rights distribution. The focus of this section is on issues of landlessness, inequitable distribution of resources, and insufficient access to land to secure livelihoods.

Since 1991, the Kyrgyz Republic has been a rural sector in the midst of transition from a command system to one of market-oriented production. According to Bloch, Delehanty, and Roth (1996), land reform has resulted in the dismantling of 442 large-scale state and collective farms, replacing them with smaller-scale farms managed by individuals, families, groups of families, and corporate farm enterprises. Childress, Giovarelli, Shimarov, and Tilekeyev (2003) report that since 1992, the Kyrgyz Republic has created an individualized farm structure with over 100,000 private farm enterprises.

According to Bloch et al. (1996) and Dekker (2003), land reform in agricultural land has undergone three phases. The first phase, in 1991, resulted in the introduction of small scale peasant farms, the second, from 1991 to 1993, centered on restructuring unprofitable farms and redistributing their land, and the third focused on the restructuring of other state and collective farms. Land reform in the Kyrgyz Republic may now be entering a fourth phase (Gerber 2004). Compared with earlier phases, which focused on distribution of farm assets, the current phase emphasizes specialization and the personalization of land reform to meet the needs of beneficiaries. Krapivina (2003) observes the need for a policy shift from the macro legal and policy work to understanding the actual needs and realities of the rural population. This shift in focus is also reflected in Abbott's (2004) survey results that showed farmers have successfully learned about their specific rights to land and that they now need much more specific information about actions they can take to bring it to effective use.

4.1.1 Agricultural Enterprise Structure

Over the period of 1994 to 2001, the government allocated 1,022 thousand hectares of land as land shares, comprising over 75 percent of all arable land in the country. Almost 2.8 million people, or 90 percent, of rural residents have become landholders. By 2004, only 59 state farms remained; the rest have been reorganized into 286,000 peasant farms and 464 cooperative societies.

Compared with the highly-concentrated agrarian structure that existed prior to restructuring, the government of Kyrgyzstan has made substantial headway in terms of redistributing land and property from state agencies to groups and individuals. Whereas people previously served in the capacity of workers with, at best, limited participation in the governance of the enterprise, private access to land and property by individuals has improved. In urban areas, people now own secure ownership rights to their housing and property. And in many rural areas of Kyrgyzstan, people feel they have been allocated land parcels and property which are theirs.

Nevertheless, there are currently two issues related to land distribution to agricultural enterprises that continue to slow the pace of reform in Kyrgyzstan: 1) legal entities cannot own agricultural land; and 2) there is a lack of operational distinction in tenure (or enterprise) forms.

Legal entities cannot own land.

Land and property shares are held by a variety of legal and non-legal entities. The Civil Code is the main body of legislation regulating the legal status of organizations. However, other laws have an important bearing as well including the Land Code, Law on Agricultural Land Management, Law on Peasant Farm, Law on Cooperation, Law on Business Partnerships and Companies, and Law on Water Users Associations (Bobukeeva 2004). In Kyrgyzstan, a legal entity cannot own agricultural land (Law on Administration of Agricultural Land [2000], Article 7), a significant constraint to credit access and investment. Two types of farm entities, peasant farmers acting as individuals and Union of Individual Entrepreneurs acting as a partnership, are not legal entities and can own land.

There is a lack of operational distinction in tenure (or enterprise) forms.

While the legal provisions that describe potential enterprise forms are sophisticated and detailed, in practice most associations of peasant enterprises, cooperatives, and joint stock companies still operate in similar ways to their predecessor collective and state farms.

Company models of ownership remain susceptible to the power of a minority or majority owner, often a manager who consolidated wealth and power in the restructuring effort. While members of large enterprise farms have a right to a portion of land because land rights have been distributed, they are not able to freely exercise that right because the power of the farm head has not been distributed. As found on field visits, 80 percent of land conflict is between individual land holders and the *aiyl okmotu* who sometimes thwart rights to building structures, investing in irrigation, and access to the Land Redistribution Fund. Local authorities often dictate what should be planted on the land, how much land in a given area should be planted in a certain crop type, where and from whom to get inputs such as seed and fertilizers, and to whom to sell the products. The *aiyl okmotu* and farm leaders continue to have a symbiotic relationship. While many (if not most) landholders feel their lives have been improved with asset ownership, the utilization of those assets in many cases are still highly circumscribed by land use conditioned on edicts from enterprise heads. For example, when members are asked why they formed a cooperative rather than a company, all too often the response is that cooperatives were the preferred legal entity recommended by government—an outcome which no doubt served the interests of former management.

4.1.2 Indivisibility of Land Rights

Land and property shares were privatized to individuals based on equity grounds, and these shares have been pooled into legal and non-legal entities as defined by law. Land rights certificates have been issued that document the land and property shares of all individuals, whether in a legal or non-legal entity. Considerable headway has been made in the past decade demarcating the boundaries of land associated with Land rights certificates. However, a number of problems remain.

- Not all land areas have been demarcated so that landholders, while having legal rights, cannot say what piece of land is theirs and where it is physically located. In certain areas of Kyrgyzstan, in particular Chui *Oblast*, where farm management has resisted reforms, individual families do not have a land certificate with a map and have not been allowed to exit the enterprise with land and property that is legally theirs. But, even in the more progressive Osh *Oblast*, it is evident that on some farms, indivisibility still persists. About 3,850,000 individuals received land shares, but a nationwide inventory conducted by RCLAR in 2003 indicated that around 35,000 people did not receive their land share. This latter group is comprised

of three categories: 1) opponents of land reform who refused shares in the early 1990s; 2) people who were not in the country at the time of land and property allocations; and 3) people who did not receive their land due to resistance or mistake. The majority of these issues have been resolved, but approximately 13,000 cases remain that still need to be dealt with.¹⁰

- Land shares were initially allocated on a per capita basis, but shares were issued to the head of households. Now, members of one household are legally unable to divide the share and farm independently on their per capita share of the land. This is especially a problem for women wanting to divorce their spouses.
- A household can withdraw its land from a peasant farm or cooperative, but this right can be undermined by immovable property locked into dysfunctional arrangements and power relationships that an individual household cannot divorce itself from.

4.1.3 Individual Land Shares Trapped by Economics, Old Age, and Disincentives that Compromise Enterprise Viability

- Most agricultural production enterprises experienced an exodus of land shares at the beginning of reforms, but this exodus currently continues at a smaller scale. For an enterprise 2,000 hectares in size, it would not be unusual to have 10 to 15 households withdraw their land shares on an annual basis. The most static shares typically belong to the elderly who lack labor or financial wherewithal to farm the land themselves. While the legal entity has use of the land, it also carries the burden of an elderly work force and the necessity to hire labor to bring that land into production.

Cotton and Debt in Osh Oblast
“Farmers growing cotton are given a cash advance to purchase inputs. The yield in the first year is low, so farmers fall into debt. They borrow again the next year, but due to poor yields, the debt worsens. Again the creditor in year 3 directs the farmer to grow cotton. The yield again is poor, and the debt load increases further. Debt has forced farmers into permanent cotton cultivation in Osh from which it’s difficult to escape. People are enslaved by government. There is great need for profitable alternatives.”

Personal Communications, Osh Oblast,
November 2004

Moreover, as observed in both Chui and Osh *oblasts*, enterprises inform their shareholders that any land withdrawn from the enterprise will not be taken back under any condition, although the individual may be hired back as wage labor. For many landholders, these impediments pose a serious disincentive to withdrawing land shares from an enterprise.

4.1.4 Common Property Neglected

Reforms focused on the distribution of arable land and private property and ignored and, in some cases, undermined the rights to common resources (upland pastures and forests) outside the domain of arable lands (See Section 6 for more extensive coverage).

¹⁰ It is worth noting that, under the law, people who lived in *raion* centers and were not a part of the collective or state farm did not have a right to land, although in some *aiyl okmotu* land is being distributed to them during this process.

4.1.5 Small and Not Economically-Viable Landholdings for Many Households

It is fair to say that, for many rural households visited during the course of this assessment, families are pleased with the real gains they have achieved in asset ownership and decision making over the use of those assets. However, these same households often remark that income today is about at the level of the pre-reform period prior to the 1990s. As demonstrated in Section 4.3, incomes initially collapsed after independence and were followed by robust recovery, but the pace of that recovery appears to be slowing in recent years. Liquidity in the agricultural sector is still extremely poor, and few farmers earn a meaningful surplus due to low profits. Indeed for many farmers, there is too little land, too little credit, too few off-farm job opportunities to absorb surplus labor, too weak a land rental market to enable them to rent-in land for purposes of absorbing surplus family labor, too much depreciation in the value of their capital assets, and too little savings to invest in meaningful improvements. In the meantime, population growth since 1991 has eroded the land/worker ratio and increased the number of young individuals and families who, lacking employment, fall back to rural land as a safety net. Curiously, as land scarcity is increasing, some *aiyl okmotu* have reported people wanting to give their land back because the tax was too high.

4.1.6 Land Redistribution Fund

The state is owner of two major categories of land: 1) the agricultural Land Redistribution Fund (LRF); and 2) pastures and forests. In both cases, the argument against privatizing these lands has been the need to ensure equitable access to these resources for society at large. For pastures, another reason to keep them in state ownership is to secure state borders. However, the reasoning behind preserving the LRF has altered substantially over time, and the status of this land and the state's intentions for its use is in need of clarification.

About 326,800 hectares (roughly 25 percent of arable land) were allocated to the LRF when collective and state farms were dissolved, although, again, the actual boundaries of this land were often notional.¹¹ The initial purpose of the LRF was to have a reserve to provide land to those who for a variety of reasons did not receive land use rights during the initial round of reforms. Through 1999, LRF was managed by the RCLAR. In early 2000, the government transferred nearly all its management rights to the LRF, including receipt of rents for lease of the land to rural governments (rural councils and their corresponding *aiyl okmotu*). The state retained ownership, which precluded sale of the land into private hands.

The rural government's assumption of responsibility for the LRF should have led to two positive changes. It was anticipated that decision making regarding a key local resource would be much closer to local residents, which should lead to allocated efficiencies thanks to gains from subsidiarity, i.e. better consideration of local peculiarities and knowledge of people's needs and demands. The transfer should also result in a dramatic increase in responsibility and discretion to act for the rural governments' themselves, with potentially significant impact on local government finance in rural areas. However, while there have been gains, a variety of factors related to governance undermined full realization of these changes.

FRAGMENTATION NOT CONDUCTIVE TO ADOPTION OF MODERN FARMING PRACTICES:

1,000,000 ha have been allocated to private land shares roughly according to the following size categories:

Farm Size Category	Number of Farming Units
1-5 ha	100,000
5-10 ha	26,000
10-20 ha	1,000
20-30 ha	2,000
30-50 ha	900
> 50 ha	500

Such fragmentation (farms < 5 ha, in particular) is not helpful for using modern farming practices.
Source: RCLAR, personal communications, November 2004

¹¹ The team was unable to identify the area of land currently in the LRF and determine its current status. If it is not known, then this is an important area of empirical enquiry.

Governance capacity in rural governments has been low.

There are no effective accountability mechanisms at the rural government level. Popular control was limited by ignorance of how the LRF was to be regulated and inertia in attitudes and low expectations of government. There were no requirements in terms of public information about the LRF and its lessors. It is difficult to obtain information on how the LRF is used, there are no displays of information, and one needs the agreement of the head of the *aiyl okmotuto* to see a map of land of the LRF and its allocation. Indeed, there was legal confusion and little guidance about the purpose of the LRF, it was alternately to support the poor, support breeding and seed farms, provide local revenue, provide for additional settlement, and serve as a reserve for those who lost out in the initial dissolution of collective and state farms. Rural governments lacked capacity to engage in long-term planning for the land to guard against its degradation.

Country's system of intergovernmental finance discourages effective management.

Raion finance offices had de facto control over rural governments' budgets; these finance offices had the ability to seize any village revenue or offset expenses against revenues by altering transfers to rural governments. In addition, *raion* governments practiced "equalization" among rural governments in their jurisdiction, in effect, taxing and redistributing income among rural governments to smooth expenditures. These dampened incentives for effective LRF management; in effect, any increase in revenues from more effective leasing of the LRF would possibly (and almost certainly, in the minds of rural government officials) be siphoned off by the *raion* finance office and redistributed. Even the most civic-minded, motivated head of rural government would avoid providing information about the true nature of revenues from the LRF, since disclosure of information would likely lead to a loss in funds for their community. Yet, despite these problems, income from the LRF officially made up 10 percent of rural governments revenue in 2002 (and over 30 percent of non-transfer revenue); actual payments were likely considerably higher. Major changes in budget legislation which would remove these perverse incentives in the LRF's management should come into effect in the 2006 budget cycle.

"New laws will let us keep the revenues from *raion* administration, and then we will have incentives to use this land properly and collect lease payments."

**Head of Mady *Aiyl Okmotu*
(November 2004, Osh Oblast)**

The national government responded to the situation by adopting Standard Regulations on Terms and Procedures of Leasing Land from the LRF in April 2002. These procedures were developed with the objective of ensuring efficiency, transparency, and equity. However, according to everyone interviewed, these procedures are cumbersome. Based on interviews and prior field research of USAID's commercial law project, these regulations are largely ignored and require modification.

Management of the LRF has been poor.

Official data from RCLAR show that slightly more than half of the land was officially leased in 2003. It is also clear that the LRF is not being used as an instrument to address rural poverty, which is one of its purposes. In 2003, only 3 percent of land from the LRF was leased out to poor and vulnerable people. However, anecdotal evidence indicates that direct elections of rural government heads in 2001 substantially improved the transparency of government actions with regard to the LRF and changes in the budget process should encourage further transparency. But other weaknesses outlined in local capacity and the legal framework for the LRF must still be addressed.

While management is weak, the risk of environmental degradation is very high.

At the beginning of the land reform, each agricultural enterprise was required to transfer 25 percent of its arable land to the LRF; the least desirable land was typically transferred. A visit with one *aiyl okmotu* head

revealed that as much as 40 percent of this land lies in remote areas and is very poor in quality. Consequently, these lands are often the most vulnerable to environmental degradation, and thus require good land use management under the best of conditions. However, because it is not clear who owns and manages LRF land, and because of tight government budgets that undermine protection and sustainable investment, these lands are as one *aiyl okmotu* noted a “ticking time bomb.”

4.2 INTERVENTIONS

4.2.1 Governance

Local Government

While land regulations exist for distribution of land, in many instances land regulations were wrongly interpreted. Further complications in redistribution grew out a significant lack of knowledge on the part of individuals who had legal and rightful access to land shares. Individuals often lacked the capacity to defend their positions during the distribution process. In several regions, there was evidence of a complete lack of transparency in the redistribution process and it became obvious that the *aiyl okmotu* and farm boss favored maintaining the agricultural enterprises over distributing land to individuals and families. These factors were instrumental in provoking a rapid increase in land related disputes. Anecdotal information suggests that the predominant number of disputes were between individuals and local authorities and constituted disagreements over non-receipt of rightfully due land shares or allocation of inappropriately sized shares. Disputes surrounding share boundaries were also common.

As mentioned above, many donor projects have participated in strengthening and increasing the capacity of local government and communities through training and education programs and community mobilization. For land distribution issues, bringing these efforts to the most local level of governance, the village, will facilitate transparency and fairness in land issues. Many village level residents did not feel represented at the *aiyl okmotu* level, and there is no process for this representation currently.

4.2.2 Conflict and Dispute Resolution

Donor-funded projects address land and property disputes and document the type and number of cases handled. One unexpected impact of USAID/Helvatas legal aid centers throughout the country has been that local governments request legal advice from these centers on a regular basis. However, despite the availability of formal and informal dispute resolution processes, a sense of hopelessness exists among individuals surrounding resolution of disputes. Formal dispute resolution processes have rarely been taken against the government or local leaders.¹²

4.2.3 Redistribution of Land and Property Shares

In early 2000, RCLAR reported that about 997,000 hectares was distributed in land shares to about 2,812,000 people, or 90 percent, of the rural population. This indisputable accomplishment, the establishment of private landholdings and marketable land rights in rural areas, is the foundation for a market-based agricultural economy and has been one of Kyrgyzstan’s great successes.

¹² Childress, M., Giovarelli, R., Shimarovm R., Tilekeyevm K., *Rapid Appraisal of Land Reform in the Kyrgyz Republic – Draft for Comment and Discussion*, ARD/Checchi Development of Commercial Law Project, November, 2003.

While this distribution has been imperfect and continued adjustments need to be made, the legal framework and follow-on education and legal aid programs have greatly assisted in making this initial stage reasonably fair and equitable.

