Monitoring of land resources and opportunities for improving agrarian reform in Kyrgyzstan:

Land Watch Kyrgyzstan Monitoring Report 2018¹

An initiative of the Land Watch Asia Campaign

The Kyrgyz Republic or Kyrgyzstan is a landlocked country in Central Asia that borders with Kazakhstan in the north, Uzbekistan in the west, Tajikistan in the southwest, and then China in the southeast. Practically all of its territory (93 percent) is occupied by mountains.

Its capital and largest city is Bishkek. The State language is Kyrgyz and official language is Russian. Its population is approximately 6.14 million, split almost evenly between men and women. Two-thirds of the population lives in rural areas.

Widespread poverty is the single most pressing problem of Kyrgyzstan, where the estimated per capita Gross Domestic Product is \$300. Indeed, it is deemed one of the world's poorest countries, with some 25 percent or a fourth of the people living below the poverty threshold.

Of these poor people, the majority or 74 percent live in rural areas and this can be traced back to the utter lack of effective reforms and policies regarding land use and agriculture. The poverty burden is felt more acutely by women, who earn less than men.

Citation:

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An indicator of the widespread poverty in Kyrgyzstan is the lack of access to safe drinking water and free land resources.

This is a severe problem considering that the Kyrgyz economy depends heavily on agriculture. Data show that agriculture, including forestry and hunting, accounted for 13.2 percent of the country's GDP in 2016. Also, close to 27 percent of the labor sector is engaged in agriculture, forestry and fisheries.

Table 1. Distribution of Land Fund by Land Categories

Category	2010	2011	2012	2013	2014	2015	2015 +/- to 2010
	Thousand	hectares, at	the beginnin	ng of the yea	r		
Total	19,994.9	19,994.9	19,994.9	19,994.9	19,994.9	19,994.9	-
including:							
agricultural land	5,684.5	5,679.7	5,674.8	6,502.3	6,544.1	6,753.9	1,069.4
lands of settlements	263.2	266.4	272.9	273.9	275.3	276.7	13.5
industrial, transportation, defense, communications and other lands	223.6	222.7	224.3	227.1	228.2	230.9	7.3
lands of specially protected natural territories	707.4	707.4	707.3	715.3	742.4	854.4	147.0
forest land	2,613.7	2,617.2	2,617.8	2,609.7	2,600.0	2,596.8	-16.90
water fund lands	767.4	767.3	767.3	767.3	767.3	767.3	-0.1
reserve lands	9,735.1	9,734.2	9,730.5	8,899.3	8,837.6	8,514.9	-1,220.2
	,	As a percent	age of the to	tal			
Total	100.0	100.0	100.0	100.0	100.0	100.0	
including:							
agricultural land	28.4	28.4	28.4	31.3	32.8	33.8	5.4
lands of settlements	1.4	1.4	1.4	1.4	1.4	1.4	-
industrial, transportation, defense, communications and other lands	1.1	1.1	1.1	1.1	1.1	1.2	0.1
lands of specially protected natural territories	3.5	3.5	3.5	3.6	3.7	4.3	0.8
forest land	13.1	13.1	13.1	13.1	13.0	13.0	-0.1
water fund lands	3.8	3.8	3.8	3.8	3.8	3.8	-
reserve lands	48.7	48.7	48.7	45.7	44.2	42.6	-6.1

Source: NSC, Environment in the Kyrgyz Republic. Statistical Compendium 2011-2015. B., 2016

The table shows that reserve lands that belong to the State account for the biggest area of the country at 42.6 percent, followed by agricultural lands (33.8 percent) and forest lands (13 percent).

Natural mountain pastures form the bulk of agricultural land and are the country's main source of income. Pasture livestock farming has for centuries been a traditional occupation of the Kyrgyz people, particularly those in the rural communities.

There was a time when Kyrgyzstan saw wealthy pastoralists seizing vast territories either for themselves or for subleasing to other people. The unsystematic and uncontrolled use of the pastureland, plus the deterioration of the infrastructure and inefficient management prompted the government to reform the pasture system.

In 2009, the law on pastures was signed, signaling the transfer of all pastures to government hands. Since then, management of these pastures has been delegated to the local communities while regulation is done by pasture communities consisting of representatives of various stakeholders of the community.

Water resources are also of particular importance to the Kyrgyz Republic and these come from the glaciers, lakes and rivers.

Kyrgyzstan uses only 10 to 17 percent of the available reserves, which is still below the annual limit of 25 percent of the water that flows through it. The rest goes to neighboring Kazakhstan, China, Tajikistan, Uzbekistan and is subject to international water sharing.

Of the total water withdrawn by Kyrgyzstan, 93 percent is used by agriculture, four percent by industry. Part of the balance is used to provide drinking water to the population.

As provided by several decrees issued by the Kyrgyz government, on-farm irrigation canals are managed by water users associations (WUAs) and maintained using funds collected from the users. The formation of these WUAs was prompted by the need to enforce the rights of farmers to use water and ensure the most efficient use of water for the irrigated lands.

As of the first half of 2017, the Kyrgyz Republic has 486 registered WUAs. The total area of agricultural land irrigated by these groups account for a combined 73.2 percent of the total irrigated land.



THE PURSUIT OF LAND REFORM

Kyrgyzstan's land-agrarian reform process, which was based on the transformation of land ownership relations, can be divided into three phases: the initial stage (1991 to 1993), stage of formation (1994 to 2000), and the stage of improvement and development (since 2001).

Land reform began after the adoption of the Law "On Peasant Farms" in February 1991. The law authorized local Soviets of People's Deputies to allocate land for the creation of peasant farms.

The collective and State farms were mandated to allocate land to all those working and living in the countryside and wishing to create peasant farms.

In April 1991, the Law "On Land Reform" was adopted, paving the way for the creation in each district of a National Land Fund (NLF) to organize peasant farms on unused and unproductive lands of collective and State farms.

Subsequent decrees in 1991 and 1992 saw the restructuring of unprofitable collective and State farms. The State Property Committee of the Kyrgyz Republic (later the Center for Agrarian and Land Reform within the Ministry of Agriculture of the Kyrgyz Republic) was tasked with determining their economic viability and the subsequent privatization of unprofitable farms, on the basis of which joint-stock companies, rural cooperatives and farmers' associations were created.

