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**Moving from ‘land titling’ to ‘land governance’:  
The case of the Kyrgyz Republic**

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**Abstract**

There is a growing recognition that well-defined and enforceable property rights to land are important for a range of economic and social functions. To assess land governance at the country level, the World Bank has elaborated a diagnostic tool based on empirical indicators that aims to identify areas for improvement and that could be used to monitor progress in the land sector. This tool, the Land Governance Assessment Framework (LGAF), was first tested in Peru, Ethiopia, Tanzania, Indonesia and in the Kyrgyz Republic, and is currently being implemented in a number of other countries worldwide. The present paper summarizes the main results obtained from the Kyrgyz pilot to illustrate the case of land governance issues that arise in a post-transition economy formerly influenced by Soviet-style land administration and which made the transition towards private ownership of land over a decade ago. Policy recommendations are derived based on the assessment.

**Keywords: Indicators, land policy, land administration, transition economy**

**JEL codes: P21, Q15, R52**

**Abbreviations**

CAADP	The Comprehensive Africa Agriculture Development Programme
CPIA	Country Policy and Institutional Assessment
FAO	Food and Agriculture Organisation
LEI	Land Equity International, Australia
LRF	Land Redistribution Fund
RDF	Rural Development Fund, Kyrgyz Republic
UN	United Nations

## 1. INTRODUCTION: THE IMPORTANCE OF LAND GOVERNANCE

Even though the Coasian world of neoclassical economics assumes well-defined property rights exist and can be enforced at no costs, it is increasingly recognized that, in practice, establishment and maintenance of institutions to define such rights and make information on them available freely is an important public sector role. This has prompted attention in governance, broadly defined as ‘the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services’ (World Bank 2007). Governance in the sense of the quality of institutional arrangements, adherence to the rule of law, and focus on accountability has long been shown to affect economic outcomes at the firm level (Caprio *et al.* 2007, Chhaochharia and Laeven 2009). In the public sector, spending in poorly governed countries has been shown to have little, if any, positive impact (Rajkumar and Swaroop 2008). In countries with weak governance and few political checks and balances, efficiency of public spending is significantly reduced (Keefer and Knack 2007). Consequently, if maximizing the effectiveness of outside resources on poverty and economic impact should, in addition to levels of poverty, focus resources on well governed countries or sectors (Collier and Dollar 2002, Collier and Dollar 2004). A commitment for focusing assistance on countries or sectors with good governance is one key trend that underlies the movement towards sector-wide support and greater responsibility of governments (Hout 2007).

Deficiencies in land policy negatively impinge on the effectiveness of broader development initiatives, e.g. private sector development, urban expansion, land acquisition for infrastructure and industrial projects, and agricultural development. The importance of land in this sense has been recognized by countries themselves who have implemented far-reaching programs to improve land tenure, by multi-lateral bodies,<sup>1</sup> and by donors (guidelines). New sources of demand add to this: this traditional demand is reinforced by recent developments. Global programs to provide resources for carbon will only be implementable if critical land tenure issues are clarified. It appears that at present many of the candidate countries are not ready yet. Similarly, increased demand for land due to commodity price increases will require better land policies.

Despite the agreements, however, substantive debate of land policy (beyond declaring its importance) is not routinely included in relevant documents (e.g. country strategies) and *fora* (e.g. CAADP roundtables) for making policy decisions. Especially with a move away from project lending towards country-owned programs and output-based aid, there is considerable demand for a diagnostic tool at the country level that could help identify policy constraints and draw on international experience for examples of how specific issues were resolved in other contexts. It translates into considerable

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<sup>1</sup> Recently, the importance of land policy for economic development from the country level has been highlighted by African Heads of State who endorsed, at their July 2009 summit, a framework and guidelines for land policy, with an explicit mandate to effectively monitor and regularly report on progress with implementation. While it calls for establishment of a fund to support implementation, there is little, if any, sign of this materializing (and major intellectual input will be needed). The challenge is to provide technical input that will help to translate these principles into practice and to make the transition from problem identification to actionable policy and institutional reforms, and to generate resources for implementing them.

demand for a diagnostic tool that can easily be linked up with a land indicator that can provide specific operational guidance to policy at local level.

