

Women's Rights to Land in the Kyrgyz Republic

by

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Executive Summary

This paper focuses on women's land rights in the changing legal and economic environment of a former Soviet Republic in Central Asia. The field research that provided the basis for this paper examined the impact of recent land legislation on the land rights of women, the process of formalization of land rights, and the impacts of this process on women's rights to land and property. In addition, the field research examined customary and written rules regarding marriage, divorce, and inheritance; the implementation of these rules; whether customary law supercedes written law in relation to intra-household land rights; and the institutions that enforce customary and written law.

For the most part, the land reform process in the Kyrgyz Republic followed the written law. During this process members of former state and collective farms received land on a per capita basis, with the land share certificates (titles) issued to the household. Therefore, women who were former members of state and collective farms have a legal right to a share of arable land. New registration rules for immovable property attempt to document these rights, as well as rights to houses and adjoining plots.

Women who are members of traditional households generally have access to arable land, household land, and pastureland and participate in the use and decision making process regarding use of the land. However, when households break down, due to abandonment, divorce, or death of a spouse, women's access to land is jeopardized because under customary law, men "own" the land and house, while women own the movable property within the house.

Customary law, which greatly influences intra-household relationships, focuses on the maintenance and support of the household as a unit and reflects the value of family and community rights, not individual rights. The written family law, on the other hand, focuses on the rights of individuals and provides mechanisms for individuals to exercise their rights, even at the expense of the household unit. Customary law appears to supercede the written law in many rural villages; although women have the legal right to land as individuals, this right is rarely exercised. Many women were satisfied with customary law and felt that it was generally superior to the written law. Most women agreed, however, that divorced and abandoned women are most vulnerable and would most benefit from exercising their individual rights under written law.

While access to land is critical to women, access to land alone is not enough. The standard of living for women has greatly decreased over the past ten years and women interviewed expressed a strong desire to fulfill their families' basic needs and a frustration that this is not always possible. Women who were interviewed stated that to improve their situation they needed, in addition to land: access to credit for inputs and small animals, extension services, job opportunities, assured access to education for their children, and healthcare.

I. Introduction

Since 1991, the Kyrgyz Republic has followed a program of economic reform designed to transform the centrally planned economy to one based on market principles. A successful transition to a market economy depends in large part on the implementation of reforms in the agricultural sector and in rural areas. Approximately 60 percent of the population lives in rural areas, and about one-third of the country's population of 4.8 million depends on agriculture for its livelihood. The physical characteristics of the country present an additional challenge to economic restructuring in general, and agricultural development in particular. Bounded by two mountain ranges, over 90 percent of the territory of the Kyrgyz Republic is more than 1,000 meters above sea level. Roughly one-third of the land area is considered unusable, 45 percent of the land area is classified as pasture, and just under 10 percent is used to cultivate annual crops.

More than 85 percent of the population of the Kyrgyz Republic is Muslim and includes Kyrgyz (66 percent), Uzbeks, (14 percent), Dungans (1 percent), and Uigurs (1 percent). The largest non-Muslim groups are Russians (13 percent), Ukrainians (1 percent), and Koreans (less than 1 percent). Non-Muslims are more likely to live in urban areas.

Geographic and demographic characteristics distinguish the north and the south in Kyrgystan. In the mountainous north, wheat is the primary commercial crop grown on the 887,000 hectares of arable land in the region.¹ The Ferghana Valley runs through the south of Kyrgystan, providing fertile soil for tobacco, cotton, fruit, and vegetables. However, the south has only 415,200 hectares of arable land (less than half of that in the north).² Over one-half of the total population lives in the south, resulting in arable land per capita of only 0.19 hectares, compared with 0.53 hectares in the north.³

The Kyrgyz Republic is continuing efforts begun in 1991 to transform large, state-managed farm enterprises into smaller enterprises owned and operated by individual families or groups of families. A cornerstone of this effort has been the land and agrarian reform program, which is designed to: (1) transfer land and non-land assets of the state and collective farms into the hands of individuals; (2) ensure secure private land rights; and (3) create the legal and administrative infrastructure necessary to support a freely functioning land market. Since 1994, land reform and farm reorganization in the Kyrgyz Republic have moved forward at a rapid pace, driven mainly by presidential decrees that promoted the dissolution of collective and state farms into smaller farms and the devolution of arable land from state control to private control. The decrees gave all those living on the territory of the collective and state farms a right to a portion of the arable land (land shares) on those farms. In addition, shares of non-land assets, such as livestock, farm buildings, and farm machinery, were distributed among employees of the state and collective farms. With assistance from the Ministry of Agriculture and local governments, whole farms broke up into private farm enterprises.

More recently, measures have been taken to encourage the development of a land market. On October 17, 1998, a nationwide referendum passed that introduced changes to the Constitution of the Kyrgyz Republic allowing the introduction of private ownership of land.⁴ In

1999, Parliament adopted a package of five laws in an effort to establish and encourage a land market based on private ownership of land.⁵

While some research has focused on the impact of land reform and agrarian reform on agricultural production, few studies have examined whether women's access to land has been helped or hindered by these efforts. Land is increasingly important for subsistence and survival, given the high levels of unemployment and poverty found in rural areas, which have been exacerbated by worsening economic conditions. However, it must be noted that access to land alone is not sufficient to ensure a means of survival for women. Even when women have access to land, a shortage of cash may prevent them from increasing productivity on the land or even using the land because of a lack of inputs.

This paper explores women's land rights in the changing legal and economic environment of the Kyrgyz Republic. Section II outlines methodology used in the field research. Section III describes social issues relating to rural women, and Section IV discusses women's farming activities. Section V analyzes the legal framework for land rights, and Section VI addresses the effects of written and customary law on intra-household land rights. Section VII deals with the documentation of women's rights to land and farms. Section VIII describes rural institutions and their impact on women's access to land, while Section IX assesses access to information about women's land rights. Section X provides a brief conclusion. Annex I contains a list of recommendations following the findings in each section.

II. Methodology

In May 2000, a team consisting of three lawyers (one Kyrgyz, two U.S.) and two sociologists (one Kyrgyz, one U.S.) conducted fieldwork in several regions of Kyrgyzstan. The purpose of the research was to:

- understand and give voice to the needs, aspirations, social and legal constraints, and opportunities of rural women in the Kyrgyz Republic relating to land;
- identify stakeholders in the institutions affecting women's access and rights to land; and,
- assess the structure and capacity of institutions related to women's land rights and recommend steps that could be taken to strengthen these institutions and increase their positive impact on women's access to land.

Over the course of two weeks, the team used Rapid Rural Appraisal techniques⁶ to interview groups of rural women and men, local and regional officials, judges, members of village Courts of Elders, religious officials, rural gender advisors, and NGO activists. Interviews focused primarily on rural women (including those from ethnic minorities) and the legal institutions with which they interact. The team collected comparative data about women's land rights along a number of categorical dimensions, including: (1) region within the country (north/south); (2) geographical setting (mountains/valleys); (3) proximity to cities and markets; (4) ethnicity;⁷ and (5) age. The team traveled to the following areas:

Southern region:

Osh Oblast: Kara-suu *Rayon*; Alay *Rayon* (*rayon* center Gulcha and villages).

Jalal-Abad Oblast: Suzak *Rayon* (*rayon* center and villages); Nookan and Bazar-Kurgan *rayons* (*rayon* centers and villages); Jalal-Abad City (deputy governor, officials).

Northern region:

Issyk-Kul Oblast: (, Issyk-Kul *Rayon*; Ak-Suu *Rayon*; Karakol City).

Chui Oblast: Kant City, Issyk-Ata *Rayon* (officials at the State Immovable Property Register).

City of Bishkek (Gender in Development Programme of UNDP, NGO activists for a micro-credit program for rural women).

Mountainous region:

Naryn Oblast: Kochkor *Rayon*.

In Osh and Jalal-Abad *Oblasts* in the south and Issyk-Kul and Naryn *Oblasts*, the team met with many groups of rural women. In these field visits, women were brought together to discuss the issues related to their access to land, benefits, if any, of obtaining land, the documentation and recordation of land rights, information constraints regarding their legal rights to land and property, and opportunities and constraints to taking initiatives to improve their lives. These in-depth interviews provided insights into the constraints and opportunities of rural women and various institutional stakeholders,⁸ and provided background information which allowed differences in women's responses to be linked to the categories described above.

After completing analysis of the field data, a stakeholder workshop was held in the Kyrgyz Republic to inform various stakeholders of the research findings, to verify the findings where possible, and to consider whether future action is needed to address the findings and how best to accomplish this.

III. Social Issues

This section offers an overview of the socio-economic realities in Kyrgyzstan and provides a context for the discussion of women's access to land.

A. Deterioration of the Economic Situation

The Kyrgyz Republic is in the midst of a transformation from a centrally planned to a market economy. While the long-term impacts of this transformation are unclear, short-term consequences of the transformation include deterioration of the rural economy, collapse of the social safety net, increased unemployment, and mass poverty. Interviews with rural women confirmed that income levels, standards of living, consumption patterns, and access to goods and services have decreased for many over the last ten years. The overwhelming majority of rural women interviewed expressed nostalgia for the Soviet safety net, healthcare, and education systems.

The majority of rural women interviewed believe the reforms in Kyrgystan have hurt women disproportionately, and that women were better off during the Soviet system of collective and state farms. All women interviewed, however, stated that it would be impossible to return to this system today.

Rural women, as well as rural men, now rely more on agricultural production (on both their land shares and household plots) for their families' livelihoods. Only a fraction of the non-agricultural jobs existing during the Soviet era now exist. Also, the collapse of the social safety net has increased dependence on land for household survival. The most disadvantaged groups of women appear to be widows, divorced women,⁹ mothers with many children, mothers with handicapped children, and young women.¹⁰

The estimated number of female-headed households in rural Kyrgystan varies from 10 to 30 percent. The most common causes for women to become heads of households include divorce, death, or an agreement between spouses that the family is better off with the female as head. In 1989, the number of widowed women (193,721) was more than twice the number of divorced women (89,600),¹¹ although field interviews indicated that the divorce rate in some parts of the country has increased over the past decade. In the case of divorce, the woman usually becomes the main provider for the children. Child support payments, if they are claimed and enforced, are insufficient to provide for children's livelihoods. In the south, a lack of irrigated land contributes to a rapid decline in living standards for both divorced women and widows with children. The number of households with female heads, even in cases where the husband is still a part of the household, is gradually increasing throughout the country despite a common conception in rural areas that mainly men should be household heads.

B. Regional Differences

There is an evident difference between the north and the south in terms of women's social position, and this difference affects their access to land. The cultural norms in the south appear to put more limits on women and their role in household decision-making. The revival of patriarchal traditions, including a discriminatory interpretation of the Koran, is apparent mainly in the south, and also affects women's role in agriculture and land reform.¹²

C. Women's Grassroots Political and Economic Initiatives

The reduction in job opportunities for women in the public sector has greatly affected many rural families. In families with unemployed husbands, women feel an obligation to invent new ways to survive, including working as "shuttles"¹³ delivering and selling various goods in Russia and in the larger cities of Kyrgyzstan. Some have formed groups to make and sell craft items, while others have organized micro-credit groups. Interviews with rural women confirmed the potential value of forming women's groups—stronger women's grassroots organizing may improve women's ability to increase their social, political, and economic participation, and may improve their ability to access information about their rights (see Section IX below for further discussion of access to information).

The reduced number of and access to tractors and other agricultural implements have increased the amount of manual labor in agriculture and, as a result, some women have left the agricultural sector to seek work in the service sector in villages or other alternative employment. In many places women articulated their strong desire to develop small enterprises such as bakeries, shops, and food processing businesses. All of them expressed that they lacked the money to start new businesses.

