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**A new property regime in Kyrgyzstan; an investigation into the links between land reform, food security, and economic development**

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*"Institutions, natural resources, technology, and knowledge define the character of a nation's possible production and possible food security, but the perception of opportunities that citizens have, determine what is realized."*

## **CHAPTER 1 INTRODUCTION**

### **1.1 RATIONALE**

Mass media regularly remind us that in various parts of the world people still live with continuous food shortages, especially in rural areas of so called lesser-developed countries. If the reminder is part of the other 'news' we hear every day, it might hardly affect us.

Yet food insecurity is real. Consulting activities in economics, geodesy, and law carried out mainly in poorer rural areas in the world made me aware of food insecurity as daily reality, not as a passing news item. Most of my assignments were in projects related to a change in rural land tenure (the "how" of rights to land), linked with a re-distribution of land (the "who" and "what" of land rights: who controls what). Some of these areas were clearly both poor and food insecure. The common expectation in the food insecure countries was that a change in land tenure would lead to higher food production, and thus to less food insecurity. A textbook, desktop-based, food insecurity reduction method.

A reduction in food insecurity was not always the chief aim however. In fact, some of the areas where I worked were neither food insecure nor significantly poor. But changes in land tenure were expected to bring benefits there too: primarily economic development. The notion here was that a new property regime would result in higher values of property, thus being an incentive for local people to improve the productivity of their property. So two types of land tenure change can be distinguished, one to alleviate food insecurity and one primarily aiming at economic development. The two types of projects have much in common - they are differentiated almost exclusively by their starting point (how poor or food insecure the area really was) and the ambition of their goals (strive for economic progress and prosperity or primarily improve food security).

The two different types of projects can be recognized in the Terms of Reference for projects in transition countries. Both generally contain assumptions of straightforward causality: change in land tenure leads to higher production which enhances food security or change in land tenure provides more certainty about land tenure which leads to higher productivity and prosperity. The assumption of straightforward causality has various corollaries. For

example, one notion is that commodified land can more easily be transferred, and thus more easily reach its highest potential value and as a result maximizing economic growth. Similarly, another idea is that privatization of land will lead to higher agricultural productivity. Recent research shows that most of the assumptions only hold when several additional supportive measures are in place and certain conditions are met. In other words, the assumptions, and their corollaries, work in theory. They do not automatically work in practice. Indeed, food insecurity is not only real; it is also very complex. The assumption of straightforward causality quickly becomes problematic when it meets the socio-political reality in which actual projects are embedded. Mismatches easily develop between the project on a desktop and the reality on the ground. A divergence quickly grows between Western textbook food insecurity alleviation or theoretical economic development paradigms and political interests, practical pressures, and constraints "on site".

The problem starts with the very terms of reference that are used to guide project work. Because for whom -- really -- are they written? Terms of reference for projects generally aim at politicians to get project support at the various political levels. The result is that the description of projects on land reform is above all politically oriented and much less project implementation oriented. This leaves project personnel with rather vague descriptions of their respective roles and responsibilities. There is a fixation on how property regimes should be oriented toward quick action. There is a neglect of the inter-relations between property rights, economic performance and ecologically sustainable resource use. There is more. A workable new legal system is a necessary parallel development for any new 'western style' land tenure to succeed. Yet countries in transition do not have time to let new legal systems evolve in a natural way. Instead, "off the shelf", alien systems are imported and forced into institutional arrangements that carry some reflection of the concepts and practices of recipient countries, but they may remain an immature, artificial fit in many ways. A workable legal system is not enough for western style land tenure. An operational land registration system is another ingredient necessary for success. In the ideal situation a new land registration system should already be in place before privatized plots of land are distributed among individuals receiving rights to land - this to ensure a proper and simple start of land registration. But land reform is often driven by national politics, while land registration (being very costly and politically hardly beneficial) generally is donor driven, and international funding is almost always necessary for it to start. The result is a de-synchronization: the two developments do not run parallel and are out of step with each other. Normally land registration institutions are established way after the land has been distributed. This causes difficulties for registration staff because of increasing discrepancies between reality and originally issued documents as more time has elapsed between the start of the land reform project. It will also result in increased and costly litigation slowing down land transfers and thus economic growth.

