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

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CHAPTER 6 INSTITUTIONAL CHANGE

6.1 IMPLEMENTING A NEW PROPERTY REGIME

6.1.1 INTRODUCTION
In chapters 6 - 13, a method for rapid assessment for the situation in Kyrgyzstan will be elaborated. I will describe how changes of elements in the model can be initiated, carried out and observed in the Kyrgyz Republic. Although each one of the chapters will focus on one specific element, generally each indicator or signal can be used to see the effect of more than one element. This will cause some overlap between the chapters. Institutional changes will affect several elements for example; changing opportunity sets, changing access to land, and changing resource use. It should be noted that the indicators used in the following chapters, are far from being exclusive. Other indicators are very well possible depending on the circumstances and data available. In discussions with researchers of the Land Tenure Center, I was assured (again) that personal observations are useful sources of information and what better way than being on an assignment in country to make those observations. Together with indicators and statistical information they form the backbone of the method as described in these chapters.

Neither land tenure security nor food security appears as element in the model. This is to underline that both are perceptions and are not suitable for direct measurement. It is through the elements of the model and the related indicators and observations that we can develop a proxy of what the perception could be. Improvement of land tenure security is influenced by institutional changes for land tenure and can be observed by changes in opportunity sets, changes in access to land, and changes in resource use. Change of food security is the effect of changing resource use, change in income and changes in consumption. In that way governments take concrete actions to change land tenure and improve food security. One of the most used measures to do so is land reform. Land reform aims at a change of the existing patterns of land tenure. It usually starts with new legislation. The new legislation must be an incentive for individuals to make use of (new) opportunity sets. To prevent the change from being felt as a threat, institutional arrangements and regulations in which the individual right holder can find protection of rights must be put in place. Especially for land, institutionalization has to support in providing security of tenure for the owners of the rights to land, legislation must provide long-term rights and protection for the exclusive use of land. Land reform requires the commitment of the government and can only be successful with sufficient supportive residual policies.

6.1.2 THE KYRGYZ CONSTITUTION, THE CIVIL CODE, AND LAND CODE
It is important to note that the Constitution, the Civil Code and the Land Code of the Kyrgyz Republic indicate a possibility of private ownership of land (and not only of use rights to land).
Article 4 of the Constitution of the Kyrgyz Republic [44] clearly states that although private ownership is recognized all land belongs to the State. It reads (in the provided English translation):

"Property in the Kyrgyz Republic may belong to the state or may be private."
The Kyrgyz Republic guarantees the diversity of forms of ownership and their equal legal protection.

In the Kyrgyz Republic the land, its underground resources, water, air space, forests, flora and fauna, and all natural wealth is the property of the State.

Under the circumstances and within the limits established by law of the Kyrgyz Republic, the use of land parcels may be transferred to individual citizens and their associations. The purchase and sale of land is not permitted.

The Kyrgyz Republic shall protect the rights of ownership of its citizens and juridical persons to property, and also their property and ownership located within territories of other governments.

In November 1998 a Law on Amendments to the Constitution of the Kyrgyz Republic was presented to Parliament. It contained the following amendments and changes (as provided in English translation):

"To set out in Article 4 the following Subparagraphs 1, 2, 3 in the following wording:

1. In the Kyrgyz Republic the state, communal, private and other forms of ownership shall be accepted and protected. The Kyrgyz Republic guarantees the diversity of forms of ownership and their equal legal protection.

2. In the Kyrgyz Republic the land, its underground resources, water, air space, forests, flora and fauna, and all natural wealth shall be used as vital elements for life and activity of the nations of Kyrgyzstan and be specially protected by the state.

3. Land may be state, communal, private and other forms of ownership

Limits and procedure of implementation of landowner's rights and protection guarantees are determined by the law".

It is to be understood that this is a change toward private ownership of all types of real property in Kyrgyzstan. Furthermore, it was declared that all land shares and government land grants – the documents issued for land designated for agriculture ("Ugodia") - were transformed into documents showing ownership rights to land.

Apart from ownership there is possible confusion about transfers of use rights in rural land. Is it free or should an "initial cost" be paid (25 times the tax rate) for the right to exclusively use the land. The Civil code of the Kyrgyz Republic does not clarify this issue further, but the preamble of the Land Code reads:

"This Land Code regulates land relationships in the Kyrgyz Republic, the grounds for emergence and procedure of exercising and termination of the rights to land and their registration. This Code also aims at development of land market relationships in the conditions of state, communal and private ownership to land and of rational use and protection of land".

This implies that private ownership of agricultural land is clearly an option.

6.1.3 MORATORIUM ON 'UGODIA'

Another confusion remains about the moratorium. What does it cover? The Land Code states in article 35:

"The owner of a land plot or a land user may transfer the rights he holds to a land plot fully or partially to other individual or legal entity without any permission of state agencies subject to limitations established in paragraph 2 of this point, unless otherwise provided
by this Code, other legislative acts of the Kyrgyz Republic, conditions of allocation of a land plot.

The owner of the land plot of agricultural designation may not perform purchase and sale of the land plot of agricultural designation for 5 years from the moment of acquiring the right of ownership.”