4.3 IMPACT OF INTERVENTIONS

Land Reform in Temu Village According to Residents

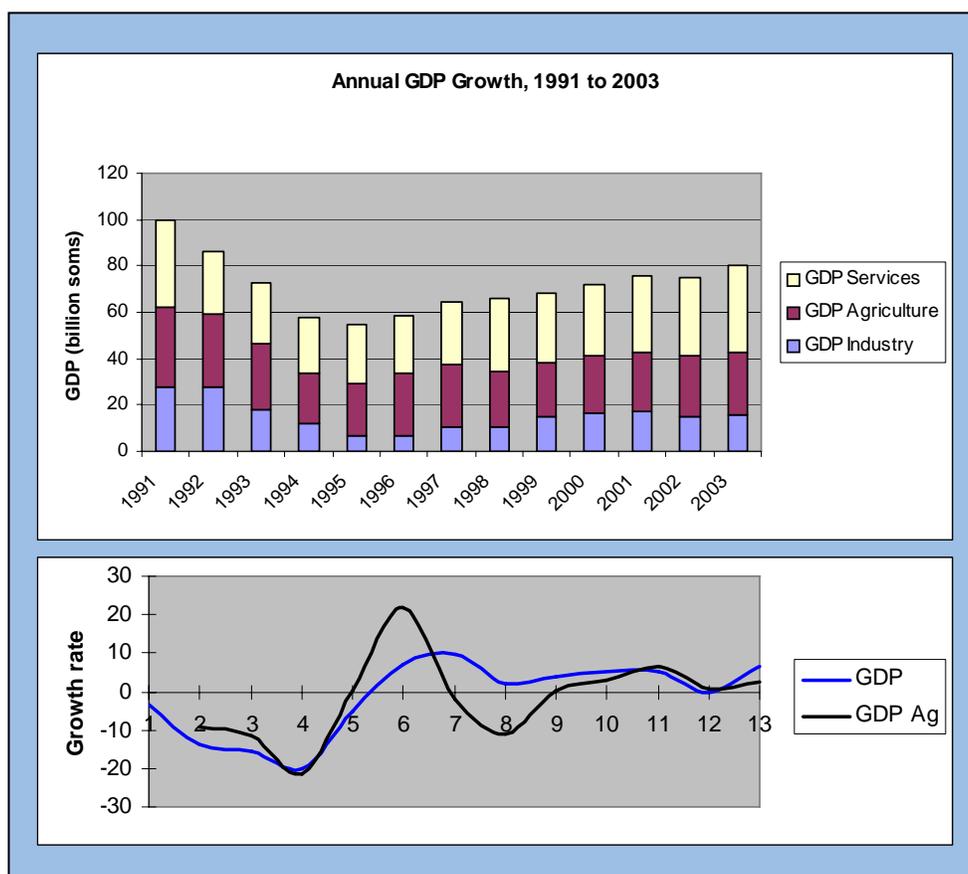
There were no negative effects to speak of. People are happy as a result to two positive outcomes:

1. Life during the first 2 to 3 years of the reforms was very tough, but the level of living has now been improved
2. People are now more motivated. They farm better and get more for their effort.

In retrospect, we might have done a few things different. In particular, we needed to know more about how to distribute property shares. This continues to be a problem to this day. One of the main problems now is lack of machinery and spare parts, which no one household can afford. We needed to address this problem years ago.

As a result of the disintegration of the former Soviet Union in the early 1990s, Kyrgyzstan experienced a loss of its international markets with former Union republics and termination of financial support from the central union budget (RCLAR 2004). Livestock herd size fell due to distressed sales, consumption, and livestock losses, while the supply, delivery, and use of credit and other agricultural inputs on state and collective farms plummeted (Bloch, Delehanty and Roth 1996). Economic regress hit Kyrgyzstan quickly and hard. As demonstrated in Figure 4.1, over a five year period beginning in 1991, the gross value of economic output and services in the economy fell by half, from 99.8 billion KGS in 1991 to 54.9 billion KGS by 1995 (measured in 2002 constant KGS). Both total GDP and agricultural GDP plummeted in 1994 before reaching its lowest point in 1995. Compared with 1991, output of grain fell by 30.3 percent, potatoes by 23.4 percent, vegetables by 45.1 percent, milk by 20.6 percent, meat by 29.8 percent, and wool by 60.5 percent. The livestock sector was hit particularly hard where the number of cattle fell by 23.7 percent, sheep and goats by 49.1 percent, pigs by 70.0 percent, and poultry by 84.1 percent.

FIGURE 4.1 ANNUAL GDP GROWTH, 1991 to 2003



At the depth of this economic depression, the population suffered acute food shortages, loss of jobs and livelihoods, severe shortages of consumer goods, loss of investment, and rapid deterioration of public infrastructure. The collapse of the former Soviet Union provided little or no time for careful thought and planning for the transition to a market economy, and once the economic crisis hit, policy making by necessity was “reactive and with haste” rather than “proactive with care.” Legal and institutional reforms to aid the transition took the form of decrees spearheaded by presidential tour de force in part to put a floor under economic regress and in part to counter elements within government that were opposed to market reforms. With great sense of urgency, government at the time faced an urgent need to curb economic regress and acute food insecurity, accelerate economic growth, develop the institutions required of a market economy, strengthen social and political stability in the agrarian sector, and grant economic freedom and independence to rural producers (RCLAR 2004).

4.3.1 Farm Enterprise Performance

In 1999, the BASIS Collaborative Research Support Program, funded by USAID/Washington, helped support the design and implementation of the First Performance Survey of Agricultural Enterprises by the Center for Land and Agrarian Reform. Statistical data were collected from 468 sampled agricultural enterprises on various aspects of their ownership structure, governance, land assets, land use, livestock holdings, and access to financial resources, assets and liabilities, input availability and costs, yield and output, and enterprise earnings. The same project resurveyed as many of these enterprises as possible in November 2001 to help monitor changes in agrarian structure: 323 enterprises were re-interviewed, 22 refused to be

surveyed, and 123 could not be relocated. A total of 140 new enterprises were thus selected to replace those enterprises lost due to refusals or failures to locate in order to maintain national representation. This Second Performance Survey of Agricultural Enterprises surveyed 463 agricultural enterprises, including 168 individual farms, 233 peasant farms (group farming units), 43 collective farms, and 19 state farms. The results of this work are summarized in Appendix D.

The agrarian structure in Kyrgyzstan remains very dynamic with ongoing upsizing and downsizing in asset holdings by farm enterprises. Roughly half of the farms and enterprises in Kyrgyzstan are showing growth in income, improvements in returns per unit of land and labor, and growth in total factor productivity. However, the other half of farming enterprises remain mired in poor economic performance. Overall, harsh economic conditions have continued in 2003.

While major tenure forms have been put in place and major legal reforms have been enacted, there is perhaps another 10 to 20 years of significant land and agrarian reform that is needed, with a focus on broadening and articulating property rights. That is, the impact of these massive reforms has been less than hoped for in terms of productivity of the agricultural sector.

4.4 RECOMMENDATIONS

There is need for a real and substantive transition from land tenure reform to agrarian reform aimed at increasing the value of assets, land profitability, and returns to land and labor invested in agriculture. This inevitably calls for greater attention given to market reforms and value added activities. After a decade and a half of reform, that secure agricultural credit and availability of new machinery and parts for most farmers is still a dream and rural agricultural markets continue to be highly risky.

In addition, a stronger emphasis on educational programs that improve governance and transparency of corporate entities and of local governments is needed.

The “grey” or informal economy in Kyrgyzstan is sizable, providing some indication that the legal framework and judicial institutions are not adequately serving agricultural and business interests. It also provides an indication that economic growth is proceeding despite legal reforms and is outpacing legal change. In the presence of a rapidly growing grey economy, law avoidance has become a widespread response to punitive taxes and fees applied at multiple levels, corruption and economic rent-seeking within the formal system of governance and land administration and a legal framework in land that is not yet sufficiently nuanced or robust to accommodate economic change.

4.4.1 Recommended Focus Areas

- One area of change that could significantly impact legal enterprises is to allow agricultural enterprises to own land.
- Management of the LRF is the single most important function undertaken by rural local self-governments where locally elected leaders have genuine discretion. LRF management is the area with the greatest potential for corruption among rural officials. All commentators agree that the key to fighting corruption is mobilizing citizens to demand more of their public officials (rather than simply mandating ‘clean hands’ from above). Building local self-government at the rural level offers this opportunity.
- Work with rural officials and citizens to develop a management strategy for the land in an open, participatory manner, and then ensure a system of implementation, monitoring, and evaluation. The strategy would have to balance concerns to maximize revenues against other governance issues (e.g. support to the poor), and to promote care of the land itself to guard against degradation.

- In addition, there remain some national-level obstacles to be overcome. First, the restrictions on privileges for certain users mandated from above should be removed. Second, the intergovernmental reforms must be implemented to remove the perverse incentives.

5.0 POORLY PERFORMING LAND MARKETS

5.1 ISSUES

Residents of Orgochor Aiyl Okomotu

1. Based on the law of 2002, the *aiyl omokotu* has the authority to grant sales, but the proceeds go to *raion* government.
2. Government assists us, but we face big problems. Donor projects have been a big help, but they don't reach all beneficiaries that need it.
3. The legal framework is a two sided problem: there are both gaps and inconsistencies in the law that need addressing; and many people do not understand the rights they have been given.
4. Rural people can't mortgage the land; they can only mortgage their house, livestock, and movable assets.
5. Land plots are indivisible; it's difficult to provide land to children or to resolve inheritances or divorce.
6. Exchange of land is difficult beyond the borders of the *aiyl omokuto*. If I'm on one side of the border, and my neighbor on the other side wants to purchase the plot, why not?
7. We don't have full use rights; we can't plant fruit trees on agricultural land and we can't build a house outside of designated areas

Issyk-Kul Oblast, November 2004

The Kyrgyz Republic has succeeded in creating a largely individualized farm structure. Land, labor, and property markets provide a channel through which farmers can expand or decrease the area of land they are cultivating, hire in labor if they have surplus land, hire out labor if land is scarce, rent-in machinery for certain farm tasks if labor is tight, or sell farm machinery if small farm sizes or rental options are too meager. All of these options are viable strategies to raise income and secure livelihoods. The temptation is to think of land markets as land rentals, purchases, and sales. However, the market in Kyrgyzstan is much more variegated and robust and also includes land consolidations, land divestitures, adding and withdrawing land from agricultural enterprises, land exchanges among family and kin, and so forth—all markets broadly conceived.

Aside from asset divestitures and consolidations, the primary market for agricultural land in Kyrgyzstan is in rentals. While the land market for purchases and sales is functioning and a limited number of transactions are taking place, the number is still quite small but growing. However, the rental market plays an important role in providing additional land for farmers to expand production.

Purchases and sales in land are governed by the Law on Administration of Agricultural Land (18 December, 2000) and Regulation 427 on the Procedure of Purchase and Sale of Agricultural Land. However, there are a number of key land market constraints.¹³

5.1.1. Indivisibility of Land Parcels

As noted above, under the Law on Administration of Agricultural Land, “household land shares are indivisible under the law, no matter how large they are or whether they are one contiguous plot.” The intent of this policy is to avoid excessive fragmentation and small size of land holdings. While size of land holdings is certainly problematic throughout Kyrgyzstan, land shares can be quite large in the north, and in addition, a land market need not always result in further fragmentation; land consolidation is also a real possibility that

¹³ See Childress, Malcolm, Renee Giovarelli, Rakhim Shimarov, and Kanat Tilekeyev. 2003. *Rapid Appraisal of Land Reform in the Kyrgyz Republic*. Report prepared for ARD/Checchi Development of Commercial Law Project, November.

would enable land poor households to rent out land or sell land to other farming units with surplus labor thus increasing the size of the farming unit.

A second issue relates to a misinterpretation of the law by local officials. During the course of restructuring, land reform beneficiaries often received shares of arable, dry, hayfield, or perennial land, that were all represented by one land certificate.¹⁴ Although a purchaser may only want to buy only irrigated land, many local jurisdictions insist that he buy the entire parcel.

5.1.2 Land Rental Agreements among Trusted Family or Neighbors

Many farms are worked by one farmer who informally leases land from neighboring individuals and relatives. According to our interviews, when transactions happen between old members of communities they trust, they defer from making any legal agreements and rely instead on community self-policing as a guarantee of property rights and contractual obligations. Indeed, in these cases there is often no written agreement to register. Rural villagers also noted that the process of registering a lease is onerous because GosRegister offices, located only in *raion* centers, are far away and it takes time and money to register the lease.

Interestingly, these same interviewees also noted that if there are land agreements involving a party who is new to the community then they enter into written legal agreements. There are two motivations for this. First, the state registration system is seen to provide a substantial guarantee of property interests. Second and more importantly, registration is required to make a lease agreement valid and hence the desire to register is linked to recognition that there may be a need to enforce a contract by means other than community policing. If the lease agreements were valid without formal registration, it is less likely that these agreements would be provided to GosRegister. At the same time, many would like to register their transactions with the in *aiyl okmotu* rather than travel to the *raion* GosRegister office. (NB: Only leases for terms of over 3 years must be registered to be valid).

5.1.3 Land Markets for Foreigners?

Foreigners cannot own agricultural land in Kyrgyzstan. Most of the transition economies do not allow foreign ownership of agricultural land, and even some states in the United States have this as the legal rule.

Trade and investment groups often press the argument that individual ownership of land and property is a prerequisite for investment. But, in reality, it's not always clear that this is the case. Foreign ownership of land should only be considered if there are well documented case studies and research that shows why investment is being dampened by the lack thereof. Alternatives might include:

- Focus on ensuring that leasing arrangements (e.g. providing land on the basis of 50 or 99-year renewable leases) are secure.
- For real investors, urge the creation of partnerships where majority ownership is in the hands of national citizens or the government. Conditions can be negotiated so that there is a gradual phase-out of government over time as the share ownership of the foreign company is increased. Malaysia is a good example where this policy has worked reasonably well.

¹⁴ For example, a household may own rocky upper land, arable middle land, and low irrigated land all situated from highland to lowland in a narrow strip of parcel. These strips combined with those of other land reform beneficiaries were the result of farm reorganization.

5.1.4 Participation in the Rural Land Market by Legal Entities and Urban Dwellers

At present, legal entities and urban dwellers are excluded from the land market. Agribusiness enterprises need to secure long-term capital (for investment), secure upstream produce (e.g., fruit for a fruit juice plant), or procure additional acreage (for expansion). The inability to exert greater control over land resources at present forces legal enterprises to rely on rental markets and contracts to secure resources and these are highly risky due to lack of trust, unenforceability, and market uncertainty. The problem is confounded by the question of what is to be done if one or more landholders wants to exit the enterprise. The transaction is all too frequently brokered by the majority shareholder, typically the enterprise manager, to the exclusion of other shareholders or outside investors. Much of the foreign ownership issue above could be dealt with through relaxation of this provision; foreign companies could participate as minority partners and still control land ownership through the legal entity.

At the time that property was distributed in the early 1990s, it made sense on equity grounds for the hard line to be drawn between urban and rural residents—people living in cities received property shares in enterprises and people living in rural areas received land and property in the course of farm restructuring. The rationale for this constraint has considerably weakened over time, and the divide is becoming a serious constraint on land market development. For the poor and elderly living in rural areas, one pathway to livelihood is to exit rural areas and live in towns with pensions supplemented by cash rentals from land or land sale. For urban citizens lacking employment or wanting supplemental income in urban areas and holding cash to invest, the rural land market would be strengthened by the injection of outside capital.

There is of course the risk of desperation sales and consolidation of land wealth that would need to be addressed. For this reason, the emphasis initially should be on strengthening the land rental market with the aim of gradually moving toward land purchase and sales as circumstances warrant. One might consider other mechanisms (e.g. oversight of land allocations vested in the *aiyl okmotu's* office), but until problems with local governance are improved, these seem likely to be ineffectual for the moment. It is often the case that government officials are more concerned about distressed sales than people are. As noted by Childress et al, a number of respondents in their field visits believed that anyone should be able to purchase agricultural land because urban dwellers also need a way to survive and pursue alternatives to the high unemployment and lack of good paying jobs in industry and urban areas.

5.1.5 Significant Constraint of Economic Obstacles

Legal issues related to land and property rights are much less important than economic issues in constraining economic growth. As noted by Childress et al (and reinforced by the previous section), there is insufficient arable land for the most dynamic farmers to expand easily and less-efficient farmers are supplying limited quantities of land to the market in the absence of better employment opportunities. Greater upstream and downstream linkages are necessary to trigger off-farm employment and increase land profitability before the land market is likely to have much of an effect on increasing agricultural performance.

5.2 INTERVENTIONS

5.2.1 Governance

Local Control of LRF Land

The Land Redistribution Fund was managed by the Ministry of Agriculture until 2000, at which time, management of the LRF was transferred to the *aiyl okmotu* as part of the effort of the GOK and donors to devolve power and governance to the local governments. Unfortunately, this devolution has only partially occurred because land legislation is unclear about the purposes and uses of the LRF, and the state is still very

much involved. Moreover, local governments do not have the capacity to manage the LRF, and there is a lack of transparency and many incidences of corruption. The land fund has a significant impact on the land market as it continues to be 25 percent of all agricultural land.

5.2.2 Legal and Regulatory Framework

The legal and regulatory framework (developed with the assistance of USAID) is for the most part adequate to support a land market. The land institutions have done most everything possible (with the exception of some remaining restrictions) to “push” the land market. What is needed now is the downstream employment “pull” to increase the supply to the most efficient farmers. Until that process moves forward, Kyrgyzstan is faced with a slow growth scenario and high pressure on the LRF to resolve the land access needs of both less-efficient and more-efficient farmers.