One impediment to women's ability to develop alternative income sources is a lack of credit for development of small business. Limited access to credit for women is amplified by a lack of access to collateral. Items that could be used for collateral, such as houses, are often formally registered with the male head of household, who sometimes oppose women's initiatives to collateralize the asset to obtain credit. In Jalal-Abad *Oblast*, rural women said they did not want to request credit because they had to pay bribes. In addition to the institutional constraints to obtaining credit, rural women encounter many obstacles in initiating and developing their own businesses because of their large share of household duties, lack of information, poor communication, and other problems.

IV. Women's Farming Activity in Kyrgyzstan

Women in Kyrgyzstan are active in farming, although field research indicated that their labor contribution varied by village, location, level of poverty, ethnicity, and age. Fifty percent of the women in Kyrgyzstan as a whole are employed in agriculture, although labor contribution varies by region.¹⁴ In the south, women were very involved in production on land shares; some women estimated their contribution to comprise 50 to 70 percent of total labor input. Women in the south described spending all day in the fields weeding and picking cotton and tobacco. In one Uzbek village in southern Kyrgyzstan, the women were also responsible for transporting the crop from the field to storage (by carrying it on their heads). Men were generally responsible for any mechanized work and for irrigation. In the north, where wheat is the predominant crop and therefore production is more mechanized than in the south, women were less involved on the land share, estimating their input at 30 to 40 percent of total labor. Regarding sales of crops in both the north and south, either men or women sold the crop to wholesalers who came through the village, while women were more likely to take on the task of selling produce at the market. Several Kyrgyz villagers stated that it was customary for men and women to share duties regarding the land and this seemed to be the case in traditional Kyrgyz villages.

Women generally have primary responsibility for cultivating the plot of land next to the house (household plots). Women usually decide what to grow on the plots (usually vegetables and fruit) and whether and how to market the crops. Women are responsible for canning and other processing, and collecting the income from any sale of produce from the plots. Produce from household plots is typically sold at the local market. In most villages men assist women on the plots, primarily by plowing and irrigating the plot. Household plots are very important to household food consumption. Additionally, household plots sometimes provide additional cash to the household.

In addition to their duties on the land, women care for livestock and assume such duties as milking goats and cows and raising domestic animals (such as poultry). In some villages women oversee the breeding of livestock. Women were primarily responsible for taking the animals to high summer pastures in the mountain villages visited. Women generally looked forward to this time and used it to make rugs and other household goods. In other villages, this responsibility was shared between men and women. In one village, where women worked as “shuttles,” men were responsible for taking the livestock to high pastures while women remained in the village to trade. In some villages, hired shepherds tended livestock.

V. Legal Framework and Implementation for Land Rights

For many people in the Kyrgyz Republic, access to land is necessary for economic survival. This section examines how the land reform legislation, family legislation, and customary law have affected women’s access to land. The field research examined women’s access to four types of land: (1) land shares; (2) household plots; (3) pastureland; and, (4) land from the Land Redistribution Fund.

A. Land Shares

1. Written law

Attempts to transfer the land and non-land assets of state and collective farms to residents and employees of these farms began as early as 1992. This effort was strengthened by a 1994 Presidential decree¹⁵ stating that citizens who lived on the territory of collective and state farms were entitled to receive shares of the farm’s arable land and that farm employees were entitled to shares of the farm’s non-land assets (i.e., machinery, buildings, animals). With the exception of seed, breeding, and experimental farms, all state and collective farms were ordered to “restructure” their ownership of land and assets based on the share system. Rural committees for land and agrarian reform at the farm level were to carry out the task of allocating shares, with assistance from the Centers for Land and Agrarian Reform (CLARs) at the *rayon* and *oblast* levels.¹⁶ All but 25 percent of the farm’s arable land was to be distributed to individuals in the form of land shares. In addition to the 25 percent of arable land held in reserve, pastureland was also reserved in state ownership to be leased out to farm enterprises, families, and shepherds. Most objects of the social sphere such as kindergartens, clubs, clinics, and sporting facilities, which had been financed by state and collective farms in the past, were to be transferred to the *rayon* administration budget so that farm enterprises could concentrate on agricultural production.

A subsequent regulation was adopted that regulated the procedure of farmland distribution in land shares for allocation to:¹⁷

- citizens who permanently worked in agriculture and lived on the farm
- citizens who permanently lived on the farm and worked in the sphere of healthcare, irrigation, education, consumer services, trade, culture, and agro-vet-chemical-technical services on the farm

- collective farm members who worked outside of the farm but were permanent residents of it before June 1, 1996

Allocation of land shares is implemented by executive local government (village government) and committees for implementation of land reform and reorganization of agricultural enterprises (“on farm” committees). Those eligible for land shares who apply after the initial allocation and restructuring of the agricultural enterprise can be allocated land shares from the Land Redistribution Fund (at the discretion of the village government).

2. Actual distribution

Generally, the average land share for each collective or state farm was calculated by dividing 75 percent of the total arable land by the number of those eligible for land shares. The shares were then allocated among the eligible farm population. An individual’s land share was generally between 0.75 and 1.5 hectares in the northern provinces and between 0.1 and 0.3 hectares in the more populous southern provinces.¹⁸ While each person among the farm’s population was entitled to a share of the land, the family, not the individual, received a certificate from the village council indicating the family’s share of land.

The actual distribution of land varied from village to village, depending on the village government and members of the former state or collective farm. In some villages, certain people (such as children, pensioners, or social sphere workers) received only a portion of the share received by other adult members. By law, the procedure for distribution of land shares was to be decided by a general meeting of all members of the former state or collective farm.¹⁹

Typically, only members of farms received land shares, while people who lived on the territory of the farm but worked in town or people who lived in town did not. A majority of the urban population was employed in industrial enterprises and the social sphere and did not receive land shares. Instead, under the industrial privatization program, these people received a share of the reorganized factories and industries where they worked.²⁰ Those who wanted to return to rural areas before January 1, 1996 were provided a land plot from the Land Redistribution Fund.

In Chui *Oblast*, the registrar stated that only one village government divided land equally among the members of the farm, but 70 other village governments made their own rules and established categories of recipients – production workers, social sphere workers, children – and assigned those in different categories different amounts of land. Chui *Oblast* is now issuing new certificates to formalize and regularize the distribution.

3. Analysis

Since the land distribution occurred on a household basis, there does not appear to be any discrimination in terms of which land was allocated to women. Women who received land in the distribution generally received the same quality and quantity of land as men within the household unless they were workers in the social sphere and the distribution did not follow what appears to

be the intent of the written law for equal distribution.²¹ However, there are two issues of concern regarding the allocation of land shares and women's access to land.

First, since people who lived or worked in towns did not receive land, these people now feel at a disadvantage because land is the sole means of survival for many people given the current economic situation and the failure of many rural factories and enterprises located in town centers. Whether women make up more of this group because they were often engaged in in-town occupations, particularly in the social sector, is unclear. However, during field research, women who did not have access to land because they were not members of a former collective or state farm raised this issue several times.

A second issue raised frequently was that children born after January 1, 1996 do not receive a land share because the land redistribution was completed by that date. Young families, therefore, are concerned about not having enough land. This issue was of particular concern in the south, where land is scarce and families are large. While land from the Land Redistribution Fund was intended to help these two groups of people, the village government currently has a great deal of discretion.

Thus, while there are two groups of people who need but did not receive land during the initial allocation, now that land has been privatized, any re-distribution of already-privatized land would be harmful to those who currently own the land, creating tenure insecurity and increasing land tensions. If possible, a portion of land from the Land Redistribution Fund should be set-aside for landless and unemployed town people and young families with children born after 1996. See Section V(D) for a discussion of the Land Redistribution Fund.

B. Household Plots

Legislation regarding household plots can be divided into two categories: (1) allocation of land; and (2) ownership of household plots in common joint ownership.

1. Written law
 - a. Allocation of household plots

Household plots for construction and maintenance of a house and household holdings are given in ownership to the citizens of the Kyrgyz Republic by the authorized body (i.e., village government, *rayon* department of architecture) free of charge (but only once per applicant/household).²²

Besides uses for private housing and the maintenance thereof, owners of the household plots can use them for agricultural activities, including orchards and gardens. Household plots may also be provided and used for raising cattle and poultry. Existing legislation does not prohibit the use of household plots for other needs (for example, for sports and recreation).

b. Common joint property of spouses

Once land has been allocated, the question of who owns the land and the house that is built on the land is determined by the Civil Code²³ and the Marriage Code²⁴.

Under the Civil Code, property acquired by spouses during their marriage is considered their common joint property, unless the terms and conditions of a contract between them provide otherwise. Spouses have equal rights of ownership, use, and disposal of common joint property. Property acquired by one spouse as a gift or by way of inheritance within the marriage becomes the individually held property of the recipient.²⁵ Property belonging to each individual may be recognized as joint property if, within the marriage, investments that considerably increased the value of the property were made using joint funds.²⁶

Spouses have equal rights to their joint property even if one of them has been engaged in household work, childcare, or for some other valid reason has not had independent earnings. When one of the spouses conducts a transaction, it is considered that he or she has acted in agreement with the other spouse. However, for transactions related to alienation of a jointly owned house or a vehicle, the consent of the other spouse is required in written form.²⁷ Spouses may conclude between themselves all types of property transactions allowed by law. However, agreements between spouses that are intended to restrict the property rights of either spouse or children are invalid and unenforceable *vis à vis* both the spouses and third parties. Common joint property may be divided between spouses (without divorce), at request of one or both spouses.

According to interviews with judges during the fieldwork, it is the court's prerogative to decide whether houses and the land on which they are built are held in common joint ownership. One judge noted that the disputing party (usually a woman) would be responsible for the burden of proof of joint ownership.

2. Customary law

Women are customarily responsible for growing food for the family and, therefore, contribute most of the labor on the household plots. However, the household plots are inseparable from the house itself and are considered to be owned by men.

Among Muslim people in the Kyrgyz Republic (Kyrgyz, Uzbeks, Dungan, and Uigar) when a woman marries, she leaves her parents' home and moves to the home of her husband. If the husband is not the youngest son, his parents help him build a house for himself and his new wife. The land required to build this house is provided by the local village and is within the construction plan of the local village. Unless the family is very wealthy, the house is usually not built until some time after the couple marries (often during the first few years of the marriage). This house is considered to be a pre-mortem inheritance of older sons. It is his share of the common joint ownership of his parental family's property. If the husband is the youngest son in his family, he (and his spouse) will generally stay with his parents and inherit their house and land when they die. The house provided by the husband's family is generally registered in the

name of the husband, and it is the responsibility of the husband's family to provide this house for the married couple.

3. Analysis

Women within a traditional household have on-going access to household land and in many cases the household plot provides the family with a large portion of their food. Women stated that they would like to receive small credits to purchase inputs or small animals to improve production. Given the difficult economic situation, supporting production or household plots would directly benefit individual families. Extension services need to be provided by women to women focusing on their particular concerns related to their household plots and small livestock raising. Moreover, assistance might be provided to women entrepreneurs to establish cooperatives for purchasing inputs and marketing excess agricultural produce.

In the event of a breakdown in the traditional household (divorce), the interpretation of the written law regarding joint ownership of the house and household plot is heavily influenced by customary law. The house is generally not considered to belong to the wife in joint ownership unless the wife and the wife's family were involved in the construction of the new house. If the house was built before the man married, the house and land will belong to him. If the house was built after the marriage, and the husband objects to the idea of co-ownership, the wife will have to prove that she was a co-owner in court to acquire her share after a break-up. Such proof would involve proving her involvement in the building of the house, either through sweat equity or through financial contribution. The working assumption of the court and local bodies of dispute resolution is that the house and household plot belong to the husband and is his parental share of his family's property. See Section VI(B) on divorce below.

Because houses can currently be purchased and sold, it may be of value to more closely study women's involvement in the sale of the house, and whether women are asked for their written permission to sell. A further question is whether women are ever compensated for improvements made to the house or household plot (value added) in the case of divorce.

