

make tax collection legitimate), to update land assessments, and to correctly provide tax breaks to poor households can have high payoffs. These actions should also include measures to reward regional governments that made progress in establishing the inventory of state-owned property. Similarly, great benefits can be gained from encouraging the design of land use planning tools at the provincial level, including specific criteria and provisions in provincial plans to streamline district-level government decision making on land use within their respective jurisdictions.

Sustainability of Land Policy Achievements

Sustainability of policy changes may involve reducing transaction costs, standardizing assessment by registrars, and designing strategies to encourage property registration. The standardization of registration forms and the elimination of registry control over property and transfer taxes were very effective strategies in the late 1980s, although they have been partly reversed since then. Their reactivation should be combined with awareness campaigns and itinerant registration services, at least in recently formalized settlements. In this context, it will also be necessary to provide a new momentum for the national cadastral system created in 2004 and to establish stronger links between the national cadastral system and the property registry.²⁶

KYRGYZ REPUBLIC

The Kyrgyz Republic represents land governance issues arising in a post-transition economy; in fact, it was one of the first countries in the Commonwealth of Independent States to introduce private land ownership when it became independent in 1991. However, large sections of land continue to be owned by the state, and they often are not used effectively. Low population density also suggests that, in many cases, individual titling may not be appropriate. The country is slowly moving toward recognition of communal land rights, which were prevalent before Russian colonization in the late 19th century. The country also implemented a large foreign-funded project to improve land administration.

The transition process from Soviet rule involved major land reforms, beginning with restructuring of some 600 collective farms and liquidation of state landholdings. Given the country's predominantly rural nature and the predominance of agriculture, transfer of arable agricultural land into private ownership was a key step in the social and economic transformation. Introduction of private land ownership was phased in first with the introduction of long-term use rights, then indefinite-term use rights, which were finally converted to ownership, and public land was provided to other entities. Initial stages of privatization involved award of notional land shares to members of collective and state farms without physical identification of plots. Conversion into actual

land parcels was undertaken only when a member withdrew from the collective to begin independent farming, a process that was accompanied by issuance of formal documentation of land ownership. Even then, many land titles had either no or highly inaccurate sketches to describe the location of the land. Also, with mass emigration from rural areas, informal and unrecorded sales were frequent. Most of these shortcomings of the transition were addressed by a systematic land registration project supported by the World Bank.

At the same time, state land was not completely transferred. In rural areas, 25 percent of arable agricultural land was left in state ownership to establish a temporary land reserve that was to be used to deal with land claims arising in the transition and in future settlement expansion. This reserve land is now held in a Land Redistribution Fund (LRF) managed by local governments, which offer short-term leases on the land in a process that is often seen as not fully transparent and as failing to provide much-needed government revenues, incentives for investment, or optimum use of the corresponding land. The different tenure situations in the Kyrgyz Republic are presented in table 4.2.

Recognition and Enforcement of Rights

Use rights to individual parcels are guaranteed by law, and a low-cost and far-reaching process of systematic and sporadic titling has by now covered some 92 percent of the country's land parcels. This legal process is complemented by a clear and practical process for formal recognition of long-term unchallenged possession that is implemented effectively, consistently, and transparently, with the possibility of relying on nondocumentary forms of evidence where needed.²⁷ Moreover, several laws aim to ensure the protection of women's land rights.²⁸ Though the registry does not identify right holders' gender, studies suggest that some 35 percent to 45 percent of land registered to physical persons is in the name of women. Women's land ownership is higher in regions with active land markets than in remote rural areas, where registration of female rights may clash with customary norms that may preclude them from inheriting land or retaining it in case of divorce. The Kyrgyz Republic also has laws that recognize condominium property and make appropriate arrangements for the management of common property.