5.2.3 Land Administration

While land administration has been well-supported by donors, there remain several issues that could be addressed to improve the efficiency of land market transactions.

Land/Property information collected for registration is excessive.

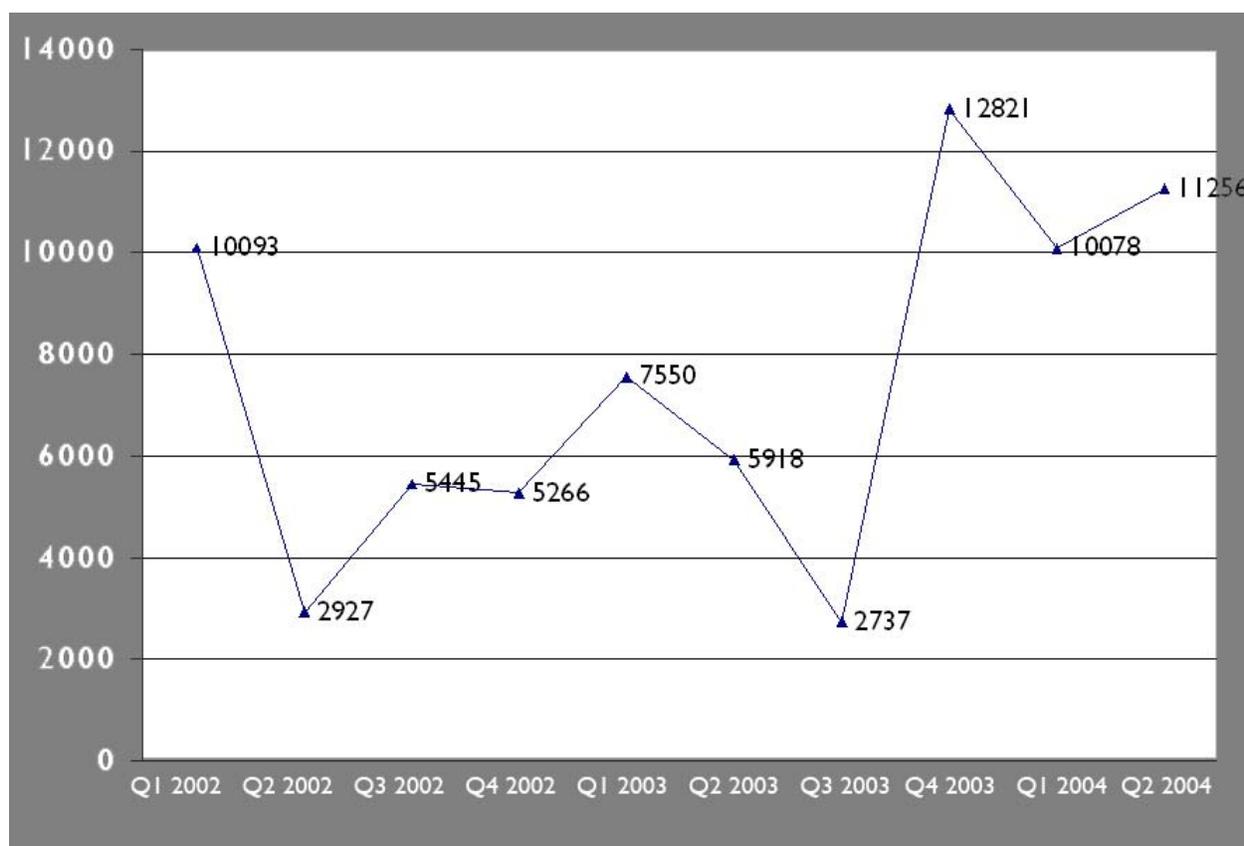
GosRegister collects very detailed information on property as part of the registration system. The registry records contain the typical land title information about the owner, a description of the land/real property, and information about the rights and interest associated with the land/real property. In addition, GosRegister records information about the physical condition of the property, such as a detailed floor plan of the property, size of rooms, the construction material, and other information not normally found in a registration system. The argument is used that the information is necessary for valuation and taxation purposes. However, one could also argue that in a market economy this information is not worth the cost of collecting it, as mass valuation based on market information is a much more cost effective approach.

Disincentives exist to register informal leases or market transactions.

GosRegister reports show that there have been approximately 3,000 sales of agricultural land throughout the Republic since the registry system became operational in 2001. However, registry officials acknowledge that, since only a small portion of the agricultural land has been registered to date, it is difficult to determine the extent of land sales. Many sales may have taken place outside the formal process and consequently, there is no record of the sale. Registry staff attributes such informal activities to a lack of knowledge of the law instead of an attempt to avoid the system.

Much of the activity in the transfer of agricultural land rights occurs through leasing. However, leases of less than three years in duration are not required to be registered, so there is no real indication of the level of leasing activity. Discussions with local officials indicate that a significant number of land owners are leasing land informally on a season-to-season basis and, consequently, there is no record of the agreement. Figure 5.1 shows the number of registered mortgages and leases from the first quarter of 2002 through the second quarter of 2004.

FIGURE 5.1 REGISTERED MORTGAGES AND LEASES, Q1 2002 THROUGH Q2 2004



Valuation of land is an impediment to land market development.

The value of agricultural land is currently determined by a complex formula that gives a “normative value.” The formula is established by GosRegister and is based on such factors as soil quality, land classification, irrigation, and productive capacity. Local people, including some government staff, argue that the “normative value” placed on agricultural land by the government is an impediment to a well functioning land market. They argue that “market value” would be a better approach to valuation and would enhance the land market. Technically, it is illegal to sell agricultural land for less than the normative value. Even if the market value is less than the normative value, the parties to any sales/purchase transaction must pay a minimum transfer tax of 5 percent of the normative value. If the sale price is higher than the normative value, the transfer tax is based on and levied at 5 percent of the reported sale price. This is a much higher transfer tax rate than is found in most market economies where the rate is generally less than 1 percent of the sale price.

Low incidence of registration and re-registration does not bode well for maintaining currency of the register.

Systematic first registration started and has been completed in urban areas. First registration of agricultural and rural land began in 2004 with a pilot registration exercise in Chui *Oblast*. According to GosRegister, there are a number of problems that the rural land registration exercise needs to deal with:

- Boundaries on the ground and boundaries of land shares do not coincide;
- As people move, land shares exchange hands and land ownership changes. Numerous transactions have occurred , but have not been reregistered; and

- Particularly in Chui *Oblast*, many shareholders do not know the location or demarcation of their land shares on the ground.

Fees charged by GosRegister are high relative to the profitability of land. Some respondents in rural areas reported price gouging and corruption. Unless measures can be found to deal with these problems, the register will be out of date within a decade, and a systemic second registration will be called for to once again to bring land ownership and land records into correspondence.

5.3 IMPACT OF INTERVENTIONS

5.3.1 Land Rental and Land Purchases

It is premature to evaluate the effect of land rights intervention on land market development. The land market sales that are observed and are on the register are relatively few in number. The formal land leasing market appears to be robust, but is primarily confined to the LRF. Informal land rental transactions also appear to be numerous, but they are unregistered, informal, and often involve transfers among family that help circumvent the problem of lack of trust.

Overall, it is fair to say that the land market in Kyrgyzstan is limited in formal terms and is highly segmented. The fact that land transactions are occurring off the books or outside formal law simply confirms that economic reality is outpacing legal change and that law needs to catch up and modernize or risk losing its credibility. In short, while the law is constraining, the grey economy of Kyrgyzstan has found ways to reap the benefits of land market transactions by avoiding the costs. Nevertheless, the grey economy itself poses risk for people who operate in that sphere because there is lack of legal recourse to enable contract enforcement. In sum, the challenge in Kyrgyzstan is not how to construct law to confine economic behavior through greater enforcement, but rather how to modify law to bring it into closer correspondence.

TABLE 5.1 CREDIT PORTFOLIO OF COMMERCIAL BANKS

	I January 2000	I January 2003
Industry	18	22
Trade	21	25
Construction	8	5
Consumer Credit	13	15
Agriculture	2	3
Other	38	30

Source: Erdolatov, A., M. Childress, and R. Mogilevsky. *Financing Restructuring of Agriculture in the Kyrgyz Republic*. Presentation prepared for the Conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development" Cholpon-Ata, Issyk-Kul, 27-29 October 2004

5.3.2 Land and Financial Market Integration

Not surprisingly, the land market has not yet lead to sufficient financing for the agricultural sector. Until 1997, state agencies represented the predominant source of credit in the agricultural sector. Beginning in 1997, however, Kyrgyzstan witnessed a long-term secular decline in the supply of credit by the state, and an increase in supply by foreign creditors and non-bank financial institutions. Commercial banks have played little or no role in providing agricultural finance to date. As shown in Table 5.1, the share of commercial lending to agriculture is very low.

Agricultural lending is a more significant component of non-bank financial institutions. As documented by Erdolatov, Childress and Mogilevsky (2004), 80 percent of the credit portfolio of non-bank financial institutions in 2003 was agriculture. The lion's share of this credit was provided by the Kyrgyz Agricultural Finance Corporation (66 percent) and, to a lesser extent, by microcredit and companies (12 percent), credit unions (15 percent), and the Financial Corporation on Support and Development of Credit Unions (7

TABLE 5.2: GROWTH IN MICRO-CREDIT LENDING

Year	Total Credit (million som)	Agricultural Credit (million som)	Number of Beneficiaries (000)
2000	1,240.3	564.8	94.2
2001	1257.8	267.7	98.4
2002	1,682.5	343.0	132.6
2003	2,372.6	362.2	167.2

Source: Erdolatov, A., M. Childress, and R. Mogilevsky. *Financing Restructuring of Agriculture in the Kyrgyz Republic*. Presentation prepared for the Conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development" Cholpon-Ata, Issyk-Kul, 27-29 October 2004

percent). Lending by credit unions has risen from 1.7 million KGS in 1977 to 288.8 million KGS in 2004, a significant rise even after taking into account rapid price inflation.

The Kyrgyz Agricultural Finance Corporation (KAFC) was established as a joint stock company in December 1966 by the GOK with technical assistance of the World Bank. It is comprised of 11 branches (profit centers) and 47 regional representatives. Its principal partners include the World Bank, Asian Development Bank, UNDP, European Union, Raiffaisen (Germany), and DFID. As a joint stock company, it is prevented from mobilizing domestic savings as does a bank; thus, its operating capital depends on equity contributions of its shareholders and borrowings.¹⁵

While it plans in the future to transform itself into a bank in order to expand its services (deposits, leasing, exchange operations), its projections on total value of deposits from 2005 onward are at best uncertain. Nevertheless it has shown solid improvements in performance since its recent date of inception. Size of loan portfolio has risen significantly even adjusting for price inflation. Based on most other indicators—loan repayment rate, average expense ratio, number of borrowers per loan officer and weighted interest rate charged—the KAFC has shown substantial improvements in efficiency gains.

TABLE 5.3 KAFC, KEY INDICATORS OF PERFORMANCE

	1997	1998	1999	2000	2001	2002	2003	2004*
CPI Index (Price Deflator)	100	110.5	150.2	178.3	190.6	194.4	200.4	
Outstanding Loan Portfolio (million KGS)	26.9	126.9	252.0	475.6	637.9	1,000.4	1,276.3	1,516.2
Avg. Disbursed Loan (000 KGS)	84	103	74	67	62	62	62	
Avg. Expenses to Avg Loan Portfolio (%)		27.6	20.7	18.6	15.7	8.0	8.7	8.0
Number of borrowers per loan officer	11	36	102	172	187	220	287	284

* Preliminary

TABLE 5.4 VALUE OF FIXED ASSETS AND ACCRUED DEPRECIATION, 1998–2003

	1998	1999	2000	2001	2002	2003
Value of fixed assets (book value at moment of purchase)	3,946	3,403	3,040	2,785	2,391	2,442
Accrued depreciation	1,360	1,104	1,086	1,043	863	904

Source: Erdolatov, A., M. Childress, and R. Mogilevsky. *Financing Restructuring of Agriculture in the Kyrgyz Republic*. Presentation prepared for the Conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development," Cholpon-Ata, Issyk-Kul, 27-29 October 2004.

As early as 1995, farmers and farm enterprise managers en masse pointed to the loss of agricultural credit as the most binding constraint confronting growth in profitability in the agricultural sector (Bloch, Delehanty and Roth 1996). Despite modest injections of financial capital into the economy by multi-lateral donors, the supply of agricultural credit in present day Kyrgyzstan is even more acute, particularly for farm equipment and other movable assets. Interviews with farm enterprise managers and agribusiness owners repeatedly

¹⁵ Its present authorized capital is KGS 400 million, or about USD 9.5 million.

underscore the observation that new machinery is expensive, credit is expensive and not available, parts for aging machinery are becoming very difficult to find, and existing equipment has become old and obsolete.

Mortgage of agricultural land, often held out as one of the main benefits of a land market and registration system, is not yet common. This is partially due to legal rules that heavily favor borrowers and partially due to under-capitalization of financial institutions, and partially this is due to a newly emerging, but not yet robust land market.

5.4 RECOMMENDATIONS

- Remove restrictions on selling or partitioning parts of a household land share; the policy against subdivision is too often driven by “economic efficiency” criteria from the top, while families and communities are better positioned to make well-informed and valued judgments.
- Sale of non-contiguous land plots should be allowed. Selling these parcels will neither increase fragmentation nor reduce the size of the land holding.
- Remove restrictions on land sales (with the possible exception of sale to foreigners). These restrictions on land sales do not appear to be onerous at present, but there is the perception that widening the range of potential outsiders would help sellers and make new investment easier.
- Explore options that enable legal entities to own land. Possible options include: a) developing a land holding company that leases land to the legal entity; b) develop a new form of legal entity that can own land; or c) convert land and property into value and allocate to shareholders at a fixed price per share, **but** make shares fully transferable and inheritable.
- Consider changes to the management and use of land from the Land Redistribution Fund (LRF). The key issue is that the process for distribution must be transparent and fair and involve community members. Once governance of the LRF is improved, consider long-term leases of the land from the LRF and setting aside a portion of the rest for the poor.
- Consider reducing the role of GosRegister and decreasing the disincentives to register (expense, time, and excessive requirements).

6.0 UNSUSTAINABLE NATURAL RESOURCES MANAGEMENT

Unsustainable natural resources management includes issues related to land degradation; unsustainable use of land, water, wildlife, forests and pasture due to conflict/instability; landlessness; poverty; insecure land and property rights; or poorly performing markets. Unsustainable land use can result from land fragmentation, sub-economic parcel size, and population growth necessitating more intensive cultivation of land, declining viability of transhumant/pastoral systems, confused land management and associated roles and responsibilities, and changing economic opportunity.

Government attention to issues of unsustainable natural resource use and natural resources management has been severely challenged in the face of other legal, political, commercial, and economic reforms. Given the fragility of the natural resource base and the importance of land, water, and mineral resources to the future economic, social, and political development of the country, greater attention needs to be given sustainable nature resources management. This includes matters related to land use planning, conservation, and environmental management and land use monitoring, as well as broader issues of land tenure and property rights.

6.1 ISSUES

The following natural resource management issues in Kyrgyzstan have both historical and contemporary origins.

6.1.1 Water

There are three major issues in Kyrgyzstan regarding water access, use and management.

Trans-boundary Water Rights

Kyrgyzstan has significant underground and ground water resources. Under the former Soviet Union, water use and management was regulated across borders. Kyrgyzstan is the major source of water for down stream countries within the region, in particular Uzbekistan, Kazakhstan, Tajikistan, and the autonomous region of Sinjan-Uigur of China. Water allocation is provided for in regional treaties, with amounts specified for Kyrgyzstan and its neighbors. Under this regional treaty, the Kyrgyz Government may use 24 percent of the total volume of river flow. Given the powerful role of the natural resource base in the political stability and economic growth of CAR, equitable water access, management and use will play an increasingly significant role in the future of the region, wherein water for energy agreements might play an increasingly significant role.

At the national level, new water regulations provide for the *raion* government to set water allocations. Communities, however, do not typically know what the rules and regulations are. For many, they are unclear as to what laws apply, to whom, and where. There appears little incentive for water management and/or conservation.

Water Pollution and Water Quality

Evidence suggests that Kyrgyzstan suffers from excessively high levels of water contamination from both poorly managed and excessively high applications of petrochemicals in agriculture, industrial discharge, and heavy metals/radioactive discharge associated with mining operations. Examples of pollution include

contamination of both surface and underground waters and the increased concentration of nitrates in the underground aquifer that provides Bishkek with 60 percent of its drinking water. There are also unregulated discharges of pollutants associated with hydrometallurgical factories and gold extraction. Increased pollution obviously has impacts on water quality and water use at local, regional, national, and international levels, and is especially relevant given the Republic's strategic place as a regional water source.