Projects have fixed termination dates. These are seldom an incentive for local project staff to care much about the continuity of project benefits beyond the project duration, because they are generally only employed for the project duration. Limited project time and resources seldom provide a generous familiarizing process for local experts with the legal concepts and the legal system of a donor country. The disincentive works both ways: expatriate consultants assigned to a project experience similar disincentives. The limited duration of their assignment seldom permits any time to sufficiently familiarize with specific circumstances, concepts, and cultural backgrounds in the recipient country. It is my

experience that there is always a trade off between available time and resources, and carrying out project activities in an ethical and responsible way. So why is it that international fund-driven projects look so good in project audits? The key is when to look and when to audit. After some years, more than half of the projects show no sustained benefits whatsoever. Of course, it is always difficult to know whether a certain project fulfills the requirement of future needs; criteria for success are difficult to define, while realistic, helpful assessment methods are time consuming. One reason is that both food security and economic prosperity cannot be measured directly. Although we use these terms as common currency, exchanging them as if they carry objective, universal meaning, both food security and economic prosperity are complex subjective experiences. Moreover, the experience of a new land tenure system and the security it provides is extremely subjective, and its connection to the level of investments people will make in the productivity of their property is tenuous and unpredictable at best. Take the farmer in a war torn country whose sons, father, uncles and various other family members might have been killed in a string of civil wars of which he never even understood the purpose. Take the apartment owner in any town in the former USSR living in a dilapidated apartment building with missing windows in the hallway and a filthy smelling main entrance. Or the house owner that can not get the right materials to fix a leaking roof or to replace cracked and stained bathroom equipment. Take the farmer in Poland for example, who was uprooted, placed here, then there. Or the farmer in Bulgaria who can not indicate where the land of his ancestors was located on the land of the vast state farm that has been completely re-landscaped for miles and miles. How will he be able to indicate the plot of ancestral land he is entitled to claim? Land tenure security means something quite different to these people than it does to the farmer in Western Europe whose title to the land actually carries quite some weight. So how, really, do we know whether we are doing any good with land reform projects? In fact, how can the very people who run and implement these projects know? That is the question my dissertation aims to answer with my own research and research results of others.

In my research I will present a tool for rapid assessment of effectiveness of land reform projects - whether they are focused on improvement of food security or on increased prosperity. The model presented in my research primarily aims at project staff. It will assist them in assessing the effectiveness of a project, to detect early warning signs of undesirable or non-sustainable project effects. The overall goal is to make project expectations more realistic and project assistance more satisfactory. Use of the model depends on available macro-economic indicators, some of which are very general in nature. Use of indicators should be kept in perspective. It generally takes a generation before the effect of land reform projects can be observed with some certainty. In the meantime all kinds of separate simultaneous developments will influence the effect of the land reform project as well. Measuring indicators must not be applied in such a way that measurement accuracy surpasses the accuracy with which the issue at stake can be observed in isolation from other parallel developments.

## **1.2 LAND TENURE, FOOD SECURITY, AND ECONOMIC DEVELOPMENT**

As mentioned, in many land reform projects a link between land tenure change and improved food security and/or economic development is assumed. More recent research confirms the relation, but also emphasizes the complex character of the links. Land tenure,

food production and economic development describe social processes but they have their roots in different domains. Land tenure is primarily described in legal and institutional terms, while food security is defined in terms of agricultural production. Economic development is described in terms of income generation and prosperity. There are quantitative and qualitative links between them. An example of a quantitative link is that increased access to land means an increase of food production and income growth and the even more obvious link that loss of access to land results in decreased food production and income loss in dominantly agrarian societies. A qualitative link is suggested in that increased long term guaranteed land access will intensify resource use, which shall result in more efficient and profitable agricultural production, leading to increased availability of food. In several project documents proposing land registration, it is suggested that establishment of a modern land registration system will enhance economic development. The assumption is that to achieve economic development, land transfers must be made easy by a reliable and clear description of titles and land objects in a registration system. It is similar to the general assumption that legal reform toward more individual 'western style' private ownership will significantly contribute to economic development especially when linked to the creation of greater legal security by land registration.