The moratorium expectedly is limited to the ‘Ugodia’. But....article 73 of the Land Code states (again in the provided English translation):

“Land plot of agricultural designation shall be used by individuals and legal entities for running of seed-growing, pedigree cattle breeding, and commodity agricultural production, protective forest planting, gardening, vegetable raising, dacha construction, carrying out scientific research and experimental works and for other purposes associated with agricultural production”

This seems to imply that the moratorium on land sales as stated in article 35, also includes sales and purchases of house plots and dacha plots. Local authorities were flexible in the application of this moratorium on house plots. I observed that in urban areas it is not applied, in rural villages it depends on the size of the house plot. There has been a tendency to increase the size of house plots with land available from ‘shrinkages’ of state farmland.

My suspicion that house plots ‘grew’ in size over time after independence, is indirectly confirmed by a table I found in WB paper # 394 [100] p. 113. Derived from that table the market surplus for example for potatoes grown on house plots increased from just over 23,000 tons in 1992, to 94,500 tons in 1996. In the same time the market surplus of milk from house plots increased from 36,000 tons to 169,000 ton. And apart from considerable market surplus quantities in other products this increase was achieved at approximately 600,000 rural households in total.

During the assignment in the Kyrgyz Republic I was told that with consent of family members a holder can sell the certificate to other members of the same farm or to citizens and entities of the Kyrgyz Republic (no foreigners!) for purposes of agricultural production. Former members of the farm are given priority. When certified by a notary in agreement with the rules set by the appropriate rural committee and the rayon land management office, certificates may be transferred or used as security.

In June 2000, a presidential decree “On pilot projects on land market and registration of rights for agricultural lands” enabled experiments in land markets including the registration of purchase and sale transactions, effectively suspending the moratorium in three rayons where new style land registration offices had been opened.

6.1.4 NEW REGULATIONS

During the land and agrarian reform, more than 15 legislative Acts, 12 Decrees and over a hundred Governmental Resolutions have been adopted and became effective. Most of the new legislation on property issues in Kyrgyzstan is the result of cooperation between local legal experts and (US) foreign legal consultants. Some of the new legislation is copied from similarly compiled laws in Kazakhstan where US experts and local experts had been active earlier to design new legislation on land related matters. Like the Kazak government, the Kyrgyz government strives at providing a higher level of tenure security by adopting a series of laws, decrees and regulations in relation to land tenure. In 1998 and 1999 the following
documents were developed and were soon adopted by the Jogorku Kenesh (the Kyrgyz parliament):

- A Law to Amend the Constitution of the Kyrgyz Republic (introducing ownership rights to all land)
- The Land Code of the Kyrgyz Republic
- The Law on State Registration of Rights to Immovable Property.
- On mortgage – for ensuring execution of all sorts of financial obligations, using real property rights as collateral.
- On cooperation – regulating the operation of cooperations in the Kyrgyz Republic
- On Peasant farm(s) – determining the legal basis for establishment and operations of peasant farms.

Resolutions were drafted on “Allocation of land shares and property in kind”, and on “Utilization of State agricultural land”.

A confusing matter is the fact that staff of new registration offices in Kyrgyzstan will be recruited mainly from the existing offices of BTI and Land Engineering. So the same staff will assist Kyrgyz citizens with registration of their rights, that previously exercised (and still exercises) control over the proper use of immovable property. The same staff that had, and still has the authority to expropriate farmers from farm land and others from real property when it is not properly used (for farm land meaning its production level is below that of the cadastral estimates).

6.1.5 IMPROVING LAND TENURE SECURITY

With the recent change of land certificates into ownership documents, will farmers in the Kyrgyz Republic generally feel more secure in their land tenure than urban residents do? In the draft social assessment report [82] some interesting remarks about land tenure security can be found.

- No one has such security as we all depend on society. For example, if communists will be in power again, they can take away our property (Uzbek male, business man in Uzgen)
- I don’t feel secure myself. I don’t recognize myself as the owner of my shop (Russian female, shop owner, Sokuluk)
- Not any guarantee, No one from Architectura, the BTI or the akaimat (local authority) knows where the mill is situated. I hope to register it. If necessary I will pay bribe. (Kyrgyz male, business man/farmer, Naryn)
- Of course I am sure of my rights. Many people are involved in this process (of privatization). Therefore our agreements give guarantee and confidence (Kyrgyz male, farmer, Naryn)
- I am sure of guarantee for 100% because there is a lot of land. Only people have no resources to make the best of it. (Kyrgyz farmer and leaseholder, Naryn)
- It does not depend on me; it depends on the type of authority of the state. Stability should be reached in everything – economy, policy, etc. Not only develop a legal

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8 Most likely this respondent refers to the general lack of access to supportive financial resources for citizens assisting them to invest in land.
system but make it work. There is no benefit if the law is only on paper, a dead law.
(Kyrgyz male, farmer Sokuluk rayon)

No institutional provision by just this government, although trying to be the most democratic in the region, will add much to the perception of land tenure security. For most farmers private ownership of rights to land and registration of their newly acquired rights will not contribute to their feeling of having secure tenure of land. There remains mistrust about the intentions of the government and of the possibility of freely exercising the newly acquired rights to land. Besides the registration process of those rights has not yet changed in many areas (only three new style registration offices were operational by the end of 1999) and systematic registration of rights only started around mid 2000 with little or no public awareness campaign. It must be expected that only a long term proven commitment of successive governments to protect private ownership of land will provide a solid base for land tenure security. The conclusion is that the government of Kyrgyzstan has provided institutional arrangements for a development of improved land tenure security but that sustainability of land tenure security can only be perceived after a period of time.