Water and Irrigated Agriculture

About 23 percent of river water taken for Kyrgyz use is lost due to inefficient and poorly maintained infrastructure and poor agricultural practices. About 90 percent of this lost water is due to poor irrigation practices. Given that approximately 70 percent of Kyrgyzstan's arable lands (1.4m hectares) depend on irrigation for their productivity, this represents a serious issue of water management and conservation. In addition, poor irrigation practices are resulting in significant salinity problems. Increases to agricultural productivity will have to contend with issues of water access, use, and management if this significant segment of the Kyrgyz GNP can be expected to grow. Issues of water tenure and water tenure security will figure in future land use planning, access and productivity.

According to the Kyrgyz Scientific Research Institute, land holdings that are small experience a high level of swamping and fertility is on the decline. Attempts have been made to rehabilitate salinity problems on irrigated lands with varying degrees of success. However, in some regions ground water levels have risen, further exacerbating the salinity problem. The structure of farms is not conducive to the maintenance and upkeep of drainage and irrigation systems. Water management systems collapsed with the decline of the FSU, and while water users associations are emerging to help resolve water allocation problems, they are still in their infancy in terms of scope and effectiveness

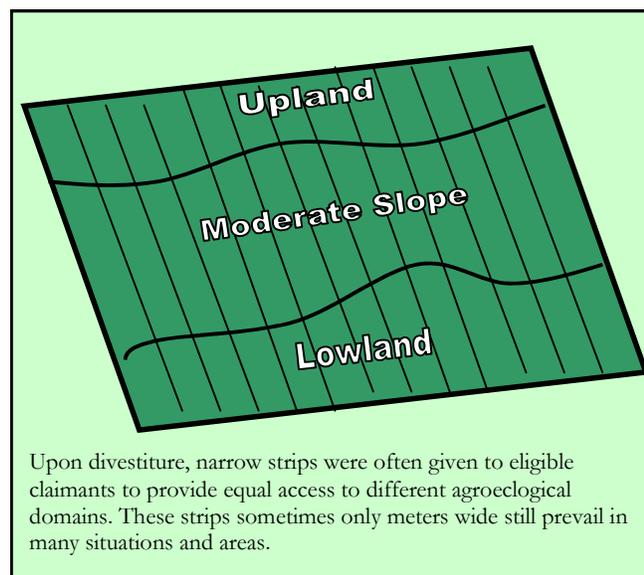
6.1.2 Land Use

Pasture Degradation

The worsening degradation of pastures is perhaps the most serious environmental problem facing the Kyrgyz Republic. Pastures comprise 90 percent of all agricultural land in Kyrgyzstan. As noted above, after independence, livestock numbers fell dramatically and intensity of pasture use declined. Now as livestock numbers are rebounding, management of pasture land is emerging as one of the most important challenges facing Kyrgyz land reform.

Nearby pastures are overused while distant pastures are underutilized. A new decree on pasture management is in place, but a clear policy is lacking on how to allocate pasture to balance seasonal use with habitat vitality, biodiversity conservation, and natural resource husbandry. Environmental degradation is the result and is both a function of three levels of government who have been assigned responsibilities for governance and the fact that control of the pasture leasing system in the past has not been flexible enough to accommodate localized conditions and priorities (Childress et al 2003).

FIGURE 6.1 SMALL SIZE OF LANDHOLDINGS



Pasture Land Management

There is an urgent need to reconfigure the responsibilities for regulating pasture land. With the dismantling of herding collectives under the former Soviet Union, formal regulatory institutions for allocation of pasture vanished and weakened customary institutions were unable to fill the void effectively. Over the years since becoming an independent republic, the Kyrgyz herding sector suffers from increasing poverty and wealth differentiation. Without a sound system of pasture management, there will be increasing conflict over prime pastures, over water resources, and over campsites. This contributes to a downward spiral of unsustainable grazing practices.

Legislation on pastures is not advanced, and regulation on use of pasture resources is based on Resolution #360 on Procedures on Lease and Use of Pastures (June 4, 2002). Functional responsibilities to manage pastures is diluted, with too many agencies involved in making policy, e.g. Ministry of Agriculture and Water Resources (MAWR), GosRegister (mainly Giprozem), State Forestry Service, local state administrations, and rural governments. This leads to fracturing of governance and the absence of long-term planning and investments. It also precludes effective policy in providing equitable access to these land resources by the population. Privatization of pasture is probably not desirable because of the importance of mobility given variable precipitation and pasture conditions.

The new law on pastures is being developed by the Ministry of Agriculture but this draft lacks significant changes to mitigate confusion over institutional responsibility. It also decreases incentives for investments and sustainable management.

Improving systems of land tenure and property rights, as well as pasture regulation, are key to reducing overgrazing and pasture degradation.

Pasture Land Economics

Leasing of pasture land and control of revenues is in need of urgent review and reform. Pastures near settlements are allocated and managed by the *aiyl okmotu*. *Raion* state administrations are responsible for intensive pastures that are further from settlement areas, and *oblast* state administrations are responsible for the most remote pastures. Within *aiyl okmotu*, the land tenure specialist monitors land use. However, while pasture allocation is conducted by rural governments, the revenues from leasing of pasture land are taken by *raion* administrations. Rural governments have no incentive to take on the laborious job of allocating and monitoring pastures. Leases are regularly

Voices from Issyk-Kul Community on Pastures and Conflict

The period 1991–1996 was confusing. No *aiyl okmotu* existed at this time. This was a Soviet style farm, and the departing director was rather weak in dealing with government.

The Forestry Department occupied our distant pastures. It doesn't allow our cattle within one mile of the new tree stands on the grounds that our cattle trample the trees. However, the Department is leasing out pasture rights; they do not have the right, but do so anyway.

In summertime, we send our cattle to what distant pastures remain. During autumn and winter, we use our nearby pastures. Since the FSU era, our pastures have declined in quality. Our nearby pastures are in conflict. Our cattle have difficulty maintaining weight when we graze them there, but this is our only recourse because we have had our distant pastures taken away by the Forestry Department.

The land tenure specialist at the *raion* level should sort this out, but the maps are confusing. And after all, the heads of all these agencies have power and connections, to such an extent that the courts cannot deal with them. The *raion* administration is too far away to be effective. Local level administration is powerless. And both the *aiyl okmotu* and *raion* administration have experienced high turnover, in part because of having to deal with this dispute.

All pastures near and far should be given to the *aiyl okmotu*. How can we develop self-governance when others make decisions? We need a system of checks and balances that works; give people the right to elect their governance. There are simply too many administrative agencies involved and obstructions in dealing with these problems.

Community in Issyk-Kul, November 2004

given for a short period of time, sub-leases are not allowed, and the entire leasing process is opaque. In effect, there is little government management of pasture lands at any level, and consequently, no measures to promote sustainable use of state-owned pasture land. Individuals use pastures on an ad hoc basis, with overgrazing in areas close to settlements and local conflicts over pasture access and use are a regular occurrence. And since demand for near pasture is great and demand for distant pastures is less apparent the question of what price to charge for each respective pasture category is an important issue.

Forest Management

Despite forest legislation to improve forest management, little impact has resulted. Forests occupy 4.25 percent of the total area of the country. On November 28, 1994 the National Forestry Program was approved, called upon to provide preservation of a forestry fund for the Kyrgyz Republic. In 2000, it was reconsidered and updated. The program provides for permanent restoration of forests, establishment of nurseries for the cultivation of new seedlings, protection of forests pests and illnesses, and protection against unauthorized felling. However in spite of these declared measures, the number of unauthorized fellings has increased. Local state administrations and local self-government bodies do not provide plantations and/or restoration of forests in their territories, nor do they maintain anti-erosion plantings. Afforestation and reforestation included in forestry strategies and work plans have been given little attention. Limited local tree tenure and property rights provide no incentive to manage and/or protect forest resources.

Soil Conservation and Land Reclamation

Under Kyrgyz law and policy, the government intervenes in soil conservation in cases when the fertility of degraded soils of agricultural arable land is necessary or lands are polluted with chemical substances or radioactive waste products over permissible norms. The order to practice official soil conservation should be established by the government. However, in practice, the measures are applied only on the decision of radioactive dumps. In the territory of the Kyrgyz Republic, 35 hazardous sites for radioactive substances have been established; these are being rehabilitated and monitored with the assistance of World Bank funding.

General and systematic data on soil research are being carried out for purposes of monitoring and soil mapping. Soil maps are prepared by experts of Gyprozem under GosRegister. Every one to five years, soil quality is supposed to be investigated. This research no doubt demands significant resources, and we suspect what is done is highly localized and project driven. The Land Code has provisions for withdrawal of land for irrational use (which can be determined by decreased soil quality), but it is unclear how many of these land takings occur. One problem with increased monitoring is the continued lack of transparency and limited check on local government control.

Terracing helps to arrest or reverse land erosion and depletion of topsoil; however its application is limited, due in part to lack of public expenditure and the high degree of land fragmentation characteristic of small holdings. Terracing is mainly found in areas of intensive rice cultivation. The alternative to terracing is banning cultivation or planting permanent cultures in fragile areas. These interdictions could be entered within the framework of territorial plans for land use but require monitoring and enforcement mechanisms that are beyond the means of most rural governments.

Natural Disasters

The incidence of natural cataclysms has become frequent in recent years. These include mudflows, landslides, and avalanches. These have drawn attention to the problem of population settlement in fragile areas. These problems fall under the jurisdiction of the Ministry of Ecology and Emergency Situations and local self-governmental bodies. Although there are examples of settlers being removed from dangerous areas, the problem remains acute because of lack of financial resources to relocate people at the local self-governance level and insufficient funding provided by the state. Fragile lands more susceptible to the human impacts are

being occupied by many Kyrgyz citizens without recourse to other areas, suggesting further problems of land access, illegal settlement, and little security of tenure.

As reported by one *aiyl okmotu*, “no one is responsible for land quality. No one deals with environmental consequences. There are no funds to do anything!” Another *aiyl okmotu* from Osh again affirmed the sharp increase in disasters in the last few years, 70 percent of which were the result of human occupation. According to the *aiyl okmotu*, “People don’t use land in the right way, resulting in erosion and land slides.” Another noted that the recent spate of land slides is just one indication that “we are sitting on an environmental powder keg that is waiting to blow up.” New authority must be given to the *aiyl okmotu* to deal with these problems and provide them with sufficient resources to carry out the job.

Biodiversity

Kyrgyzstan has a remarkable diversity of landscapes and plant and animal life, with an unusually high occurrence of valuable, rare, and endemic plants and animals. The Tien Shen mountain massifs and Lake Issyk-Kul are among the most noteworthy areas for variety and complexity of ecosystems and habitats. About 777,000 hectares, or 3.9 percent, of the area of Kyrgyzstan fall into some protected area status. Parks and nature reserves make up 3.3 percent of this total.

The most significant threats to the nation’s biodiversity come from human activity in the forms of settlement, overgrazing, natural resource extraction, expanding and poor agricultural practices, and illegal extraction. While the Kyrgyz Republic adopted a national system of in-situ conservation and preservation, challenges to this system are on the increase. Insecure tenure and property rights in the face of growing land needs and economic reforms can be seen as contributing to biodiversity loss, and poor environmental management practices. These problems are exacerbated by inadequate protection, law enforcement, and funding.

6.2 INTERVENTIONS

6.2.1 Legal and Regulatory Framework

At present, issues of land use planning and natural resources management including land resources management are regulated by the legal framework that is illustrated in Table 6.1.

The Land Code establishes the general principles for protection of land and maintaining good land husbandry and assigns responsibility to owners and users who should achieve it by rational land use, improving land fertility, protecting against erosion and degradation, rehabilitating damaged lands, and conserving fragile lands.

The GOK establishes ecological, sanitary, and other special requirements over land and related natural resources with control and observance assigned to authorized state bodies. According to Article 10 of the Land Code, the Land Fund includes the following categories: agricultural lands; lands of settlements (cities, settlements of city type and rural settlements); land of industry; transport; protected natural territories; and land of the Water Fund. Accordingly, by the principle of sector management, state bodies are assigned control for each land category. The control over use of the forestry lands is carried out by the State Agency on Forestry, the Water Fund by the Ministry of Water and Agriculture, and mines by the State Agency on Geology and Mineral Resources.

Issues of protected areas management are regulated by the law “On Especially Protected Natural Territories.” This law indicates that all natural resources of given territories, including land, water, biological and others, are the property of the state. Access to protected areas and conducting any economic activity on protected lands is limited. The degree of restrictions is defined by the status of the conservation territory.

State control over land use is the responsibility of local state administrations at *raion* and *oblast* levels and also by local self-government bodies. Tasks of state control are established as follows:

- Monitoring the condition and change of environment under influence of human and economic activity;
- Control of implementing actions on protection of the environment and rational use of natural resources; and
- Control of enforcement requirements of environmental protection legislation to state and private entities.

Information on quality of all lands within the Republic or land quality within a given territorial unit is the responsibility of GosRegister which is to provide authorized state bodies with a uniform land cadastre.

TABLE 6.1: LEGISLATIVE ACTS DEALING WITH LAND USE PLANNING AND NATURAL RESOURCES MANAGEMENT	
LEGISLATIVE ACT	PROVISIONS
Land Code, Section IV, June 2, 1999	Declares the necessity of protecting land and natural resources. Establishes the purpose of conducting the state cadastre of land.
Regulations on Monitoring of Agricultural Land March 1, 1999	Establishes the contents of land monitoring, the order of its execution, and implementation bodies: GosRegister; the ministry of ecology and emergency situations; local self-government; local state administrations; land owners and land users.
Regulations on the Order of Conducting a Land Cadastre, December 2, 1999	Adjusts the order of gathering, assembling, and processing information on the Land Fund, which is the basis of the land cadastre, and assigns GosRegister the powers to conduct the land cadastre.
Regulations on State Control Over Protection of the Environment, Rational Use of Natural Resources and Maintenance of Ecological Safety of KR, May 25, 2000	Determines and authorizes state bodies to carry out the protection of the environment and make rational use of natural resources.
Regulations on the Order of Lease Out and Use of Pastures, June 4, 2002	Establishes the classification of pastures within geographical locations and differentiates authorities between local self-government bodies and state administrations on the management of pastures and distribution of leasing incomes.
The Instruction of the GosRegister on the Procedure of State Control Over Use and Protection of Lands by Senior State Inspectors October 5, 1999	Defines rights and duties of state inspectors on the control over use and protection of lands and fines and other forms of punishment for persons breaking the law.
Methodical Instructions of the GosRegister on Monitoring the Agricultural Land of KR August 3, 1999	Gives detailed instructions on methodology for defining quality of arable lands and pastures, including level of salinity, erosion, soil pollution by heavy metals, pesticides, and mineral fertilizers.
Regulations on Land Management and the Order of its Carrying Out, December 27, 1999	Defines the order of zoning of territories by use categories and maintenance and protection of these lands from degradation.

GOK submits an annual report on the condition and use of the Land Fund (as different from the LRF), including the quantitative and qualitative analyses on land categories and types of ownership on them. The registration of land quality includes natural zoning, agricultural zoning, and soils grouping and classification. Data on changes in soil structure, quality and type of use come to light during routine observation, soil

research and land use monitoring. Soils classification characterizes a qualitative condition of the land and forms a basis for development of actions aimed at increasing soil fertility.

Objects of land monitoring are all agricultural lands irrespective of ownership, with division into arable lands and pastures. Monitoring of land is a system of permanent observation over the condition of the Land Fund to help assess changes and prevent or eliminate factors contributing to degradation. Thus all factors connected with human activity are analyzed. Monitoring of the lands includes regular observation for:

- Condition of the land parcels;
- Development of processes: erosion, salination, bogging, and soil pollution with chemical substances and waste products; and
- Change in a condition of vegetative cover.

GosRegister, local self-government bodies and local state administrations are responsible for monitoring land resources.

There are two problematic provisions in legislation related to land administration. First, change of use from one category of land to another requires approval by Parliament, a difficult procedure which does not allow for local land planning. Second, no structures can be built on any agricultural land. This provision is intended to protect agricultural land, but makes it very difficult to farm or improve land that is far from the village.

6.2.3 Land Use Planning

Land Use Regulations

Kyrgyzstan's Ministry of Agriculture and Water Resources continues to draft so-called indicative plans for what crops should be grown and where, as part of its indicative planning. These plans are drafted based on crop rotation norms that stem from the Soviet era as well as some market information gathered by MAWR. The plans are then passed down to *raion* level departments which, together with *raion* administrations, then issue 'recommendations' to rural governments to implement these planting patterns. The staff of rural governments includes agronomists who are nominally accountable for acting on the recommendations and the indicative plans. While the plan is not legally binding, there is a sense that government officials are responsible for delivering the results indicated in the plan. At the same time, there remains legislation authorizing GosRegister to monitor use of land and in some cases to take action to seize the land (if it is being unused).

Conflict between *Aiyl Omoktus* and *Raion* Government

"Raion governments hassle our office and town members. They push paper. They issue output quotas. At the end of the season, they ask where our cotton is. We say the farmers sold it. They ask where our cattle are. We say they in the pastures. They have no ability to monitor the conditions they impose, and we are very thankful for that."