The importance of having indicators for this is highlighted by the fact that, even in terms of indicators such as corruption, the land sector has long been known to be prone to mis-governance and there are many countries where land administration competes with law enforcement (police and the courts) for the doubtful honour or being the sector perceived to be most corrupt. Management, acquisition, and disposal of public lands are most notorious for irregularities and outright fraud. For example, in Kenya “land grabbing” by public officials reached systemic proportions during 1980-2005 and was identified as “one of the most pronounced manifestations of corruption and moral decadence in our society.” (Government of Kenya 2004), p. 192. For private land, bad governance manifests itself in the difficulty of accessing land administration institutions to obtain land ownership information or transfer property. Even petty corruption in the form of ‘speed money’ can add up to be large sums; in India bribes paid annually by users of land administration services are estimated at \$700 million (Transparency International India 2005), three-quarters of India’s total public spending on science, technology, and environment. At least of equal importance is the fact that such irregularities will negatively affect perceived integrity and (because of high transaction cost) completeness of land registries, thereby undermining the very essence of land administration systems. The negative impacts from bad land governance will be multiplied in an environment where the challenges of providing land for rapid urban expansion; increasing agricultural production to meet increased food and non-food demands especially in the context of recent trends towards large scale land acquisition; and ensuring that environmental services to mitigate and where necessary adapt to the effects of climate change are provided reliably.<sup>2</sup>

This paper highlights some of the challenges encountered in formulating a land governance indicator and then uses the case of the Kyrgyz Republic to discuss the results of doing so in a specific country context.

## **2. CHALLENGES ASSOCIATED WITH DEVELOPING LAND GOVERNANCE INDICATORS**

The governance literature has developed numerous indicators to define ‘good governance’.<sup>3</sup> A useful way to categorize these is to distinguish into rule-based from outcome-based ones (Kaufmann and Kraay 2008). *Rule-based* indicators assess whether institutions generally presumed to be associated with good governance such as anti-corruption commissions are in place. As long as it is possible to identify relevant measures that are clearly linked to positive outcomes and easily observed by outsiders, such reference to discrete measures makes assessment of governance status and progress easy. However, a drawback is that many indicators may be needed to approximate the complexity of real world situations. Moreover, having rules on paper

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<sup>2</sup> This is one of the reasons for FAO has been tasked with developing a set of voluntary guidelines for land tenure to help member states in this area (FAO 2009), a task that is approached in collaboration with UN agencies responsible for urban land.

<sup>3</sup> For lists of indicators refer to (Langbein and Knack 2010). While this has its own challenges, i.e. not consistent with policy objectives, focus on areas that are easily measurable sectors, it is certainly a trend that is there to stay.

often says little about the extent and quality of their implementation although it is clearly the latter that counts and is desired.<sup>4</sup> *Outcome-based* indicators, by contrast, focus on either broad citizen perceptions, the extent to which (potential) could access public services in line with their needs, or expert opinion about the *de facto* implementation of rules. While they provide a more differentiated picture, they are normally more costly to collect and less actionable from a policy perspective. In practice, output- and rule-based indicators can complement each other.<sup>5</sup> Experience also suggests that, while aggregate country-level governance indicators can have a useful function, specific reforms are in many cases contingent on sector-specific indicators, an area on which progress has thus far been much more limited (Johnson 2008).<sup>6</sup> At multilateral level, recognition of the importance of land has led to inclusion of a land policy indicator, as part of a broader set of evidence, in multilateral institutions' indicators to determine overall resource allocation, including the World Bank's CPIA.

Attempts to improve land governance need to deal with three challenges linked to the fact that land administration is (i) technically complex and multi-sectoral; (ii) often institutionally fragmented; and (iii) based on rights that evolved over a long time. It is well known that land administration covers many diverse disciplines. This implies a need to draw on location-specific expertise from a variety of disciplines and to properly combine local with global insights. It also highlights that a key challenge to sustainability and scale is the ability to make tradeoffs in a way that improves overall governance of the system. In many situations, and contrary to sectors such as education or health, responsibility for formulation and implementation of land policy is normally dispersed among ministries and institutions in different sectors. Division of responsibility between central and local governments and institutions adds further complexity that often results in uncoordinated actions. A land governance framework can help provide a holistic view while at the same time focusing strictly on technical issues and objectively measurable information to avoid getting caught in politics. Finally, land rights have evolved over long periods of time and space as a response to societies' values, norms, and resource endowments. Institutions to administer them will need to be sensitive to time and place and build on local knowledge and allow sufficient flexibility rather than trying to impose 'one size fits all' solutions that may not be appropriate to the specific characteristics of a given location. If implemented in a way that draws on local rather than outside expertise, a land governance framework can accomplish this while also drawing attention to good practice examples from other contexts that can provide examples to be referred to and drawn upon.