6.2 LAND REFORM IN KYRGYZSTAN

6.2.1 IMITATING THE ‘WEST’.
The land and agrarian reform in Kyrgyzstan is one of the most obvious institutional changes carried out after independence. Kyrgyzstan is eager to portray itself as the most democratic and advanced country in Central Asia. It succeeded in becoming the region’s most preferred country among donor organizations. Sometimes it is even referred to as the “pet of international donors”. And although democracy at Kyrgyz standards is not exactly the same as it is in Western countries, the current government is the most liberal and democratic in the area. Recent reports about the political situation suggest that the government is leaning towards a more dictatorial course, but this political correction of the policy is mild compared to the political measures in neighboring Republics9.
The newly elected government followed a “western pattern” by introducing private property, individual taxation, and taxes paid in money rather than in food (quota). This requires them to make institutional arrangements and establish agencies that identify boundaries, register property descriptions and identify the taxpayers. So one of the motives for the Kyrgyz land reform program could well have been the wish to show the world – once more - the rapidly evolving democracy in this country in Central-Asia.

6.2.2 WHAT MOTIVE?
The land and agrarian reform in Kyrgyzstan aimed at replacement of the existing approximately 450 (the number varies depending on the source but about 450 is a good

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9 Elections for the Kyrgyz Parliament in early 2000 were followed by oppressing of the opposition. Most likely because of his outspokenness an opposition leader was jailed causing supporters to set up a picket line in Bishkek for several weeks. Although this is a serious denouncement of democracy, the fact that picket lines could be maintained for several weeks and that the press could freely report about it shows the ambivalent attitude of the government. In neighboring countries Uzbekistan and Kazakhstan the current presidents have made themselves president for life and act like dictators, almost similar to Soviet leaders during the pre-democratic times.
proxy) large scale state and collective farms, which counted for virtually all agricultural production in the Kyrgyz Republic. These large scale farms had to be replaced by smaller-scale farms managed by individuals, families, groups of families, and corporate farm enterprises.

There is no clear political statement or written reasoning at hand for such a drastic and costly maneuver as land privatization is in Kyrgyzstan. What can be found is scattered among written intentions in governmental regulations, in project documentation of international donors, and in the terms of reference of projects. Undoubtedly there has been a certain automatism following an international trend with a genuine intent to distribute the land of state and collective farms among families living on the farms. This is reflected in the distribution of land shares, because the size of the family determined the area of land to be transferred. Each spouse received a certain amount and every child in the family also received an amount of agricultural land. Local committees determined the size of the land shares but that was done in accordance with the total land available for distribution. This resulted in fewer land per capita in the more densely populated south of the country than in the north. A typical distribution for example was 1.5 ha (± 3.75 acres) for the head of the family, 1 ha (± 2.5 acres) for the spouse, and 0.75 ha (± 1.9 acres) for each child in the family.

A certainly never freely expressed motive for land reform might have been a backlash against the agrarian elite in the form of the management of the state and collective farms. This motive is one of the findings in research as carried out by the Land Tenure Center and this type of envy plays a role in almost all land reform projects in transition countries.

6.2.3 REVITALIZATION OF KYRGYZ LAND REFORM

Progress of the agricultural restructuring was fitful until 1994. As described in chapter 3, it is difficult to precisely monitor the progress of the privatization plan because of many ambiguities and shifts in the definition of concepts (peasant farm, private farm, cooperative farm, and reorganized enterprise) causing confusion and difficulties in interpreting statistics. After struggling with restructuring of agricultural production in the first years of independence, the President of the Kyrgyz Republic took the initiative to re-vitalize the agrarian reform in 1994. The result of this 1994 initiative for speeding up restructuring was both a continuation of previous measures and methods, and also a frontal assault on collective and state farms that had ignored previous restructuring edicts. The Ministry of Agriculture declared its intent to transfer nearly all of the country’s 1.5 million ha of agricultural land to small holders by 1995. From 1995 onward Kyrgyzstan experienced a progressive land reform program.

A 1994, 22 February Presidential Decree (measures on Promoting Land and Agrarian Reforms in the Kyrgyz Republic) underscores government priorities to improve agricultural production. All people living and working on the territories of collective and state farms got a use right to a share of land designated for agriculture with the right to sell, exchange, bequeath, mortgage and lease (art 1 & 2). They are granted rights for 49 years (later this was extended to 99 years) of tenure with preferential rights of extension upon termination (art 3). Arable land plots must be used for agricultural production (art 10). There are restrictions set on the maximum size for one family (art 11) in correspondence with the composition of the family, and the location and soil quality of the land. If a family was already holding more land than allowed under the new regulations, the surplus should be
returned for redistribution with cash compensation as set by the government (art 12). State authorities are prohibited from interfering with individual use rights (art 14). The Ministry of Agriculture is given power to control the whole reform and cadastral taxing. The MAF was instructed to physically identify land for the National Land Fund (NLF) together with rayon administrations. With oblast administrations the MAF should submit orders to ascertain land shares to citizens etc and implement the NLF. Heads of rayon administrations had to develop regional programs for implementation of all this with proposals on the minimum size of plots taking into account climate, and natural conditions. That State authorities can not interfere with individual use rights as stated in art 14 is limited by the Land Code – as still practiced in 1999. The “State Inspectorate on Land Engineering” maintains records on the use of arable land and can also expropriate owners of rights because of insufficient use, improper use, or illegal use of the real property.