Aiyl Moktu in Osh Oblast, November 1994

The process is a shadow of socialist-era economic planning in which centralized decision-making on types of crops was communicated to, and followed by, collective and state farms. It has little relevance for the current situation in which a) farms are privately owned, b) there are several thousand individual farms, and c) rural governments are *de jure* independent of local state administrations. In practice, private owners who are operating on their own rough cost-benefit analysis choose to plant whatever crops they like or, as is often the case, simply do not sow any land at all (the amount of tilled land has fallen substantially since independence). If recommendations from the above make sense based on the individual's assessment of the market, then they are followed. There are no mechanisms for monitoring or really enforcing these indicative plans among private farmers (though there is legislation that allows for taking unused land). One local *aiyl okmotu* head

noted that he would often plead ignorance of the plans or pretend that he followed the prescribed crop sowing instructions since it would be difficult to verify after harvest.

6.3 IMPACT OF INTERVENTIONS

6.3.1 Land Transfers, Transactions, and Access

The need for access to land among southern Kyrgyz citizens is acute. Present land policy does not allow for easy transaction of land parcels between different regions of the country. As a consequence, fragile and marginal lands are being occupied in the face of intensifying demand for land (particularly in urban areas), restrictive and restricted land access, and confusing land jurisdictions. Squatting and the speculative occupation of land can be expected to lead to further land degradation and provide little if any benefits to economic development and growth.

6.3.2 Sustainable Natural Resources Management

To the extent that the Kyrgyz economy is dependent on the production of raw and minimally processed products for domestic use and for export, we can expect to see a demand for primary products that will increase negative impacts on the environment. Economic returns based more on the quantity of natural resources exploited than on the quality of added value of these products produced are bound to have greater direct negative impacts on the environment. It also means that a given amount of natural resource will provide fewer jobs and less income to the population. The absence of agro-processing and alternative livelihood options means that individual households have an economic incentive, at least in the short term, to maximize exploitation of commonly held resources.

6.3.4 Pasture Management

While Kyrgyzstan does not yet suffer from an excessive number of herders or a large number of livestock relative to the land carrying capacity, further development of this sector, accompanied by poor access to markets and social services, results could include increasing competition and conflict over pastures and water sources, localized problems of over-grazing and pasture degradation, and a high vulnerability to natural disasters. Already in many areas, the wealthy have captured large swaths of pastureland. There is already evidence to suggest that existing herding practices are resulting in tell-tale signs of unsustainable pasture and natural resources management. Donor and government inattention to these issues could contribute to further land degradation, unsustainable natural resources management, increased in-migration to cities, and inevitable conflict.

6.3.5 Land Use Monitoring

The system of land use monitoring for environmental protection follows in the wake of FSU-era systems of monitoring and regulating environmental resources. This assessment team was not able to carefully review the outcome of this system, but we suspect that many of the elements above exist on paper only. The team was not shown maps or other documents to verify the existence or quality of this work at the federal level, and it is hard to conceptualize that this information is being generated or used at the regional level, given the capacity constraints observed there. On the other hand, it is also hard to argue that the information above has priority or is feasible to collect in the present day where government budgets are so restrictive. What is perhaps needed is an environmental assessment of what can and should be done now, given current resources, and over the next decade to evaluate the impacts of further land reforms on natural resources and

the environment. This assessment would also lend itself to identifying priority gaps where donors could provide strategic interjections of financial support.

The lack of effective institutions and mechanisms to put land use on a more rational footing reflects poor governance in this area. The government is not carrying out its policy, does not have the appropriate mechanisms, and is making policy decision with little connection to inputs from or the needs of local farmers. There are no accountability measures. This situation leads to two major problems. First, owing to low farm profitability as well as shifting systems for owning and managing land and water infrastructure, farmers have allowed this infrastructure to degrade. Second, the government's recommendations do not provide information that is genuinely useful to farmers, i.e. information on prices of various commodities in different markets, opportunities for marketing, and predictions of trends for agricultural produce. Although Kyrgyz Agricultural Market Information Service collects and distributes price information on major agricultural commodities, this information is still not reaching many Kyrgyz private producers.

6.3.6 Urban and Regional Planning

Due to activity of the Land Reform Project of USAID, which has been carried out by Chemonics, the system of legal zoning is now being introduced in 10 out of 24 cities in Kyrgyzstan. This system is to replace the former land use system (set during Soviet times) that granted permissions in settlements. According to the former system, any investment in land was carried out only after approval of the architectural service—the state body responsible for carrying out town-planning policy. This system was the basic brake in development of the land market and caused the greatest number of complaints of businessmen.

Adoption of the new system of legal zoning would allow a decentralized process of city and regional planning. As a result, city and regional planning would be transferred from administrative methods to market principles. Participation of the general public will help enable greater transparency and will help strengthen the responsibility of local self-government bodies.

Survey of existing land uses in settlements and zonal mapping is carried out within the framework of the legal zoning system. After discussion with authorized state bodies and with participation of the public, local self-government bodies accept “Rules of Building up and Land Use” in their territories and make maps of legal zones according to land use decided upon.

6.3.7 Zoning

Zoning issues fall into two categories:

1. Classification of land categories (agricultural, settlement, industry, transport, protected areas, forestry, and Water Fund) which is a part of the state land cadastre; and
2. Delimitation of territories by types of use (arable lands, pastures, hayfields, and lands for expansion of settlements).

There is need for a more clear differentiation of land categories. For example, pastures are divided into pastures of the agricultural fund and the pastures of forestry, each involving the management of different state agencies. The lack of clear borders between these two categories of land results in irrational land use and conflicts, both between state bodies and between government and private individuals. Local self-government bodies have the right to change land categories, for example, to change land earlier categorized as stony without value to arable land for purposes of increasing tax revenues. Recategorizing lands to a lower category is the prerogative of central government, and it is a complex and long process. Thus, there are situations when lands that are degraded as a result of excessive salt concentrations, bogging, or erosion, continue to remain in the higher category of arable land (considered valuable for tax purposes).

6.4 RECOMMENDATIONS

These recommendations are formed in order of their importance. The apparent impacts resulting from incomplete land reform and associated land tenure and property rights problems can be related directly to the following issues of natural resources management.

6.4.1 Pasture Management Governance

Pasture management governance is interspersed between three levels of government: *aiyl okmotu*; *raion* government; and *oblast* government. Livestock, nature, and transhumance are near to the heart of all Kyrgyz people. There is need to rediscover and help formalize customary practices before it is too late. The solution for this rediscovery lies with communities, not government; but government must provide the legal infrastructure to enable this transition. A much more detailed pasture lands and natural resources management assessment is in order, but a number of policy options were explored with federal and local government:

- Eliminate the role of one or more government bodies in pasture management. Because there is need for federal government oversight at the border, and *raion* administration is too remote for most communities, the office of the *aiyl okmotu* is best positioned to play the primary role of pasture management.
- Continue to provide support for ongoing institutional innovations to increase the downward accountability of local governments in pasture land management. In this case, the *aiyl okmotu*'s offices would have entire responsibility for pasture lands, including nearby pasture lands, intensive pasture lands, and distant pasture lands with technical assistance and investment in human capacity from *raion* and federal governments, and with donor support. The purpose should be to help Kyrgyz pastoralists reinstate common property management systems that once existed and that help to improve the fluidity of movement between all pasture zones that seem impeded by the rigid boundaries set by the different government regimes at present.
- *Raion* government would remain involved in the management of pasture land, but only to the extent of providing technical support and mediation in the case of conflict between two or more lower government offices. They would also be involved in providing important technical capacity, mapping support, and training.
- A new revenue-sharing formula is needed that keeps more resources in the office of the *aiyl okmotu* to improve incentives for local resource management, but subject to verification that offices have the capacity of managing with transparency, accountability, and good fiscal management. Because of alleged problems with corruption at the local level, it cannot be expected that all *aiyl okmotu* offices would qualify immediately. A phase-in plan would need to be anticipated.
- Leasing mechanisms of both LRF land and pasture land need to be rethought and reviewed with the objectives of ensuring fairness, efficiency, and cost effectiveness. Not everyone will have equal ability to pay. There is need to segment policy to suit the needs of two populations: 1) one that serves commercial farmers, based on fair and transparent auctions or tenders; and 2) one that serve the needs of the poor and disadvantaged, based on administrative allocations. Slippage by the wealthy into the poor category can be expected. The *aiyl okmotu* will need a special advisory body of community stakeholders to monitor this problem and prevent the most serious abuses.
- Public information needs to be available and promoted regarding land legislation and the relevant actions and responsibilities of local government.

- Develop alternative approaches to pasture-land dispute resolution to complement the administrative options embraced presently within the land law. Use these mechanism and public consultation to further development of national land legislation.
- Elaborate flexible and context-sensitive implementation guidelines and manuals for use by local government to uphold land law in transparent and accountable ways.

6.4.2 Pasture Management Pilot Schemes

We think there are strong parallels between pilot pasture management efforts in Mongolia and the possibility of extending these to Kyrgyzstan. These efforts are focusing on risk preparedness and risk mitigation in combinations of herders, local government, and other key actors. With the support of the World Bank, IFAD, the ADB, and UN agencies, implementing both through international NGOs and on their own, these pilot activities are developing bundles of measures that, in combination, are expected to improve pasture management practices. This “bundle” includes:

- Longer-range risk forecasting, management, and contingency planning including the clarification of roles and responsibilities in light of natural disasters;
- Measure to support marketing of livestock and livestock products, in part to permit rapid de-stocking prior to natural disasters;
- Support for community-based pasture tenure and management arrangements to ensure the equitable implementation of key provisions of the existing land law. These could include group-based approaches to water resource rehabilitation, access and use of under-utilized pasture, and mechanisms for disputes and conflict resolution;
- Hay and fodder development and management, including alternative business models for commercial hay and fodder production using different technologies, and revolving funds for emergency fodder supply and management at decentralized levels;
- Development of micro-finance services tailored to herder needs, including mortality index-based approaches to livestock insurance and micro-credit; and
- Long-term community/group lease rights on other natural resources such as forest, wildlife, non-timber forest products, water, etc.

6.4.3 Land Use Planning

Land tenure insecurity is intimately interconnected with land use conditions that threaten the heavy hand of government if the right crops are not produced or it is assessed that land is not being used properly. The system of federal government imposing land use conditions from above and attempting to enforce these conditions locally is outmoded and serves little use. The theoretical benefits of having agronomists formulate land use plans to help “modernize agriculture” or spearhead dissemination of agricultural technology is not working under present conditions and is not likely to work in the future. As proposed in Section 4, there is great need to inject liquidity, agricultural technology, and improved market information into rural areas to help accelerate agricultural growth. However, rather than government dictating “model” farm plans and technology adopted from above, the greater likelihood of success will come from public and market interventions that help farmers secure rights, procure inputs, and sell their produce at more favorable terms. Rather than less government, there is need for a shift of resources within government aimed at delivery of public goods and services that best serve the needs of farmers as stakeholders and participants.

6.4.4 Role of the Private Sector

Conversely the private sector will not typically deliver public goods (e.g. terracing) by individuals that, in the wake of land reform, possess highly fragmented land holdings. There is need for programs that develop and strengthen community mechanisms that help define and prioritize localized development strategies for the purposes of carrying out public investments whether they are town infrastructure or environmental improvements. The World Bank Village Investment Project is a good program to emulate in this regard.

7.0 RECOMMENDATIONS

USAID and other donors have significantly contributed to the land legislation framework in Kyrgyzstan that allows for private ownership of land, transfer of land (with limitations), and independent use of land. The public sector and private individuals have access to information about the land legislation and the ability to seek redress for land disputes, but there is still a lack of depth of knowledge.

Perhaps the issue that reoccurred in every aspect of this review was that of governance. While donors have encouraged devolution of resources and power to the local levels, local level governance is still not transparent or inclusive. This lack of transparency has led to suspicion, anger, and unjust and inequitable land distribution. But governance is not just an issue for local government. Much power has been consolidated into the hands of a few, and this power has been frequently abused.

The recommended areas of focus are:

7.1 LAND DISPUTES AND CONFLICT

- Work with local government bodies to increase transparency in relation to the distribution of land from the Land Redistribution Fund and pasture land.
- Work with Parliament to address the issue of lack of land for urban dwellers and limits on purchase of agricultural land.
- Address the issue of designated use of land as a possible way to put unused land back into production.
- Assist farmers who are blocked from receiving a share of land by recalcitrant farm bosses to exercise their legal right to land.

7.2 LAND TENURE SECURITY

- Local government has been tasked with a wide array of governance tasks for which it has no funding and limited capability. Working with and educating locally elected officials to encourage transparency, openness in governance, and a process for input and comment will be a critical next step in the land reform process.
- Design campaigns that effectively reach rural communities in the Kyrgyz context; through the use of local, traditional institutions like elders, traditional neighborhood committees, or village leaders.
- Promote the development of local-level advocacy skills and devise mechanisms for feedback from the rural communities to the central policy-makers.
- Given the favorable outcomes of legal aid interventions in general, the feasibility of continuing work in existing zones and expanding activities to include other geographic areas, merits attention. In this vein, communities having demonstrated an enhanced ability to mobilize as a result of legal aid programs should now be the subject of assistance in advocacy. This assistance will provide citizens with the requisite skills and tools to articulate their concerns and protect their interests at local and national levels.

7.3 LANDLESSNESS

- One area of change that could significantly impact legal enterprises is to allow agricultural enterprises to own land.
- Work with rural officials and citizens to develop a management strategy for the land in the LRF in an open, participatory manner, and then ensure a system of implementation, monitoring, and evaluation. The strategy would have to balance concerns to maximize revenues against other governance issues (e.g. support to the poor), and to promote care of the land itself to guard against degradation.

7.4 LAND MARKETS

- Remove restrictions on selling or partitioning parts of a household land share.
- Sale of non-contiguous land plots should be allowed. Selling these parcels will neither increase fragmentation nor reduce the size of the land holding.
- Remove restrictions on land sales (with the possible exception of sale to foreigners).
- Explore options that enable legal entities to own land. Possible options include: a) developing a land holding company that leases land to the legal entity; b) develop a new form of legal entity that can own land; c) convert land and property into value and allocate to shareholders at a fixed price per share, but make shares fully transferable and inheritable.
- Consider changes to the management and use of land from the LRF. The key issue is that the process for distribution must be transparent and fair and involve community members. Once governance of the LRF is improved, consider long-term leases of the land from the LRF and setting aside a portion of the rest for the poor.
- Consider reducing the role of GosRegister and decreasing the disincentives to register (expense, time, and excessive requirements).

7.5 NATURAL RESOURCE MANAGEMENT

- Eliminate the role of one or more government bodies in pasture management. The *aiyl okmotu* is best positioned to play the primary role of pasture management.
- Continue to provide support for ongoing institutional innovations to increase the downward accountability of local governments in pasture land management.
- A new revenue sharing formula is needed that keeps more resources in the office of the *aiyl okmotu* to improve incentives for local resource management, but subject to verification that offices have the capacity of managing with transparency, accountability and good fiscal management.
- Develop alternative approaches to pasture-land dispute resolution to complement the administrative options embraced presently within the land law. Use these mechanism and public consultation to further development of national land legislation;
- Elaborate flexible and context-sensitive implementation guidelines and manuals for use by local government to uphold land law in transparent and accountable ways.
- Pilot pasture management project that provides support for community-based pasture tenure and management arrangements to ensure the equitable implementation of key provisions of the existing

land law. These could include group-based approaches to water resource rehabilitation, access and use of under-utilized pasture, and mechanisms for disputes and conflict resolution.

8.0 BIBLIOGRAPHY

- Abbott, E. "Knowledge, Attitudes, and Practices of Kyrgyz Farmers and Rural Leaders about Land Rights Issues," March 18, 2004.
- Bobukeeva, M. "Legal and Organizational Structures in the Kyrgyz Republic (Agribusiness Enterprises and Other Legal Entities): BASIS CRSP Legal Background Paper." Madison: BASIS CRSP Management Entity, 2004.
- Bloch, P., Delehanty, J.M., & Roth, M. "Land and Agrarian Reform in the Kyrgyz Republic," Land Tenure Center No. 128, July 1996.
- Childress, M., Giovarelli R., Shimarov R., & Tilekeyev, K. "Rapid Appraisal of Land Reform in the Kyrgyz Republic, Draft for Comment and Discussion," November 10, 2003.
- Dekker, H.A.L. *Property Regimes in Transition, Land Reform, Food Security and Economic Development: A Case Study in the Kyrgyz Republic*. Burlington: Ashgate Publishing Company, 2003.
- Erdolatov, A., M. Childress, and R. Mogilevsky. "Financing Restructuring of Agriculture in the Kyrgyz Republic. "Presentation prepared for the Conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development" Cholpon-Ata, Issyk-Kul, 27-29 October 2004.
- Gerber, Laura. (2004). "Literature Review: Land Reform in the Kyrgyz Republic, 1991-2004." October 12, 2004.
- Government of Kyrgyzstan, RCLAR. "Status of Agricultural Sector in Kyrgyzstan," Bishkek, 2004.
- Krapivina, I. "Final Report," USAID-sponsored Conference on Economic Development through Rural Land Reform in Kyrgyzstan, November 5, 2003.
- Michael Roth, Kelley Cormier, Roman Mogilevsky, and Kizito Mazvimavi, Presentation prepared for the Conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development," Cholpan Ata, Issyk-Kul, 27-29 October 2004.
- Jeenbaeva, Baktygul. (2004). *K AFC*. Presentation prepared for the Conference "Institutional Transformation and Agrarian Change in Kyrgyzstan: Bridging Legal and Economic Reforms for Agricultural Development," Cholpon-Ata, Issyk-Kul, 27-29 October 2004.

