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Issue No. 38
December 2020

Zarema Akhmadiyeva
Thomas Herzfeld

How to align formal land rights with farmers' perceptions in Central Asia?

Kazakhstan and Uzbekistan still undergo the process of establishing a land legislative system, implementing agricultural reforms that aim at increasing land productivity. The effectiveness of these reforms is often dependent on the level of law enforcement that varies in accordance with whether political elites in these countries have an interest in enacting certain reforms. As a result, legal land rights and farmers' perceptions of land rights may contradict each other and may create an uncertain and insecure environment for the farmers. Based on the findings of a farm-level survey conducted in 2019 in Kazakhstan and Uzbekistan, this policy brief claims that legal rights and farmers' actual farming practices do not coincide in many cases. Deviations appear in both directions: 1) farmers engage in activities which they are not allowed to be, and 2) farmers do not use all the opportunities provided by the national land legislation. These deviations indicate the ineffectiveness not only of land policies but of administrative monitoring and law enforcement mechanisms, too. Policy makers are recommended reconsidering the legal restrictions of land use in how far they are necessary to reach policy objectives. Furthermore, governments should reform the judicial system in particular enabling farmers and land users to appeal to courts for dispute resolutions in an effective, transparent, and fair manner. Finally, international donors should support future research on land rights and tenure security to improve policy design.

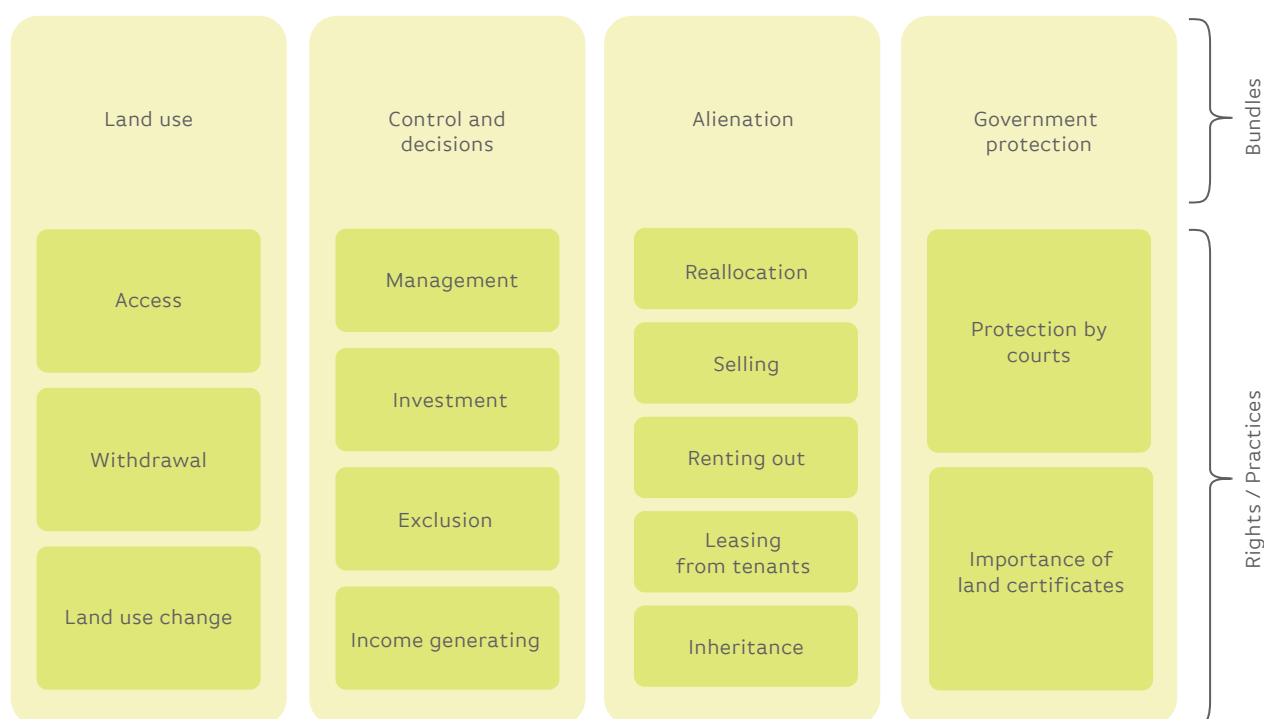
Issues in using land rights

The governments of Kazakhstan and Uzbekistan have undertaken a series of land reforms in the pursuit of transition to a market-based economy. However, just as in other former Soviet Union countries, certain laws in Kazakhstan and Uzbekistan are only enforced when they are in the personal interest of state authorities (Hosking, 2005). The different levels of law enforcement and contradictory land legislative documents give rise to the anecdotal evidence of farmers' noncompliance with what was prescribed by the law. Although Uzbekistan granted land use rights to farmers with the national land code adopted in 1998, a big share of agricultural land remained under government-mandated cotton and grain production (which has been