Three groups of indicators can broadly be distinguished addressing land policy assessments. A first set of indicators based on opinion by *experts* who are intimately familiar with the sector and likely to be qualified has been the most frequently used to

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<sup>4</sup> In all 41 countries covered by the World Bank's 2006 Governance Indicators, taking a bribe is officially considered as legal and all but three (Brazil, Liberia, and Lebanon) had anti-corruption commissions (Kaufmann and Kraay 2008).

<sup>5</sup> The World Bank's 'doing business' indicators (World Bank 2009) aim to accomplish this by asking experts to identify the actions required and associated cost for a stylized hypothetical situation frequently encountered by entrepreneurs. Regarding property, focus is on registration of a plot of given size and free of conflict and other encumbrances for industrial use in the surrounding of the country's capital. While this has been effective in drawing attention to the topic and prompting policy reform, the meaning of 'registration' and thus the associated requirements differ across legal systems and failure to adjust for these differences can greatly reduce relevance and usefulness of such indicators (Arrunada 2007).

<sup>6</sup> A number of initiatives have discussed such indicators, in particular the Urban Indicators Initiative.

guide resource allocations by international financial institutions.<sup>7</sup> While such an indicator is relatively cheap to collect, relevance and acceptance of rankings will depend crucially on credibility of the experts. Also, the ability to compare across countries or within countries over time may be limited. A second set, based on *representative surveys* of households, users of government services, or industry specialists, avoids some of these limitations but will incur higher cost. Finally, local observatories, often run by civil society groups, have often been proposed as an alternative.

### **3. THE LGAF: CONCEPT AND IMPLEMENTATION MODALITIES**

To make sector-specific indicators of land governance policy relevant in a specific setting, a methodology and process are needed that would allow using land governance indicators as a diagnostic tool to assess a country's situation and, on the basis of the shortcomings identified, ideally come up with a set of policy recommendations or areas for future research.

#### **3.1 Substantive areas covered**

To start formulating a response, the roles to be fulfilled by public institutions in the land sector have to be clearly defined and understood. Based on the literature, these are essentially three-fold: first, there is a need for legal and institutional framework that clearly defines the rules for allocation of property rights to land and, by allowing their enforcement in a cost-effective way, encourage land-related investment. Second, reliable and complete information on land rights needs to be made available freely to interested parties so as to allow low-cost verification of land ownership status which in turn forms the basis for low-cost land transfers to more productive use(r)s and the use of land as collateral in financial markets. Finally, there is a need to perform a regulatory function to avoid negative externalities that may arise from uncoordinated action by private parties. Weak governance of the land sector and a failure to perform these functions effectively and in an efficient manner will negatively affect development by reducing investment levels, land transfers, financial sector activity, and the scope for meaningful decentralization. At the same time it will contribute to elevated levels of conflict and possibly irreversible degradation of natural resources. Because the poor lack other assets, access to land is more important to them, and consequently bad land governance will have undesirable distributional consequences and disproportionately hurt the poor.

Given the broad range of land governance, it is important to ensure that all substantive areas are covered. To do so, we identify five key areas of good land governance, namely (i) a *legal, institutional, and policy framework* that recognizes existing rights, enforces them at low cost, and allows users to exercise them in line with their aspirations and in a way that promotes the benefit of society as a whole; (ii) arrangements for *land use planning and taxation* that help to avoid negative

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<sup>7</sup> IFAD's Performance based allocation system (PBAS) and the World Bank's Country policy and institutional assessment (CPIA).

externalities and support effective decentralization; (iii) *state land* provides public goods, is clearly identified and managed efficiently with expropriation being used as a last resort to provide public goods with quick payment of fair compensation and effective mechanisms for appeal as well as mechanisms for divestiture of state lands that are transparent and maximize public revenue; (iv) *public provision of land information* is broadly accessible, comprehensive, reliable, current, and cost-effective in the long run; and (v) mechanisms to authoritatively *resolve dispute and manage conflict* are accessible, have clearly defined mandates, and work effectively.