At the end of 1992, a decree was issued to organize the village committees (in 1996 renamed village councils) to supervise the reorganization.

As a result, from 1991 to 1993, 18,000 peasant farms were created. However, they owned only six percent, thus the collective and State farms still dominated the land sector.

The next stage is the formation of land relations in the Kyrgyz Republic, starting with the issuance in 1994 of the decree "On Measures to Strengthen Land and Agrarian Reform."

According to this decree, all collective and State farms had to reorganize and distribute land shares (with the exception of pastures) among all the inhabitants of the farm, and property shares among its employees.

Certificates for the right to use the land share were issued by the *Centers for Land and Agrarian Reform (CLAR)* in the form of a lease for a period of 49 years. Land shares were subject to purchase, sale, lease, mortgage, and transfer to inheritance.

This was an important step towards the introduction of private ownership of land.

Support for land reform become widespread and within a year, it became necessary to extend the land use period to 99 years. In all regions, the vast majority of collective and State farms were reorganized.

By the end of 2000, 180,000 peasant farms were created. Also, more than 2.5 million rural residents, or 500,000 families, received their land shares.

Determination of the land share and issuance of a certificate for the right to use a land share to citizens of the Kyrgyz Republic after the collapse of the USSR were carried out in accordance with the Resolution of the Government of the Kyrgyz Republic of 22 August 1994 No. 632 (see box).

Resolution of the Government of the Kyrgyz Republic of 22 August 1994 No. 632

Lands within the existing legal borders of collective farms, State farms and other agricultural enterprises (only assigned under the State Act on the right to use land), except for land plots of the Agricultural Land Redistribution Fund under the Ministry of Agriculture and Food of the Kyrgyz Republic and pastures, lands of settlements intended for general use of the population (substocking of personal livestock, mowing, collective gardening, and horticulture), forestry enterprises, environmental protection, and recreational purposes, historical and cultural purposes, water fund, were subject to the division into land shares to provide:

- for persons permanently working in the field of agricultural production and residing in this farm, those
 who have retired after working and living in the farm, and those who became disabled while working in
 these farms;
- for persons permanently residing on the farm and working in the field of health care, water management, education, consumer services, trade, culture and agro chemistry service, serving agriculture; and,
- for decision of members of the labor collective, persons (people from this household) who worked outside the household and returned to their permanent place of residence.

The determination of the land share of citizens was carried out by the rural committees on land and agrarian reform, taking into account their family members at the time of the reorganization of the agricultural enterprise, and approved by the district State administration.

If the above-mentioned persons appeal after the reorganization of the economy, then their share was determined in the Agricultural Land Redistribution Fund under the Ministry of Agriculture and Food of the Kyrgyz Republic.

Land share was provided to citizens only once and free of charge.

The logical conclusion of the second stage of land reform was to resolve the issue of private ownership of land.

A referendum was held on this issue in 1998 and the results showed that the Kyrgyz people supported the introduction of private land ownership of land.



Eventually, the basic legal framework for private land ownership was established through the Law "On the Enactment of the Land Code of the Kyrgyz Republic."

The final stage of land reform began in 2001 and the priority directions during this time were:

- improvement of State regulation of land use by improving the regulatory framework;
- development of the land market by ensuring the availability, openness and transparency of the procedure for all forms of transactions with land plots; and,
- creation of a land information system an automated land cadaster for obtaining objective data on all categories of land; development of mortgage lending on the security of land and the creation of land valuation.

This period was also marked by the strengthening of cooperatives, through which peasants themselves independently and voluntarily managed their own land. This is contrast to the prior State-run farm collectives.

Providing the legal basis was "On Cooperatives," which was adopted on 30 April 2004. This has been amended and improved through the years such that today, Kyrgyzstan has one of the most progressive laws on cooperatives.

But even then, the cooperatives have yet to unleash their full potential and thereby implement the final stage of agrarian reform.

The aim is to develop model cooperatives in all regions so that their benefits can be shared with as many people as possible. Another goal is to expand the sphere of the cooperative movement to include the other factors necessary to improve the lives of the rural poor, like credit facilities, technology, inputs, and marketing support.

CURRENT LEGISLATION COVERING LAND RESOURCES

Land relations in the Kyrgyz Republic are determined by the Constitution of the Kyrgyz Republic, the Civil and Land Codes, the Laws of the Kyrgyz Republic, as well as the decrees of the President of the Kyrgyz Republic issued in accordance with them, resolutions of the LCD Parliament, and resolutions of the Government of the Kyrgyz Republic.

The Constitution of the Kyrgyz Republic, for example, recognizes the diversity of ownership forms and guarantees equal legal protection of private, State, municipal and other forms of ownership.

The fundamental regulatory act regulating land relations in the Kyrgyz Republic is the Land Code of the Kyrgyz Republic (LC KR) of 2 June 1999 No. 45.

Among others, the LC of KR regulates the establishment, implementation and termination of land rights. It also provides for the rational use of land and its protection.

In accordance with Article 4 of the Land Code of the Kyrgyz Republic, State-owned land, lands of forest and water funds, lands of specially protected natural areas, reserve lands, lands of the border zone, land of SFSU, pastures in rural areas, and pastures in the zone of intensive use are owned by the State.

The management of the lands of the SFSU is carried out by the executive and administrative body of the local self-government of the *aiyl okrug* and the village in agreement with the State body in charge of the specified Fund.²

The transfer (transformation) of lands from one category to another is provided by the Land Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic "On the Transfer (Transformation) of Land Plots" dated 15 July 2013 No. 145, as well as the provisional regulations on the procedure for transfer (transformation) of land plots.³

The land legislation of the Kyrgyz Republic provides two options for obtaining the right to a land plot – the provision by an authorized State body to own or use a land plot in State or municipal ownership (the primary market for granting rights); and also the transfer of the right to a land plot (i.e., alienation by the owner or land user of the right to a land plot or its transfer for temporary use to another person through civil law transactions – a secondary land use market).

The use of the State Agricultural Land Fund (SALF) is regulated by the Model Provision on the conditions and procedure for leasing the lands of the SALF.⁴

The granting of rights to the land plots under this Fund is based on the Prospective Plan, auctions held by the local self-government or by direct sales.