One of the results of my research is to suggest a difference in approach and actions whether a project focuses primarily on food security improvement or when a project aim is economic development. Although in the end one combined model for rapid assessment of both paradigms will emerge, different emphasis on measurements and activities to reach the specific goals is strongly recommended to achieve maximum benefits.

It should be mentioned from the beginning, that increased agricultural production and ecological responsible stewardship of land require balancing. Exploitation of land resources at a level below the maximum potential can ensure sustainable future benefits. To reach a state of sustainable food security, current food production should not be increased at the expense of future needs for food. Often it is necessary for the government to take action. Most people focus primarily on the exploitation of resources and should be guided toward responsible resource use. Additional governmental monitoring of the use of natural resources should safeguard ecologically sustainable exploitation of privatized land.

### **1.3 THE ASSIGNMENT**

My research focuses on Kyrgyzstan, but can be applied to most countries currently in transition. The Kyrgyz Republic has been chosen because an assignment in this country happened to come my way; an assignment to assist with land titling and real estate registration in this Central Asian country. A substantial part of my research is based on the process of land and agrarian reform (the term used by the Kyrgyz to describe the land reform process) which started in the Kyrgyz Republic after independence in 1991. It is important to note that land titling and land registration have been considered from the beginning of the land reform project, but that the actual preparation phase of this component did not materialize before 1999. The World Bank scheduled the preparation phase of the land registration project between spring 1999 and the end of 1999. The Government of the Kyrgyz Republic at that time had an appropriate legal basis for real estate registration in place and had determined the various institutional responsibilities in operating the registration system.

A Project Preparation Unit (PPU), as part of the State Agency on Registration of Rights to Immovable Property (GosRegister) will manage the preparation phase of the registration project. GosRegister actually will eventually combine the former offices of the urban Bureaus of Technical Inventory (BTI) and the rural Land Agencies (or Land Engineering offices) into one new organization. GosRegister is supposed to work closely together with Giprozem (the Land Management service of the Ministry of Agriculture) and the State Service for Cartography and Geodesy (GosCartographia).

In 1997 a pilot project was undertaken by US-AID as an extension of the land reform project and this pilot project has been instrumental in drafting a Real Estate Registration Law, which was approved by parliament in 1998. An important time bound condition for starting the registration project was passing of the Land Code by parliament in June 1999.

My assignment - parallel with the assignments of two other expatriate experts - focused on creating a new institutional framework for land registration, a small project compared to the land and agrarian reform project. It encompassed all the institutional arrangements for establishment of a 'western style' land registration, import of a 'western style' legal system, familiarizing and training of staff, and implementing legal changes, as well as generating ideas for surveying and mapping. The preparation phase has been concluded with the opening of the first of a series of registration offices 'new style'. These new offices will be refurbished existing offices, modeled to be more customer-friendly and mainly staffed with selected staff out of current offices involved in keeping inventory of real property. The original task of those offices was to monitor proper use of State owned real property by citizens who acquired use rights to it. In urban areas this was carried out by local BTI offices (as far as buildings are concerned - urban land was registered at the Architectura), while in rural areas this task was part of regional offices of Land Administration (also referred to as Land Engineering offices).