Although much land is individually owned, the state remains the Kyrgyz Republic's biggest land owner, and state land is often underused or not managed effectively. With a total of 9 million ha, or 85 percent of the 11 million ha of agricultural land, pastures are the largest land use category in the country. In the past, although *de jure* rights to such land had to be allocated through competitive leases, pastures near villages remained in common use, and only distant pastures were leased. Nontransparent processes to award 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 subleases with locals. As a result, the majority of small livestock holders had no access to

Table 4.2 Tenure Typology for the Kyrgyz Republic

| Tenure type | Area and population | Legal recognition and characteristics | Overlaps and potential issues |
|---|---|---|--|
| <i>Urban sector</i> | | | |
| State land | <p>Private lands Area: 22,514 ha Population: 347,497 owners and users</p> <p>State lands Area: 89,609 ha Population: 11,585 users</p> <p>Municipal lands Area: 21,136 ha Population: 3,445 owners and users</p> | <p>Legal recognition: Ownership rights to private land in municipal areas are recognized subject to registration.</p> <p>Registration/recording: Recorded</p> <p>Transferability: Yes</p> | <p>Can overlap with municipal land if there are no clear boundaries; cases of informal use.</p> <p>Survey (inventory), mapping, and formalization process under way. Coverage thus far is 93% on private property; 72% on state property; and 78% on municipal property.</p> |
| Private ownership of groups under registered condominiums (RCs) | <p>Extent</p> <p>Bishkek: 219 RCs Osh: 52 RCs Karakol: 7 RCs Population: Unknown</p> | <p>Legal recognition: Condominiums registered as legal entity; right to adjacent land recognized subject to registration</p> <p>Registration/recording: Recorded</p> <p>Transferability: Yes, subject to condominium bylaws</p> | <p>A 2009 regulation limits rights of condominium coowners, specifying that front and back side land areas cannot be owned by the condominium.</p> |
| Private individual ownership | <p>Area: 22,000 ha Population: 347,000 owners and users Total population: 1.4 million</p> | <p>Legal recognition: Ownership rights to private land in municipal areas recognized subject to registration</p> <p>Registration/recording: Recorded</p> <p>Transferability: Yes</p> | <p>Private ownership can overlap with state and municipal land if no clear boundaries are marked. Transfers in newly settled parts of big towns and cities are often not formalized to avoid cost of registration.</p> |

| | | | |
|---|--|--|---|
| Private individual use of urban land | No data available | Legal recognition: Formalized through contract, which is often not registered (required if longer than 3 years) Registration/recording: Rarely recorded in practice Transferability: Sublease possible if recorded | Many entrepreneurs in urban areas sign lease contracts on municipal land for commerce but do not register those contracts in the state registry. |
| Private use of common use urban land (informal) | No data available | Legal recognition: Considered to be illegal Registration/recording: Not recorded Transferability: No | Many land plots occupied illegally are recognized by the municipality to avoid social problems. |
| <i>Rural sector</i> | | | |
| State land | Area: 18.6 million ha Population: 40,431 owners and users | Legal recognition: Subject to registration Registration/recording: Recorded Transferability: Yes | The process of surveying, mapping, and formalizing through systematic registration is under way. |
| Municipal lands | Area: 37,624 ha Population: 5,129 owners and users | Legal recognition: Subject to registration if greater than 3 years Registration/recording: Recorded Transferability: Yes | The process of surveying (inventory), mapping, and formalizing is under way. |
| Group ownership of rural land | Area: 91,200 ha Population: 77,589 | Recognition: Group ownership recognized subject to registration. Registration/recording: Recorded Transferability: Yes | Usually no overlap with other rights is seen. |
| Communal use of rural land | Area: 3 million ha Population: 1 million | Legal recognition: Not recognized without contract Registration/recording: Not recorded Transferability: No | Communal pasture use is near village pasture and sometimes overlaps with private land. Use can be formalized under the 2009 Pasture Law (February 2009). |

(continued next page)