Meanwhile, the **Law of the Kyrgyz Republic "On pastures"** (dated 26 January 2009 No. 30), says that "pastures are the exclusive property of the State."

² Paragraph 2 of Article 13 of the Code of the Kyrgyz Republic

³ Approved by the RCC resolution of 19 March 2014 No. 169

⁴ Approved by the Government Resolution of 22 June 2007 No. 243



MAIN PROBLEMS PLAGUING THE LAND SECTOR

Despite favorable legislation, there are still barriers that limit the rights of citizens to fair access and use of precious land resources.

These include issues on the lack of procedures for the seizure or expropriation of land for public use, and fair compensation for owners and land users and independent assessment (non-material damage and loss of profits).

Current rules and regulations of the Kyrgyz Republic do not define the procedure for seizure (redemption) of land for State, municipal and public needs, such as development of mineral deposits, the construction of city parks, recreation areas and transport and energy infrastructure like airports and roads. As a result, courts find it difficult to resolve land conflicts that inevitably arise.

There are also no procedures or mechanisms to determine fair compensation for landowners and users, who may lose profit and their home following the loss of their right to own and use land. There are also no rules on how to determine the fair value of a seized plot or compensation for losing the right to use land in favor of the State.

Another gap in the legislation of the Kyrgyz Republic is the lack of a mechanism to pay compensation to pasture users and land tenants in case of withdrawal of a part or all land from them for State and public needs.

Thus, it can be concluded that there is no national policy on expropriation in the Kyrgyz Republic, and the existing regulatory framework does not provide the necessary basis for the implementation of the norms and principles governing expropriation issues due to the absence of regulated mechanisms/procedure for expropriation, in particular, deprivation of the right to own and use citizens' land resources for public needs.

On land market development, there are currently three main problems: the lack of legal documents covering land transactions, inability of owners to use their agricultural land as collateral to access credit, and corruption involving the lease of State and municipal lands.

Data show that from 1995 to 2009, the area devoted to agriculture in Kyrgyzstan was reduced drastically by 51 percent. And the decline continues despite the moratorium on using irrigated land for other purposes.

What is happening is that vast tracts of agricultural land are now being used for the expansion of villages, development of transportation infrastructure, and creation of specially protected areas, among others. There are cases of land transactions being done illegally with the use of forged or fake documents.

This is due to the lack of fixed rules that ensure the indivisibility of agriculture land. This is why many owners of large tracts of land divide the property into small plots and sell them to individuals for housing needs. Some of these transactions can be considered illegal based on the resulting land disputes.

Meanwhile, banks and other credit institutions are wary of accepting land as collateral as restrictions on the rights over the mortgaged property (land) increase their risks. They also find it difficult to determine the actual value of the mortgaged land, thus hampering their ability to make a financial assessment.

There is also the problem with corruption that has led the Prosecutor General's Office of the Kyrgyz Republic to conclude that there is systemic violation of land rules. There are reports of questionable auctions or sale of parcels of land and the conversion of land use from agricultural to commercial use.

In the pastoral sector, unresolved issues include the degradation of pastures due to unregulated use, lack of management expertise and inadequate infrastructure.

In the forest sector, there are problems related to community forestry. For example, many forest users are using the property without registering their lease with local authorities. At the same time, the State forest management body also lacks an accurate and constantly updated register of forest lease agreements.

The lack of legal protection of forest users, understanding of responsible management of forest areas and non-transparency of relations between forest users and forestry authorities have given rise to numerous conflicts and forest degradation.

As for the water associations, the main causes of conflicts are: "theft" of irrigation water; water losses due to the poor condition of irrigation channels; and violation of irrigation schedules of farm plots.

Despite the abundance of water resources, the Kyrgyz Republic constantly faces a shortage of water for irrigation and drinking needs. The situation worsens during the dry periods and with climate change, the water shortage will only get worse.

GENDER ASPECTS OF LAND ADMINISTRATION

The formal legal framework of the Kyrgyz Republic provides for the equal protection of the rights of men and women, including women's rights to property and land. However, traditional stereotypes still hold, that the man is the breadwinner and the woman is the keeper of the home.



Kyrgyzstan, however, is working to ensure gender equality. It has, for example, ratified international conventions and covenants on gender equality, including the Convention on the Elimination of Discrimination Against Women (CEDAW), which obliges Member-States to take appropriate measures to eliminate all forms of discrimination against women and to ensure the same rights of spouses with regard to property, acquisition, management, use, and disposal of property.

The Constitution of the KR also prohibits discrimination based on sex, grants equal rights to all and establishes that men and women have equal opportunities and freedoms;⁵ thus, it includes international agreements to which Kyrgyzstan is a party.

The Family Code of KR (FamC KR or No. 201 of 30 August 2003) regulates family relations between spouses and defines the family as the basic unit of society, recognizing only registered marriages and regulating family relations based on the principles of equality of spouses.

The FamC KR also provides that all property acquired during marriage is considered joint property and is managed jointly by the spouses. In the event of divorce, the joint property of the spouses shall be divided in equal parts, unless otherwise specified in the marriage contract. In addition, the legislation of the Kyrgyz Republic also determines equal rights to inheritance for sons and daughters.

The Law of the Kyrgyz Republic "On the Basics of State Guarantees for Ensuring Gender Equality" prohibits direct and indirect gender discrimination, including traditional ways of life and cultures that discriminate against women. It guarantees equal property rights to property, determines equal rights to use land and to protect these rights equally for men and women.

The Law of the Kyrgyz Republic "On State Guarantees of Equal Rights and Equal Opportunities for Men and Women" defines State guarantees for granting equal rights and opportunities to persons of different gender in political, social, economic, cultural and other spheres of human life.

Kyrgyzstan adopted national policy documents aimed at achieving gender equality, including the **NSSD 2013 to 2017**, which special section 4.5. "Enhancing the role of the family and gender development" specifies gender equality issues with an emphasis on strengthening the family institution through creating a basis for increasing the role of the family as the main unit of society, expanding the economic opportunities of the family, and improving the status of women and men.⁶

The **National Strategy for Achieving Gender Equality until 2020**⁷ is the first document that spells out the commitment to achieve gender equality in Kyrgyzstan.