### **3.2 Methodology**

To assess land governance in a particular country, the World Bank's Land Governance Assessment Framework adopts an approach closely related to the Public Expenditure and Financial Accountability (PEFA) Performance Measurement Framework. The LGAF is made up of a 21 indicators (and 80 sub-indicators or dimensions of land governance) that are each ranked according to predefined statements graded from A (best governance scenario) through D (worst governance scenario). The indicators are structured within the five key areas of good land governance which provide an exhaustive overview of major land governance issues. The country coordinator is a key to the assessment process, since he/she coordinates the process, collects all background data and information and establishes a country-specific typology of land tenure situation. All indicators are assessed by eight panels on: (i) land tenure; (ii) institutional arrangements; (iii) urban land use, planning and development; (iv) rural land use and policy; (v) land valuation and taxation; (vi) public land management; (vii) public provision of land information; and (viii) disputes resolution. Local experts convene and assess them through a consensual ranking of each dimension based on the available information and expert knowledge.<sup>8</sup> These experts represent different stakeholders who interact with the land administration system from different perspectives, such as lawyers, academics, members of business chambers, banks, NGO representatives, government officials, land professionals and others. Based on these panels' discussions, country coordinator writes a status report with policy recommendations identified during the panel discussions approved by the panels' members. One of the difficulties encountered in the methodology related to the degree of involvement of government representatives in the assessment. On one hand it is imperative to involve this group of experts to get reliable data and information, but on the other hand, their opinions in some cases are subjective and not necessarily true. In that regards, having stakeholders from other sector present helped to validate these opinions.

## **4. APPLICATION TO THE KYRGYZ REPUBLIC**

### **4.1 Background and rationale**

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<sup>8</sup> More information on the methodology can be found in BURNS *et al.* 2009.

The Kyrgyz Republic was chosen as a representative case to illustrate land governance issues arising in a post-transition economy that, after having been strongly influenced by Soviet-style central land administration, made the transition towards private ownership to land. Large sections of land continue to be held by the public sector and it is clear that state administration of land is not efficient and transparent. Finally, the country has implemented number of foreign funded projects aimed to improve land administration and related services provision.

The transition process involved major land reforms, starting with the restructuring of large 600 state and collective farms and the liquidation of the state monopoly in land ownership with the transfer of land shares to rural population to address the inefficiency of big farms and the difficulties stemming from the cut in subsidies coming from Moscow in early 90s. Given the agrarian economic structure and predominantly rural nature of the country, the transfer of arable agricultural land into private ownership was a key step in the country's social and economic transformation. First, country introduced 49 year use rights to land, then these rights were transferred into 99 year use rights, and finally into full ownership in 1999. In the initial stages of the land privatization process in the early 1990s, land was allocated to members of collective and state farms notionally, without giving out certificates of title or physically identifying the land plots. These allocations were converted into actual land parcels only where land was withdrawn from state control to enable the commencement of independent farming which was also to result in the issuance of formal documentation of land ownership. In many of these cases, land titles were issued either without any description of the location of the land or with highly inaccurate of the land. At the same time, state land has not been completely disposed of, and the overwhelming majority of the land remains state owned. This is forestry land, pasture land and land in the Land Redistribution Fund. About 25% of the land was left in state ownership in order to establish a temporary land reserve that would deal with claims arising in the transition<sup>9</sup> and cater to the expansion of settlements. Although the need for such a large reserve no longer exists, reserve land continues to be held in the LRF managed by local governments and leased out (for a maximum period of 10 years) in a process that is often less than transparent and fails to provide much-needed government revenue or convey incentives for optimum use of the affected land.

While the transition from state to individual ownership is now largely complete, the efficiency and equity of the process varied widely across regions. The legal procedures and mechanisms for the individualization of land rights by those who want to exit agricultural cooperatives, peasant farms or joint stock companies are lacking.<sup>10</sup> Also, with mass emigration from rural areas and from the Kyrgyz Republic in general, informal land sales were frequent. These problems were addressed through a systematic land registration project, with the World Bank support.