6.2.4 ECONOMIC STAGNATION
Unfortunately the economic recovery that seemed to start in 1995 did not continue as expected. The following short anthology of the current situation in the Kyrgyz Republic can illustrate this. The Kyrgyz national currency of (the som) showed a devaluation of 55% in 1999. The first half of 1999 was the most difficult period ever for the Kyrgyz national currency, the som. Prime Minister Amangeldi Muraliev reported on January 28, 2000 that inflation in the country over 1999 had been as high as 39.9%. Annual inflation in 1993 was 1209% and came down from 35% in 1996 to 14.7% in 1997, but the recent figures over 1998 - 20% - and almost 40% over 1999 indicate a worsening trend. In 1999 treasury bills for a three months period had a yield between 28% and 71%, the six-month treasury bills had an average yield of 52%. Mortgages with real property as collateral for a maximum period of six months (!) had an annual interest rate of more than 70%. The number of transactions in real estate in the capital Bishkek over the period January 1 – June 1, 2000 was reported as 5,865 or an average of 1173 per month. Monthly numbers reported over January and February 2000 were 886 and 1123. This indicates a very slow increase, but still a significant lower monthly average than reported over 1998 (1527) and 1999 (1338) the year the decline became obvious. (See also annex B: Real property transactions in Bishkek). I do realize that this observation covers only a short period of time. It is possible that the real estate market in Bishkek went through a specific (negative) situation at the time the data were collected. It is hard to indicate a 'normal' level of transactions in a city like Bishkek, because there hardly has been a 'normal' situation in the few years of independence to set such a standard. The next table shows data of Bishkek with data of Osh and data of the suburban areas of Bishkek and Osh.

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Suburban areas of Bishkek:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Kant</td>
<td>1600</td>
<td>1500</td>
<td>1622</td>
</tr>
<tr>
<td>Sokuluk</td>
<td>1858</td>
<td>1912</td>
<td>1922</td>
</tr>
<tr>
<td>Further away from Bishkek:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chui-Tokmok (Eastwards)</td>
<td>2225</td>
<td>2160</td>
<td>1065</td>
</tr>
<tr>
<td>Moscow (Westwards)</td>
<td></td>
<td>1231</td>
<td>1411</td>
</tr>
<tr>
<td>In the South of the country:</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Osh</td>
<td>3608</td>
<td>2534</td>
<td>4500</td>
</tr>
<tr>
<td>Djallal-Abad</td>
<td>1070</td>
<td>1118</td>
<td>1315</td>
</tr>
<tr>
<td>Kara-Suu</td>
<td>1200</td>
<td>1640</td>
<td>1436</td>
</tr>
</tbody>
</table>

(data source: GosRegister see annex D)
The table shows no notable increase in transactions between 1997/1998 and now, except for the number of transactions in and around Osh, the unofficial capital of the densely populated Ferghana valley. It indicates that there is not yet the expected developing property market.

The newspaper "Vecherni Bishkek" reported in October 1999 that so far only 146 "brave people" started their own business in Bishkek in 1999, compared with 583 in the whole year 1998. A few weeks earlier the same newspaper reported that for the majority of schoolteachers in Bishkek living conditions continue to worsen. The wages are minimal (some basic rates amount to 280 som – or approx. 70 US dollar – per month). Not capable of paying for fares of public transport, many teachers go to work on foot almost across the city. "Voluntary" non-paid vacations have become more common in the education sector.

The economic stagnation is noticeable everywhere in the country. The Times of Central Asia [88] reports: "Kyrgyzstani Agriculture Requires Equipment and Technical Servicing", on December 9, 1999; "The fleet of agricultural equipment has greatly reduced and deliveries of farming equipment have almost stopped. Compared with 1991, in 1998 the number of tractors reduced 12.7%, trucks by 14%, grain harvesters by 7%, corn harvesters by 81.8%, plows by 14%, and sowing machines by 28.5%. To boost agricultural production in Kyrgyzstan, the Government issued a decree establishing technical servicing stations in the country. To date their number has reached 300. However, these service stations still lack the necessary repair facilities and funds."

6.2.5 LAND ACQUISITION

LTC report # 128 [52] states that nearly one-third of the new farm enterprises have acquired exclusive use of land during the transition. Because of the moratorium on arable land most acquisitions of land happened through rental arrangements, through (new) shareholders joining the enterprise and through leasing or purchasing from the National Land Fund. Although certainly not sufficient for proof of a vivid land market, it is a sign of transfers of land and activity on a land market, all happening without the new land registration system established.

LTC researchers found in Kyrgyzstan that few households see themselves selling land in the future. Many individuals (within the enterprises) in the case studies declared that they intend to hold on to their land at all costs; no household interviewed appeared to want to sell its land shares or engage in land speculation. Statistics show that few enterprises have disposed of land since the restructuring of agriculture began. This confirms a research finding that most transactions of land take place shortly after implementation of the land reform process and slows down after a while. Given the poor economic situation and the relatively high costs of formal land transfers it is also possible that people are avoiding formal transactions and instead make the choice for the informal transfer. This certainly is a non-desired development because of the possibilities of cheating, fraud, and corruption that might occur at informal transactions.