C. Pastureland

1. Written law

Kyrgyz legislation does not separately distinguish the rights of women or men related to pasture use.²⁸ Pastureland is not subject to share division among citizens and is leased out in accordance with procedures established by the Ministry of Agriculture and Water Resources.²⁹ Shepherds and other pasture livestock workers have a preferential right to short-term and long-term leases for pastureland.

Total area and boundaries of pastures have been and are determined during the ongoing land inventorization process. Areas and boundaries are approved by: (1) the Government of the Kyrgyz Republic (distant mountain pastures); (2) the *oblast* state administrations (pastures located in intensive-usage zones); and (3) the *rayon* (town) state administrations (near-the-

village pastures). According to the law, pasture plots are to be demarcated both on the ground and on maps.³⁰

Under a recently adopted law, pastureland lease contracts must be in writing and registered with the local immovable property registration body. Leases lacking a written lease contract are invalid.³¹

2. Customary law

Even though the law requires a written lease and registration of the lease, pastureland is generally not leased to livestock owners, although professional shepherds appear to have written leases with the village government. Rather than a written lease for pastureland, families pay a fee per head on their animals. There are at least two common patterns for ownership and use rights to pastures. Either high mountain pastures belong to the village as a whole and are undivided, or they belong to the village as a whole but are loosely divided among families based on ancient and traditional pasture rights. The latter pattern was most prevalent in the villages visited. Even though rights to pasture land do not appear to be formalized, no disputes over pastureland were noted during field research. This lack of conflict is probably due to an abundance of pastureland and greatly decreased herd sizes.

Women go to the traditional pastures of their husband's family after marriage. They continue to have access to pastures after the death of their husbands if they have children. In a divorce, the pastureland stays with the husband.

3. Analysis

The new pasture legislation, which requires written and registered leases for use of pastureland, was not being followed in the villages visited during the field research. Pastureland does not appear to be demarcated, making formalization impossible. Pasture legislation may be more successfully embraced if it more closely reflected traditional rules regarding pastures. These rules appear to be working well (at least at this time). It is worth noting that whenever a written rule of law does not make sense to an entire community, not only is that written law not followed, but the entire rule of law is less respected overall.

However, if formalization of pasture rights is enforced in the future, the rights will most likely be formalized in the name of the head of the household, not necessarily with the user of the pastureland (in some cases women). The model form for pasture lease contracts has a place for the name of only one lessee, and pastureland, like other land, is passed down within the husband's family.

Given that residents of rural areas do not have an abundance of livestock at this time, the authorized agency will not have to consider many disputes on provision of pastureland. But, in the future as herd sizes rise, farmers will become more interested in obtaining pastures that are accessible and productive. Further research is needed to look at the process of inventory of

pastureland and the mechanism of distribution in relationship to unmarried women's access to pastures.

D. Land Redistribution Fund

1. Written law

The Land Redistribution Fund (LRF), which until recently was administered by the Ministry of Agriculture and Water Resources and is now administered by village governments,³² consists of farmland parcels (excluding pastureland) under state ownership.³³ The LRF (formerly the National Land Fund) was established by government resolution³⁴ and comprises 25 percent of arable land (except pastureland). Each agricultural enterprise was ordered to transfer 25 percent of its arable land to the state and allocate the other 75 percent of arable land free of charge to members of the collective or state farm in private ownership as land shares.

The LRF was created to allow: (1) the development of rural settlements; (2) the establishment of seed-farms, livestock breeding stations, and experimental peasant farms; (3) the creation of special agricultural enterprises; (4) land use rights to be sold through auction; and (5) the allocation of land plots to citizens who worked and lived on the farms or came to the farms for permanent residence before July 1, 1996.³⁵

LRF land plots are located within existing settlements and are separately allocated. Currently only leasing of LRF land plots is allowed.³⁶ LRF lands are to be transferred into ownership or lease use through auction.³⁷ The current legislation does not contain any restrictions to women's rights to receive LRF land plots.

2. Actual practice

LRF land has been administered differently in each *oblast*. In Osh, the lease right to land was auctioned to the highest bidder, and several women stated that only those with money could obtain LRF land. In other *oblasts*, the village government decided who could lease land based on either a first-come-first-served basis or based on criteria developed in the regulations pertaining to auctions of LRF land.

In the northern *oblasts*, several women stated that LRF land would not be distributed to them, while others stated that the village government took care of single women. Women who leased LRF land in Chui *Oblast* went to the village government. Several women from Chui stated that the allocation of land was not transparent, and that women were often given poor land. Furthermore, once the land had been granted for a lease term, women did not ask for or receive their legal documents regarding the land. A legal advisor for women, who lives and works in Chui *Oblast*, stated that women generally do not know their rights regarding land, how much the tax on the land will be, or what the lease payments will be.

3. Analysis

Equitable distribution during the primary stages of land redistribution is important in providing a possibility for equity as the land market develops. It is appropriate for the Government to place criteria on distribution of State land, with particular goals and remedies in mind. The LRF could be used to assist families who are landless and unemployed because they live in towns where industry has failed in the past 10 years and has not been replaced. Moreover, the LRF could help ease the transition to a land market if the introduction of a land market results in a rapid increase in landless farmers.

Rather than control of LRF land resting with village leaders alone, a local leasing commission should be responsible for deciding who is eligible to lease land. Under a pilot project to sell a portion of the LRF to private owners, the auction commissions, which were made up of both local leaders and representatives of the village and central government, were considered to be fair by nearly everyone interviewed in an earlier survey that addressed this issue.³⁸ The criteria for applicants should be clearly established by legislation with policy goals defined. It is strongly recommended that a portion of the LRF land (possibly from 20 to 50 percent) be set aside for families with children born after January 1, 1996, families who live in towns that do not have access to land, and women who move to the village of their husband that do not have access to a land share in the new village. See Section VI(A) on marriage below.

VI. Effects of Written and Customary Law on Access and Rights to Land Within the Household

1. Introduction

Issues regarding women's access to land arise when there is a breakdown within the traditional household. Land is allocated on a household basis and the household defines itself as a unit. When the head of the household, usually a male, dies, abandons the household, or seeks a divorce, or when women themselves seek a divorce, the woman's access to the household land is at risk, especially if she is childless.

The primary finding from field research is that the written law addresses members of a household as individuals and provides and guarantees individual rights. Customary law, on the other hand, addresses the household as a unit and works to preserve the unit as a whole. Given this split, written laws are virtually irrelevant in rural villages in many instances. Although customary law does not vest land rights specifically with women, women's needs are addressed in many cases through their access to household land.

Often, women favor customary law over written law. In cases where they do not, it is very difficult, if not impossible, for women to insist on their legal rights at the expense of the household—assuming that they are even aware of their legal rights under written law. Embedded in the customary law is an extremely strong sense of duty to the household and of shame when one's obligations are not met.

When asked which customary laws women would change, they most frequently mentioned the funeral repast and mourning requirements, both of which are very expensive and

difficult during current economic times. Women would like to see the custom of a strong marriage enforced so that women are not “discarded.” Many women stated that customary law is favorable to women and that they are not interested in rights under the written law. These women believed that an application to the court would be an acceptable route, however, if a woman’s situation was a product of spousal drinking and abuse.

One woman stated that existing customary law would only change when children were brought up to embrace different values or if there were a widespread and organized response by women to a particular custom.

A. Marriage

1. Written law

Legal regulation of matrimonial relations in the Kyrgyz Republic is carried out solely by the state.³⁹ Only marriages registered in the state registry offices and village government are considered to be valid. Religious ceremonies, as well as other religious rites, do not bestow legal validity.

Marriages in villages are registered with the village government, while marriages in urban areas are registered in the marriage department. Registration costs approximately 30 som, or a little more than one US dollar. The rights bestowed by marriage are protected by courts and the state registry offices.

To register a marriage, the parties must be 18 years or older.⁴⁰ Local self-government bodies, in exceptional cases, may reduce the marriage age for a woman by no more than one year. According to the law, marriage is not permitted if one or both of the persons is already married.⁴¹

2. Customary law

Under customary law, dowry (gifts given to a daughter by her family upon marriage) and bridewealth (gifts given by the groom’s family to the bride’s family) give the bride status and security, in a way that marriage registration does not. The Muslim marriage, *Nikah*, is of greater importance than state marriage. Non-registered marriages are becoming more common, especially in rural areas, where many couples wait until they have a child before they register their marriage (presenting a marriage certificate appears to be the simplest way of proving information about parentage for the birth certificate). In some cases, couples do not register their marriages even upon birth of a child (or multiple children). At the time of a birth, a man will occasionally not want to register the marriage or give his name to a child if no bridewealth or dowry has been paid. Women interviewed estimated that as many as 10 percent of women were in this position.

The Kyrgyz tradition of bride stealing⁴² often puts the unknowing bride in a vulnerable position because it may take up to six months for her parents to provide the dowry. These

months are very insecure for the bride because she will generally no longer be a virgin and will not have the status provided by her dowry. If her husband sends her home before her dowry is given and her bridewealth paid, her price will be much lower for a subsequent marriage. Moreover, if her marriage is not registered, she loses any rights provided by the law. It has been estimated that between 15 and 30 percent of all girls are kidnapped against their will, depending on the region of the country.

In ethnic Uzbek families, where bride stealing is not practiced, parents try to marry their daughters at a younger and younger age so that their bridewealth is high and they have a better chance of marrying a wealthy man. Some women interviewed noted that it is not uncommon for girls to be married at 14. These marriages are arranged by the bride and groom's parents.

While polygamy is prohibited by written law in the Kyrgyz Republic, under customary law the *mullah* can perform and register the marriage of a second wife. Wealthy men often have a second wife, and the arrangement is generally kept secret. However, women did talk about being concerned about losing their husbands and their rights to his income in the event of a second wife. Women who are second wives have no legal rights to any of the man's income or property and, therefore, this group of women is also very vulnerable.

Women in the ethnic Uzbek families stated that some men prefer to have two wives, and for this reason, the divorce rate has increased because the first wives do not like this change. Polygamy in the Uzbek village visited was less hidden; women stated that the two women generally live in the same house, unlike in Kyrgyz villages.

3. Analysis

A new wife is vulnerable if her marriage is not registered. Especially troubling is the trend for younger girls to marry. Girls who are marrying young, under the age of 17 or 18, cannot be legally married because the official marriage age is 18, and in some rare cases, 17. Therefore, a girl who marries at 14 has no legal rights under the law until the marriage is registered 3 or 4 years later—in many cases after children have already been born.

The trend away from registering marriages has several effects on women's land rights. In the event of a divorce or death of the husband, it is more difficult for a woman to prove her interest in jointly-held property if her marriage is not registered. Moreover, it is easier for the head of the household to alienate jointly-held land without the written permission of his wife because, if the marriage is unregistered, the notary or registrars have no way of identifying the wife as a joint owner. See formalization of rights, Section VII. Interviewees (both men and women) cited both of these results as reasons why some men were likely to avoid marriage registration, while also noting that avoidance was easier now than in the past because of less strict enforcement.

Possible recommendations regarding legal registration of marriage include providing protection under the law for spouses in unregistered marriages. For example, unregistered marriages could be considered marriages by the state if certain conditions were met (common

law marriages).⁴³ However, this recommendation raises a series of questions that must be answered before such a provision could be considered. For example, in many cases women and men do not get legally divorced before marrying a second spouse. What would a common law marriage rule mean in terms of inheritance or division of property? What would be the rights and obligations of the first wife? The second wife? If the first marriage were registered and the second not, under the current written law, the first spouse would have all legal rights and the second none, even if the second wife had been “married” to her husband for many years. If neither marriage were registered, what should the common law rule be? Should there be a common law divorce rule? In addition, further research might be undertaken to look at the extent to which marriages are or are not registered in Kyrgyzstan, and the influence that marriage registration (or lack thereof) has on women’s rights to immovable property.