The Kyrgyz Republic has been one of the earliest and most active reformers among the Central Asian Republics. After disappointing progress in the first years of independence with restructuring of the agriculture (it was mainly restructuring on paper only) the President of the Kyrgyz Republic took the initiative for re-vitalizing the agrarian reform in 1994. Although terms and definitions changed regularly, making statistical analysis difficult, it is clear that progress on restructuring of large state and collective farms into small privatized individual and (smaller) cooperative privatized farms from 1994 onward was more satisfactory.

The new system for land registration aims at keeping the amount of collected data on land at a minimum. The scope of the collected data reflects only the basic elements of a land registration. It should be unambiguous in answering simple questions about the Who, Where, What, When and How much (to what extent) of each real right to an immovable property (more about this terminology in chapter 3). In the registration office a clear and reliable link between the registered units and the geographical data of those units must be available. This requires a cadastral map for the area covered by the registration office. For each registered right to immovable property, both alphanumeric as well as geographical data will be made readily available. Due to the very limited capacity in land surveying and the period of time and money it will require to achieve quality cadastral mapping, current topographic - providing topographic details rather than features of boundaries but nevertheless referred to as 'cadastral' - mapping will be used as much as possible. This decision comes down to the use of geographical representations of real property units without much attention to topographic detail and geographical accuracy (one of the

consultants suggested in this respect to print on each 'map' that "any similarity with reality is pure coincidence"). It is assumed that after establishing the registration offices new style, existing cadastral mapping will gradually be updated and improved with funding mainly out of the fees for registration.

In order to make economic transactions in land and real estate simple, inexpensive and fast it is necessary to remove existing bureaucratic hurdles, unnecessary fees and complicated processes. It involves analysis of existing laws, regulations and procedures and refinement of these for the benefit of the user. In addition, a public awareness strategy and a series of workshops, seminars and the like for real estate professionals must help to develop the private market for real property. The staff of GosRegister and the Project Preparation Unit will mainly provide input assisted by foreign technical assistance, but additional input will be required to conduct the necessary workshops, seminars and public meetings.

#### **1.4. CONSTRAINTS IN THE ASSIGNMENT**

The assignment in Kyrgyzstan is to assist in establishing a land and real estate registration project in the country. One of the goals of the assignment is to design a legal framework for protection of individual rights to land. The government expects an import of legal regulations, institutions and economic concepts to establish a 'western style' system of land registration and a legal system for the protection of individual rights to land in which the land registration is the core. The resulting security of rights to land presumably should support a developing land market and with that economic development. One of my observations was an almost general selective focus on property in its economic function: more efficient production and circulation of property objects to reach the highest market value. In this respect Kyrgyzstan cannot wait to construct a system of law for this purpose in an empirical fashion. The project must provide a more or less ready-to-implement system introducing individual private ownership of 'commodified' property (property that is stripped of most of its social functions – claims on the part of the community, neighborhood, and kinship group - and thus an easily tradable commodity for exploitation). Property with a modern "western" style legislation and registration system. Unfortunately – but not unusual - the expatriate advisors were not given time to familiarize themselves with the receiving culture and the recipient legal experts were not familiarized with the donor culture to fully understand the proposals made by the expatriates. The result is a legal framework that can serve as a basis to start land registration in a more or less "western" fashion, but is dependent on a rapid evolution toward a Kyrgyz system. The government should be open to accept several amendments on the proposed basic texts for law and regulations and the local legal experts should be willing to face the challenge to adapt and propose implementation of adjusted legal regulations.

During my stay in country the situation of property rights to be institutionalized was presented as being private individual ownership. No reference was ever made to any development in the Kyrgyz society around property rights during the years of independence. With the adaptation of the Law on privatization of housing stock in the Republic of Kyrgyzstan in December 1991, generally all dwelling houses and apartments became objects of privatization. Except for some specific categories (apartments not meeting sanitary standards, houses listed for demolition, housing stock of state farms, etc.) houses and apartments were transferred from State to private ownership. The same law limited