It is interesting to note that the situation in Kyrgyzstan obviously is different from Albania and some other European countries in transition, where the willingness to sell among the population is substantially higher (See Stanfield [80]). It could be that the degree of familiarity with private individual ownership of property in these more westerly located countries is significantly higher since communist ideology did exist there for a shorter period of time.
6.3 THE LAND REGISTRATION PROJECT IN KYRGYZSTAN

6.3.1 LAND REGISTRATION AND LAND REFORM
The “Times of Central Asia” [88] of November 11, 1999 reports on a Real Estate Registration Seminar in Bishkek organized on November 1. In the article the project on registration of rights to real estate and land is described as being a proposal of the World Bank stemming from 1995, in the form of a reform of the real estate sector in Kyrgyzstan and the unification of the registration of real estate rights. The paper obviously misinterpreted some of the information exchanged during the seminar. A unification of registration of real estate rights is a reasonable description of the project of which the preparatory phase started in 1999, but a reform of the real estate sector in the Kyrgyz Republic did not initiate in 1995. The Kyrgyz Republic embarked on a course to change the tenure of its arable land after the declaration of independence in 1991. As a supportive project for the restructuring of the agriculture, the much smaller project for land registration has been discussed almost since the start of the land reform in Kyrgyzstan. As a sideline of restructuring of agriculture, the first investigations for the land registration project started in 1995, and in 1997 a pilot project by US-AID was completed. The approval of the Land Code and the Law on State Registration of Rights to Immovable Property in November 1998, the legal basis for a land and real estate registration project was complete. The World Bank could allocate specific funding and a preparation phase scheduled in 1999, will provide the foundation for the land registration project for which two other expatriates and I were assigned. As explained earlier, a new land registration system operational at the moment the first land certificates were issued would have been the most effective and efficient measure. Now data recorded in the registers is more or less ‘second-hand’ and will most likely contain some errors and misinterpretation.

The current project in Kyrgyzstan is not going to provide much surveying of boundaries and hardly any additional mapping. And although land registration and land titling as being institutionally arranged in Kyrgyzstan will enhance land tenure security it is still doubtful that it will make much of a difference for the Kyrgyz citizens. The long period of dependence on the USSR also contributes to a hesitant reaction on privatization among the Kyrgyz citizens. The many experiments and forms of privatization underline the struggle of those willing to (re-) introduce private ownership in Kyrgyzstan. Conflicts about lands between the State and villagers have been rare in Kyrgyzstan but there have been some arguments about boundaries between villagers, although there is little evidence of real conflicts.

6.3.2 LAND MARKET DEVELOPMENT
The World Bank’s land registration project documentation and in particular the terms of reference for the project that effectively started in 1999, puts as much emphasis on land market development as on protection of individual property rights. This project is the result of an earlier World Bank funded project in 1995, an assessment of land and agrarian reform to aid the government of the Kyrgyz Republic in reorganizing agricultural land tenure and land management in order to facilitate the transition to a market economy. In this project US-AID, EU-TACIS, the World Bank and the Land Tenure Center of the University of Wisconsin participated in which the latter partner prepared the report.
Markets for sales, leases, mortgages and other transactions currently function without the new land registration system. However it is only a small market and it is not likely that this will soon change. For the few transactions now taking place there is obviously little concern or uncertainty about the rights to land that Kyrgyz citizens have. It can be questioned whether the current ‘system’ is reasonably efficient, but then, what should be the urgency to improve efficiency? Looking at the data provided by the Kyrgyz authorities on the amount of transactions currently effected, efficiency improvement can hardly be used as an argument to change the current system. The number of transactions registered in the whole country in the relevant offices (BTI or Land Management) reported for 1998 was between 40,000 and 45,000 (the number varies depending on the source). The Bishkek BTI office had the most transfers 18,329. Some of the more rural 48 regions in the country report a number lower than 10 transfers of real property for the whole year 1998. Even in Bishkek the activity comes down to an average number of less than 80 transfers per working day in 1998 (See annex D).

The terms of reference for the land registration project indicate the intention of the Kyrgyz Government. It says: “The Government of the Kyrgyz Republic has requested assistance from the World Bank in the preparation of a land and real estate registration project. The objective of the project will be to secure rights in real estate, and to facilitate the exercise of those rights through the efficient functioning of markets for sales, lease, mortgage and other transactions. A critical aspect of the transition to a market economy in the Kyrgyz Republic is clarification and protection of rights in land and other real property. The traditional approach to collecting and maintaining information on land and other forms of real property cannot serve the needs of a modern market economy. There is a need to develop a unified system of registration, which will incorporate all relevant information on a given piece of property and provide clear guarantee and security of property rights. This requires determination by the Government of how any existing activity in the collection and management of information on real property will fit into a new unified registration system.”

6.3.3 FOCUS ON URBAN PROPERTY?

The reference made to a ‘modern market economy’ without any indications on how to stimulate the rural (agricultural) economy, reveals that the focus is on the urban real property market. Initially the project was linked with the restructuring of the agriculture and with rural poverty alleviation. Now the emphasis seems more on economic development by stimulating the real property market. The original aim could be captured in the food security model, now it seems more appropriate to follow the prosperity model aimed at economic development. However, given the persistent economic decline in the Kyrgyz Republic and the absence of any emphasis on land market development in the project, the change in goal for the Land and Real Estate Registration Project seems to be a rather opportunistic one.