Table 4.2 (Continued)

| Tenure type | Area and population | Legal recognition and characteristics | Overlaps and potential issues |
|---|---|---|--|
| Private individual ownership of rural land | Area: 1.06 million ha Population: 905,991 | Recognition: Subject to registration Registration/recording: Recorded Transferability: Yes | Private property is protected by the constitution of the Kyrgyz Republic and can be taken only by court decision. |
| Private individual use of rural land | Area: 1.1 million ha Population: Not available | Legal recognition: Recognized if lease agreements with municipal bodies exist Registration/recording: Recorded Transfer: Sublease allowed for private, not for public or LRF land | Overlap can occur with the state and municipal lands. Land ownership is formalized through contract agreement, but leases often are not registered. |
| Private use of common-use rural land (informal) | Area: Not available Population: Not available | Legal recognition: Not recognized Registration/recording: Not recorded Transferability: No | Use can include fencing or cultivation of state pastures or unused LRF lands because of land pressure. Rights could be formalized. |

Source: Various sources; compiled by A. Undeland.

Note: ha = hectare; LRF = Land Redistribution Fund; RC = registered condominium.

good-quality pastures, prompting them to graze their animals on the communal areas in the immediate proximity of villages and leading to a dramatic degradation of this type of land. To stop this trend, and in the context of overall decentralization, the 2009 Pasture Law replaces leases with the recognition of traditional use rights to pastures and allows these to be registered at the village level, with the responsibility decentralized to pasture users' associations. By transforming leases into use rights that allow seasonal mobility and retention of revenues from pastures at the village level, this law is expected to be an important step in fostering decentralization and more sustainable use of natural resources. Implementing regulations are being drafted.

Policy and Institutional Framework

Policy explicitly accounts for equity goals, with the land code stipulating that every citizen has a right to receive a kitchen or housing plot free once in a lifetime. This had unintended consequences by contributing to large-scale squatting and internal migration, including big waves of squatting in 1989, 1998, and 2005. It also created pressure for the discretionary application of formalization processes on public land.

Forestland (2.7 million ha in total) remains under state ownership and is managed at the national level by the state agency for forestry and environmental protection and at the local level by forestry enterprises. 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) on forestland, which includes a vast area of rangeland leased from forestry enterprises by farmers for grazing purposes (*leskhozoes*), with revenue going to the agency for forestry and environmental protection, while other pasture land is managed by village governments and pasture user associations with revenue retained at the local level. The different procedures for obtaining use rights to pastures from the Forest Land Fund and from the State Land Fund have led to confusion on the ground and corruption in forestry enterprises.

In rural areas, legal restrictions prevent nonvillagers, foreigners, and legal entities (except those engaged in agricultural production or processing) 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 by legal entities with majority Kyrgyz ownership. The minimum size of a holding is the share size established in each village during land privatization. The inability of banks to own agricultural land and the fact that any land held by them must be disposed of within a year to avoid the threat of a government buy-out is a disincentive to using land as collateral.

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, and urban use) is reasonably clear, with the possible exception of forest pastures. To increase transparency, the government annually approves and formally publishes a report on the implementation of land policy.²⁹ Institutions dealing with land management are appropriately staffed and funded, with limited resources to fulfill the mandates of institutions for the management of public land.

Land Use Planning and Taxation

In light of significant urbanization and in-migration, failure to allocate any land to new individual housing in the main cities (including Bishkek) has led to serious shortcomings in housing supply and to 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, is based on outdated specifications and is out of touch with current realities. Although participation by the public is legally required, such rules are largely ignored in practice, leading to top-down processes of planning and changes of land use that in turn are a major source of conflict and dissatisfaction. Information is often not available publicly, such as changes to land use, modifications to the general city plan, or detailed layout designs and other architectural and town-planning documents that regulate land use. A project to establish town-planning maps and zoning regulations was partly successful; urban land use plans are only partially implemented, and the planning process and planning authority are struggling to cope with the increasing demand for housing units and land.³⁰