⁵ Constitution of Kyrgyz Republic (Part 4 of Article 16)

⁶ Approved by Presidential Decree of 21 January 2013 No. 11

⁷ Approved by the Government Resolution dated 27 June 2012 No. 443

To implement this National Strategy for Gender Equality, the Government of the Kyrgyz Republic approved the National Action Plan for Achieving Gender Equality in the Kyrgyz Republic.⁸

These strategic documents are structured around four main priorities: (i) Women's economic empowerment; (ii) Creation of a functional education system; (iii) Eradication of gender discrimination and improvement of women's access to justice; and, (iv) Promotion of gender parity in decision-making and expansion of women's political participation.⁹

The enforcement of these laws is a priority because existing stereotypes, customs and traditions prevent many women from benefiting, for example, from land distribution even if they were allocated land shares.

According to a study conducted in 2012, almost 60 percent of rural women report that they do not own any land. It is noteworthy that more than 40 percent of rural men are also not owners of land, but men are much more likely to be the sole owner of land (22 percent of men surveyed) than women (three percent).¹⁰

According to the Social Institutions and Gender Index (SIGI), Kyrgyzstan has a score of 0.1598 and is classified as a country with an average level of discrimination against women and social institutions. It has a low category of discrimination in the family, a medium category in the restriction of civil liberties and physical integrity, and a high category in the bias of son preference and access to resources and assets. In fact, gender equality laws have not been fully implemented and there was a high level of imbalance at the regional level. In particular, the contribution of rural women to the country's economy remains unnoticed and ignored, and women themselves are often unable to defend their right to land, access to vital resources (clean water), social services and justice.

Among the main problems that prevent gender equality are illiteracy, the lack of awareness and capacity of women to protect their interests and the stubborn traditions and customs that discriminate against women.

Land shares obtained during the course of land reform, for example, are issued to the head of the family, usually the father or a husband. Then if a woman marries, gets divorced or widowed, she loses the right to land.

Often in rural areas, women usually cede/lose their land rights to their husbands (as head of household), fathers and brothers (in case of marriage), mothers-in-law, in case of divorce. Laws on equitable inheritance and division of land are also lacking.

Approved by the Government Resolution dated 27 June 2012 No. 443

⁹ The National Strategy of the Kyrgyz Republic on Achieving Gender Equality until 2020 (approved by the Government Resolution dated 27 June 2012 No. 443)

¹⁰ National Statistical Committee of the Kyrgyz Republic, Ministry of Health and ICF International. 2013. p. 274.



These factors combine to make women poor and economically dependent on their husbands or their male relatives.

Land is almost the main and only family asset in rural areas, so the problem of women's access to land urgently needs to be resolved.

Cultural and religious practices that have an impact on women's rights in relation to land issues are aggravating the situation. These practices often coexist with legislation and often discriminate against women in matters of property, land ownership and sometimes violate national legislation.

Moreover, the interpretation of official law is influenced by customary law or practices, to the detriment of women's rights.

LAND RESOURCES AND THE RURAL POPULATION

According to statistics, about 64.37 percent of the country's population lives in rural areas, where almost 40 percent of the working population are women. About a quarter of the population was classified as poor in 2016. And of these poor, 68 percent are in rural areas.

The rural population has advantages in terms of acquiring rights to agricultural land in the Kyrgyz Republic. The regulation on the procedure for sale and purchase of agricultural land plots (as amended by Resolution of the Government of the Kyrgyz Republic of 9 September 2005 No. 422) stipulates the rights of citizens of the Kyrgyz Republic when purchasing a land plot for agricultural purposes:

- agricultural land in State or private ownership may be sold only to citizens of the Kyrgyz Republic who have been living in rural areas for at least two years; and,
- when granting agricultural land ownership, citizens of the Kyrgyz Republic, who live in the territory of this aiyl kenesh (local council), as well as having land (irrigated arable land) less than 0.10 of a hectare per family member and live in highland and remote areas have preferential rights.

After land reform and the legal registration of land rights, the majority of rural residents were forced to unite into peasant or farm enterprises.

A peasant farm is defined as an independent economic entity, having the status of a legal entity or carrying out its activities without forming a legal entity, whose activity is mainly based on the personal work of members of one family, relatives and other persons jointly engaged in the production of agricultural products based on land and other property owned by members by right of ownership or received for use (rent).¹¹

¹¹ Law of the Kyrgyz Republic on Peasant Farm of 3 June 1999

During the years of market transformation, peasant (farmer) farms became an integral part of the agrarian economy of the Kyrgyz Republic. However, complex issues arose associated with productivity and the marketing of their products. They are also constrained by the acute shortage of credit and technical expertise, such that they are unable to purchase high-quality seeds and pedigree livestock that could increase their profit.

The development of agricultural cooperatives in the Kyrgyz Republic began during the period of reforming collective and State farms and conducting land and agrarian reforms. The aim was to form a market economy and pave the way for greater economic and productive independence of rural producers and the introduction of private ownership of land and other means of production.

According to the NSC of the Kyrgyz Republic, as of 1 January 2016, 67.3 percent of all arable land is owned by farms, 26.6 percent is used by collective and State farms and cooperatives, and five percent is with citizens for their personal use.

The main part (more than 66 percent) of pastures and hayfields is owned by the State, one third (33 percent) is in the use of State farms, *ayil okmotu*. Farms own only about one percent.

Agriculture, which went through a severe crisis following the collapse of the old system and the formation of new production relations, has managed to stabilize in recent years.

Farms and personal subsidiary farms (PSFs) produced significantly more main types of agricultural products compared to State and collective farms. However, small-scale production remains an acute problem hampering the development of the agrarian sector.

The small peasant and fragmented economic structure limits their output, thus highlighting the need for the strengthening of agricultural cooperatives to raise productivity.

The government did adopt the Concept of the Development of the Agricultural Cooperative System in the Kyrgyz Republic for 2017 to 2021, the main State project to support farms in the Kyrgyz Republic.

The problem lies in the implementation, as the State has practically no budget to provide real assistance to the villages.

The farmers have the option to increase production through intensification given the limited agricultural land. But this will require additional investments that could come through much-needed State support.

To summarize, peasant farms are characterized by low liquidity and low savings. This dire situation should be a signal for the government's economic planners as well as banking institutions to



develop appropriate lending products and systems for the agricultural support that needs much financial support.