In a project information document explaining the objectives of the Land and Real Estate Registration Project in Kyrgyzstan (World Bank document by E. Cook [101]) the emphasis of the project is clearly on market development. It reads in paragraph 2 ‘Objectives’: “The primary objective of this project is to encourage and support development of markets for and investments in land and real estate”. For Kyrgyzstan this goal is only possible in the long run. The project information document seems to be based on the often-assumed link between increasing security of land tenure and a developing land market. There is mounting evidence that this link is not an automatic one. The development of a land market depends on several factors of which increasing land tenure security is just one (and most likely not
the most relevant). As shown earlier, for a land market to evolve, economic circumstances are dominant. Factors like demand for real property, control over inflation, a well functioning banking system, and land market expertise.

6.3.4 A MORE PUBLIC-FRIENDLY SYSTEM
The director of the newly established organization for land and real estate registration in Kyrgyzstan stresses as major accomplishment of 'his' project the concept of a "one-stop-shop" for registration of land. Instead of the various offices and windows to visit in order to formally transfer real property as described in 2.3, his new organization envisages one window in the one office that registers real property in the area where the property is situated. The new office will take care of all the aspects of registration. In this way he wins public support for the new system for land registration because most people are aware of the fact that transfers of real property are currently cumbersome and time consuming. Furthermore, it is a well-known fact in Kyrgyzstan that in order to speed up the procedure at each window, some extra cash will assist thus increasing the cost of a formal transfer. An account of this practice can be found in the report [82] containing a social assessment of the land registration project among Kyrgyz citizens. The (draft) report states (p. 32): "Many clients during Focus Group – a specifically selected response group for the social assessment project - discussions noticed a practice of official and unofficial prices for provided service. Many clients don't know and have no opportunity to get information about official cost. Except at Bishkek's BTI, where available stands explain prices for service provided. Clients accept an amount of official fee for service offered, no claims from their side, they also agree with additional payment to fasten document procedures". (For the Social Assessment, five focus groups with clients have been organized in Bishkek City, Osh, Uzgen and Naryn cities. Groups of clients consisted of various people: lease holders, private farmers and agricultural employees, social servants, owners of houses and apartments, businessmen such as owners of shops, mini-markets, mills and private companies registering real estate, insurance and building firms, private legal advice offices). (Report on Social Assessment of the Land Registration Project of November 1999 [82]).

The proposed institutional arrangements of the 1999 preparatory project in Kyrgyzstan focus on land registration in such a way that it is simple, affordable and easy to understand for a population that is getting used to private ownership of real property. The establishment of a land registration system in the Kyrgyz Republic is not a goal in itself. It is a tool to improve the security of land tenure. Land registration is a modern tool, but it is not the only means to achieve land tenure security and certainly not the only condition to be fulfilled to accomplish economic development and or food security. To be really effective in alleviating food security and economic development, land reform and land registration activities must be supported by society. A stable government, protection and security for all citizens, and an institutional framework in which the forces of a market economy can flourish are necessary. It includes a land registration system designed according to the social and cultural circumstances under which the system will function.

6.3.5 CURRENT SITUATION ON LAND REGISTRATION
In Kyrgyzstan all three elements of a land reform project have been initiated. Restructuring agricultural production by re-distribution of land and assets, a change in property regime and a land registration project. The usual de-synchronization between land distribution and
land registration (in the new form) makes it an expensive and time-consuming project in total. Restructuring of the agricultural production was at the start of the land registration project in its final stage of completion. Much land had been distributed already even before the preparatory activities specifically aimed at improvement of registration started. Private farmers and new farming enterprises had taken possession of the land and some of them used the existing old institutionalized structure for registration of their rights to land. The result is that at the beginning of the new millennium, only about 20% of the land in private hands is officially registered in one or another governmental office. Many holders of land shares or land certificates did not yet spend time and money on registration. In January 2000 the new registration system has been established in only four offices. While working on the project the expatriate advisors proposed to provide the new offices, before opening, with maps showing the parcels in the territory of the office. After opening in each new registration office a detailed outlined process of systematic registration is supposed to start. Systematic registration includes the allocation of owners of rights to each parcel basically paid for by the State (or by foreign donor organizations), in order to set up a complete and accurate registration. Specially trained teams of registration specialists, not part of the normal operational staff, but specifically hired for the job at hand will carry out this temporary task, moving from one newly opened office to the next one. Owners of rights to land who want to transfer their rights before systematic registration has been completed on their parcels, will have to apply for sporadic registration (at their own expense) to comply with the new rules. At their request a procedure for sporadic (meaning just one investigation to check the data) registration was carried out. Systematic conversion of existing rights to land (free of charge for the owners of rights to land) is scheduled for each of the new offices directly after their opening to provide them with correct data in the new registration system. So owners transferring rights to land in areas of new land registration offices where systematic registration is completed can benefit from the completed and available land registration data and have a relatively quick and simple transfer at reasonable cost. It has been estimated that even in the largest offices the process of systematic registration could be completed within two years after opening of the new registration office. The ambitious program for systematic registration of all land in the territory of newly opened offices was started on a small scale in 2000.