Land tax rates are very low and vary depending on land use categories,³¹ but a failure to account for market values makes the process arbitrary and non-transparent while constraining the potential to raise revenue. Local governments can vary rates within very narrow limits, in addition to carrying out inflation adjustments, but often fail to do so. In a process that gave rise to considerable debate, the land tax was complemented by a property tax that became effective in 2010. Although coverage with land tax is reasonably high, low rates and their infrequent adjustment limit land tax revenue. Especially in urban areas, the rate of tax collection is high and costs are reasonably low. For example, in Bishkek, close to or even more than 100 percent of planned tax collections were realized in 2007 and 2008 because of good tax administration and inclusion of new construction and residential areas, as well as lessors of municipal lands. In secondary cities and villages, tax collection is lower—the average over the past five years in Karakol and Kichi-Kemin is 72 percent and 63 percent, respectively—pointing to considerable potential for higher local revenue.

Public Land Management

Most observers agree that the 25 percent of total arable land that is vested in the state LRF (299,000 ha) is managed very inefficiently, giving rise to rent seeking and corruption on a large scale, and making the LRF one of the major sources of corruption and lost revenue opportunities in the country. No official data are available on the use of the LRF for 2008–09, but the most recent figures, from 2005, show that only slightly more than half of the LRF was leased out. Corruption is widespread—in particular through underreporting of lease rates, nontransparency in land management, lease agreements in the name of third parties who qualify for preferential treatment, and creation of fictitious enterprises that qualify for preferential treatment in allocation of LRF land. 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. Under the law, LRF land should be allocated through auction, with priority of land access to be given to women, the poor, and other 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 of expropriated land having been transferred to private uses (two to three cases for the entire country). The Land Code also provides for the purchase of land for public needs, requiring written agreement between the authorized state body and the land user or owner. Appeals processes are available if any of the parties are dissatisfied. Compensation must include the market price for land and structures and any losses to the owner from the 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 rights (for example, for grazing) will not be compensated.

The Land Code requires use of public auctions for disposition of public land but contains a provision that allows land to be given for free without competitive process that is frequently misused. As a result, although 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 were allocated without an auction process. Local registry data show that the 2008 rental income from the LRF and pasture leases was 87.6 million soms and 13.3 million soms, respectively (US\$2.20 million and US\$0.33 million, respectively), or some 68 percent and 70 percent of projected revenue, respectively. A key gap, and possible area for policy action, is that despite the recording of the location of public lands and the conditions under which the lands are leased, the information is not publicly available and, in practice, is almost impossible to obtain.³²

Public Provision of Land Information

A cost-effective process for first-time registration of individual rights has been implemented successfully, suggesting that more than 92 percent of land parcels are registered and that plans to achieve full coverage are under way. Relevant private encumbrances are included in the records, and more than 90 percent of registry records are mapped. Though access to records is limited to intermediaries with demonstrated interest, there are few limits on the number of searches that intermediaries can undertake other than the need to demonstrate an interest and the obligation to pay the necessary fee. Independent surveys have shown that updating of the registry is satisfactory, fee schedules and 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 verified through independent surveys. In addition, the capacity of headquarters and local staff to communicate with clients and other stakeholders has grown significantly since 2009, as a result of public relations training and numerous measures to promote information dissemination and transparency.³³

Information on individual land is available within the registry; however, that does not mean that all information has been publicly available. In particular, municipal land is defined residually as all land within settlement area borders that is not in private or state ownership and is therefore difficult to identify. Thus, no inventory of municipal land is available, making it impossible to monitor how effectively this valuable resource is being used.³⁴ Also, although the quality and coverage of land information has greatly improved, huge potential benefits from sharing are forgone because of very weak coordination among relevant institutions and the failure to make full use of the information for strategic decision making.