APPENDIX A LIST OF MEETINGS AND CONTACTS

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APPENDIX B LAND TENURE AND PROPERTY RIGHTS AWARENESS FRAMEWORK

B.1 LAND TENURE AND PROPERTY RIGHTS ISSUES

Following is a brief description of the methodological framework for this case study.

Land tenure, property rights, and natural resource management are concerned with questions of access to resources, the distribution of those resources within society, security of tenure held by various individuals and groups over these resources, and the sustainability of their use. Problems related to conflict over land and resources, resource degradation, and poverty or insecure livelihoods all derive from or are affected by weak property rights institutions and/or their unequal distribution within society.

Rights, including rights to property, are defined by a legal or statutory framework or by provisions under customary law, sometimes working in parallel, or in contradiction. Because societies have different attitudes over the ownership and management of property, land tenure and property rights systems vary, although there are principles that find widespread (nearly universal) acceptance.¹⁶ Whether legally defined by a statutory framework or conferred by customary practice, land and resource tenure is the relationship among people and groups with respect to land and related natural resources. Tenure institutions define how property rights to land and natural resources are allocated within society. Tenure systems define who holds and can use resources, for what length of time, and under what conditions (Ciparisse 2003).

Land and property rights (usufruct, transfer, exclusion) are defined in terms of location, time, use, and the individual's relationship to community and state. Property rights distribution refers to how these rights are allocated to different members of society. Security of tenure refers to the breadth (how many rights) and assurance (certainty) of rights that an individual or group holds in the land resource; it may be communally or socially sanctioned, or instead may be more formal in terms of freehold or leasehold tenure. The widespread observation that rights are diminished or insecure for women, the disenfranchised, or marginalized people on the fringes of society and the deprivation of livelihoods that often results is a fundamental concern that links LTPR inequality with issues of poverty, conflict, exploitation, and environmental degradation.

Property rights systems both help to shape and inform political and economic events and are the culmination of societal adaptations to political and economic change. It is this simultaneity that defies easy categorization of **best** property rights systems, for **best** is conditioned on time and current events. Even if **best** seems feasible, there are numerous examples where property right failures emerge in contexts of failed states, or instances where the pace of change surpasses the ability of property rights systems to adapt or cope. Discerning whether property rights are an issue and whether and what intervention is warranted requires understanding of how tenure systems are influenced by this larger historical context and how its elements interact with political, socio-cultural and economic spheres.

Figure B.1 Land Tenure and Property Rights (LTPR) Awareness Matrix conceptually illustrates the relationship between a stylized categorization of LTPR issues observed globally (columns) and a categorization of LTPR cross-cutting policy and program interventions (rows). Five issue categories are denoted in the figure: 1) conflict and instability, 2) insecure tenure and property rights, 3) landlessness and inequitable resource distribution, 4) poorly performing markets, and 5) unsustainable natural resources management. The matrix also denotes six categories of policy and program interventions that are drawn from the policy toolkit commonly applied by development practitioners:¹⁷ a) good governance, b) conflict or

¹⁶ For example, natural rights (air, water), rights of alienation, rights of enjoyment (freedom of use, protection of personal property), and compensation if these rights are infringed upon (For further elaboration, see Gérard Ciparisse, *Multilingual Thesaurus on Land Tenure*, FAO, 2003).

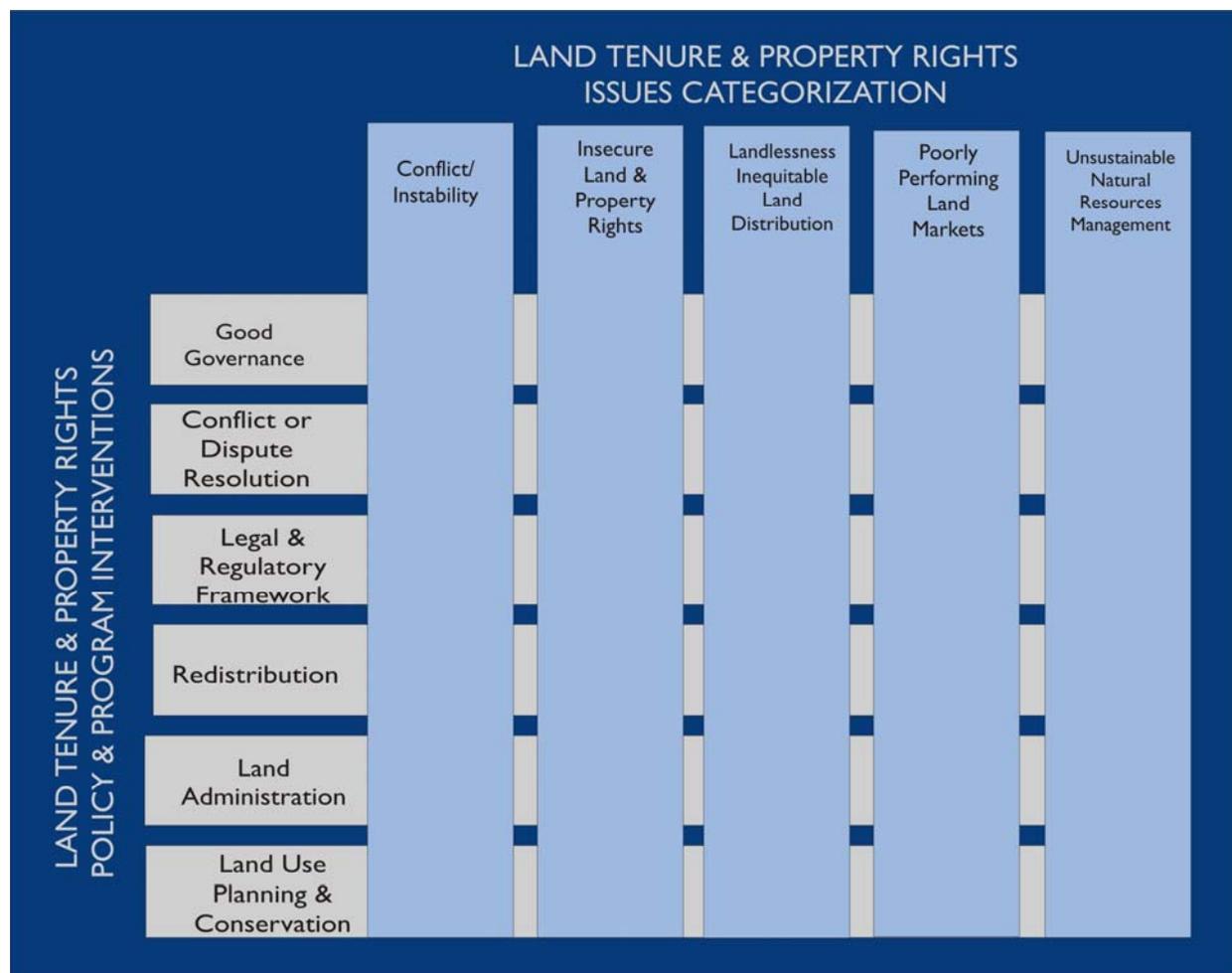
¹⁷ For detailed development of this framework, terms and definitions, see its companion paper entitled *Tenure Primer and Glossary* (Marquardt et al 2005).

dispute resolution, c) legal and regulatory framework, d) redistribution of resources within society, e) investing in land administration and the structures for implementing policy, and f) enabling and strengthening land use planning and conservation. Overlapping areas of the table represent critical intersections between land issues experienced and policy interventions; both issue categories and intervention categories, while depicted as distinct, are in practice interconnected and sometimes fungible across categories.

Within each heading of the LTPR issues categorization are sub-issues that provide historical, cultural, political, economic, and social nuance and depth. “Conflict/Instability” in itself is generic and abstract, but when couched in sub-issues of dealing with displaced peoples from war or restoring rule of law, they take on practical policy and program significance. Each policy toolbox represented by rows in Figure B.1 are cross-cutting and have general relevance across all five issues categories. However, the type of tools within each toolbox that are most appropriate to a sub-issue will be specific and vary from one issues category and/or sub-issue to the next. For example, with respect to governance, restoring rule of law is a necessary precondition for resolving problems of conflict and political instability, strengthening government commitment, and lessening barriers to government services are more important tools for addressing problems of land distribution or land markets. Conversely, working at the level of a given land issue, e.g. “Insecure Land and Property Rights,” all six intervention categories (toolboxes) offer tools to bear, depending on the specific sub-issue and context of concern.

Land issues in developing or transitional countries usually fall within one or more of five broad areas constituting categories of issues in the LTPR Awareness Matrix:

FIGURE B.1 LAND TENURE AND PROPERTY RIGHTS (LTPR) AWARENESS MATRIX

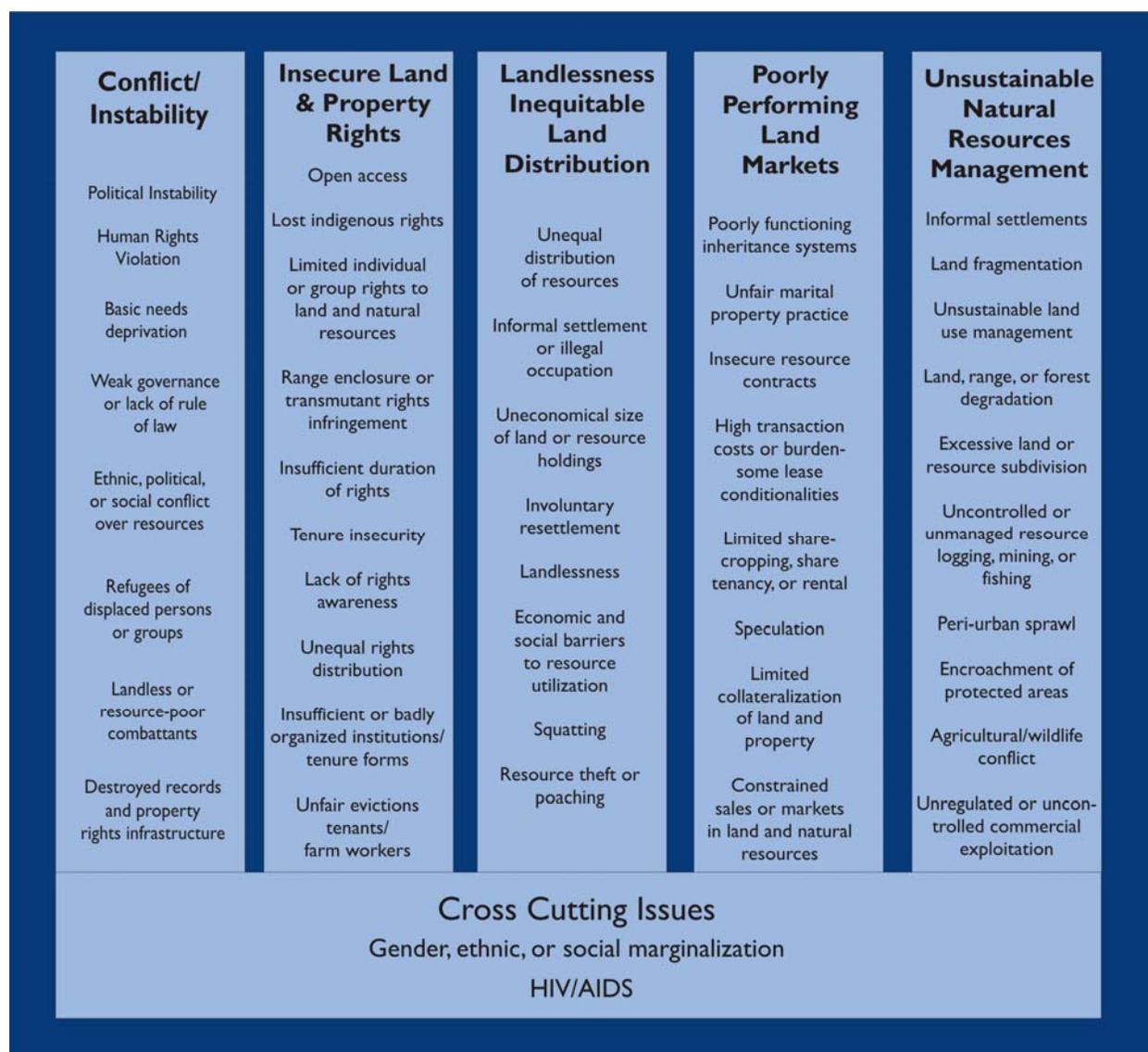


- **Conflict/Instability:** Political instability and lack of governance in post-conflict situations or social and ethnic conflict over resources that arise in the course of economic, social, political, or institutional change.
- **Insecure Land and Property Rights:** Insecure rights or unequal distribution of rights in land and property that create conflict, undermine economic incentives, and constrain property transfers.
- **Landlessness or Inequitable Land Distribution¹⁸:** Landlessness, inequitable land distribution, and insufficient access to land and related natural resources to secure livelihoods.
- **Poorly Performing Land Markets:** Missing markets, segmented markets, or undeveloped markets that affect a broad range of transactions including purchases and sales, mortgages, land exchanges, resource contract, temporary transfers and leases, long-term and short-term informal borrowing, resource pooling, and other informal arrangements.
- **Unsustainable Natural Resources Management:** Deforestation, land degradation, and unsustainable use of land, water, wildlife, forests, pasture, and other natural resources due to conflict/instability, landlessness, poverty, insecure land and property rights, or poorly performing markets.

Figure B.2 contains an illustrative set of LTPR issues observed globally; not all the issues are relevant to Kyrgyzstan or even of importance there. Yet this assessment is intended to identify those LTPR issues at appropriate levels of nuance that are important to Kyrgyzstan's land subsector's development and to its overarching goals of poverty reduction, food security and political stability.

¹⁸ Land access relates to how a person or group enters onto and utilizes a physically defined area of land. The economic value of land and resources is obtained both from one's tenure security in the resource and the quantity and quality of the resource held. Certain tenure problems relate to the situation in which secure rights are held, but ownership of physical and natural resources is too limited to provide secure livelihoods or income. Alternatively, one's holdings of physical and natural resources may be relatively plentiful, but tenure security is limited or uncertain to enable conservation or achievement of full productive potential.

FIGURE B.2 GLOBAL LAND TENURE AND PROPERTY RIGHTS ISSUES



B.2 LAND TENURE AND PROPERTY RIGHTS INTERVENTIONS

Interventions aimed at reducing resource conflict, achieving political stability, securing property rights, reducing landlessness, achieving a more equitable land distribution, facilitating or enabling land markets and investment, and achieving more sustainable land use management typically fall into one of the areas described below and constitute intervention categories in the LTPR Awareness Framework.

- **Good Governance:** Preconditions of political will and pursuit of democratic governance aimed at restoring rule of law and developing sound institutional structure based on accountability, transparency, and mechanisms to encourage citizen participation.
- **Conflict or Dispute Resolution:** Formal and alternative dispute resolution methods and strengthening recourse to rule of law.
- **Legal and Regulatory Framework:** Creation of property institutions, both for individual and communally held property and for rural and urban uses, which secure rights of ownership, transferability, exclusiveness, and use.
- **Redistribution:** Land and agrarian reform, resettlement, farm restructuring, and privatization.

- **Land Administration¹⁹:** Efficiency improvements in the functioning of land administration systems along with decentralization and devolution.
- **Land Use Planning and Conservation²⁰:** Land suitability assessments, land use planning, environmental regulations, zoning, taxation, and development incentives. Conservation is concerned with the sustainability or improvement of the natural resource base environment and includes land reclamation, set asides, conservancies, buffer zone management, protected areas management, reforestation, and soil conservation..

As gender, ethnic, or social marginalization are a cross cutting issue in Figure B.2, LTPR policy and program interventions must have a dedicated focus on removing legal impediments that discriminate against these groups and on supporting policy and programs that strengthen their rights awareness, provide legal recourse, redress problems of landlessness, and broaden access to markets and services. Strengthening capacity is the second cross-cutting issue: the capacity of government to create and implement LTPR policy; the capacity of stakeholders to assist government in implementation; and the capacity of beneficiaries to know and understand their rights and act upon them.

¹⁹ Land administration refers to the process of recording and disseminating information about the ownership, value, and use of land and related resources. Public sector agencies play a role in land and resource management and administration, securing rights of ownership, transferability, exclusiveness, and use, and in defining and supporting markets. Although these agencies vary in organization, structure, size, locale, and scope of responsibility from country to country, they typically fill many of the same roles providing regulation, administration and services in the following areas: land demarcation and adjudication of rights, titling and registration, land (and property) registry development, surveying and mapping, recording of credit and mortgage transactions, real estate development, town and country planning, and taxation. While development of the legal and regulatory framework in intervention C above gives these interventions legal weight and *tour de force*, there is in addition the need for government to establish structures that deliver these services on the ground.