In the Bishkek office the number of transactions decreased from 1466 in January 1999 to a little under 1000 in December 1999 or less than 50 on average per working day in December. During personal observations in this office - where all information has been computerized since April 1998 – one would never see long lines of people waiting for a window and if customers became impatient this was mostly because of the long processing times and not because they had to wait long before they were served. The necessity of improving efficiency at the registration offices becomes even more doubtful looking to other offices. The second largest office with respect to number of transfers is the Osh BTI office with 2534 transfers in 1998 or a daily average of around 10 transfers. The newly created and relatively large Kant office announced 145 transfers in October 2000 (both urban and rural) in this first of the new type of registration offices which comes down to less than an average 8 transfers for each working day. Offices in dominantly rural areas reported figures that come down to an average of less than 1 transfer per working day or even a month in 1998. But this can change after lifting the moratorium on farm land transfers, although it is not expected that in rural offices transactions will increase to a level of more than several per working day.
Researchers of the Land Tenure Center claim that a land registration system is not urgent for the continuation of the farm restructuring program, but it will be essential to have such a system in place soon (they indicated 1997) to facilitate transfers of land or development of a land market. The reasoning behind this is: "Every landholder wants to be assured that his or her claim on the land is secure, be it rent or ownership. Likewise banks will require clear title for lending purposes. Furthermore, legally secure tenure increases the likelihood that the owner will be willing to make long-term investments in the land. The lack of a single land registration system suited to market transactions is not an obstacle to land reform and farm reorganization, but such a system, which protects the rights of buyers, sellers, owners, renters, and mortgage holders will be necessary for the full development of a land market... At present, land parcels are registered in several different places within the rayon administration. Parties to a transaction involving land shares would have to go through several channels to complete the transaction. Moreover, information contained in the registration records does not include information on mortgages, easements, court decisions, and other restrictions on the parcel. In addition, there are two separate systems for rural and urban land. A single system for all immovable property would greatly simplify the process required to perform transactions in land".

6.3.6 PERSPECTIVE OF THE NEW LAND REGISTRATION SYSTEM

Over three million Kyrgyz citizens in rural areas got their land shares and half a million land certificates had been issued in June 2000 on the basis of the combined land shares. A farming family generally combines the shares of the members and will receive one land certificate, which in turn can be brought into a cooperation or a collective, or just remain in the hands of that one family starting a single family farm. The land certificates are reported to be of proper format, meaning that they are suitable for registration at any given time. Many farmers however are not yet registering the certificates not because of the complexity of the registration system (they mostly know where to register) but because of the cost involved in registration. There is no doubt about the formal value of the certificate, so why hurry with registration? Moreover, the moratorium on transfers of land designated for agriculture is still in force - although very recently it seems that there might be a discussion in parliament to lift it, or at least to diminish the length of the term (as in June 2000 still 5 years). Little progress has been made so far however, because the recently re-elected president (for a fourth term) suggested lifting the moratorium on December 12, 2000 but this met much opposition in parliament as the Times of Central Asia reports in its December 15, 2000 (# 50) issue. (I have been recently informed that it might be lifted in the late summer of 2001).

The 1999 World Bank project expected to have at least about fourteen new registration offices operational in June 2000, but in June 2000 only four out of a projected 48 offices were operational under the new unified and single registration system and so far only for sporadic registration. A maximum of only a few hundred transactions has been registered under the rules of the new single registration system as of June 2000. All the other owners of rights to land are still holding certificates under the old system without obviously serious problems. Although transactions with real property do happen, a real land market has not yet materialized. What is more remarkable, even with specific reference to the development of a land market in the terms of reference and other project documents, no specific actions to stimulate the development of such a market are part of the project.
The World Bank Land and Real Estate Registration Project in Kyrgyzstan as initiated in 1999 started both too early and too late. It is too early to support the establishment of a rural land market because of the already mentioned moratorium on sales of land designated for agriculture. Without additional supportive projects it will hardly assist an urban real property market because of the continuing economic stagnation. It is too late to ensure continuous protection of rights to land as established with the land certificates of which more than half a million have been registered already. Besides, it could be challenged whether this project is one of the most urgent projects to be carried out in Kyrgyzstan where still so many other factors are hampering the economic development and thus the alleviation of poverty.

Supported by Gershon Feder [32], I conclude that careful investigation of the situation in Kyrgyzstan would most likely have offered more urgent projects to be funded than this land registration project. In his report in Warsaw in 1998, Feder warns that (p. 58): “If it is not clear as to whether the key factors for economic viability of land registration systems are present, it may not be an opportune time for the government to invest in land registration. The society would benefit more from other types of investment, which address more binding constraints of its economic development”.

The conclusion is:
The Kyrgyz society would have benefitted more from other donor funded projects. For economic development specific land market incentives and credit improvement measures would have been an option. For alleviating rural poverty and food security, agricultural credit lines, establishing of centers for extension services for agricultural education, or improvement of agricultural mechanization for small scale farming, would most likely have achieved more with the same investment of resources in land registration.

It is interesting to mention the tendency among Kyrgyz registrars to continue the custom to physically inspect the real property before registering it in the land registration. The expatriate advisors attempted to explain that under the new situation state inspection of a property to be sold, to assess the condition before it can be transferred is not necessary and certainly not usual in ‘the West’. The Kyrgyz registrars do not want to be responsible for registration of facts that have not been verified on the ground. Explaining that a prospective buyer will inspect the property and that the offered price thus will reflect the condition of the real property in a market economy does not convince them either. They defend these ongoing inspections – for which the individuals have to pay and have to provide transport for the official physical inspection – by indicating the responsibility of only registering true facts, for which the physical inspection is necessary. Heated debates between expatriate advisors and national experts did not resolve this matter. I have been informed recently that the officials still insist on inspection of the real property before registration.