B. Divorce and Division of Property

1. Written law

A Marriage may be dissolved by divorce based on a statement of one or both spouses. However, a husband does not have a right to institute a marriage dissolution case during his wife’s pregnancy and during one year after the birth of a child.⁴⁴

a. Procedure of divorce

As a general rule, the dissolution of a marriage is executed judicially, but in some cases, when the parties do not have children or property disputes, by the state registry office. The Code of Civil Judicial Procedure governs marriage dissolution cases. When considering marriage dissolution cases, the court is obliged to establish causes for the marriage dissolution, to take measures for the spouses’ reconciliation, and, consequently, to set a term for reconciliation. The marriage is dissolved if the court establishes that the continuation of the common life of the spouses and preservation of the family would be impossible. When making a decision on marriage dissolution, the court, if necessary, takes measures to protect the interests of under-age children and disabled spouses. If there is a dispute between spouses over child custody and support, the court will also establish, simultaneously with the settlement of the divorce case, which parent the children will stay with and which parent will assume financial responsibility for the children. At the request of one or both spouses, the court is obliged, simultaneously with the settlement of the divorce case, to divide the common joint property.

b. Division of common share/joint property

In dividing the common joint property, the shares of spouses are generally considered to be equal. In certain cases, the court may depart from this principle of equality after taking into consideration the interests of under age children and the interests of one of the spouses. A share of one of the spouses might be increased if the other spouse has evaded work or has wasted common property and damaged the interests of the family.

While dividing the common joint property, the court will transfer property to each spouse. When the value of property transferred to one of the spouses exceeds his/her share, the other spouse has a right to ask for a corresponding monetary reimbursement. As mentioned earlier, property owned individually by either spouse before getting married remains the individual property of the owning spouse after marriage. Property received individually as a gift or by inheritance during marriage is also individual property. In some cases the property that would otherwise be considered individual property will be considered common joint property if it is established that during the marriage there were joint property inputs that considerably increased the value of the property.⁴⁵

The person who applies for property division (almost always the woman) must pay the state fee. If property is worth 500 to 10,000 soms, the plaintiff must pay 5 percent of the value of the property; if the property is valued at over 10,000 soms, the plaintiff must pay 10 percent of the value of the property.⁴⁶ Article 102 of the Civil Code provides that the court can exempt payment, and poor women often do pay less than the above stated percentages. However, the amount must be paid in advance and it provides grounds for the commencement of the judicial procedure. The full burden for payment falls on the person requesting the property division.

2. Customary law

Customary law does not encourage divorce. Extended families, village elders, and the village government make an effort to keep the family together. Often, a “cooling-off” period is required by local leaders before a divorce will be allowed. If a divorce occurs, it appears that (generally in rural areas) the land and house stays with the husband unless the husband leaves the village to marry another wife because the house and land are considered to be the husband’s portion of his family’s wealth. The wife most often takes the children and returns to her family. However, in one group interview, women stated that the land and house stay with the spouse having custody of the children and that the livestock stays with the land.

In a more remote village, women stated that the land and house stays with the woman if she has children and her husband initiates the divorce. These same women stated that if a woman initiates divorce, the property and land are shared between spouses. If the wife has children, however, she gets a bigger portion of the property even if she initiates the divorce.

Although exceptions clearly exist, most women stated that it is not traditional for women to ask for the land or house. In fact, it is considered shameful to take a share of the land. Of the divorced women we interviewed, none had kept their land and house even though they had children. One woman stated that the Council of Elders was not helpful in resolving such situations because husbands would bribe the Council. Other women stated that division of property is decided by the village leader (the village government).

Uzbek women are even less likely to go to court to seek a divorce than Kyrgyz women since Uzbek families generally do not want to take their daughter back upon divorce. In this case, the wife's family tries to convince the groom to keep her. However, if divorce does occur

and the woman has children, the house generally stays with the wife. If she does not have children, the house stays with the husband.

3. Analysis

Customary law, which is enforced at the village level, does not give women access to land upon divorce. Some exceptions exist if the couple has children and the husband leaves the house. However, if women go to court seeking divorce and property division, the written law is generally enforced. One judge in a *rayon* court in Jalal-Abad *Oblast* stated that it is very rare for anyone to come to the *rayon* court to divide property upon divorce. However, if a woman goes to the *rayon* court, she is likely to receive her share of the house and land as a monetary settlement. Women who petition the court must provide proof of their investment in the house, and are compensated for that investment. In addition, the court generally compensates women for their portion of the household land share if their name appeared on the land share certificate.

In addition to the social stigma of divorce, one barrier to women going to court is the state fee charged for division of property. Women generally have no possibility of paying the fee, so they rarely apply to court.

One additional issue regarding women's access to land in the event of divorce stems from the residency document (*propiska*) system held over from Soviet time. This system may both impede women from obtaining land rights, and the further development of market relations in rural areas. For example, some women in Issyk-kul *Oblast* (Grigor'evka Village) told us that after their divorce they were refused a *propiska* even in the home village of their parents. The absence of a *propiska* automatically excluded these women from the land share distribution process. It could also prevent women from leasing in land from the land redistribution fund (or buying it at auction if this becomes possible in the future, and if residency requirements or preferences are specified). Further research is needed to study the relationship between *propiska* legislation and women's land rights, especially in cases of divorce.

Several judges stated that it is very important to change the law so that individuals with children or dependent parents do not have to pay the state fee for property division. An additional recommendation is to allow the state fee to be paid after the property has been divided and for the burden to be shared by both parties. Without actual access to court, the written legislation regarding divorce will be meaningless for most women.

Women generally thought that, in the case of divorce, written law regarding division of property is better than customary law. Women in the north were, in general, more likely to go to court than women in the south.

C. Inheritance and Division of Property

1. Written law

Succession is the transfer of the property of a deceased person to another person or persons (successors) by way of inheriting legal rights. The law recognizes succession by will and by operation of law. Intestate succession takes place by operation of law in the absence of a will, when the will does not cover the whole estate, and in other cases provided for by the Civil Code. An individual may bequeath all or part of his or her property to anyone even though they are not heirs at law. A devisor's under-age or disabled children, as well as his or her disabled spouse and parents, inherit, irrespective of the contents of the will, not less than two thirds of the share that would have been due to each of them in case of succession at law (obligatory share). Successors, by operation of law, are called to succession in order of priority.⁴⁷ In summary, surviving children, spouse, and parents take first in equal shares. Subsequent successors are more distant relatives and family members.

When one spouse dies, the share of common joint property, including land plots, of the deceased is defined and subtracted from the total amount or value of the property. A surviving spouse has the right to inherit by will or at law a deceased spouse's share of common property, and is also able to keep his/her share of the common joint property.

A surviving spouse may be removed from succession by the court's decision if it is proved that the marriage with the devisor was actually terminated prior to commencement of succession and that the spouses lived separately for at least five years before the commencement of succession.

2. Customary law

Bridewealth and dowry are customary pre-mortem ways of redistributing property to girls and a way of protecting girls in their new families. Customary law provides that all children get a share of the household's wealth, and the daughter's share is given in the form of dowry. It is very shameful for a family not to fulfill this obligation.⁴⁸

Under Kyrgyz customary law, bridewealth is given by the groom or his family to the bride's family as "payment for her mother's milk." Dowry is given directly to the bride by her family and considered to be her pre-mortem inheritance.⁴⁹ Women have the customary right to retain their dowry and to take it with them to their parent's home in case of divorce. With few exceptions, women interviewed valued the custom of dowry and bridewealth even though the gift exchange is a burden to the families.

Under customary Kyrgyz law, the youngest son inherits the property of the household. In anticipation of this inheritance, the youngest son remains in the household and is responsible for care of his elder parents who continue to live with him. The elderly parents in turn are responsible for helping to care for the grandchildren. Some women stated that customary law might not be followed exactly if the youngest son were not suited to caring for his parents. In this case, another son would be chosen as the heir.

As to pre-mortem bequests to older sons, the family is responsible for building a house for each son, which usually occurs a short while after marriage (possibly 2 years). Older sons are also given livestock and other implements.

In one case, a woman's husband died before her youngest son was an adult. Although her older son lived with her, she had the house put into her name. She will transfer the house to her younger son when he reaches the age of 18.

If there are no sons, the house and land may go to grandsons. If there are no grandsons, the property may be divided among male relatives. If a daughter asked for her inheritance share of land (under the written law), it would be a great shame to her and her family.

In Russian households, the Kyrgyz customary law is not followed. Children will more often go to court to receive their intestacy right to a share of the property than during the former Soviet times. However, several Russian women stated that the written law did not always work unless there was money for a bribe.

3. Analysis

Under customary law, each member of the family, except the youngest son, receives his/her property share before the death of the parents and therefore does not have a claim to an inheritance.

In general, the great majority of women interviewed agreed that the customary inheritance law was fair to women.⁵⁰ The customary rules on succession were being followed in every Kyrgyz and Uzbek village visited. No cases had been brought by Kyrgyz or Uzbeks to either the Court of Elders or the *rayon* courts regarding division of property after death. Russians do not follow Kyrgyz customary law, and the one case that had been brought to one *rayon* court was regarding succession issues in a Russian family.

The legal intestate succession rules appear to be irrelevant in rural areas since wills are seldom written and it is the family who decides how the land will be distributed based on customary law with little diversion from rules that were established centuries ago. The current system keeps the house and land together, does not allow for fragmentation, and provides the youngest son with the incentive to care for his parents.

Land shares were not conceived of under customary inheritance laws. It appears that land shares, even though they are held in common ownership by all members of the family, are also passed to the youngest sons. Among those interviewed, there had been no re-registration of land shares upon the death of any members of the household, including the head of the household. Women did not claim their share of the land share when they left their household. It is unclear whether older sons continue to claim a share of the land share once they move to a nearby house.

One potential vulnerability a woman may face arises if her husband dies and they have had no children. In such a case, her in-laws decide her fate. However, women interviewed responded that it is traditional to leave the woman with something. A share of the property would likely be given to her by the husband's relatives. If the woman is young and has no children, she would go back to her parents with some small gifts (and her dowry). If she is elderly, she would usually receive the wealth of her husband. In fact, in such a case, the usual practice in a family would customarily be that others who have a right to the house or land plot would forego their formal rights in favor of the surviving spouse.

The written law on intestacy should not be imposed on families who do not bring cases to court. For example, in re-registering land after the death of a husband, the family should be able to decide who gets the land without the state imposing the written intestacy law on the family. If written intestacy laws more closely reflected customary law, they would cease to be irrelevant. However, given Kyrgyzstan's ethnic diversity, different legislation may be necessary for different ethnic groups. In fact, this approach is not uncommon in other countries in relation to intra-household law.

VII. Formalization and Documentation of Women's Rights to Land and Assets

Accurate recordation of women's rights to land and farm assets within a household becomes important in at least three contexts: (1) divorce (if a wife's property rights are not documented, it may be much more difficult for her to claim her interest during a court divorce settlement); (2) death of a spouse (a wife's claim to her portion of her husband's property and property held jointly by both spouses may be tenuous if the marriage was not recorded or if her interest in the jointly held property was not recorded); and (3) alienation of the property by one spouse (if a wife's interest in the property is not documented, her husband could sell, mortgage, or lease it without her consent).⁵¹

This section explores the question of whether registration of rights to immovable property (including land shares and houses with household plots) and farm assets adequately reflects the legal interests of all household members. Each section begins by introducing the relevant legal framework and is followed by a discussion of field observations, analysis and recommendations.

A. Registration of Rights to Immovable Property

1. Written law

The 1998 Law on Registration⁵² calls for implementation of new procedures through gradual opening of registration entities throughout the country, under a single state immovable property register (*Gosregister*).⁵³ For an interim period, therefore, two different registration systems will exist in Kyrgyzstan. This section focuses primarily on the new system as implemented through pilot *rayon*-level registration departments.