²⁰ Land use planning is the systematic assessment of the potential of land and related resources, alternative patterns of land use and other physical, social, and economic conditions for the purpose of selecting land use options. Illustrative tools include land suitability assessments, land use planning, environmental regulations, zoning, taxation, and development incentives. Conservation is concerned with the sustainability or improvement of the natural resource base environment and includes land reclamation, set asides, conservancies, buffer zone management, protected areas management, reforestation, and soil conservation.

APPENDIX C CHRONOLOGY OF LEGISLATIVE ENACTMENTS

The Kyrgyz Republic Law "On Peasant Farms" (February 2, 1991)	Encouraged private farm enterprises by allowing individuals to apply to the local Council of People's Deputies for unused land or land to be allocated from failing collective or state farms. Private farmers were able to receive inputs from the state at the same prices as a collective or state farm.
Law "On Land Reform" (April 19, 1991)	Sought to provide, among other things, a framework for the "equitable development of various forms of farming," and began the process of redistribution of land. Called for: (1) Inventory and classification of all public and private land; (2) Voluntary reorganization of "inefficiently operated" collective and state farms; and (3) Creation of a special land fund, which was to contain unused and inefficiently used lands for redistribution to other land users. Inefficiently operated collective and state farms could voluntarily reorganize as cooperatives, other types of legal entities, associations of peasant farms, or private farm enterprises. Land commissions were established at the local level to consider requests for distribution of land within the locality. Similar commissions were to be created at the <i>raion</i> , <i>oblast</i> and federal levels.
Presidential Decree No. VII-369 "On Urgent Measures to Secure the Realization of the Laws of the Kyrgyz Republic Regulating Land Relations and Other Relations in Agriculture" (November 10, 1991), and Government Resolution "On the Peculiarities of the Destatization and Privatization of State Farms and Other State (Municipal) Agricultural Enterprises in the Kyrgyz Republic" (January 13, 1992)	Mandated that those collective and state farms with less than 15 percent profitability be privatized, with redistribution of land and other assets to farm members to be used for creation of private farm enterprises and cooperatives. The farms that were to be privatized were to be chosen by the State Property Committee together with the Ministry of Agriculture and the <i>oblast</i> and <i>raion</i> Councils of People's Deputies. Allowed individual members of non-reorganized state and collective farms to withdraw a share of land and property (non-land assets) from the farm to start a private farm enterprise. The property share of each member was to be determined based on the member's length of service and labor contribution. Called for 1.5 million hectares of agricultural land (out of a total of approximately 10.4 million hectares) to be added to the special land fund for redistribution to rural and urban citizens who wanted to create private farm enterprises, small cooperatives, gardens and private individual plots. No less than "50 percent of irrigated arable lands allocated for the organization of peasant farms" would be transferred to the newly created and separate land fund, the National Land Fund (NLF), to support the way of life of Kyrgyz peasants.
Presidential Decree "On the National Land Fund of the Republic of Kyrgyzstan," (March 10, 1992)	Provided details as to the manner of the NLF's formation, distribution, and use.
Presidential Decree "On Measures for Further Implementation of the Land and Agrarian Reform in the Republic of Kyrgyzstan" (December 10, 1992)	Added: (1) A requirement that National Land Fund land be allocated to commodity producing private farm enterprises on a competitive basis (the reference to supporting the way of life of ethnic Kyrgyz was dropped); (2) A recommendation that collective and state farms divide their land into shares to insure that every worker or member has the right to a land plot. This right to a land plot is called a "land share." A land share represents a share of land on the territory of an agricultural enterprise and may be demarcated or undemarcated. An individual member or worker on the agricultural enterprise owns the use right attached to the land share. The <i>raion</i> state administrations were given control over the implementation of this land reform system with input from the rural committees on land reform (village governments).
Constitution of the Kyrgyz Republic adopted on May 5, 1993	Land belongs to the state and cannot be privately owned. The purchase and sale of land is not allowed
Presidential Decree No. 23 "On Measures to Enhance (Deepen) Land and Agrarian Reform in the Kyrgyz Republic" (February 22, 1994)	Guaranteed (rather than recommended) the right of members of collective and state farms to receive land share use rights (49-year), fully disposable and mortgagable. The decree authorized land plot users and land share owners to sell their plot or share immediately to other members of their collective or state farm, but prohibited sale to non-members until after January 1, 1995. Reduced the National Land Fund in half, to 25 percent of all arable land except pastures. A maximum size of land plot per family was established (20 hectares for intensive agriculture, 25 hectares for less intensive agriculture, and 30 hectares for mountainous areas). Transferred privatization powers from the State Property Fund to the Ministry of Agriculture and Food (MOAF).
Government Resolution No. 345 "On the National Land Fund" (May 19, 1994)	Called for the land to be distributed: (1) In lease to livestock breeders, seed producers, and rural household enterprises; (2) As land shares to collective and state farm workers not otherwise entitled to land shares from the farms they had joined; and (3) In lease or temporary use to other agricultural commodity producers. The rules set out in this resolution were still unclear as to what quality of land was to be selected for the fund, the use terms of the land in the fund, and who was to allocate the land.
Government Regulation "On the Procedure for Determining Citizens' Land Shares and for Issuance of Certificates Containing Land Share Use Right," Adopted by Resolution No. 632 (August 22, 1994)	Provided that with the consent of the <i>raion</i> administration, the Ministry of Agriculture could delegate to the village government the right to lease out NLF land. Provided rules for the process of determining land share use rights. All land within collective and state farms (with the exception of NLF land, village land, pastures and other well defined types of non-arable land) was required to be allocated as land shares. Land shares were to be distributed free of charge to farm workers, pensioners, invalids, and specified social sphere workers.

	<p>Land share certificates were to be distributed, listing the names of each recipient's family members and providing an additional share for each family member.</p> <p>Certificates were issued to the head of the household and must be registered to be legally enforceable.</p> <p>Commodity producing agricultural enterprises must consist of at least 10 hectares of plowed land in intensive cultivation zones, 15 hectares in average zones, and 20 hectares in the mountains.</p>
"Program of Land and Agrarian Reform in the Kyrgyz Republic for 1995-1996." (January 1995).	<p>Focused on whole farm break-up and called for the reorganization of all state and collective farms by 1996 into smaller management units created from land and property shares.</p> <p>Established committees to inventory the assets of farms to be reorganized, calculate land and property shares of members, develop a plan for reorganizing the farm, and then implement the plan.</p>
Ministry of Agriculture passed Decision No. 7, "On the National Land Fund" (February 8, 1995)	<p>Provided that NLF land could not be divided into land shares unless the <i>raion</i> administration, with permission from the MOAF, made such a proposal for the purpose of:</p> <p>(a) raising yields, making an enterprise profitable, increasing production of beef and milk, increasing employment; or</p> <p>(b) allocating shares to workers in specified fields of the social sphere. Other land in the fund could be temporarily leased to peasant farms with permission from the village government.</p>
Presidential Decree "On Measures for Further Development and State Support of Land And Agrarian Reform in the Kyrgyz Republic" (November 3, 1995)	<p>Extended the 49-year use rights to agricultural land to 99-year use rights</p> <p>Abolished maximum size of land and reduced the minimum size of land plots to 5 hectares in all cultivation zones (and to 1 hectare for rural and suburban vegetable operations)</p> <p>Heads of <i>oblast</i> and <i>raion</i> governments were instructed to complete the issuance of land share certificates by December 31, 1995.</p> <p>Abolished the National Land Fund and transferred the land remaining in the fund to the new Land Redistribution Fund (LRF) to be run by the Ministry of Agriculture.</p> <p>Provided that land parcels from the fund are to be used for expansion of rural settlements, creation of experimental agricultural facilities, auctioned as 99-year use rights for organizations of "peasant communities," and other purposes to be decided by the government.</p>
Government Regulation "On Categories of Subjects of Agricultural Enterprises in the Kyrgyz Republic" (adopted by Government Resolution No. 158 "On Adoption of the Regulation on Categories of Subjects of Agricultural Enterprise in the Kyrgyz Republic" (April 12, 1996))	<p>Defined seven new enterprise categories</p> <ol style="list-style-type: none"> 1. Personal household enterprise (household plot cultivated by family members); 2. Farm enterprise (farm operated by one family on at least 5 hectares of irrigated land or at least 1 hectare of suburban vegetable land); 3. Peasant enterprise (two or more families cultivating 5 to 100 hectares of irrigated land or 1 to 100 hectares of suburban vegetable land); 4. Collective peasant enterprise (cultivating more than 150 hectares of irrigated land); 5. Joint stock company (enterprise capitalized with shareholders' non-land property which uses shareholders' land shares); 6. State enterprise (enterprise using state land and performing a state program); and 7. Agricultural cooperative (composed of independent farm enterprises or peasant enterprises).
Presidential Decree No. 327 "On Measures Aimed at Introduction of Market of Land Use Rights and on Establishment of the Market Credit System in Agriculture" (November 25, 1996)	<p>Called for</p> <ol style="list-style-type: none"> (1) registration of land use rights transactions; (2) sale (tender and auctions) of use rights to 50 percent of land of the Land Redistribution Fund; and (3) one-year lease agreements for the remaining land in the Land Redistribution Fund
Government Resolution No. 14 "On Measures Aimed at Introduction of the Market of Land Use Rights" (January 9, 1998) and accompanying Regulations "On Republican and <i>Rayon</i> Executive Commissions on Sale of Rights to Use Land Plots of the Agricultural Land Redistribution Fund Under the Ministry of Agriculture and Water of the Kyrgyz Republic," and "Temporary Regulations on Auction Sales of Rights to Use Land Plots of the Agricultural Land Redistribution Fund Under the Ministry of Agriculture and Water of the Kyrgyz Republic" (January 9, 1998)	<p>Procedures for sale of land from the LRF.</p>
Presidential Decree "On Concept of Introduction of Private Land Ownership in the Kyrgyz Republic" (October 13, 1998)	<p>Outlined the concept of private ownership of land and provided that seven laws should be promulgated (if the referendum passed) that would establish and encourage a land market (Land Code, Peasant Farm Law, Mortgage Law, Law on Cooperatives, and a law introducing land-related amendments to the Civil Code).</p>
Land Code of the Kyrgyz Republic, June 2, 1999	<p>Imposed a 5-year moratorium on the sale of agricultural land. All sale of land from the LRF was halted.</p>
Law on Effectuation of the Land Code, June 2, 1999	<p>Required privatization of state animal breeding farms, seed-growing farms, experimental farms, testing stations, educational institutions, and scientific research institutions and other state entities of agricultural profile.</p> <p>These state farms and institutions were to transfer 75 percent of their agricultural land (except pastures) as land shares to citizens working and residing on the territory of the farm.</p> <p>One-fourth of the remaining 25 percent of agricultural land in the LRF was to be distributed for the operation of seed growing, pedigree animals breeding, testing /selection and experimental farms.</p> <p>Three-fourths of the remaining 25 percent was to be used for extension of rural settlements, for sale of use rights at auction; for transfer to rural manufacturers for lease; for citizens working and</p>

	residing outside the farm (including those from that farm) who permanently resided on the territory of this farm before July 1, 1996; and for other purposes envisaged by the decision of the Government of the Kyrgyz Republic.
Law on Administration of Agricultural Land (December 18, 2000), and Regulation #427, “On the Procedure of Purchase and Sale of Agricultural Land” (approved by the GOK Resolution of 08.13.01).	Lifted the moratorium on the sale of agricultural land. LRF may not be sold into ownership Only in exceptional cases can LRF land be transferred to citizens' ownership according to the local <i>keneshes'</i> proposals, based on a decision of Kyrgyz Republic Government approved by the Legislative Assembly of the Jogorku Kenesh (national parliamentary body). Household land shares are indivisible under the law, no matter how large they are or whether or not they are one contiguous plot. Foreigners, legal entities, and urban dwellers cannot own or purchase agricultural land. Must live in a rural area for two years before purchasing land. .
Government Resolution #10 “On the Reform of Local Governance Structures,” January 11, 2000	Responsibility for the LRF was devolved from the Ministry of Agriculture to each of the 454 <i>aiyl keneshes</i> .
Standard Regulation, “On the terms and order of providing land from the Agricultural Land Redistribution Fund for rent,” approved by the Resolution of the Legislative Chamber of the Parliament, April 15, 2002, L No 702-II	New regulations relating to lease of land from the LRF A commission decides who is eligible to bid on the land plot at a public auction. There are two types of tenders foreseen under the new regulations: a commercial tender and an investment tender, but a majority of the land is to be distributed through the tender process. <i>Aiyl keneshes</i> are able to make certain decisions based on local circumstances within the limitations imposed by the law. They are responsible for determining the ceiling on the size of land parcel to be leased and the term of the rental agreements. Arable land must be rented out for 5 years under the law. Other land from the LRF can be rented out for 5-7 years or up to 10 years. Physical persons are able to lease in up to 25 hectares of irrigated land and up to 50 hectares of dry land. Juridical persons can lease in up to 50 hectares of irrigated land and up to 100 hectares of dry land The <i>aiyl okmotu</i> has the right to use a land parcel from the LRF to give to low income citizens in the territory of the <i>aiyl okmotu</i> . However, not more than 20 percent of the land from the LRF may be used for this purpose and the lease term cannot exceed seven years. The land must be high quality land.
Amendment to the Effectuation of the Land Code (May 11, 2002)	Added three additional categories of recipients for land from the LRF. First, the amendment allowed (but did not require) additional LRF land to be provided on favorable terms to seed producing, breeding, experimental, teaching and experimental entities, and pilot stations independent of their organizational-legal form and type of ownership. A second group, citizens of the Kyrgyz Republic living permanently in a rural area, who had the right to receive a land share but due to various reasons did not receive a land share at the time of the enactment of the Land Code, had a right to a free land share from land that was abandoned, left without heirs, voluntarily refused, withdrawn in compliance with legislation, or low-productive land. However, if, in exceptional cases, there was a shortage of such land, unclaimed land from the LRF could be distributed in land shares with approval from the Jogorku Kenesh. The amendment gave a priority to receive free land from the LRF to citizens of the Kyrgyz Republic, living permanently in rural areas, who received their land share in due time, but due to various reasons relinquished them to the Agricultural Land Redistribution Fund. For these land shares, the ceiling size shall be determined by <i>aiyl keneshes</i> and approved by <i>raion keneshes</i> .
Government Resolution, “On Allocation of Land Shares to Citizens of the Kyrgyz Republic,” (January 2003).	Conceded that there was a shortage of land outside of the LRF and ordered the Jogorku Kenesh to accept proposals from the local <i>keneshes</i> for free allocation of land shares from the LRF to citizens who were entitled to obtain land shares as of the time of reorganization of collective and state farms and failed to receive them as of the time of introduction of the Land Code.

APPENDIX D ECONOMIC ANALYSIS OF FARM ENTERPRISE PERFORMANCE

In 1999, the BASIS Collaborative Research Support Program, funded by USAID/Washington, helped support the design and implementation of the First Performance Survey of Agricultural Enterprises by the Center for Land and Agrarian Reform. Statistical data were collected from 468 sampled agricultural enterprises on various aspects of their ownership structure, governance, land assets, land use, livestock holdings, access to financial resources, assets and liabilities, input availability and costs, yield and output, and enterprise earnings. The same project resurveyed as many of these enterprises as possible in November 2001 to help monitor changes in agrarian structure: 323 enterprises were reinterviewed, 22 refused to be surveyed, and 123 could not be relocated. A total of 140 new enterprises were thus selected to replace those enterprises lost due to refusals or failures to locate in order to maintain national representation. This Second Performance Survey of Agricultural Enterprises surveyed 463 agricultural enterprises including 168 individual farms, 233 peasant farms (group farming units), 43 collective farms, and 19 state farms.

For the 321 farms with complete data available in both 1999 and 2001 periods, Roth, Cormier, Mogilivesky, and Mazvimavi clustered the data according to four enterprise categories:

- **Chronically Weak (CW):** Enterprises with net returns/ha in the lowest two quartiles (in terms of net returns/ha) in both periods;
- **Regressive (RG):** Enterprises with net returns/ha in the highest two quartiles in 2001 but in the lowest two quartiles in 1999;
- **Progressive (PG):** Enterprises with net returns/ha in the lowest two quartiles in 1999 but in the highest two quartiles in 2001; and
- **Superlative or Steadfast (SUP):** Enterprises with net returns/ha in the highest two quartiles in both 1999 and 2001.