## **4.2 Legal, policy and institutional framework**

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<sup>9</sup> Only those who lived in rural area at the time of land privatization, and who worked in collective and state farms were entitled to agricultural land share. However, in the beginning of the land reform, many people in rural areas who were entitled to a right to land, refused to claim their land shares so as to avoid paying taxes, or because they migrated to cities or out of the country.

<sup>10</sup> Difficulties arise regarding the so-called 'unified' farms, where the conversion from state to individual lots was subverted and new collective entities were directly created, especially in the country's North.

LGAF assessment results reflected that use rights to individual parcels by males and females in Kyrgyzstan are guaranteed by law and a low-cost and far-reaching process of systematic as well as sporadic titling has covered by now some 80% of the land parcels in the country. And experts' scoring confirmed the difference between situation with rights recognition in urban and rural areas with recognition of rights held by more than 90% of the urban population, either through customary or statutory tenure regimes and 70% - 90% of the rural population.

There are legal restrictions preventing non-villagers, foreigners, and legal entities from purchasing land. Ownership of agricultural land may be transferred only to residents of the same rural area and not to legal entities such as banks or foreigners. Land in settlements may be owned only by Kyrgyz natural persons or legal entities with at least 80% ownership by Kyrgyz persons or legal entities. In rural areas, maximum holding size is set at 50 ha or the equivalent of 20 land shares within the village, whichever is smaller. The inability of banks to own agricultural land and the fact that any land held by them must be disposed of within a year or transferred to the Government are major disincentives for banks accepting land as collateral.

During the systematic registration conducted by the State Register of the Kyrgyz Republic in 2000-2009 the rights held by population were registered in the Unified state register of the real estate rights. The total number of registered properties in cities and settlements made 86% of all surveyed; while in the outside settlement areas 94.5% of the total number of the surveyed real estate units was registered.

Urban land privatization offered a more straightforward system, which privatized structures and appurtenant land plots. However, municipal and public land regulations in cities are not particularly clear. Policy explicitly accounts for equity goals with the Land Code stipulating that every citizen has a right to receive a kitchen plot or land plot for housing for free once. However, this provision has had unintended consequences and led to large-scale squatting and internal migration. Big waves of squatting are linked to political upheavals in 1989, 1998, 2005, and 2010. This creates pressure for discretionary application of formalization processes on public land.

It is seen from assessment that one of the biggest challenges for the Kyrgyz Republic is improvement of governance in management of public land. While much land is individually owned, the State remains the Kyrgyz Republic's biggest land owner and, for reasons to be discussed below, state land is often under-used or not managed effectively.

Major strides have been made in the decentralization process to give greater responsibility to elected bodies at the local level and to build up their capacity. The agencies responsible for managing land and enforcing restrictions are clearly identified and efficient. As a result, land set aside for specific uses is largely used for the intended purpose. Functional distribution of institutional responsibilities (agriculture, environment, urban) is reasonably clear, with the possible exception of forest pastures. To increase transparency, the Government annually approves and formally publishes a

report on implementation of land policy.<sup>11</sup> Institutions dealing with land management are not appropriately staffed and funded, implying that there are only limited resources to fulfil the mandates of institutions for the management of public land.

A clear and practical process for the formal recognition of long-term unchallenged possession is in place and implemented effectively, consistently and transparently, with the possibility of relying on non-documentary forms of evidence where needed.<sup>12</sup> Kyrgyzstan also has laws that recognize condominium property and make appropriate arrangements for the management of common property.

Kyrgyzstan has several laws aiming to ensure protection of women's land rights.<sup>13</sup> While the registration system does not disaggregate rights' holders by gender, studies show that 35% - 45% of land registered to physical persons is in the name of women. Women's real estate ownership is higher in regions with active land markets as opposed to remote areas. In rural areas the women's rights are registered basically to agricultural land allotted during the land reform and, although legislation recognizes female rights, customary law often prevails, implying that women rarely inherit land from their parents, spouses or retain a share of the household plot in case of divorce.