TRANSPARENCY IN LAND MANAGEMENT

According to the Law of the Kyrgyz Republic "On Regulatory Legal Acts", all amendments to legislation should be based on the results of public hearings, including focus group discussions at the national and subnational levels.

Unfortunately, this process of having prior public discussions to provide valuable input to laws is not always followed, to the detriment of local communities that play a crucial role in the planning and management of the country's pasture, forest and water resources.

For example, according to the Law of the Kyrgyz Republic "On pastures," 12 all pastures are now under the management of pasture committees consisting of representatives of pasture users, deputies of the local *kenesh*, a representative of the authorized body on environment and forests and heads of the executive body of the local self-government.

A pasture committee is responsible for managing the activities of the pasture users association. It is also engaged in planning the use of limited pasture resources.

Joint Forest Management, meanwhile, involves the planning and implementation of measures to ensure the sustainable management of forests with the participation of local governments, the public and local communities.

Water management, on the other hand, has been transferred to the local communities through the water user associations (WUAs). Water users established these associations in accordance with the Law "On Water User Associations (Associations)" to operate and maintain irrigation systems.

The Water Code of the KR also provides for the gradual increase in the participation of water users, the public and other stakeholders in the planning, adoption and monitoring of the implementation of management decisions.

Given the desire to increase public participation in crucial discussions regarding Kyrgyzstan's future, there is a need for greater involvement of CSOs, local communities and farmers. For CSOs in particular, they are called on to help fulfill the country's international obligations.

¹² dated 26 January 2009 No. 30

These include commitments to the Convention on Biological Diversity, Convention to Combat Desertification, the Aarhus Convention, the Convention on Climate Change, as well as Agenda 21.

However, so far, the involvement of NGOs has been weak, particularly in talks on land degradation. There are only a handful of NGOs focused on combating the degradation of land. This low effectiveness of NGO activities in environmental protection is worsened by underdeveloped partnerships, preventing the spread of widespread information and best practices, among others, to citizens and institutions thus affecting the quality of land resources. Also, there are also questions on the effectiveness of implemented projects and the lack of coordination.

Nevertheless, there is reason to be encouraged, as there is the possibility of public participation in determining proper land use, including through NGOs and community organizations.

NGOs can, for example, be involved through the *jamaat* in informing farmers about the management and proper use of land resources in their territory. They can also help them access financial resources and markets for their products.

Indeed, despite challenges, the government is working toward greater public participation and transparency.

For instance, to improve public access and increase the level of transparency in decision-making regarding the management and use of natural resources, various platforms have been created in the Kyrgyz Republic:

- The National Council for Sustainable Development under the President of the Kyrgyz
 Republic was established on 24 November 2012 to unite the efforts of all branches of
 government, the private sector and civil society toward the sustainable development of
 Kyrgyzstan.
- The Coordination Council on Macroeconomics and Investment Policy under the Government of the Kyrgyz Republic. Its main objective is to achieve sustainable economic development of the Kyrgyz Republic through coordinated decisions on the development and implementation of macroeconomic and investment policies.
- The Coordinating Commission on Climate Change (CCoCC), chaired by the Vice Prime Minister of the Kyrgyz Republic¹³ that aims to coordinate and implement programs of ministries, departments, and organizations to fulfill the obligations of the Kyrgyz Republic under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

¹³ Resolution of the government of the Kyrgyz Republic No. 783 dated 21 November 2012



- The Council for Business Development and Investment under the Government of the Kyrgyz Republic.¹⁴ The Council is a consultative and advisory body that seeks to improve the business environment and the investment climate and implement the measures necessary to accelerate the country's socio-economic development.
- The National Water Council¹⁵ is a consultative and advisory body to the Government that ensures coordination of the activities of ministries, State committees, administrative departments, local State administrations and local governments on the use, management and protection of water resources.

There are also public platforms for full participation in the discussion of the most important decisions in the field of efficient use of natural resources of the Kyrgyz Republic:

- Coordinating Council of Stakeholders on Effective Use of Pasture Resources in Kyrgyzstan was established to:
 - push for the improved management and use of pastures of the Kyrgyz Republic through the implementation of joint projects;
 - exchange experiences and information on the implementation of measures in the field of sustainable pasture management; and,
 - make suggestions and recommendations to State agencies for the effective management and use of pastures.
- Regional Pasture Network (GIZ) an information platform that is designed to share experiences and expertise in pasture management in Central Asia, China and Mongolia. The Regional Pasture Network focuses on pasture management and includes aspects of forest management and wildlife management.
- Mountain Partnership "Sustainable Mountain Development"- a voluntary alliance of partnership efforts to improve the living standards of mountain communities and protect mountain ecosystems around the world. The Mountain Partnership was launched during the World Summit on Sustainable Development in 2002. Today, the global alliance includes 50 countries, 16 intergovernmental organizations and 112 different groups as well as representatives of civil society, NGOs, and the private sector.
- Coordinating Council of the National Dialogue on Water Policy in Kyrgyzstan in the area of integrated water resources management which considers:
 - key issues of the national water policy and take decisions on activities within the framework of the NAP;
 - coordinates activities of partners and projects on water issues in Kyrgyzstan; and,
 - institutional, economic, and financial aspects of water resources management and water management systems.
- Climate network of Kyrgyzstan voluntary, self-governing, non-profit association of legal organizations established to reduce the negative impact of climate change. Its main

¹⁴ Resolution of the GKR from 5 August 2010 No. 149

¹⁵ Resolution of the GKR from 3 February 2006 No. 64

purpose is to promote the development of national policies, technologies and practices, as well as public interest in mitigation and adaptation to climate change.

According to the current legislation, measures are taken in the Kyrgyz Republic to ensure transparency and all data on the implemented and approved programs of the Government of the Kyrgyz Republic are published on the official websites of the Government of the Kyrgyz Republic, Ministries, Departments, and Agencies.

All laws of the Kyrgyz Republic are published in the Republican newspaper "Erkin Too," and then go out in open access on the Internet, on the websites of ministries, departments and other interested parties. All laws and changes on them are stored in the information system "Toktom."