The loss of 123 enterprises in the sample between 1999 and 2001 represents in and of itself a very high level of dynamics in agrarian structure for panel level data over just a two-year period. A further indication of dynamics and variations in performance according to farm typologies are provided in Table D.1. All farm categories in 1999 exhibited low returns per hectare. However, by definition, the two categories of farms, progressive and superlative, representing 50 percent of the total manifested sharp increases in net returns per hectare by 2001. Three categories of farms, CW, RG and SUP, showed a net reduction in the supply of labor dedicated to farm work due to either net out-migration, further farm divestitures, or shift in focus to off-farm employment. One category (progressive) manifested a sharp decrease in average size of landholdings and a slight increase in size of labor force. As a result of both improved economic conditions and improved efficiency between 1999 and 2001 (as indicated by an increase in net returns per hectare for all farms) and asset changes taking place within each farm category, all groups exhibited improvements in net returns/land and net returns/labor, with the most marked improvements noted for the PG and SUP groupings.

STRATEGIC OBJECTIVES OF THE LAND AND AGRARIAN REFORM

1. Develop and implement projects that stabilize agricultural development
2. Vest land and property held by state farms and collectives to private individuals, cooperatives, and other economic entities
3. Liquidate and reorganize insolvent agricultural enterprises
4. Ensure real economic and business independence of rural commodity producers
5. Promote within a market policy state support for new agricultural commodity producers

Source: RCLAR, *Status of the Agricultural Sector of Kyrgyzstan*, 2004

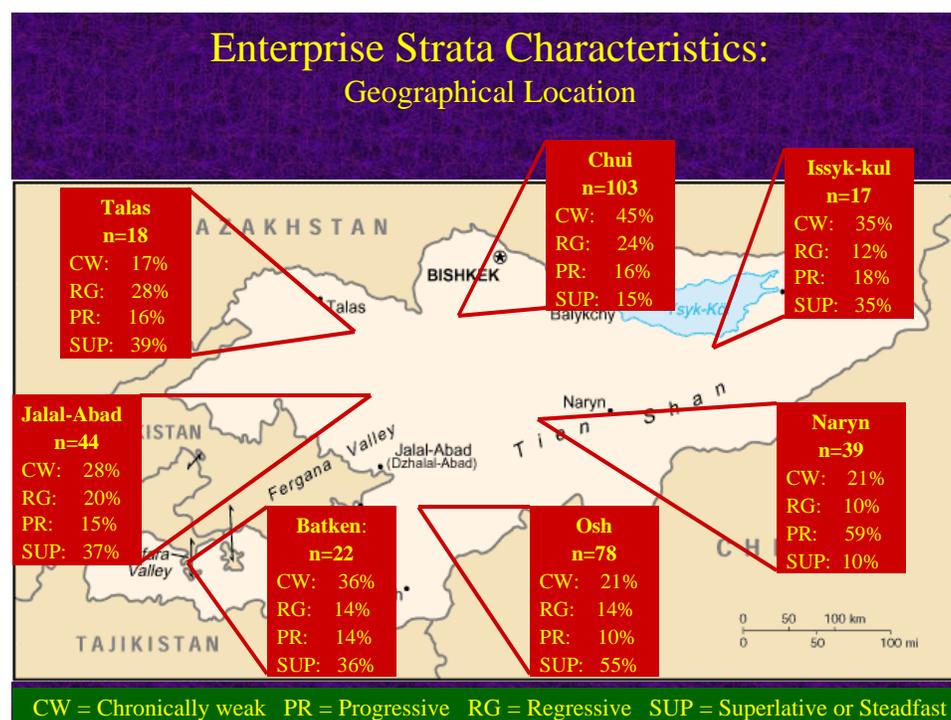
As demonstrated in Figure D.1, all regions of the country share significant numbers of each farm category but unique concentrations within *oblasts* are evident. Chronically weak farm enterprises tend to be concentrated in Chui and Issyk-Kul *oblasts* in the northern part of the country where the land reform has from the beginning been the slowest and most problematic, as well as in Batken *oblast* in the far south that has been late to develop. Better performing farm enterprises (PG and SUP categories) are located in Naryn and Osh.

TABLE D.1 INDICATORS OF FARM ENTERPRISE ASSET HOLDINGS AND PERFORMANCE, 1999–2001, KR

	Year of Study	CW	RG	PG	SUP
Sample size		N=99	N=60	N=60	N=101
Gross revenue (constant 2001 KGS)	1999	289.2	717.3	169.7	1,215.9
	2001	1,345.9	1,130.7	1,104.0	3,599.7
Net Income (constant 2001 KGS)	1999	64.4	553.3	70.7	1,077.5
	2001	754.7	430.7	867.7	2,796.3
Net income/hectare (constant 2001 KGS)	1999	0.33	2.88	-0.71	3.17
	2001	1.47	4.40	15.98	30.04
Off-farm income (constant 2001 KGS)	1999	3.0	2.2	0.46	4.9
	2001	16.6	33.3	13.4	34.1
Size of land holdings (ha)	1999	399.3	203.7	119.1	178.0
	2001	369.9	211.3	70.3	178.7
Stock of labor (No. workers)	1999	54.7	110.7	24.4	243.2
	2001	40.2	57.7	27.1	199.4
Net returns/labor	1999	1.2	7.4	-0.7	5.1
	2001	19.6	15.6	34.0	28.0
Net returns/land	1999	0.3	2.9	-0.7	4.2
	2001	3.9	4.4	16.0	21.8

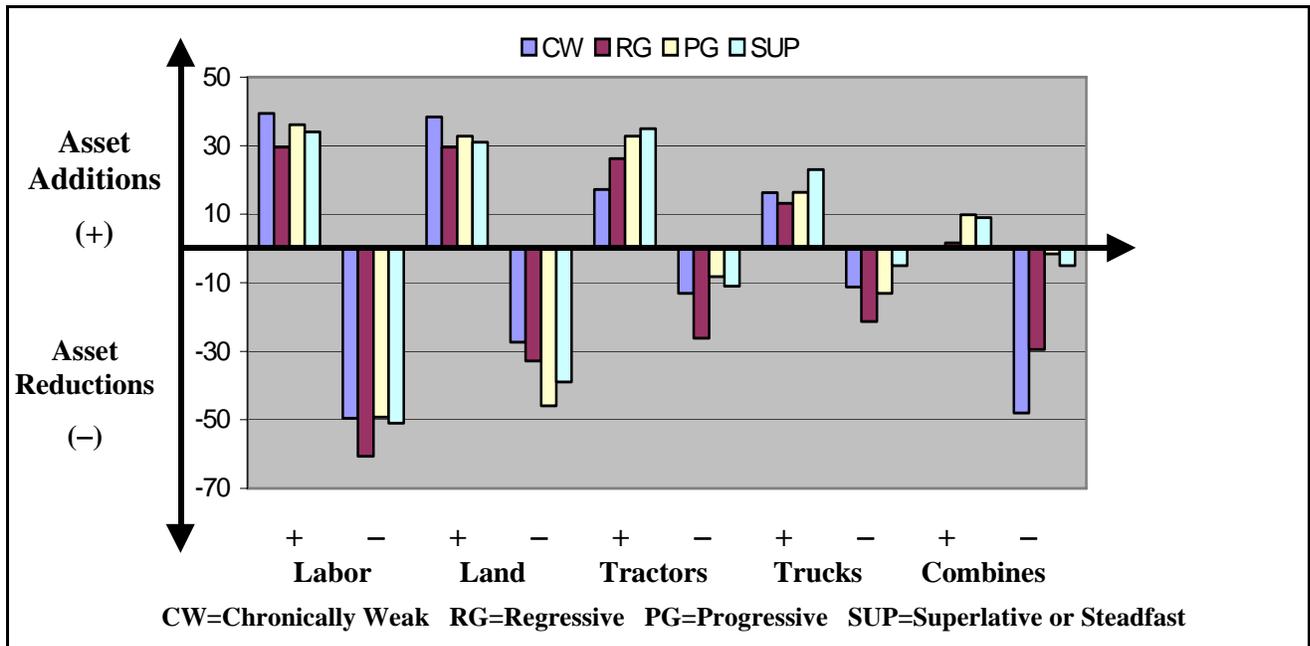
Source: Michael Roth, Kelley Cormier, Roman Mogilevsky, and Kizito Mazvimavi, 2004.

FIGURE D.1 ENTERPRISE STRATA CHARACTERISTICS



A further indication of the agrarian dynamics occurring is demonstrated in Figure D.2 which shows the percentage of enterprises changing asset holdings (either increasing or decreasing) for each of five asset categories: labor; land; tractors; trucks; and combines. With regard to labor (land), at least 30 percent of farms in each performance category added labor (land) between 1999 and 2001, while at least 50 percent of farms in each category spun off labor (land) on net. Smaller but still sizable asset shifts (both up and down within each category) are observed for the other assets shown. While the data in Table D.1 illustrates overall net changes and trends, the data in Figure D.2 suggests a highly volatile environment in asset holdings where farm enterprises are rapidly balancing and rebalancing their asset portfolios as a result of entry to and exit of farm enterprise members, land market transactions, farm divestitures, and machinery purchases and depreciation.

FIGURE D.2 DYNAMICS IN ASSET OWNERSHIP



In such a situation where markets are difficult to navigate, prices are highly uncertain, and farms are operating on long learning curves, traditional measures of farm productivity—net returns per unit of land or labor—can be very unreliable. Total factor productivity (TFP) measures the weighted average productivity of all inputs, where the weights are the share of inputs in the total cost of production. Because price and quantity of all inputs are taken into account, total factor productivity measures the aggregate efficiency with which inputs are used in agricultural production. Results in Figure D.2 show TFP measures for three disaggregated farm groupings, by farm typology, by landholding size, and by livestock herd size for two study years, 1999 and 2001. The results generally show that TFP increased modestly for the farming sector over the period 1999 and 2001 and that the smallest farm size categories (<100 ha, < 5 TLU) outperformed larger farm size categories with the exception of the very largest farms.²¹ TFP estimates for farms in the PG and SUP categories exceed that in the CW and RG categories.

In general these results show the agrarian structure in Kyrgyzstan remains very dynamic with ongoing upsizing and downsizing in asset holdings by farm enterprises. Roughly half of the farms and enterprises in Kyrgyzstan are showing growth in income, improvements in returns per unit of land and labor, and growth in total factor productivity. However, the other half of farming enterprises remain mired in poor economic performance. Overall, harsh economic conditions have continued in 2003.

²¹ Farms greater than 1000 ha tend to be very few in numbers and have significant state support to encourage crop seed and livestock breeding along with other specialty enterprises.

APPENDIX E DONOR PROJECTS AND PROGRAM INTERVENTIONS

NAME OF PROJECT	DONOR	TOTAL PROJECT AMOUNT	TIMEFRAME	OBJECTIVE RELATED TO LAND REFORM AND/OR COMPONENT	COMMENTS
Rural Financial Institutions Project	ADB	\$US 22.1 million (\$US 12.6 million loan, \$US 9.6 million GOK and beneficiaries)	1997–2004	Creation of viable institutions for rural area and creation of credit unions in villages for mobilization of savings and lending.	More than 300 credit unions established with more than 25,500 participants
Project of Regional Agricultural Development	ADB	\$US 45 million (\$US 36 million loan, \$US 7.5 million GOK, \$US 1.5 million beneficiaries)	2001–2007	To increase incomes of farms in Chui <i>Oblast</i> through farm development, rehabilitation of drainage and irrigations systems, machinery and marking in private sectors.	Legal review of 17 farms was developed with plan of legal aid support to small and big farms. Prepared plan for rehabilitation of drainage and irrigation systems of 4 farms, machinery procured, established, marketing groups, and some lending to agri-processors.
Second Project of Regional Agricultural Development in the Sought	ADB	\$US 37.5 million (\$US 30 million land, \$US 7.5 million GOK)	2006–2012	To increase incomes of farms in Chui <i>Oblast</i> through restructuring and improvement of farm management, rehabilitation of drainage and irrigation systems, land use and water resources management, cooperative development and development of regional strategic planning.	In preparation
Increase of Potential of Agriculture at the Local Level	ADB	\$US 0.6 million for technical assistance	2006–2007	Local-level capacity building.	Planned
Study of impact of land reform in agriculture, on poverty and environment and perspectives for sustainable rural development	ADB	\$US 0.5 million	2004–2006	Study for policy recommendations.	Planned
Agricultural Policy Formulation	ADB		2004–2005		
Sheep Development Project	WB/IFAD	\$US 8.4 million	1996–2002	Support to sheep industry development in the form of pasture monitoring and management	
Rural Finance II	WB	\$US 15 million	2001–2005	Continuation of Rural Finance II project with focus on development of agricultural sector through lending to farms, enterprises and agribusiness and services.	
Agricultural Support Services Project	WB, IFAD, SDC, TACIS, SIDA	\$US 30.16 million	1998–2004	Alleviate poverty, increase incomes and development of productive and competitive farming sector through land and agrarian reforms, legislation and normative acts of development, distribution of land shares and land titles, restructuring of farms, public awareness, and extension.	
Land and Agrarian Reform (LARI & 2)	DFID			LAR focused on resolution of disputes and conflict, providing assistance in managing complaints associated with land reform and introducing a third party arbitration system in several pilot areas following the publication of the Presidential Decree on	DFID provided funding for the Land and Agrarian Reform Component the World Bank Agricultural Support Services Project

NAME OF PROJECT	DONOR	TOTAL PROJECT AMOUNT	TIMEFRAME	OBJECTIVE RELATED TO LAND REFORM AND/OR COMPONENT	COMMENTS
				agrarian arbitration and subsequent passage of the general law on Third Party Arbitration. LAR instituted a structured disputes monitoring system, improving the availability of data related to types of disputes and resolution effectiveness. An expected outcome of LAR is the replication of third party services outside of pilot areas.	
Land and Real Estate Registration Project	WB	\$US 9.42 million	2000–2005	Establishment of national registration system for real estate and land, development of registration procedures, information awareness, training and registration employees	
Village Investment Project	WB	\$US 15 million	2004–2007	Poverty alleviation by improving governance and capacity at the local level, strengthening the provision of and access to essential infrastructure services, and support to small-scale group enterprise development	
Establishment of Credit System in Rural Areas	GTZ	\$US 2.89 million	1999–2005	Provide access to financial resources.	
Food security, regional cooperation and stability in Batken Oblast	GTZ		2000–2005	Improvement of economic and social situation in Batken Oblast through focus on support to small producers in accessing markets, increasing productivity and processing of agricultural products, and rehabilitation of social and industrial infrastructure.	There were studies on nutrition of population. Cases were brought to the courts related to land disputes. Potential conflicts were prevented by addressing issues of rehabilitation of irrigation system and land use.
Food Security Program	EU	€ 9.5 million	2000–ongoing	The major objective is to support macro economic stability through budget support and key reforms.	Budgetary support of RCLARS
Support to livelihoods of livestock communities	DFID	€ 1.75 million	2002–2005	Establishment of economic strategies for survival and increasing of incomes of rural population dealing with livestock.	Capacity building of communities and local government in strategic planning for territories and local investments, and, lending to community groups
Kyrgyz Swiss Agricultural Program	SDC	\$US 4 million	2002–2004	Supports 12 sub-project: Agricultural Policy Support Project;; support to Central Asian Breeding Station; and Private Initiative Support Project; and support to Rural Advisory Services	
Legal Aid to Rural Population Project	SDC	\$US 0.5 million co-financed by USAID	2000–2004	To help people to implement their legal rights and to increase legal awareness among rural populations.	
Legal Rights Advocacy Project (LARP)	WB			LARP identified local community leaders and trained them to work within informal traditional structures to resolve disputes. The training of these leaders also included coverage of land legislation and rights. Working with informal structure proved particularly successful in the context of dispute resolution in rural areas. Building and reinforcing the capacity of local citizens to advocate for their interests was an important aspect	

NAME OF PROJECT	DONOR	TOTAL PROJECT AMOUNT	TIMEFRAME	OBJECTIVE RELATED TO LAND REFORM AND/OR COMPONENT	COMMENTS
Legal Aid to Projects ARD/Checci	USAID		1996–2004	of the project.	
Land Reform Project Chemonics	USAID		1996–2004	LRP address issues related to water, urban land and land reform in rural areas. The focus of the rural land component is on conducting legal seminars for rural citizens, publication and distribution of a land reform bulletin, and a rural activists program. LRP sponsors local land specialist in 45 villages. Their role is to investigate and assist in revolving land-related problems such as helping families that have not receive land share, resolving issues of non-payment for use of pastures, and soliciting local level input on improvements to land law.	
Legal Assistance to Rural Citizens (LARC)	USAID & Helvetas			LARC, through a network of lawyers around the country, provides general legal information, consultation, and information on legal issues pertinent to rural area. Principally, LARC lawyers handle the creation of legal entities, land use disputes, leasing related issue and division of land. The project strives to use mediation to resolve issue in lieu of intervention by civil courts. In establishing a network of lawyers, LARC tracks and manages in order to maximize use of legal advice. Monitoring case resolution effectiveness is also an integral feature of their tracking activities.	
Local Government Reform Urban Institute					
Civil Society Support Initiative (CSSI)	USAID			CSSI principal objective is to strengthen the organizational effectiveness of non-governmental organizations in the central Asian region in order to foster a strong and vibrant civil society. Strengthening is carried out through grants to individual NGOs. Organizations in Kyrgyzstan are beginning to build their capacity to advocate on behalf of specific issues such a open and unbiased media.	

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