### **4.3 Land use planning and taxation**

Kyrgyzstan scored poorly on land use planning. In light of significant urbanization and in-migration, failure to allocate any land to new individual housing in the main cities (including Bishkek) over the past 5 years has led to serious shortcomings in housing supply and general public dissatisfaction. Town plans are often severely outdated. The main document for town-planning is the city's general plan which, in most cases dates back to Soviet times and, is based on outdated specifications, and out of touch with current realities. Although participation by the public is legally required, such rules are largely ignored in practice, leading to very top-down processes of planning and changes of land use that in turn are a major source of conflict and dissatisfaction. Information on changes to land use, modifications to the general city plan, or detailed lay-out designs and other architectural and town-planning documents that regulate land use are not available publicly. A project to establish town-planning maps and zoning regulations was partly successful as urban land use plans are only partially implemented and the planning process/authority is struggling to cope with the increasing demand for house units/land.

Land tax rates vary depending on land use categories<sup>14</sup> but a failure to take into account market values makes the process arbitrary and non-transparent while at the

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<sup>11</sup> This report is available on the Gosregister website ([www.gosreg.kg](http://www.gosreg.kg)) and at the National Statistics Committee.

<sup>12</sup> During systematic first time registration, 34% of all registered property units were registered based on non-documentary forms of evidence.

<sup>13</sup> These include the Law of the Kyrgyz Republic on the Foundation of the State Guarantees for Gender Equality (March 2003, N 60), which was followed by the amendment to this law (State Guarantees of Equal Rights and Equal Opportunities for Men and Women, Aug, 2008, No184), and others. According to the Article 13 of this law the right to land is equally reserved for persons of both sexes.

<sup>14</sup> These include agricultural (arable land, irrigated and dry land, perennial plantings, hay land, pastures) land, land plots near the house, and land plots of settlement areas and land for commercial purposes.

same time constraining the revenue that can be raised. The Tax Code allows local governments to vary rates only to adjust for inflation; the fact that these adjustments are undertaken in an *ad hoc* and infrequent manner limits the buoyancy of land tax revenue. In a process that gave rise to considerable debate, land tax was recently complemented by a property tax that will become effective in 2010. While coverage with land tax is reasonably high; infrequent adjustment of rates constrains land tax revenues. Especially in urban areas, the rate of tax collection is high and costs reasonably low. For example, in Bishkek, close to or even more than 100% of planned tax collections were realized in 2007 and 2008, due to good tax administration and the inclusion of new construction and residential areas as well as lessees of municipal lands. In secondary cities, tax collection is lower -the average over the past 5 years is 72% and 63% in Karakol and Kichi-Kemin (*case studies data*), respectively- pointing towards considerable potential for higher local revenue.

#### **4.4 Public land management**

With a total of 9 million hectares or 85% of agricultural land, pastures are the largest land use category in the country. Although *de jure*, rights to such land had to be allocated through competitively awarded leases, pastures near villages remained in common use while the more distant so-called intensive and remote pastures were leased out. A non-transparent process of awarding leases led to negative equity consequences whereby the best pasture land was often leased by big farmers or well-connected businessmen who then entered into sub-leases with shepherds and villagers. This implied that the majority of small livestock holders had no access to good quality pastures, prompting them to graze their animals on the communal areas in villages' immediate proximity, leading to a dramatic degradation of this type of land. To arrest this trend, and in the context of overall decentralization, the 2009 Pasture Law replaced leases with recognition of traditional use rights to pastures and allows these to be registered at the village level, with responsibility decentralized to pasture users' unions. By transforming leases into use rights with allowance for seasonal mobility and providing for retention of revenues generated from pastures at the village level, this law is expected to mark an important step that will foster decentralization and the sustainable use of natural resources. Implementing regulations are currently being drafted and its too early to say that the situation is improved.

Forest land also remains under state ownership, managed by the state agency for forestry and environmental protection at the national and by forestry enterprises at the local level. Before being transferred to the national government in 1996, forests were used and managed by collective and state farms. The Forestry Code allows farmers to obtain long-term leases (up to 50 years) of rangeland for grazing purposes from forestry enterprises. The different procedures for obtaining use rights to pastures on forest and pasture has led to confusion on the ground and corruption in forestry enterprises.