6.4 ASSESSMENT OF INSTITUTIONAL CHANGE IN KYRGYZSTAN

6.4.1 INDICATORS FOR INSTITUTIONAL CHANGE
The elements of my model will generally be evaluated with macro indicators. Indicators based on availability of data in Kyrgyzstan. The land reform project started some nine years ago, now providing several data sets to assess some of the progress and the possible effects of initiated changes. The further back the start of the changes in institutional arrangements, the more elements will be measurable with indicators and observable
phenomena. As far as relevant some of the indicators will be given the adjective proposed, because it is sometimes possible to assess proposed measures although these measures did not yet materialize. The first elements in the model all can be evaluated with indicators of change in land tenure. At macro level these indicators also measure changes in land tenure security. The first part of my model is shown here:

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Initial situation
Resources +
Institutional provisions

(0)

Institutional change

(1)

Change in opportunity sets

(2)
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Improvement of agricultural land resulting from enhanced tenure security can lead to changing short term inputs measurable by demand for farm chemicals and labor, but also demand for medium- and long term land improvements (irrigation, farm buildings, road access etc.) and – to a lesser degree - demand for mobile farm equipment. Another indication of changing land tenure security is a change in land lease contracts and other ways to utilize land more efficiently. Land leases are often without any form of written contract. Even with a written contract, registration is not always pursued because of costs and time involved in registration. The more informal the system of land leases the more trust there obviously is in tenure security. Measuring of the ideological side of land tenure security is more difficult. Getting accustomed to land tenure security will take time for a population that has no experience with the concept of private ownership of real property. The perception of land tenure security among a population has to be earned by a government by showing a long-term commitment to the protection of private rights to real property.

For the first element ‘institutional change’ (marked (1) in the model) relatively easily accessible indicators for change are:

- the number of (proposed) new or renewed laws and regulations
- process descriptions and instructions for implementing the new systems
- (proposed) organizational changes by the government
- schedule for implementation of the new institutional arrangements
- training and education of officials and others involved in the application of the new system

The above list of indicators is not about real changes, one might remark, which is true, it only reflects the various steps taken in the direction of change in institutions.

M.Riad El-Ghonemy (1990) [37] estimates that a period of fifteen to twenty years is required for the stabilization of the relative economic position of losers and gainers from restructuring of agriculture. At least the same period of time will be needed for beneficiaries to experience their new responsibilities in production, marketing, capital formation and participation in the development of their communities. The same goes for the manifestation of improved
abilities in beneficiaries as a consequence of new motivations, better nutritional standards and developed skills. To show results of land and agrarian reform programs as initiated in Eastern Europe and Central Asia after the political changes in 1989, a period of about twenty five years is needed. This implies that little can yet actually be measured about the effects of restructuring of the agriculture in those areas. A fundamental problem while trying to show the outcome of land reform (or restructuring of the agriculture) is to separate or to isolate the consequences of reform from the totality of dynamic forces driving change and development. So indicators should not be regarded as absolute or as final, rather they are signals of change and should be used as such. The scope of indicators will be wider in the prosperity model than in the food security model. In the food security model, specific institutional arrangements (implying a narrower approach) for the alleviation of food insecurity will appear and they will, in general, focus primarily on agricultural issues. For food security improvement the Ministry of Agriculture will play a dominant role in the organizational arrangements.

6.4.2 ASSESSMENT OF INSTUTIONAL CHANGE

It is obvious from the list of new legal regulations and institutional arrangements that the foundation has been laid for institutional changes. Fifteen laws, 12 decrees and more than 100 governmental resolutions have been adopted and became effective between 1991 and 2000. A July 1997 survey of large farm managers (30), private farmers (60) and household plot owners (90) across all regions of the Kyrgyz Republic provides some insight into the perception of various groups of farmers about the agricultural reforms. Nearly two-thirds of the large farm managers and private farmers support the reforms, but the household plot owners are equally divided among ‘satisfied’, ‘not satisfied’ and ‘no opinion’. (Source: WB discussion paper # 394) [100]. The report on social assessment does not provide much additional information on the perception of the institutional renewal, because there is no specific questioning aimed at an assessment of the renewal of institutional arrangements. A few conclusions can be found throughout the report. The main problem is that the average Kyrgyz farmer has insufficient knowledge to formally establish an agricultural enterprise. Officials because of (supposed) little understanding of formal procedures carry out most of the formal requirements by new heads of the small farm. Former management members of the state and collective farms can also take care of formal procedures. In most rural areas the latter do still have the contacts and the (informal) authority to get things done. The general knowledge about the new possibilities of starting private firms and private farms is limited among the people by lack of proper information and instruction. Education and information of individual citizens about the legal aspects of restructured farms and land registration is crucial to improve the trust that people will have in the government, but so far little attention has been paid to this aspect. More than 70% of ‘Ugodia’ (land) is privately owned nowadays and farmed by single-family farms, associations of peasant farms, cooperatives or new (smaller) collective farms. More than a half million land certificates have been issued. The institutions of the centralized plan economy that dominated the old Soviet system are gradually being dismantled, privatized, or transformed into institutions that primarily serve private agriculture in a market economy. The legal and regulatory framework required for private ownership and a functioning market economy is being put in place. The Ministry of Agriculture is shifting from owner operator to regulator, service agency, and policymaker.