The Kyrgyz Republic collects information on land resources annually, compiles reports on the distribution of land by type, and publishes reports of the NSC KR in the form of annual and quarterly data. A census is conducted once every 10 years according to the presidential decree. Data on land ownership by type and form are also available and stored in State Register Service and the Project Institute for Land Management.

Unfortunately, the majority of the citizens, especially those in the rural areas, are not able to make full use of the official data and legal information that they can use to make informed decisions. This can be attributed to the lack of public discussions and widespread dissemination of the relevant information that may impact the average rural resident.

GOVERNMENT PROGRAMS TO IMPROVE ACCESS TO LAND RESOURCES

The Government of the Kyrgyz Republic regularly monitors existing legislation and State programs to check if there is a need to improve the access of the population, in particular its vulnerable sectors, to available land, forest, and water resources.

Currently, the main State strategies for the improved management and use of natural resources of the Kyrgyz Republic include the following:

- Concept of development of the forest industry of the Kyrgyz Republic for the period up to 2040 (Draft) (Approved by the Decree of the Jogorku Kenesh of the Kyrgyz Republic of 25 August 2017 No. 1836-VI)
- Regulation "On the Procedure for Leasing and Use of Forest Land Plots"
- The procedure for the use and disposal of the State Forest Fund (Approved by the Decree of the Government of the Kyrgyz Republic No. 19482 of 109.0410.201807)
- Regulation on Community Management of Forestry in the Kyrgyz Republic (Approved by the RFPP No. 377 dated 27 July 2001)



- Concept of development of the forest industry of the Kyrgyz Republic of 14 April 2004 No.
 256
- Program of the Government of the Kyrgyz Republic on the transition to sustainable development for 2013 to 2017 - i.e. No. 3694-V, 25 August 2017
- The program of the Government of the Kyrgyz Republic "Zhani Doorgo-kyrk Kadam" (40 steps to new era) for 2018 to 2022. dated 25 August 2017 No. 1836-VI

As for the level of corruption in the country, the Kyrgyz Republic ranked 135th out of 180 countries on the Corruption Perception Index in 2017.¹⁶ This indicates "strong corruption" that citizens have to bear with daily.

This is despite the fact that the Kyrgyz Republic has a law "On Combating Corruption," as well as strategic programs to reduce the level of corruption, which has spread to the transfer of land from one category to another. Corruption can also be observed in the use of land in the mining industry and in the extraction of minerals.

This widespread corruption that has affected land issues gave rise to a large number of conflicts, including conflicts involving human rights defenders who are fighting for better citizen access to land and related areas.

RESOLVING LAND CONFLICTS AND PROTECTING HUMAN RIGHTS DEFENDERS

According to an informal survey of cases involving land laws, the most common subjects of court proceedings are:

- recognition of ownership of land;
- challenge of local self-government bodies' actions on the provision and withdrawal of a land plot;
- disputes regarding land plots adjacent to the house;
- payment of land tax;
- challenge of actions (inaction) of government officials;
- procedure for granting lands of specially protected natural territories;
- mortgage of land;
- requirements to remove obstacles to the use of the land plot and reclamation of land from illegal possession; and,
- recognition of invalid contracts and the application of the consequences of their invalidity, among others.

 $^{^{16}}$ According to the international organization Transparency International – www.transparency.org (новости knews.kg)

Causing the most number of conflicts and disputes are:

- changes to the boundaries of land shares;
- unauthorized seizure of land; and,
- conflict between the "obligatory providing every citizen of the Kyrgyz Republic once throughout the territory of the land plot for the construction of a dwelling house" and "preserving agricultural lands for solving the issue of ensuring food security."

In the Kyrgyz Republic, disputes/conflicts can be resolved through:

- Appeal to a higher authority in accordance with the Law of the Kyrgyz Republic "On the Procedure for Consideration of Citizens' Appeals," the Law of the Kyrgyz Republic "On the Basis of Administrative Activity of Administrative Procedures."
- Appeal to the administrative commission of local self-government bodies that
 deal with cases of administrative offenses under the Administrative Code. These are
 administrative offenses infringing on the protection of citizens' health, administrative
 offenses in agriculture, administrative offenses infringing on the rules of trade, causing
 harm (damage) to the consumer, administrative offenses infringing on urban planning and
 architectural activities, administrative offenses in the housing and utilities sector.
- Appeal to the prosecution authorities is one of the extrajudicial mechanisms to secure justice in matters relating to the right to own and use land resources, where according to the Law of the Kyrgyz Republic "On the Prosecutor's Office of the Kyrgyz Republic." 17

To ensure the rule of law and protection of the rights and freedoms of citizens, the prosecutor's office oversees compliance with the laws of the local self-government.

• Appeal to the Ombudsman is one of the mechanisms for the protection of violated land rights or, as it is also called, the parliamentary ombudsman for human rights. In the Kyrgyz Republic, he is represented as an ombudsman (akyikatchy) of the Kyrgyz Republic, whose activities are regulated by the Constitution of the Kyrgyz Republic and the Law of the Kyrgyz Republic "On the Ombudsman of the Kyrgyz Republic." 18

Among others, the Ombudsman ensures protection of human and civil rights and freedoms proclaimed by the Constitution and laws of the Kyrgyz Republic, as well as international treaties and agreements ratified by the Kyrgyz Republic.

¹⁷ from 17 July 2009 No. 224

¹⁸ from 31 July 2002 No. 136



In this regard, in exercising his powers, the Ombudsman (akyikatchy) does not depend on any State body or official. It is prohibited to interfere in his activities or influence him in any form.

Thus, the Kyrgyz Republic has an Ombudsman, as well as independent human rights institutions: various human rights movements, NGOs, the media, trade union movements, etc., but the State does not ensure the security of human rights institutions during court proceedings. After analyzing the current legislation and the current situation with human rights defenders in the Kyrgyz Republic, it can be concluded that there is not one among the national institutions that would demonstrate willingness or ability to take effective actions in this area. The newly-created State institutions also proved incapable of fully complying with their purpose: the Ombudsman is not sufficiently involved in high-level discussions on human rights (such as the EU-Kyrgyzstan Human Rights Dialogues), and national preventive mechanisms are very weak, in particular lack of adequate funding required for inspection control and awareness-raising activities among the population.