According to most observers, the 25% of total land that is vested in the Land Redistribution Fund (LRF) is managed in a very inefficient way that gives rise to rent seeking and corruption on a large scale. This makes the LRF one of the major sources

of corruption and lost revenue opportunities in the country. By law, the maximum duration of leases for LRF land is 10 years but in most cases, leases are much shorter, with no clear procedure for renewal, thus undermining incentives for long-term improvements. As per the law, land from LRF should be allocated through auction with priority of land access to be given to women, poor and disadvantaged groups. In practice, unclear rules for auctions and lack of transparency and local involvement have led to allocation of the best lands to local elites.

Expropriation is limited and confined to public uses with very few cases (2-3 for the entire country) of expropriated land having been transferred to private uses. The Land Code also provides for the purchase of land for public needs, requiring written agreement between authorized state body and land user/owner. Appeals processes are available if any one of the parties is dissatisfied. Compensation is fair and paid in a timely manner. Compensation must include the market price for land and structures and any losses to the owner from termination of rights. The owner has the option of requesting the allocation of a new parcel of land of equal or higher value. At the same time, only registered rights are eligible for compensation, implying that informal or secondary rights (e.g. for grazing) will not be compensated.

The Land Code requires use of public auctions for the disposition of public land but contains a provision that allows land to be given for free without a competitive process that is frequently misused. As a result, while the majority of urban land plots are distributed through auctions, most leases of use rights for pastures and some of the leases for LRF land have been allocated without an auction process. Local registry data show that 2008 rental income from the LRF and pasture leases was 87.6 and 13.3 mn soms (US \$2.2 and \$0.33 mn), or some 68%-70% of projected revenue, respectively. A key gap, and possible area for policy action, is that, even though the location of public lands as well as the conditions under which it is leased is recorded, the information is not publicly available and in practice almost impossible to obtain.

#### **4.5 Public provision of land information**

A cost effective process for the first-time registration of individual rights has been implemented successfully, resulting in more than 80% of land parcels being registered and there are plans to complete the registration of the remaining land. Relevant private encumbrances are included in the records and more than 90% of registry records are mapped. While access to records is limited to intermediaries with demonstrated interest, searches can be conducted freely after payment of a fee. Updating of registry records is satisfactory, fee schedules as well as meaningful service standards are published, receipts are used to discourage informal payments, and the registry operates in a sustainable and self-financing manner with reasonably high levels of customer satisfaction as assessed through independent surveys.

While information on individual land is available with the registry, this does not extend to information about public land. In particular, municipal land is defined residually as all land within settlement area borders which is not in private or state

ownership, and is thus difficult to identify. There is thus no inventory of municipal land, making it impossible to monitor how effectively this valuable resource is being used. Also, while the quality and coverage of land information has greatly improved, huge potential benefits from sharing are foregone because of very weak coordination among relevant institutions and improving access to information could greatly increase returns from this investment.

Documents attesting a transaction must be submitted for registration within 30 days and unregistered transactions are considered invalid. Although registration is very affordable,<sup>15</sup> fee collections in Kyrgyz registries exceed the operating cost, implying that all registration offices are self financing. Price lists and service standards for operation of all registration services are publicly displayed in each of the offices. Each action is supported by proper receipts, and other documents. Boxes to register complaints are available in each of the offices to provide users with an option to register complaints about improper behaviour (e.g. exaction of informal payments) by employees. Access to these boxes is limited to high level staff outside the agency. While insufficient on their own, it is felt that, if complemented by internal vigilance mechanisms, such boxes can help to address the challenge of corruption which is an issue especially in areas where property values are high. At the same time, capital investments are still covered by an external loan and a big source of income is systematic registration. The fact that there is no distribution of revenue among registries may imply that in areas with low levels of real estate market activity, offices will either have to close or merge to reduce costs.

#### **4.6 Dispute resolution and conflict management**

The Kyrgyz constitution provides for the possibility to establish a court of elders (*aksakal court*) in each village which has the authority to make decisions regarding property conflicts within families. These courts are readily accessible and their decisions are implemented through peer pressure. While recent changes that allow participation by women may make them more representative, these courts are not always independent or fully representative, and the extent to which their verdicts are recognized by the formal system varies. At the same time, clear assignation of responsibilities limits forum shopping and aggrieved parties can apply to the *rayon* (local government) or city court to have the *aksakal court* decision enforced.