These new procedures apply both to land shares and to household plots. The two main components of the registration system of concern here are the registration card and registration

file.⁵⁴ The registration card contains a registration number, the identity of the rights holder(s), the type of rights held, and specifies the type of rights-establishing document the registration is based on.⁵⁵ The registration file contains copies of all documents referred to on the registration card, including information on the origin, change, term, or limit of the rights, as well as a map of the property.⁵⁶

The registration card contains two important fields that can be used to identify common ownership rights.⁵⁷ One is a field for “owner’s name” and the other is a field for “joint or shared ownership.” If the share of each of the owners is defined, the property is shared ownership if the share is undefined, the property is joint ownership.⁵⁸ Married couples are joint owners of property unless otherwise specified by law or contract.⁵⁹ To register common joint ownership, the registrar must record the names of all of the joint owners under the field for “owner’s name.” In the field for “joint or shared ownership,” the registrar must record “joint ownership.” When property is held jointly by spouses, the registrar must enter both spouses’ names in the “owner’s name” field, and record “joint ownership.”⁶⁰ Disposal of immovable property held in common joint ownership (which includes sale, mortgage and lease⁶¹) requires consent of all the joint owners.⁶² Both spouses who are joint owners must give written consent to the transaction.⁶³ Thus the registrar may legally register a sale, mortgage, or lease transaction only in cases where written consent of all joint owners is attached to the registration application.⁶⁴

To register common shared ownership, the registrar must list all common owners in the “owner’s name” field, and under the “joint or shared ownership” field must record the sizes of the shares in percent, fraction or hectares.⁶⁵ Common share owners may transact their share without the consent of the other share owners except that, in the event of a sale, the selling share owner must inform the other share owners, who hold a right of first refusal.⁶⁶

2. Field observations and analysis

a. Registration procedures for land shares

Implementation of the 1998 law is taking place in selected *rayon*-level pilot registration departments including the registration departments in Kant *Rayon* in Chui *Oblast* and Kara-suu *Rayon* in Osh *Oblast*. Few land shares have yet been registered under the 1998 law. The only occasion for land shares to be registered is if they are being re-issued (as is the case in Kant *rayon*), or if they are formally transacted through inheritance,⁶⁷ gift, or lease (extremely rare according to our interviews with the registrars).⁶⁸

Registrars in Kant appear to be taking steps toward ensuring that all intra-household rights to land shares are registered by recording “common share” ownership in the appropriate field on the registration card and including the land share certificates in the registration file. (Certificates usually include the names of all common share owners along with their relative percentage of ownership.) Registrars do not, however, appear to be listing each of the names of intra-household common share owners on the registration card under the “owner’s name” field in all instances. Nor are they uniformly recording the percentage share held by each common share owner under the “common or joint ownership” field.

While the actions taken by the Kant registrars to record the rights of intra-household common share owners to land shares should be sufficient to give notice to anyone reviewing the registration card that information on common share owners exists in the file, they do not provide the full security for documenting intra-household rights afforded by the law. While the registration system upholds the rights of any common share owners that are recorded in the registration file (as long as the registration card indicates the existence of common share owners), including all common share owners' names on the card could improve efficiency and further ensure the rights of all common share owners are observed. (If and when transactions of land shares begin to occur more frequently, the original land share certificate will cease to provide conclusive proof of ownership. Determining who the common owners are would require the registrar to sort through the documents in the file recording each previous transaction—including inheritance, purchase/sale, mortgage, and lease.)

To ensure that all common share owners' interests are adequately recorded in the registration system, the State Register could enforce current regulatory provisions so that: (1) common share owners within a household are listed independently under the "owner's name" field on the registration card; and (2) the relative interests of common share owners within a household are listed independently under the field for "common or joint ownership" on the registration card.

b. Registering leases

It was not clear whether the registrars at Kant or Kara-suu would require all common owners' approval to register a lease transaction on land as no lease transactions have yet been registered. One official, however, believed that legislation did not address this issue, and that the person listed as the head of the household on a land share certificate could lease out the entire land share without consent from the other common share holders. Additional regulations could specify that a common share owner of a household land share must obtain the formal approval of all other adult common share owners within a household to lease out the land share.

c. Registration procedures for houses

In registering houses, registrars in Kant and Kara-suu rarely record the interests of anyone other than the head of the household (or person designated by the head of the household to be the registered owner) on the registration card or in the registration file.⁶⁹ It was not possible to determine whether this is because cases of joint ownership by spouses are very infrequent or because the registrars are not following the letter of the law in terms of registering rights of intra-household common joint owners to houses.⁷⁰ It appeared, however, that registrars distinguished between the need to record interests of two or more households holding property in common and *intra*-household joint owners. For the former, registrars indicated the names of joint owners (heads of households) in the "owner's name" field on the registration card and marked the field for joint ownership. For the latter, they appeared to do neither.

If, as it appears, a wife's joint ownership share to a house is rarely formally registered, it would be harder for her to prove her interest in the house in the event of divorce or the death of her husband. While the head of the household would be able to prove his interest by going to the registration files, anyone not listed on the files would have to rely on the village government household books or some other more complex (and likely less acceptable) means. Furthermore, a husband who wanted to sell the house without informing his wife could more easily do so, leaving the wife with limited recourse (see discussion below under section on "notaries").

The registration system for houses could more adequately record women's rights within the household in several ways. First, legislation could require joint ownership interests to be determined at the time the immovable property is registered. A process should be established to determine, upon initial registration, who has interest in the immovable property being registered. For example, if there is more than one adult living in a house, written approval from each adult might be required to register the property other than in common share or common joint ownership of all adults living in the house. Second, the government could monitor implementation of the Law on Registration provisions that set forth specific requirements for recording common joint and share ownership to immovable property, and provisions requiring any "rights establishing document" to be signed by all interested parties.⁷¹ Regulations could also clarify that "interested parties" include all common owners.

d. Notaries

In the event that the spouse with the registered interest in the house attempts to transact it, Kyrgyzstan's system relies on notaries to identify and gain the approval of all common owners. To understand how the Kyrgyz system has attempted to protect the rights to houses held by all joint share owners without recording the joint owners in the registration files, it is important to understand the registration process and the role that notaries play in it. First, the only registration of houses currently occurring is sporadic; home owners apply for registration only when they need to in order to sell their house, mortgage it, bequeath it, or gift it.⁷² To register a transaction the seller must provide a number of documents, which must be notary-approved before they will be accepted for registration. If, for example, a homeowner wants to sell his house, he must present the following documents to the notary:

- (1) A "rights establishing" document (either a record of a former transaction on the property, such as a purchase/sale, mortgage, or inheritance, or a statement from the village government);
- (2) A passport; and
- (3) In some cases, additional proof of marital/ household status.

Notaries depend on the rights establishing document to determine whether the applicant's household has legal possession of the property he/she wishes to sell, and on the passport and proof of marital status to identify any other potential common joint owners within the household. Notaries operate on the presumption that the existence of a spouse indicates that he or she is a common joint owner.⁷³ Because the rights establishing document does not generally include the

names of anyone but the applicant, notaries rely heavily on items not included in the registration files to identify common owners.

By relying on notaries rather than registration documents themselves to identify all joint owners, it is more likely that a spouse's joint interests would go undetected during a transaction than if these interests were recorded in the files at the time of registration. Unless and until the State Registry assumes the notaries' functions of identifying and gaining approval of intra-household common owners, however, notaries continue to provide important insurance for a woman's rights to her house. Despite this, recent legislation allows for land to be alienated for mortgage without notaries' involvement.⁷⁴ While this may have a positive effect in reducing transaction costs in the near term, it could jeopardize the rights of women joint owners within a household. Before adopting further legislation phasing out notaries from transactions involving immovable property, it will be important to assess whether and how the State Registry could adequately assume the function of identifying common joint owners of a house and securing their approval for a transaction.

B. Registration of Rights to Farm Enterprises

Adequate registration of women's rights to the assets of a family farm can determine their ability to realize the value of these assets upon divorce or the death of a husband, as well as their ability to use these assets as collateral to leverage capital (and their ability to withhold approval for collateralizing property held jointly with their husbands). Access to capital assets may in turn enhance a woman's capacity to effectively use the land she has rights to. This section looks briefly at whether the enterprise registration system for family farms (peasant farm enterprises) adequately documents the rights of all members with legal interests in the assets of the farm.

1. Written law

Members of a peasant farm enterprise may be spouses, children, or other people who help to run the farm, which consists of land owned by the members and any land they lease in. Any person of legal age may be a founder of a peasant farm enterprise, and any person of legal age may be the head of the enterprise. Unless otherwise specified, all members hold assets in common joint ownership.⁷⁵

Peasant farms may be registered either as legal entities with the Ministry of Justice⁷⁶ or as "individual entrepreneurs" with the *rayon*-level bureau of statistics (branches of the National Statistics Committee).⁷⁷ Farm operations are based on a charter (if registered as a legal enterprise) and an agreement defining the procedure of formation and division of common joint property.⁷⁸ To register as a legal entity, a peasant farm must submit the charter and/or "founding documents." Either one of these contains information on farm members, including the names and contributions of members within households.

2. Field observations and analysis

At the Isyk-kul *Oblast* Ministry of Justice in Karakol, the registration process appeared to follow legislative guidelines for registration of peasant farms. The ministry required each applicant to submit by-laws (which appeared to fulfil the role of a charter) and minutes from the first general meeting demonstrating election of the founder/head by the general meeting. The minutes list all household members with an interest in the farm. According to the officials interviewed, any member of a household who owns common share rights to the household land share could register a peasant farm in his or her name, as long as he or she could show that other household share owners gave approval. None of the ten peasant farms registered thus far was founded or headed by a woman.

Most peasant farms continue to be registered as “individual entrepreneurs” with the *rayon*-level bureau of statistics. At the Ak-su *Rayon* bureau of statistics (in Issyk-Kul *Oblast*), for example, 745 peasant farms were registered. Of these, no more than 15 were registered in women’s names. The bureau of statistics registers peasant farms in the name of only one of the share owners (usually the owner listed as the “head of the household” on the share certificate). According to the official interviewed, this did not affect the legal status of other household members as common owners (a status they gained through contribution of their portion of the household land share and/or assisting in farm operations). In the event that peasant farm assets had to be divided among family members, they said, a court could determine who had rights based on the household land share certificate. One problem with this approach, however, is that the land certificate will not always accurately represent current interests in the land share or current membership in the farm. For example, a wife who moves to her husband’s household will not be listed on the certificate, but may be an active farm member who has given a substantial labor contribution to the farm. If her name is not included as a farm member on the registration documents, it may be more difficult for her to prove her right to any of the farm assets in the event of a divorce or the death of her husband.

VII. Rural Institutions and their Impact on Women’s Access to Land

Many institutions at the village level and above have the power to both facilitate and constrain women’s access to land. This section focuses primarily on the institutions involved in dispute resolution and touches briefly on institutions with a role in the initial allocation of land, registration of secondary transactions of land, and the documentation and registration of rights. There are some regional variations in these institutions, with the biggest differences found between the north and south. Also, there appeared to be a significant difference in the extent to which these institutions operate on the basis of customs and traditions versus the legislative acts authored by the President and Parliament. Village level institutions in Uzbek villages in the southern *oblasts* seemed least likely to operate according to written law. Furthermore, the written law and formal state institutions appear to have much more influence on individuals in villages in the northern part of the country. The sharp difference between northern and southern villages in the influence of written law and official state structures raises the question as to whether observers should realistically expect the implementation of written laws to occur at the same pace in southern villages as in the north.