The administrative procedure for the protection of civil rights provides for the settlement of disputes, the restoration of rights, the suppression of unlawful actions of legal entities through instructions, resolutions, acts of authorized bodies (administrative bodies, local self-government bodies, ministries and departments), adopted in accordance with the current legislation of the Kyrgyz Republic.

The courts of general jurisdiction consider civil (including land), criminal cases. Any interested person has the right, in the manner prescribed by law, to apply to the court for the protection of his violated or disputed rights, freedoms or interests protected by law. The final arbiter is the Supreme Court of the Kyrgyz Republic, its decision is final and not subject to appeal.

Alternative dispute resolution in the Kyrgyz Republic is possible through the courts of *Aksakals* (elders) and arbitration courts.

Courts of Aksakals (elders) are created in villages, settlements, and cities from among the elders and other citizens who have respect and authority. By mutual agreement between parties in conflict, the courts of elders render decisions on property and even family disputes. Their decisions may be appealed.

Arbitration court. Disputes may be referred to arbitral tribunals for resolution first before going to a regular court. Their activities are regulated by the Law of the Kyrgyz Republic "On the Arbitration Court of the Kyrgyz Republic." ¹⁹

¹⁹ from 30 July 2002 No 135

There are no national statistics on land violations, but indicating the prevalence of land conflicts is the number of cases being processed by the Ombudsman. Data show that in 2017, the office received 231 complaints concerning land issues, accounting for about seven percent of the total number of citizens' complaints.²⁰

Kyrgyzstan protects the rights of all its citizens, including human rights defenders working in the field of land relations, including their right to freedom of opinion and expression,

MEDIATION

Disputes can be resolved with the help of mediation, which can be carried out before going to court, and during court proceedings, arbitration proceedings and enforcement proceedings. Mediation is aimed at resolving disputes, helping to protect the rights, freedoms and legitimate interests of citizens, developing partnership business relations and forming the ethics of business turnover, harmonizing social relations. Mediation cannot be applied to administrative cases (actions/inactions, invalidation of administrative acts). In most cases, according to experts, access to justice is limited by the presence of such problems as the lack of rules for resolving disputes over land ownership and use through mediation.

peaceful assemblies and associations set out in the UN Declaration on Human Rights Defenders and the International Covenant on Civil and Political Rights, which Kyrgyzstan ratified in 1994.

In 2014, the Law of the Kyrgyz Republic "On Public Councils of State Authorities" was adopted. It provides for the creation of supervisory and advisory bodies - formed on a voluntary basis from representatives of civil society - to cooperate and promote community initiatives. Human rights defenders are included.

As for the judicial system in the Kyrgyz Republic, there has been some success in reforming it and it is approaching the standards of modern democracies.

The scope of judicial competence has significantly expanded and the system has become more accessible to citizens. The legal basis for the independence of judges was secured, the financing of courts was improved, and the legal and organizational bases for the functioning of the judiciary were created.

All these indicators indicate the development of the judicial system in the Kyrgyz Republic, but this did not alter the overall negative view of the majority of the population on the judicial system.

Opinion polls continue to state distrust of the courts by a significant proportion of the population. Citizens, public and political figures, and representatives of non-governmental organizations continue to believe that the court in the Kyrgyz Republic is ineffective, unfair, often politically motivated, or in general, corrupt.

²⁰ Publication "Protection of property rights in the Kyrgyz Republic. Review, analysis, recommendations (International Business Council for GTZ Property Rights Protection), 2017.



It should be noted that the implementation of judicial reform has given rise to many new problems, which in the public consciousness also causes a negative attitude toward the judicial system.

First of all, it concerns contentious issues of property rights of citizens and legal entities. Courts often become an "instrument" for seizure of property of citizens and legal entities. In addition, there are questions over the level of professional competence of judges and law enforcement officials.

These problems can be solved partly by creating an effective mechanism for judicial protection of human rights and freedoms, and the legal interests of entities.

It is vitally important to gain the trust of citizens, legal entities, and international organizations in the courts as an institution of the State that firmly protects the rights, freedoms, and legitimate interests of a person, guaranteeing legality and legal order in society.

Therefore, it is necessary for Kyrgyzstan to continue the implementation of judicial reform.

CONCLUSIONS AND RECOMMENDATIONS

This study on the current environment affecting access to land and the security of land ownership for the rural population of the Kyrgyz Republic points to needed policy actions to ensure and protect the rights of citizens to the equitable distribution and comprehensive use of available natural resources, including land, forests, and water sources.

For example, there is a need to amend and supplement existing NLAs to improve access of vulnerable people to land resources, increase gender balance in the allocation of resources and increase transparency in decision making.

There is also a clear need to continue land and agrarian reforms in the country in order to effectively solve the accumulated problems in the sector, improve public access to relevant information, and reduce corruption in land relations.

Effective measures are needed to improve transparency in land management, including through the development and implementation of modern State programs to improve access to land resources, support rural farming, and resolve land conflicts.

To resolve **conflicts over land resources**, it is necessary to determine at the legislative level a reasonable fee for land management. There should also be an official measurement of plots to provide an effective means for resolving border conflicts.

On the problem of unauthorized seizure of land for individual housing construction, the government needs to adopt an effective and fair regulation that will govern expropriation. The government will also have to strike a balance between the need to provide housing or farmland and the need to preserve agricultural land to ensure national food security.

On conflicts over water use, it is necessary to strengthen sanctions for unfair water use and introduce effective and transparent mechanisms for water distribution. It is also important to provide measures to strengthen the work of commissions for dispute resolution in the WUAs.

On conflicts over the ownership and use of forest resources, it is necessary to monitor and map conflicts on forest lands; to put into practice the development of integrated management plans and the use of local forest resources; and increase the capacity of forestry staff in law enforcement and conflict management.

A particularly disheartening problem involves land grabbing, which is acute in Kyrgyzstan.

In our opinion, it is necessary to develop and implement a national policy and regulatory framework for the expropriation of land. In addition, it is necessary to build the capacity of policy makers, legislators, land administration agencies, and land users for all to clearly understand the gaps and discrepancies in land expropriation legislation.

In planning and conducting expropriation, transparency and full participation of stakeholders should be ensured, and the views of all potentially affected persons should be sufficiently informed and sought.

Public interest has to be considered carefully, especially when territories proposed for expropriation are of particular cultural, religious or ecological importance, or where the land, fish and forest resources considered are especially important as means of subsistence for the poor or vulnerable populations.