With development of land markets and housing construction, land conflicts are on the increase. Private conflicts regarding location of boundaries, overlapping claims to the same plot, and privatization of land plots by owners of buildings located on them make up some 10% to 30% of total court cases. Unresolved cases older than five years represent about 5% to 10% of total pending court cases. Also, with a relatively well-functioning and accessible system for resolving disputes among individuals, a large share of disputes concerns conflicts with the state regarding allocation of land plots and the cancellation of allocation of land plots. Mechanisms to appeal against rulings

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<sup>15</sup> As of April 30, 2009, a uniform fees for conducting a registration of somewhat less than US\$4.00 has been adopted.

on land are available although court fees for accessing them are, with 10% of any damages awarded, very high.

#### **4.7 Policy recommendations**

Norms stipulating the right of each citizen to a residential land plot, while apparently attractive from an equity perspective are difficult to apply as land is not available. Instead, they encourage squatting. They will therefore need to be rethought and revised. Similarly, it may be time to rethink the size of and the overall justification for the LRF, as the reasons that led to its formation no longer seem to apply. This is even more urgent as the state appears to be unable to efficiently manage these lands, causing the country to score poorly on transparency and competition in the disposition of public land.

Although the distribution of collective land and state farms to the population played an important role in the transition, the small size of individual land plots limits the income that can be generated from such plots. As the economy develops, land markets will need to play an increasingly important function so that it will be important to eliminate these obstacles that land markets function efficiently. Pasture management will need to be improved based on the recently passed law that decentralizes responsibility to pasture user's associations and allows use rights to be registered.

With decentralization, the ability to derive revenue from land assumes increasing importance for the supply of local public goods. However, local governments' ability to set the land tax rates remains limited. Together with improved tax administration and better definition of municipal lands, this provides a major opportunity for greater autonomy by local governments. Such autonomy should then be used to establish transparent and participatory processes and build local capacity for land use planning and public land management that can replace the rigid land use regimes that are no longer in line with reality but continue to provide opportunities for rent-seeking and decrease land values. Effective local land management will also require the closing of loopholes that allow the disposal of public land for free and without any auction.

While the land administration project in Kyrgyzstan is best practice and provides lessons in many important respects, it has yet to overcome barriers to information sharing among different land-related agencies in Government to ensure that the intended benefits are fully realized. A first step in this direction will be providing appropriate incentives to the registry for making information available to other bodies, possibly by allowing to charge modest fees for such services. Similarly, development of ways to register lands that are not held individually and to make sure that such information is publicly available will be of great importance.

### **5. CONCLUSION AND NEXT STEPS**

Instead of repeating the advantages and disadvantages of the framework and the substantive findings for the case of the Kyrgyz Republic, we conclude by highlighting three ways in which the LGAF can help to promote the policy dialogue in different settings. The first and most immediate use is the application of the LGAF as a diagnostic tool to help identify areas for intervention. If applied in a way that draws on existing expertise and broad participation by relevant stakeholders (including governments) from the beginning, the LGAF can not only help to broaden the range of issues to be covered in such analysis but also the relevance of the resulting analysis and the credibility of resulting recommendations for policy or further study.

A second use of, to monitor discrete (rule-based) indicators for policy reform, follows immediately and can provide an excellent opportunity for a broad-based coalition of actors (including the private sector and chambers of commerce) to monitor the extent to which recommendations are followed through.

Finally, and possibly most importantly, the LGAF points towards a number of quantitative indicators which, together with the initial diagnostic, are essential to continually monitor land governance. Key variables include (i) the coverage of the land administration system and the registration of different types of transfers, especially for women; (ii) receipts of land tax revenue; (iii) the total area of public or private land that is mapped with information publicly available; (iv) the number of expropriations and the modalities of compensation (including delay in payment receipts); and (v) the number of conflicts of different types entering the formal system. The fact that each of these indicators is related to one or more core areas of the land administration system suggests that collection and publication of these indicators on a regular basis, and -to accommodate wide variations of these indicators over space- in a way that can be easily disaggregated, should be a routine in any land administration system.

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