privatization to distribution of land shares, being a 'title' for permanent or fixed-term use only for agricultural land – arable land; land planted with perennials, some hayfields and pastures, in Kyrgyzstan called the '*Ugodia*'. The fact that the initially issued land shares (also referred to as land certificates) were originally limited to exclusive use rights to land and only very recently changed in documents proving ownership of rights to real property was not revealed. This rather interesting detail was found out after completion of the preparatory project for land registration. After changing into ownership, a moratorium was issued on agricultural designated land plots (which was understood as being the '*Ugodia*' land). Article 35 of the Land Code states in translation: "The owner of the land plot of agricultural designation may not perform purchase and sale of the land plot of agricultural designation within 5 years from the moment of acquiring the right of ownership".

Although households and the household level are the main players in the linkages between land tenure security and food security, my research will primarily focus on the macro level. This is due to limited resources and time constraints, and because of lack of statistical data on the household level.

It became obvious to me - and other researchers in the Kyrgyz Republic did notice the same in their reports - that statistical information (in English) sometimes contradicted itself. Discrepancies were noticeable in statistical data as well as in other sources of information, sometimes simply because of linguistics. For example (following VanAtta [95] his note 35 here), in Russian, any economic enterprise, farm or factory, is a '*khoziaistvo*'. Agriculture is '*sel'skoe khoziaistvo*', but farms are often called '*khoziaistva*,' literally translated as 'enterprise', confusing the distinction between farm and factory. Another example is the term 'peasant farm' (*krest'ianskoe khoziaistvo*). This carries the connotation of a backward, subsistence farm. Supporters of the reform 'invented' the term 'farmer's farm' (*fermerskoe khoziaistvo*), to describe a large, modern, market-oriented but family-owned and operated farm. But (Russian) censors initially did not permit the use of '*fermerskoe khoziaistvo*', and '*krest'ianskoe khoziaistvo*' had to be used in the USSR. So despite its name, the "Law on Peasant Farms" was intended to promote the creation of American-style, family-run, market farms. So texts (provided after translation in English) were at times ambiguous in their translation, depending on the knowledge and the experience of the translator.

The Kyrgyz Republic is a country in transition and figures and data on the agrarian reform show ambiguities because of shifts in definitions used. I am aware of the fact that faulty conclusions are possible because of incorrect inferences about what one or another agency means at any given time by concepts, and definitions. Some examples of contradictions will be shown in the text of this document, detected by comparing data from different sources and my own observations. The official language of the Kyrgyz Republic is Kyrgyz (also referred to as Khirgiz), but Russian is widely spoken and understood. Russian has been the language in which Kyrgyz citizens received their (higher) education; almost all institutes of higher and academic education that the Kyrgyz citizens could attend were in Russia. So Russian is the language generally used in government circles and by 'educated' people. The content of my research is based on observations, field research and research of others found in literature, and as far as written documents are concerned it is based on texts translated from Russian or Kyrgyz into English. Most documents were made available to me



during my assignment. Every effort has been made to double-check my own interpretations and observations as well as the reliability of data. Personally I experience it always as both exciting and challenging to temporarily live and work in a country where citizens have different concepts and where the mentality is different from that in the region one grew up in. The most difficult issue is generally the translation or rather interpretation. Those who share with me the experience of working in former communist countries will recognize the observation that the Russian term "DA" should not always be translated with "YES" (as in the dictionaries). Remarkably often it is more accurately translated with "YES-BUT", and similarly "NJET" should not always be translated as "NO" but with the more applicable "NO-PERHAPS".

During my first long-term assignment in Sofia in 1993, a high ranking Bulgarian official kindly informed me about this subtle but important fact. Since then I have discovered the truth of the rule. Though not limited to Bulgaria but also in most of the former Soviet countries and not only with the terms "yes" and "no". It makes working abroad sometimes a little frustrating, but anyway very challenging.