abolished in March 2020). Annual mandatory quotas for cotton and grain production contradicted farmers' rights to make decisions about land management, selection of input suppliers, and marketing channels. In case of failure to fulfill government orders, farmers might lose their land completely or might be subject to administrative liability and, even, to criminal prosecution. Strong law enforcement in Uzbekistan is prompted by a highly centralized agricultural sector that makes considerable profits for state and small elites.

Kazakhstan, by contrast, has an inadequate institutional capacity to implement land reforms and therefore the rule of law remains weak. Local executives together with judicial authorities misuse legislation designed for rent-seeking behaviours. The enforcement of land law, thus, often depends

Figure 1: Bundles of land rights and actual practices



on the personal connections of local authorities with land users. Such unpredictable behaviours of local authorities might undermine trust in formal institutions and deteriorate the investment climate. In order to establish an enabling institutional environment in the agricultural sector, farmers' perception on the enforcement of legal rules should match their written content.

Measuring land rights and actual claims

All actions that farmers are legally allowed to undertake with agricultural land can be grouped into several bundles of property rights (Schlager and Ostrom, 1992). Every bundle gives specific privileges such as (i) power to use and manage land; (ii) power to transfer and alienate it, and (iii) power to take income or rent from land use. Yet farmers' land use decisions are determined by land tenure settings that include not only legally defined land rights but also actual or real land-use practices consisting of commonly accepted rules and unwritten norms. These actual practices may match or mismatch with land rights as laid down in laws depending upon every farmer individually. For farmers who seek to maximize expected returns to land, the situation when a particular farming practice matches with the corresponding land right, bears fewer risks because such behaviour is compliant with the law. In case of a partial match or absence of matching, the impact for farmers would differ depending on whether the mismatch is in favor of land rights or actual practices. In a situation when land rights are more prominent than

actual practices, farmers might have low awareness about their legal privileges or be restricted from the exploitation of the full potential of tenure rights for various reasons. When actual practices dominate land rights, farmers violate limitations and prohibitions in land law disregarding the authority of regulatory institutions.

Adopting an approach introduced by Klümper et al. (2018), we analyse to what extent farmers in Kazakhstan and Uzbekistan use their land rights and how effective are current tenure settings. In addition to the 'traditional' bundles of land rights (land use rights, control and decision-making rights, and alienation rights) we added the bundle of government protection that consists of the protection of land rights by courts and the legal validity of land certificates (Figure 1). The rationale behind this adjustment is that we can assess whether farmers can claim their tenure rights in courts and whether land certificates have the power to protect land rights. The right to lease land in the alienation bundle is split into two, the right to rent out and the right to rent from farmers who lease state land, or so-called land tenants. Thus, we can reveal whether farmers rent the additional land from land tenants that are forbidden to rent out.

Table 1 presents two ordinal scales to evaluate land rights and actual practices. We analysed Kazakh and Uzbek national land codes to assess land rights on a 3-point ascending scale where 1 stands for the absence of right, 3 – right with limitations, and 5 – full right. Data on the corresponding actual practices was collected during a survey among farmers using a 5-point ascending scale. Questions to assess farmers' actual practices were

Table 1: The evaluation scale of legal land rights and actual farming practices

Scale	1	2	3	4	5
Legal right	No Right	–	Limited right	–	Full right
Actual Practice	Never hold	Rarely hold	Occasionally hold	Frequently hold	Always hold

formulated as: "To what extent are you free to access land, withdraw agricultural production from land, etc.?" After evaluating land rights and actual practices, we calculated their differences that ranged from -4 to 4. The sign of difference shows whether the land right is underused or overused.

How controversial are land rights with actual claims in Kazakhstan and Uzbekistan?

The farm survey was conducted in March and April 2019 in Turkistan province (southern Kazakhstan) and Samarkand province (eastern Uzbekistan) and financed by Volkswagen Foundation, Federal Ministry of Education and Research (BMBF), and IAMO. Three districts in southern Kazakhstan and three districts in eastern Uzbekistan were chosen to select respondents. The final sample consisted of 460 Uzbek farmers and 495 Kazakh farmers. Respondents were grouped by the set of land rights defined by law. The first group consists of Kazakh farmers who own agricultural land as private property (i.e., landowners), the second group corresponds to Kazakh farmers who lease state land, and the third group covers Uzbek farmers who also lease state land.