Village Level Institutions	Rayon, Oblast, and National Level Institutions
Village Government	<i>Oblast</i> Department of Justice
Court of Elders (<i>ak sakal sotu</i>)	<i>Rayon</i> Bureau of Statistics
Village Elder (<i>ak sakal, bei</i>)	<i>Rayon</i> courts
Maila Committee	<i>Rayon</i> Center for Land and Agrarian Reform
Women's Association	Notary
Extended family	Bureau of Marriage and the Family
	<i>Rayon</i> and <i>Oblast</i> Women's Associations

A. Village Government

One of the most important institutions that affects women's access to land both according to law and in practice is the village government, which replaced collective and state farm management as the executive organ of power in the countryside. The territory of the village government coincides with that of a former state or collective farm and a single village government may comprise one or several villages. The head of a village government is appointed by the head of the *rayon* state administration.

The legal basis for the village governments is Government Resolution No. 187 of 1996, subsequently amended by Resolution No. 482 in 1999. The resolutions vest broad powers and responsibilities in the village government. The village government's responsibilities related to land, include: the initial allocation of land shares from the State to citizens; administering leases on the Land Redistribution Fund (LRF); administration of pasture lands adjacent to the village; monitoring rational land use; recommending land parcels for confiscation; creation of a special local land fund; participation in the privatization of state agricultural enterprises; and, conducting competitions for land rentals. Other tasks performed by village governments related to women's access to land and property include: the registration of houses,⁷⁹ the organization of work on registering acts of citizen's status (i.e. birth and death), and confirming identification and marital status of individuals. Financing for the village government comes from the state budget, tax collection, and rentals from the LRF.

During field research, rural women confirmed that there is no gender preference specified in legislation for the position of village government head. However, among the heads of village government interviewed or encountered during field research, none was female. According to women interviewed during field research, the village government plays an important role in resolving land-related disputes. The village government also oversees the work of two other institutions that play a role in women's access to land: the Court of Elders, and the village elder.

B. Court of Elders

The Court of Elders (*Ak sakal sotu*) has its legal basis in Presidential Decree No. 30 of 1995, which provides that one Court of Elders be established per village government. The decree stipulates that the Court consist of three to nine members elected by a general meeting of village residents to serve a four-year term. The Court of Elders must make an annual report on its activities to a general meeting of the village. According to law, the Court of Elders may consider such cases as the division of common property between spouses, disputes between land-users including disputes over irrigation water, and irrational use of agricultural land and pastures. Further, the legislation allows the Courts of Elders to use customs and traditions as the basis for their decisions so long as these do not contradict the legislation of Kyrgyzstan.

Many rural women perceived the Court of Elders to be a relatively unimportant institution for their needs, and suggested that it considers primarily small disputes regarding stealing, vandalism, and domestic violence and rarely becomes involved in land disputes or disputes over property division, although some interviewees did assign the Courts of Elders a role in such disputes. Members of the Court of Elders are not required to have a specific educational background and those encountered during field research differed in their professional experience (ranging from teachers to professional military personnel). All members of Courts of Elders interviewed during field research were retired and male, although many people noted that this is not a prerequisite for serving on this body. Of all women interviewed, few, if any, had a positive impression of the Court of Elders and few considered it a body that is “friendly” to women. In all cases in Jalal-Abad and Osh *Oblasts*, the Courts of Elders claimed to work more on the basis of customary law than the written laws of the Kyrgyz Government. In Issyk-Kul *Oblast*, Courts of Elders appear more likely to operate on the basis of written laws than on customs or traditions.

Field research confirmed that activity of the Courts of Elders as a restored archaic form of governance has a controversial impact; on one hand it greatly helps to prevent small crimes, but on the other it reinforces the numerous patriarchal traditions in the rural environment. Although there are more women among the elderly population in villages,⁸⁰ the members of the courts are almost always men. The term *ak sakal* translates literally as “white beard” and is not used to refer to women. Furthermore, it connotes qualities traditionally associated with men. The role of the Court of Elders may be more important in remote villages compared with those closer to a *rayon* center. The true impact of the *Ak sakal* court on the social dynamics in villages is unclear and requires further research.

C. Village Elder (*Ak sakal*)

In Jalal-Abad and Issyk-Kul *Oblasts*, rural residents and village government employees referred to a village elder for each village, responsible to the village government and either appointed by the village government or elected at a general meeting of village residents. Such a post is provided for in Government Regulation No. 187 of 1996 as a means of assisting the village government in executing village-level activities.

According to village government employees and some rural women, the village elder provides the village government (if comprised of several villages) a presence at the village level and also carries out the orders of the village government in the given village. Again, respondents noted that this was neither a gender- nor age-specific position, but, in practice, no female village elders were encountered during the field research.

A second village-level institution under the village government is the village “*bei*” or the village judge. This was encountered in Jalal-Abad *Oblast* and it is unclear whether this is the same as the village elder or whether this institution fulfills a different function. In the one case encountered, the *bei* was said to be a “young” man who is responsible for the social life of the village (more specifically, for making arrangements for funeral and wedding feasts in the village). It is unclear whether this institution plays a role in anything other than traditional ceremonies.

D. Maila Committee

The Maila Committee, akin to a neighborhood or block-level organization, was encountered in the south, mainly in Uzbek villages. As no legal basis was found for this institution, it is thought to be an informal institution existing on the basis of traditional political/societal organization. Rural women said that generally one Maila Committee exists for each street in a village. Some women perceived the Maila Committee as very important in the everyday lives of village residents, while others claimed it was less important. Some functions attributed to the Maila committee include: providing land parcels, dealing with divorce cases, and helping the poor. Again, further research is needed in this area to determine the impact of the Maila Committees on village life.

E. Women’s Association

The Women’s Associations appear to be state-supported organizations, though they identify themselves as NGOs. The leader of a village-level Women’s Association explained that the association was primarily implementing humanitarian aid efforts under the supervision of the village government. Members of the Women’s Association, in this instance, were generally the wives of the heads of village governments and that appeared to be the main factor in their becoming members of this association.

F. Extended Family

The extended family plays an important role in conflict resolution between couples and within families. When conflict arises within a family, the elder and/or most members of the extended family are typically called in to mediate the conflict. Only when attempts by the extended family fail does the matter go outside the family to a village-level institution or a *rayon* court. It is common for the extended family to be involved in divorce and inheritance cases, and also in disputes over land and property. Within the extended family, the husband’s mother appears to play a very powerful role. Women interviewed acknowledged the influence of mothers-in-law on their sons’ marriages. Mothers-in-law seem to have a great deal of power and

some women suggested that mothers-in-law are the main force in maintaining and preserving traditions and customary law.

G. Religious Institutions

Although very few religious institutions were visited during the fieldwork (3 mosques, 1 Russian-Orthodox church), it is clear that they have a role in sanctioning and addressing problems of village residents. Although women are not allowed in mosques, separate mosques and *madressahs* (religious schools) were seen functioning for women. Furthermore, in Suzak *rayon*, a number of women were waiting to speak with the *mullah* (Islamic priest) about various issues including land disputes and disputes within the family.

H. Center for Land and Agrarian Reform (CLAR)

The Centers for Land and Agrarian Reform exist at the *rayon* and *oblast* levels and are responsible – in cooperation with the village government – for the initial allocation of land and non-land assets to rural residents in the farm privatization process. CLARs also have a role in dispute resolution when the village government alone is unable to solve the problem. Further, CLARs until recently administered the leasing of the Land Redistribution Fund (LRF). CLAR employees consider the procedure for leasing LRF parcels to women fair, but it should be noted that no women were asked this question and the CLAR employees interviewed were men.

Interviews with CLAR *rayon* directors in Issyk-Kul *Oblast* indicated that the demand for leases of LRF parcels by women is on the increase. However, such leases still account for just a small number of total leaseholders of LRF land and the total land area under those leases is still quite small. Both the number of LRF leases going to women and LRF acreage leased to women has increased over the last two years. CLAR personnel attributed this both to the fact that women typically head charitable organizations that lease land in order to produce food for orphans and to female-headed households. Secondly, many respondents in Issyk-Kul *Oblast* cited women's entrepreneurial skills and the "democratic" approach of Issyk-Kul *Oblast* as a reason for the women's increased share of LRF rentals.

I. State Immovable Property Register (*Gosregister*)

As mentioned in Section VII above, registration of rights in immovable property is the responsibility of the State Agency for the Registration of Immovable Property (*Gosregister*). *Gosregister* offices exist at the *rayon* level, and the agency is divided into several departments, one that surveys land and another that surveys and collects attribute information on houses, buildings, and other constructions.

J. Notary

The notary in Kyrgyzstan – located at the *rayon* level and under the administration of the Ministry of Justice – has much broader responsibilities than does the notary in the U.S. Notaries do fulfill the function of verifying identity and witnessing signatures but they have much broader

responsibilities that include providing consultation to parties to a transaction, and processing contracts for transactions with real estate. Most importantly in regard to women's access to land, notaries identify and secure the approval of any common joint owners for a transaction involving a house and household plot. The legal basis for notaries is the Law on Notaries of 1998, and amended in 1999. For further discussion of notaries' role regarding women's land rights, see Section VI on formalization of rights, above.

K. Courts

The courts with the most direct relevance to women's lives are the *rayon*-level courts of general jurisdiction. These courts consider several types of disputes related to women, including divorce, property disputes, and disputes related to inheritance. So far, courts have not yet considered disputes related to the application of land legislation. However, because the moratorium on the purchase and sale of agricultural land will be lifted in September 2001, it is possible that land-related disputes will begin to rise to the court level.⁸¹

Access to courts for rural people, and especially rural women, is limited by the costs (both out-of-pocket and opportunity costs) of hiring legal representation, traveling to court, and paying court fees. Limited information about legal rights and institutions further impedes rural women's access to courts. See Section IX, below, for further discussion on access to information.

The most common occasion for women to turn to the *rayon* court appeared to be divorce, for the purpose of claiming child support. However, women noted that to apply to the *rayon* courts in the event of divorce is costly and hinted that attorneys would not even consider a woman's case unless she offered a bribe. Judges argue that the reason few women bring their cases to court is that people tend to settle their disputes within the family or through some village-level institution.

Judges interviewed in Issyk-Kul and Jalal-Abad *Oblasts* demonstrated different levels of tolerance for customary law. From the interviews conducted, it seems that it is much more common in the south for customary law to be used as the basis for court decisions whereas in Issyk-Kul this did not seem to be the case.

IX. Access to Information about Women's Land Rights

Despite legislation regulating rights and freedoms of citizens, rural citizens, especially women, are not availing themselves of their rights because they lack information about these rights. A lack of current information also impedes the ability of institutional actors, such as village governments and *rayon* courts, to respond adequately to issues involving women's rights (including rights to land) and provides opportunities for rural officials to violate the rights of unknowing citizens. Due to an information vacuum in rural areas, there is a tendency to restore past practices and revive old customs and traditions, which are playing the prevailing role in regulating the social life of citizens in rural areas. According to interview responses women with access to information are more active and enterprising. For example, women's groups in Gulcha

(south, Osh *Oblast*) involved in NGO activity and trainings have been very successful in self-organizing.

Interviews with rural residents identified several issues related to the dissemination of legal information. Many of these issues relate to the adequacy of institutions responsible for transmitting this information. Due to the absence of social infrastructure facilities, the following entities are becoming the main sources of information:

- village governments (including the Courts of Elders and Women's Associations);
- local residents, who work in *rayon* and *oblast* centers; and
- village *mullahs*.

Rayon courts of common law jurisdiction, state bodies at the *rayon* level, and international organizations play a less important role in this process. The role of mass media is also insignificant because many citizens do not have access to radio or television and do not subscribe to newspapers and magazines. As a rule, important places for getting information are traditional social events such as births, weddings, and funerals.

In the south, the most authoritative source of information appears to be the village *mullah*, who generally provides information on religious issues and, to a large extent, rules of customary law. This fact may contribute to the perception by some that women in the south are less able to obtain information about and protect their rights.

In the north, the village government plays an important role in providing official information to villagers. However, the timelines of the information disseminated leaves much to be desired.. Many village government officials do not have access to the latest laws. Legal acts are not received at all or come very late; certain acts are out-dated even before they reach the rural areas. Limited access to current legal information also affects the local courts. This lack of information undoubtedly affects the capability to make informed and impartial decisions.