### 1.5 THE MODEL

The model presented in this book provides a possibility to rapidly assess the effectiveness of a project, based on links between change of land tenure (by changing institutional arrangements) and economic development or improved food security. Because of my personal background and experience, the model and the method focus on countries in transition where land tenure reform aims at a (rather rapid and sudden) change toward individual tenure. And although the method in principle is applicable to any change in tenure, in cases of a (much) slower pace of tenure change, indicators for a rapid assessment might be more difficult to find because the effects of the land tenure change will take much more time to be noticeable. Many of the land reform projects carried out in other parts of the world did not pursue a sudden change in land tenure, but wanted to bring existing land tenure arrangements more in line with each other. It should also be borne in mind that in many land reform projects outside countries in transition, the need for rapid assessment of the effectiveness of changes is smaller because of the slower pace of reform, making an application of the model and the method less effective.

The model is not only built on personal research and experience, but my findings are compared with research results of others in the fields of land and food security. In this book my results are dominantly applied to the Kyrgyz situation. The model has been designed to serve as a field guide to give rapid insight in the feasibility of a project concentrating on land tenure change. Use of the model depends on easily collectable macro-economic indicators. It provides an ad hoc appraisal of effectiveness for expatriate experts working in countries in transition.

It seems contradictory to develop a model to assess the impact of 'change' in land tenure, while at the same time claiming that the model can be used for rapid assessment 'hic et nunc'. Change is per definition something that happens over time, and a certain course of time should be allowed to make an assessment. By using readily available statistical – macro (economic) – data and indicators, the time constraint is avoided, giving the model its possibility to provide insight 'hic et nunc'.

There are a lot of empirical expectations that surround land reform and land tenure change. It seemed important to use extensively proven evidence taken from research results by others to check if it converges with my theory. The complexity of changes in land tenure, economic development, and food security make it impossible to isolate the effects of a developing society and to consider the issues strictly on their own. The society in which they take place creates a whole new set of changing situations and possibilities while a researcher wants to observe just some specific effects. In other words, no researcher has control over the phenomena that are observed. When it comes to conclusions, data gathering in any research is very likely to be selective and should thus be supported by converging research results of others. There also is the danger of selective generalization to make them suitable for the results the research is looking for. Many expatriate consultants have a tendency – and sometimes an outright habit – to extrapolate ‘logical’ expectations. Finding similarities in other research can then be a comfort, although it is not a guarantee that the researcher does not fall into the same trap as the one he or she quotes.

## **1.6 STRUCTURE OF THE BOOK**

The practical application of the research in this book is related to my assignment in Kyrgyzstan and so the situation in the Kyrgyz Republic plays an important role in the contents of this document. The start of my theoretical research was some six years ago and contains experiences of former assignments in other countries in transition as well. There are many similarities with other former Soviet countries making the research suitable for wider use.

This book actually consists of three parts. Part one contains the Chapters 1 – 5 and provides the reader with background information. It is completed in Chapter 5 with the building of my model for rapid assessment.

Chapter 1 contains an introduction into the research. Chapter 2 provides the terminology and definitions. Chapter 3 describes Kyrgyzstan, the Kyrgyz society, and the current economic situation. It provides details with respect to land tenure and ownership of rights to land in the Kyrgyz Republic before and after independence. In Chapter 4, a general introduction on land reform research and land reform projects in countries in transition is given. This chapter closes with a description of the land reform experiences of China being culturally and ethnically the most important neighbor of Kyrgyzstan. In Chapter 5 the model of linkages between institutional change and both economic development and food security is developed.

Part two is dedicated to the rapid assessment method with the model. In chapters 6 to 12, the various elements of the model are described as far as relevant for the Kyrgyz situation. Per chapter one step in the model is assessed. Chapter 13 focuses on food security represented by the elements consumption and nutritional status. The development of the Land and Real Estate Registration Project is described in Chapter 14.

Part three of the book contains two chapters. Chapter 15 contains what can be called ‘second thoughts’ or implications of non-evolutionary tenure change of importance for assessing effects of measures. Chapter 16 completes the book with conclusions and statements.