Documents attesting a transaction must be submitted for registration within 30 days, and unregistered transactions are considered invalid. Although registration is very affordable,³⁵ fee collections in Kyrgyz registries exceed the operating cost, suggesting 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 behavior by employees (for example, exacting of informal payments). Access to these boxes is limited to high-level staff members outside the agency. Though insufficient on their own, if complemented by internal vigilance mechanisms, such boxes could help to address the challenge of corruption, which is an issue, especially in areas where property values are high. Capital investments have been 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 suggest that in areas with low levels of real estate market activity, offices will have to either close or merge with each other.³⁶

Dispute Resolution and Conflict Management

The Kyrgyz constitution provides for the possibility to establish a court of elders (*aksakal court*) that can make decisions regarding property conflicts within families in each village. These courts are accessible, and their decisions are implemented through peer pressure. Although recent changes that allow participation by women may make the courts more representative, the courts are not always independent or fully representative, and the extent to which their verdicts are recognized by the formal system varies. Clear assignment 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 the location of borders, overlapping claims to the same plot, and privatization of land plots by owners of buildings located on them make up some 10 to 30 percent of total court cases. Unresolved cases older than five years represent roughly 5 to 10 percent of total pending court cases. Also, with a rather well-functioning and accessible system for resolving disputes among individuals, many disputes concern conflicts with the state regarding provision of land plots and their withdrawal. Mechanisms to appeal against land-related rulings are available, but associated court fees are very high, taking 10 percent of damages.

Policy Recommendations

Policy recommendations for the Kyrgyz Republic focus on reforming current practices of land redistribution, finding ways to generate more local government revenues from land, and ensuring that information is shared throughout the different institutions involved in the land sector.

Rethinking Land Redistribution

Policies stipulating the right of each citizen to a residential land plot, though seemingly attractive from an equity perspective, are difficult to apply because land is not available. As a result, the policies encourage squatting and will therefore need to be rethought. Similarly, because the reasons that led to the LRF's formation no longer appear to apply, it may be time to rethink the size and justification for the LRF. The situation is even more urgent, because the state appears to be unable to manage the land in question efficiently, suggesting that the country scores poorly on transparency and competition in the disposition of public land.

Although broad distribution of land to the population played an important role in the post-transition economy, the small size of individual land plots has limited the income that can be generated from such plots. As the economy develops, land markets will assume an increasingly important role,

and eliminating obstacles to their efficient functioning will be important. Pasture management will need to be improved on the basis of the recent law that decentralizes responsibility to pasture user associations and allows registration of use rights.

Improving Local Government Revenues from Land

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 land tax rates remains limited. Together with improved tax administration and better definition of municipal lands, this ability could provide local governments with greater autonomy, which could help to establish transparent and participatory processes. These processes will contribute to building local capacity for land use planning and public land management to replace the rigid land use regimes that are no longer in line with reality but continue to provide opportunities for rent-seeking and to decrease land values. Effective local land management will also require closing the loopholes that allow the disposal of public land for free without auction.

Information Sharing

The Kyrgyzstan land administration project includes many best practice elements that can provide lessons. Barriers to information sharing among different government agencies dealing with land are gradually being overcome, including the development of ways to register lands that are not held individually and to make sure that such information is publicly available. All the information regarding real estate and land over the country that exists in local registration offices has been merged in a Kyrgyz Land Information System. Plans exist to make such information publicly available online, with provisions to sell bulk data at set fees.

TANZANIA

Tanzania has spent considerable amounts of time and effort to develop a land policy in a participatory way.³⁷ However, although the government adopted an ambitious agenda to formalize property (known locally as MKURABITA), implementation of the 1999 Land Act (LA) and Village Land Act (VLA), which aims to make this policy operational, has advanced little since the legislation was adopted. A closer look at this case study can offer lessons for African countries that exhibit a similar pattern of ambitious legal change followed by limited implementation on the ground.

Rights Recognition

Land in mainland Tanzania falls into one of three types: village land, reserved land, or general land (table 4.3). Village land, which covers about