VIII. Conclusion

The Kyrgyz Republic has made a commitment to move toward a market economy and to give individual households the rights to make decisions regarding their land and their agricultural enterprises. By western standards, the land laws and civil laws promulgated are reasonably good and workable. However, the Kyrgyz and other ethnic groups that have settled in Kyrgyzstan have not embraced all of the written laws and do not follow or value them. The reason for this was clearly stated by one woman interviewed who said, "Customary law has been with us for thousands of years and is based on our lives; the written law is new and untested." The primary difference between the two systems is that the written law focuses on the rights of individuals and customary law focuses on the rights of the extended family as a unit. This clash in basic philosophy is clearest in relationship to intra-household rights.

To answer the basic question of this research—Do women in post-Soviet Kyrgyzstan have access to land?—one has to consider the question both through the lens of customary law

and through the lens of the written law. Looking through the customary law lens, women have access to land and are quite active in cultivating land and using land for agricultural purposes within their households. When the household unit breaks down, in most cases women no longer have access to the land, which customarily belongs to their husband's family. Women are most vulnerable in the case of divorce. However, when a woman's husband dies, she generally continues to have access to land as a member of the household of her youngest son.

Under the written law, women have rights to land even when the household unit breaks down. However, assertion of individual rights is shameful within Kyrgyz and other Central Asian cultures. Women who choose to assert their rights step outside of their cultural norms, and few are willing to do so. In addition to the shame of asserting individual rights, women have to pay for access to the court system.

One thing is clear: access to land is not enough. Women need credit, inexpensive inputs, and training. Women are concerned about feeding their families, educating their children, having access to healthcare, and being gainfully employed—in many cases outside of agriculture. Access to land is a concern, but often not the primary concern.

The question remains, what do women want in relation to individual rights versus household rights? In one exchange between ethnic Kyrgyz women and ethnic Russian women, the fundamental choice for women was clarified. The ethnic Kyrgyz women stated, "Russian women are lucky because they can choose to spend the money they earn on themselves and do not always have to put their families first." The Russian women responded, "Yes, but Kyrgyz women have the support of their extended families and do not have to face economic and other hardships alone."

The research indicated three final conclusions:

1. While in many cases customary law supports women, within the existing customary law, women can be vulnerable, face serious violations of their individual rights, and be marginalized and impoverished by the implementation of customary law.
2. Change to customary law and its implementation will only occur when women no longer accept a particular custom and organize in large groups to change that custom.
3. Women interviewed did not want to disregard all customary law in favor of written law, nor did they want in all cases to exercise their individual rights at the expense of the household unit.

Annex 1

Recommendations

Social Issues

- Increase support for women's initiatives in small farms and businesses in rural areas. Experience indicates that women's small businesses can be an important engine of economic reform and women's equality in the republic.
- Develop lending institutions focused on women that reduce the need for physical collateral. Institutions could rely instead on social pressure among a group of borrowers to pay back loans.

Women's Access to Land

- Provide extension services to women by women regarding the particular concerns of a household plot and small livestock raising.
- Provide assistance to women entrepreneurs to establish cooperatives for purchasing inputs and marketing excess agricultural produce.
- Provide credits to women for improving their household plots and purchasing small livestock.
- Conform pasture legislation to traditional rules regarding pastures so the former may be more successfully embraced.
- Create a leasing commission responsible for deciding who is eligible to lease in land, rather than leaving control of the Land Redistribution Fund (LRF) land with village leaders alone. The leasing commission should include members who are not involved in local administration.
- Clearly establish the criteria for applicants to the LRF by legislation with defined policy goals.
- Provide that a portion of the LRF land (possibly 20 t percent) be set aside for rural families with children born after January 1, 1996, families who live in towns that do not have access to land, and women who move to the village of their husband that do not have access to a land share.
- Provide legal protection regarding rights to land and property for spouses in unregistered marriages.

- Amend the law to provide that individuals with children or dependent parents do not have to pay the state fee for property division.
- Amend the State Fees Law so that the state fee paid to the courts for division of property can be paid after the property has been divided. Further amend the State Fees Law to provide that both parties pay the fees, not only the plaintiff.
- Allow customary intestate rules to govern those who want to follow customary law. The written intestate law should not be imposed on families who do not bring cases to court.

Formalization of Land Rights

- Enforce provisions in current regulations for immovable property registration so that: (1) common share owners within a household are listed independently under the “owner’s name” field on the registration card; and (2) the relative interests of common share owners within a household are listed independently under the field for “common or joint ownership” on the registration card.
- Specify in additional regulations that a common share owner of a household land share must obtain formal approval of all other adult common share owners within the household in order to lease out the land share.
- Provide in legislation that the existence of common ownership interests be determined at the time of registration of immovable property.
- Monitor implementation of the Law on Registration provisions that set forth specific requirements for recording common joint and share ownership to immovable property.
- Monitor implementation of the Law on Registration provision requiring any “rights establishing document” to be signed by all interested parties. Clarify that interested parties include all common owners.
- Exercise caution in adopting legislation phasing out notaries from transactions involving immovable property. Assess whether and how the State Registry could adequately assume this role before eliminating notaries from the process.
- Provide that when family farms are registered as individual entrepreneurs, the names of all household members listed on the land share certificate be listed in the registration documents for the enterprise.

Rural Institutions

- Increase support for village-level programs that focus on women’s leadership (such as the UNDP program). This should be viewed as a long-term effort due to the nature of these

institutions and the fact that they are embedded in and reflect a socio-cultural context that changes slowly over time.

- Train Rural Advisory and Development Services Foundation (RADS) advisers in the legal aspects of women's access to land, especially in divorce and inheritance cases, and also raise awareness of the impact of customary law and traditions on women's status.
- RADS gender advisers' role in consulting and training women on agricultural production issues is crucial and should continue to be supported.
- Consider broadening the mandate of RADS advisers to include basic information on nutrition and health for rural women and children. Depending on the resources available to RADS, this information could be conveyed to rural women through informational leaflets, radio commercials, TV public service announcements, or newspapers.
- Provide judges with training on the use of land legislation, including women's rights to land within the household.
- Ensure the state bodies overseeing court activities provide every judge with current copies of existing standard legal acts.
- Introduce a more comprehensive sliding schedule for court fees, depending on income, which would allow low-income citizens greater access to judicial protection.

Access to information

- Improve access of village governments to current legal information, and assist them in developing channels for dissemination of this information to villagers.
- Where possible, create a center or department within the village government that deals with the collection and dissemination of legal information, and provides advice.
- Improve legal information dissemination practices among women through women's committees, established by the village government.
- Consider incentives for mass media (television, radio, newspapers) to open branches and representative offices in remote regions of the country. (One possibility could be tax incentives.)
- Organize regional workshops to teach women and local officials about intra-household legal issues related to land.

Further Research

- More closely study women's involvement in the sale of houses, and whether women are asked for their written permission to sell.
- Further study whether women are ever compensated for improvements made to the household plot (value added) in the case of divorce.
- Further study the effects of a common law marriage rule on women in cases where there are two wives. How would a common law marriage rule affect inheritance, or division of property? What would be the rights and obligations of the first wife? The second wife? If neither marriage were registered, what should the common law rule be? Should there be a common law divorce rule?
- Further research might be undertaken to look at the extent to which marriages are or are not registered in Kyrgyzstan, and the influence that marriage registration (or lack thereof) has on women's rights to property.
- Consider the ramifications of drafting different inheritance intestacy laws for different ethnic groups in the Kyrgyz Republic. Review comparative experience of other countries.
- Further research the role of the Court of Elders (*Ak sakal*) on the social and intra-household dynamics in villages.
- To better understand the direction future legislation should take, further research regarding customary law versus written law is necessary regarding specific issues identified in this research paper.

Annex II

Endnotes

¹ James Delehanty & Kathryn Rasmussen, *Land Reform and Farm Restructuring in the Kyrgyz Republic*, 36 POST SOVIET GEOGRAPHY 578 (1995) (887,000 hectares of arable land in the north).

² *Id.*

³ *Id.*; NATIONAL REPORT OF KYRGYSTAN ON HUMAN DEVELOPMENT (1996), available on the internet at <http://www.grida.no/prog/cee/enrin/htmls/kyrgyz/soe/english/kyrgyz.htm>.

⁴ Decree of the President of the Kyrgyz Republic "On the Concept of Introduction of Private Land Ownership in the Kyrgyz Republic" (October 13, 1998).

⁵ LAND CODE OF THE KYRGYZ REPUBLIC (June 2, 1999) (hereinafter LAND CODE); Law of the Kyrgyz Republic "On the Peasant Farm" (May 1999) (hereinafter Law on the Peasant Farm); Law of the Kyrgyz Republic "On Mortgage" (April 30, 1999); Law of the Kyrgyz Republic "On Cooperation" (June 2, 1999); and, a law introducing land-related amendments to the CIVIL CODE OF THE KYRGYZ REPUBLIC (hereinafter CIVIL CODE).

⁶ Rapid Rural Appraisal involves semi-structured interviews with rural people who have valuable knowledge regarding issues that affect their lives. Carried out appropriately, such appraisal not only provides efficient and rapid identification of problems and issues, but also provides a relatively thorough, comprehensive, and insightful framework in which to analyze issues. Rapid Rural Appraisal techniques are further described in Tony Dunn, *Rapid Rural Appraisal: A Description of the Methodology and Its Application in Teaching at Charles Stuart University*, 4 RURAL SOCIETY (December 1994); and ROBERT CHAMBERS, RURAL APPRAISAL: RAPID, RELAXED AND PARTICIPATORY (Institute of Development Studies Discussion Paper No. 311, October 1992).

⁷ The mountainous Naryn *Oblast* is relatively ethnically homogeneous, whereas Osh and Jala-Abad *Oblasts* are more multi-ethnic.

⁸ From these interviews and interviews in each region with relevant institutional stakeholders, the team obtained data on land information flow, socio-economic data of households, as well as information focusing on the following project-related issues: land history and needs; information flow; standard of living; comparing today with ten years ago; access to land and land-related information; women's priorities; decision-making patterns within households; and, informal and formal group involvement.

⁹ Interview responses underscored the differences between married and divorced women in access to land. The process of obtaining land and real estate with land plot for divorced women is complicated and bureaucratic, with transaction costs that are high both in absolute terms and in relation to the resources of women. See Section VI(B) on divorce, *infra*, for further discussion.

¹⁰ At first glance the social position of young women seems to be the most vulnerable, as they often feel more pressure to strictly follow ethnic traditions of obedience and respect for male and female elders.

¹¹ NATIONAL STATISTICAL COMMITTEE OF THE KYRGYZ REPUBLIC, WOMEN AND MEN IN THE KYRGYZ REPUBLIC: STATISTICAL COLLECTION, 6, 12 (1999).

¹² Examples of patriarchal customs that may contribute to narrowing women's access to land, as discussed in other sections of this paper, include polygamy, religious marriages (with neglect of civil registration), and kidnapping of brides.

¹³ People travelling to a given destination such as Russia, Turkey, or China to purchase consumer goods for re-sale elsewhere (generally in their home regions) are referred to as “shuttles.”

¹⁴ NATIONAL STATISTICAL COMMITTEE OF THE KYRGYZ REPUBLIC, *supra* note 11, at 50.

¹⁵ Decree of the President of the Kyrgyz Republic “On Measures to Enhance the Land and Agrarian Reform in the Kyrgyz Republic” (February 22, 1994).

¹⁶ Certificates on the Right to Use a Land Share were issued to each household, stating both the sum of the land shares allocated to individual members of the household, and listing the share of each household member. The Certificate provides a space for a sketch map of the household’s land share, but in practice the sketch map is not always included.