Calculated discrepancies between land rights and their actual usage were classified into three groups, depending on their directions: negative, positive, and no difference. Figure 2 shows the shares of discrepancies within each group of farmers. The assessments of legal land rights are presented as follows: FR – full right, LR – limited right, NR – no right. Negative discrepancies indicate violations (or potential violations) of legal land-use restrictions by farmers. Positive discrepancies show the under-use of prescribed land rights by farmers. The full use of rights produces a no-discrepancy situation.

Our assessment shows that the Kazakh land law is more liberal compared to the Uzbek case. It grants almost all rights to Kazakh landowners. The only exceptions relate to partly restricted land use change and leasing from land tenants which is forbidden. Kazakh and Uzbek land tenants face a number of restrictions in the bundle of alienation rights, i.e. they are not allowed to sell, rent out, or lease land from land tenants. In addition, Uzbek farmers have limitations in the bundle of decision-making rights, as they are obliged to obtain permission from authorities before making changes in land management and investment.

When looking at farmers' practices with respect to the rights they should enjoy fully, it is clear that, in reality, not all farmers use full land rights at maximum. In cases they legally enjoy full rights, fewer Kazakh landowners report that they don't use the respective right than land tenants in Kazakhstan. Uzbek farmers underuse their rights, in cases they enjoy full rights formally, even more than Kazakh land tenants. The right to protection by courts produces a similar pattern among Kazakh and Uzbek farmers, the vast majority of which complain about insufficient protection and low trust in state authorities. About half of Kazakh land tenants perceive no or limited right to inherit the land. Big shares of positive discrepancies in the right to withdrawal and income-generating among Uzbek farmers indicate that farmers cannot use these legally allowed privileges. The reason for this is that most of the Uzbek respondents are cotton and grain producers which are exposed to strict limitations and frequent government interventions in land use.

Almost all formally limited and completely restricted land rights are being violated by farmers in all three groups. Big shares of negative discrepancies among Kazakh farmers indicate that they do not take seriously legal restrictions, confirming that law enforcement in the surveyed region is weak. Widespread violations of restrictions in the bundle of alienation rights by Kazakh land tenants, on the other hand, indicate that farmers try to find a way to effective allocation of land resources that is limited by law. Uzbek farmers are more compliant with the law than Kazakh farmers, despite having more restricted land rights. Most of them uphold prohibitions in the bundle of alienation rights. Yet the big share of negative discrepancies for land investment shows that the limitation is being often violated.

Figure 2: Shares of discrepancies between legal rights and actual practices



Recommendations

The underuse and overuse of land rights may reduce the efficiency of land reforms and policies by creating a threat to a secure institutional environment. Farmers violating legal restrictions face the risk of administrative punishment or land eviction and, hence, tend to cut land investment; those who underuse the legal privileges cannot maintain effective land productivity. What, then, should be done to align formal land rights with farmers' real usage of these rights in Kazakhstan and Uzbekistan? This policy brief recommends several crucial measures that should be considered by relevant national authorities and consulting organizations:

- Governments should strengthen the monitoring of law enforcement on the local level to verify whether rule of law is respected;
- Governments should reconsider legal restrictions of land use whether they are necessary to reach policy objectives;
- Governments should reform the judicial system giving the independence to courts to enhance their effectiveness, transparency, and fairness in dispute resolutions;
- The paradigm of administrative culture should be shifted from the concept of rent-seeking to the respect for the rule of law;
- International donors should support future research on land rights and tenure security to improve policy design.

Further Information

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Contact

Zarema Akhmadiyeva
akhmadiyeva@iamo.de
Tel.: +49 345 2928-321

Prof. Dr. Thomas Herzfeld
herzfeld@iamo.de
Tel.: +49 345 2928-100

Leibniz Institute of
Agricultural Development
in Transition Economies
(IAMO)
Theodor-Lieser-Str. 2
06120 Halle (Saale)
Germany
www.iamo.de/en

We would like to thank our colleagues Olga Polonska and Nozilakhon Mukhamedova for their editing support.

Printed edition: ISSN 2363-5800
ISBN 978-3-95992-097-1
Online edition: ISSN 2363-5797
ISBN 978-3-95992-098-8

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