Land users should be paid equivalent and fair compensation, at least enough to compensate for potential losses that will result from the redemption or takeover of their land.

In addition, the issue of **fair trial in resolving land conflicts and disputes** remains very important. There should be reasonable restrictions on the government's power to forcibly seize (buy) land, thereby increasing people's confidence in the justice system, increasing people's ability to protect their rights to land and increasing the perception of security of tenure.

All this is possible with prior consultation, participatory planning, and accessible mechanisms for appeals.



Separately, in support of **gender-equal inheritance rights**, it is proposed to provide a policy and legal framework that clearly recognizes the inheritance rights of widows and to develop effective enforcement and monitoring mechanisms.

It is also necessary that the experts who know how land law intersects with family law organize public sessions to raise the awareness of relevant laws so that the people, particularly women, know the laws that can protect them.

There is also a need to train authorities on inheritance laws, promote community discussion on marriage and inheritance, and seek solutions to the tensions between traditional practices and State laws.

There is also a need to develop the capacity of organizations that support women's rights and to recognize their role in raising awareness and strategic interventions to support widows.

All these measures will enhance rights and opportunities through better access to justice, dispute resolution mechanisms, and legal support to enable widows to claim their rights.

An important factor is the need to inform young people about the importance of legal marriage and to ensure that all children are born in marriage; encourage the writing of wills and indicate both spouses as co-tenants in land lease agreements.

Also, in the legislative level, it is necessary to introduce the compulsory participation of women through quotas in management bodies (municipalities, local councils, pasture committees, WUAs, Councils of Joint Forest Management, and the Commission on the Allocation of Land, Forest Grazing Areas) and to strengthen the capacity of decision-makers in the field of gender equality in the possession, use and disposal of land, forest and water resources.

To address shortcomings and national legislation in the field of **land use administration and registration of rights to real estate**, there is a need to pass legislation on elimination of discrimination against women in divorce and inheritance of land share, as well as the mechanism for registration of life rent for inherited land share with relevant amendments to the law of the Kyrgyz Republic on the management of agricultural land.

For the development of the land market, there is a need for a regulatory framework that will govern the right of the land user to dispose of his/her own land without restrictions: freely sell and buy, give and bequeath, take loans with the land as collatoral, and create favorable conditions for investment in the agro-industrial complex.

In parallel, there should be increased transparency and access to information on land markets, requirements for tenders, auctions, and dissemination of information about them, as well as informal land transactions.

To help mitigate corruption, it is necessary to develop a clear mechanism for the economic valuation of land (especially for agricultural purposes); establish a means to prevent the reduction of agricultural land, especially arable land; and put in place guidelines to govern the withdrawal of unused agricultural land.

Also important is the need to develop mechanisms for the purchase and sale of agricultural land through competitive bidding, organized by a licensed trading platform, under State and public control. At the national level, the development and implementation of a program document on the development and State support of the land market will help, taking into account the responsible institutions for management, forecasting, monitoring, and reporting on the land market.

On the **use of irrigation water and land of the water fund**, it is recommended that the regulatory framework be amended for improved protection of rights and proper registration of land of the water fund and infrastructure at the WUA level.

To improve the **situation with the lease rights of forest areas of the SFF**, it is necessary to regularly raise the awareness of forest users, local communities, local self-government bodies, and other interested parties about the correct format of drawing up contracts, about forest use possibilities, and ongoing tenders for leasable land.

An important point is the introduction of appropriate amendments to the national forest policy and legal framework for regulating forest management in order to move from individual and group forms of contract forest management to a State-community (municipal) partnership to promote genuine community forest management.

To improve the management and use of pastures, it is necessary to have a formal inventory of pastureland to determine the extent and quality of pasture capacity. There should also be proper mapping to extract the right technical information for balanced pasture use at the community level. The right kind of information will also enable the communities and authorities implement ownership and rights to use pasture resources more effectively.

This, in turn, will help determine the potential of livestock farming more accurately to ensure food security of the Kyrgyz Republic.

All this urgently requires the development of a new State program for the development of pasture livestock in the country to support the development of sustainable pasture management as the basis for the livelihoods of local communities. ■



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ACRONYMS USED

ANGOC Asian NGO Coalition for Agrarian Reform and Rural Development

CCKR Civil Code of the Kyrgyz Republic

CEDAW Convention on the Elimination of all Forms of Discrimination Against Women

CIS Commonwealth of Independent States (former Soviet Union countries)

CLAR Center for Land and Agrarian Reform

CPC Civil Procedure Code
CSO civil society organization
DWM District Water Management

Fam C KR Family Code of the Kyrgyz Republic

FLR Fund on Land Distribution
GDP Gross Domestic Product

GKR Government of the Kyrgyz Republic

ILC International Land Coalition

JK KR Jogorku Kenesh (Main Parliament) of the Kyrgyz Republic

KR Kyrgyz Republic

LC KR Land Code of the Kyrgyz Republic

LGB local government bodies

MAFI & LR Ministry of Agriculture, Food Industry and Land Reclamation of the

Kyrgyz Republic

NLA Normative Legal Acts

NSC KR National Strategy for Gender Equality

NSO National Statistical Offices NPO non-for-profit organization

NSSD National Strategy for Sustainable Development PACE Parliamentary Assembly of the Council of Europe

SAEPF State Agency for Environmental Protection and Forestry

SALF State Agricultural Land Fund Sustainable Development Goals **SDGs**

SFF State Forest Fund

SIGI Social Institution and Gender Index

SLF Special Land Fund

SPNA Specially Protected Natural Areas

SRS State Registration Service

TC KR Tax Code of the Kyrgyz Republic

UN United Nations

GLOSSARY OF TERMS

Aiyl Aymaks Rural District

Aiyl Kenesh Local Council/Parliament

Aiyl Okmotu Executive Local Self-Government Body

Akyikatchy Ombudsmen Ayil Okrug Rural District Court of Aksakals Court of elders Jamaat Communities

The Supreme Council is the unicameral Parliament of the Kyrgyz Republic Jogorku Kenesh

Kyrgyzgiprozem State Design Institute for Land Management

Oblast Region

Som (KGS) Kyrgyzstan national currency

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