¹⁷ Regulations of the Government of the Kyrgyz Republic “On the Procedure for Determining Citizens’ Land Shares and for Issuance of Certificates Containing Land Share Use Right,” *adopted by* Resolution of the Kyrgyz Republic No. 632 (August 22, 1994) (hereinafter Regulation on Land Shares).

¹⁸ Delehanty & Rasmussen, *supra* note 1, at 571-72.

¹⁹ Regulation on Land Shares, *supra* note 17.

²⁰ In part, the 25 percent of arable held in reserve – the Land Redistribution Fund (LRF) – was set aside to deal with future claims for land shares including those from farm residents working in factories or enterprises in town. Additionally, the LRF land is used for the expansion of rural settlements and for land share allocations to citizens who were absent at the time of farm reorganization but moved to the farm for permanent residence before July 1, 1996, as well as for other specified purposes.

²¹ It is not stated directly in the legislation that the shares for all members of former collective and state farms should be equal, but the law has been interpreted to mean this. Regulations on Land Shares, *supra* note 17.

²² LAND CODE art. 17, *supra* note 5.

²³ CIVIL CODE part I, *supra* note 5.

²⁴ MATRIMONIAL CODE OF THE KYRGYZ REPUBLIC (April 29, 1980) (hereinafter MATRIMONIAL CODE).

²⁵ CIVIL CODE art. 275(2), *supra* note 5.

²⁶ *Id.*

²⁷ MATRIMONIAL CODE art. 24, *supra* note 24.

²⁸ The primary laws which govern pastureland include: LAND CODE, *supra* note 5; CIVIL CODE, *supra* note 5; Regulation of the Government of the Kyrgyz Republic “On Leasing Out and Using Pastures” *adopted by* resolution of the Government of the Kyrgyz Republic No. 649 (November 29, 1999) (hereinafter Regulation on Leasing Pastureland); and the Resolution of Government of the Kyrgyz Republic of May 5, 1992.

²⁹ Resolution of the Government of the Kyrgyz Republic No. 252 (May 7, 1998).

³⁰ Regulation on Leasing Pastureland, *supra* note 28, point 9 (November 29, 1999).

³¹ *Id.* points 20-21.

³² Resolution of the Government of the Kyrgyz Republic “On the Reform of Local Governance Structures” No. 10, point 13 (January 11, 2000).

³³ LAND CODE art. 1(26), *supra* note 5.

³⁴ Regulation of the Government of the Kyrgyz Republic “On Approval of the Regulations of the National Land Fund” *adopted by* Resolution of the Government of the Kyrgyz Republic No. 345 (May 19, 1994). This regulation created the National Land Fund and stated that 25 percent of agricultural land (excluding pastures) would be held in this fund.

³⁵ Temporary Recommendations of the Government of the Kyrgyz Republic “On Distribution Of Territory to New Agricultural and Other Entities Under the Land and Agrarian Reform in the Kyrgyz Republic” *approved by* the Order of Goszemagntstvo under the Government of the Kyrgyz Republic No. 93 (October 28,1998).

³⁶“On Administration of Agricultural Land Law,” December 18, 2000 .

³⁷ LAND CODE art. 29, *supra* note 5.

³⁸ USAID and ARD/CHECCHI, survey conducted in the Kyrgyz Republic, October 1999 [unpublished, on file with ARD/CHECCHI Commercial Law Development Project (USAID) 96 Toktogula St., Apt. 9. Bishkek, Kyrgyz Republic]. Survey of 4 *oblasts*, including 110 survey interviews. Those interviewed were either farmers who won or lost at the auction, those who were currently leasing land from the LRF, or members of the auction commissions.

³⁹ MATRIMONIAL CODE art. 6, *supra* note 24.

⁴⁰ *Id.* art. 18.

⁴¹ *Id.* art. 19.

⁴² Bride stealing is a Kyrgyz custom in which a man enters a woman's house and takes her out of her house in the middle of the night. With this act, she becomes his bride. In some cases, the bride is consenting, and bride stealing is a form of elopement. In other cases, the bride is taken against her will, with no prior knowledge.

⁴³ In the U.S. these conditions might be living together for a period of time (1-3 years) and holding yourselves out as married to the public.

⁴⁴ MATRIMONIAL CODE art. 32(2), *supra* note 24.

⁴⁵ CIVIL CODE art. 275(2), *supra* note 5.

⁴⁶ Law of the Kyrgyz Republic “On State Duties” art. 4.

⁴⁷ CIVIL CODE arts. 1142-46, *supra* note 5.

⁴⁸ Customary laws regarding dowry and bridewealth vary among the various ethnic groups represented in the Kyrgyz Republic. Ethnic Russians and other non-Muslim people do not generally practice either dowry or bridewealth, however bridewealth and dowry are customary for Kyrgyz, Dungans, Uigurs, and Uzbeks, with some variations among the ethnic groups. For example, Kyrgyz customary law does not follow Islamic tradition, which requires that the groom must present the bride, not her family, with a marriage gift. However, the Uzbek customs do follow Islamic traditions. In the Uzbek village visited, the groom gives gifts to the bride and gives only token gifts to her family. Dungans follow *Sharia* (Islamic law).

⁴⁹ In Kyrgyz families, dowry usually includes the following: blankets, puppets, rugs, *shirdaks* (traditional rugs), furniture, cutlery, dishes, a chest, clothing, gold jewelry (if the family can afford it), and livestock. The bridewealth may include a portion of the groom's family's crop for the first year, which would be given to the newlyweds. To the bride's family, the groom generally gives livestock, cash, clothes, and food. The bridewealth range is established at the village level and the cash given may range between 3,000 and 10,000 soms. A typical bridewealth would be 3,000 soms, one horse, one sheep, one box of sweets, one box of vodka (20 bottles) and clothes. Dungans generally provide the bride with gold and jewelry in addition to the items listed above.

⁵⁰ A minority of women interviewed, however, did not think the system was fair. They believed that female heirs should be able to inherit household land equally with male heirs, per the written law.

⁵¹ Currently houses with household plots may be freely sold, bought, or leased, but land shares are currently subject to a moratorium established in 1998 that prohibits purchase, sale or mortgage of agricultural land. However, this moratorium is to be lifted in September 2001. Whether and how lifting the moratorium would affect women's land rights is an important question that has not been adequately researched.

⁵² Law of the Kyrgyz Republic "On State Registration of Rights to Immovable Property" (November 26, 1998) (hereinafter Law on Registration). Prior to 1998, land shares were recorded at *rayon*-level affiliates of the State Agency for Land Management and Land Resources (SALMLR) and houses with household plots were registered either by the village government or by a *rayon*- or city-level office of the Bureau of Technical Inventory (BTI). Transactions of houses with household plots were registered with village governments. The Law on Registration called for the tasks of both the *rayon*-level SALMLR and BTI affiliates to consolidate under *rayon*-level affiliates of the State Registration Agency.

⁵³ Law on Registration arts. 52-53, *supra* note 52.

⁵⁴ *Id.* arts. 15-16.

⁵⁵ *Id.* art. 15.

⁵⁶ *Id.* art. 16.

⁵⁷ Common ownership includes joint ownership and shared ownership. CIVIL CODE art. 266. Joint ownership arises when interests of the common owners are not defined. Shared ownership arises where interests of the common owners are defined. Article 39 of the Law on Registration, *supra* note 52, sets forth the general requirements for registration of common owners' rights.

⁵⁸ CIVIL CODE art. 266.

⁵⁹ CIVIL CODE art. 275.

⁶⁰ Temporary Regulations "On Registration of Rights and Encumbrances to Immovable Property" §§ 2(14), 6(1)(1) (March 6, 2000) (hereinafter Temporary Regulations on Registration).

⁶¹ Land shares may be leased for a maximum of 50 years under current legislation. LAND CODE art. 7(2), *supra* note 5. The Law on Registration art. 40, *supra* note 52, provides that leases for more than three years must be registered, but does not specify whether co-owners' approval is required.

⁶² CIVIL CODE art. 272(2), *supra* note 5.

⁶³ MARRIAGE CODE art. 24, *supra* note 24.

⁶⁴ Temporary Regulations on Registration § 6(1)(1), *supra* note 35.

⁶⁵ *Id.* art. 2(14a).

⁶⁶ This right of first refusal does not apply in the event of a forced public sale. Also, share owners waive this right if they fail to exercise it within 30 days. CIVIL CODE art. 270(2), *supra* note 5.

⁶⁷ At this point, heirs to land share rights have not yet begun to formally claim their rights to the share. Passing on of a deceased family member's rights is usually done informally to the surviving family members who are currently farming the household land share. When the moratorium on purchase and sale of land shares is lifted in September 2001, heirs may have a greater incentive to formally register their rights to a share. How land shares are passed—and recorded—in intestacy will be an interesting question, given the current friction between customary law (under which the surviving spouse or youngest son generally receives immovable property) and written law (under which the deceased's children, spouse, and parents each take an equal share). See Section VI(C) on inheritance, *infra*, for further discussion.

⁶⁸ An immovable property register in Ak-su *Rayon* (Issyk-Kul *Oblast*) that is not participating in the pilot registration project had not yet recorded any transactions of land shares. It keeps one copy of all original land share certificates on file without any accompanying documents, and has made no changes to the original certificates.

⁶⁹ The name listed is almost always that of the male head of the household, although in some cases may be either a female head of household or a female within a household designated as the title-holder for the property. Businessmen have begun to register their family houses (with household plots) in the names of their wives or other females in the household in order to further protect the property from creditors in the event of forfeit, according to one registrar. In other cases, a household may designate a woman as the signee because she is viewed as more “entrepreneurial,” or more familiar with and able to negotiate bureaucratic processes.

⁷⁰ It is important to note, however, that further observation is needed for definitive conclusions. Findings presented here are based on interviews with registrar officials and a limited number of random sample documents drawn from the files. The lack of clear information on how to register joint ownership of a house may be based on a limited number of circumstances under which the house would actually be owned jointly by both spouses. See Section V(B) on common joint property of spouses, *infra*, for further discussion.

⁷¹ Law on Registration art. 19(3), *supra* note 52.

⁷² The 1998 law and regulations provide for both sporadic and systematic registration of houses, along with land shares as discussed above. Systematic registration is not yet underway.

⁷³ The courts, however, do not seem to operate under this presumption. The likelihood that a wife would in fact be a common joint owner of a house, given the legal rules for common joint ownership and the customary traditions involving marriage, is unclear. See Section V(B) on common joint property of spouses, *infra*, for further discussion.

⁷⁴ Law of the Kyrgyz Republic “On Mortgage” art. 3 (April 30, 1999). No examples of unnotarized mortgages were seen. However, people interviewed continue to expect notarization for any registered transaction, including mortgage.

⁷⁵ Law of the Kyrgyz Republic “On the Peasant Farm” art. 8(1) (May 1999) (hereinafter Law on the Peasant Farm).

⁷⁶ Legislation allowing peasant farm enterprises to be legal entities was only recently adopted so there are few cases where peasant farm enterprises have registered as such. *Id.*

⁷⁷ The primary incentive to register as a legal person is that it allows farm owners to use farm assets for collateral.

⁷⁸ Law on the Peasant Farm art. 2(4,5), *supra* note 75.

⁷⁹ The 1998 Law on Registration, *supra* note 52, transfers authority to register houses (with household plots) from village governments to *rayon*-level registration departments under the State Registry. This transfer has begun to take place, but comprehensive re-registration of houses at the *rayon gosregisters* is not likely to be completed for several years.

⁸⁰ Women 55 years and older outnumber men 2:1 in the Kyrgyz Republic. NATIONAL STATISTICS COMMITTEE OF THE KYRGYZ REPUBLIC, *supra* note 11.

⁸¹ The role of courts in considering land disputes will be very important because land plots, especially in the south, have become the main source of income for many extended families. Therefore, the way the new land legislation will be applied by courts could effect not only the economic and social status of a single family, but the political situation in the whole country.