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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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## CHAPTER 7. OPPORTUNITY SETS

### 7.1 IMPLICATIONS OF OPPORTUNITY SETS

#### 7.1.1 WHY OPPORTUNITY SETS?

An individual's opportunity set is composed of physical and emotional capacities plus legal or customary understandings of potential options that are conditioned by the actual choice of others. In paragraph 5.2 opportunity sets were introduced in the model to be able to pay attention to perceptions while at the same time remaining aware of the shaky character of the indirect observations of emotions and the feeling of security or trust provided by formal or informal institutions. Institutional change is one of the factors determining change in land tenure security, because change in land tenure security is only measurable by observing the effects of it, the logical next step in the method is to examine a change in opportunity sets. Schmid argues that the opportunity sets of potential actors are determined in part by the rules established by the institutions. The institutional infrastructure has a large influence on the behavior of individuals, and as far as farmers are concerned, it is also determined by expectations of the behavior of other land claimants, other farm workers, and the bureaucrats both in the decision making agencies and the supporting agencies.

Abraham Maslow presents in "Towards a Psychology of Being" [54], his hierarchy of needs that must be satisfied by mankind. His theory builds a pyramid of needs. Basic physiological requirements at the base of the pyramid are food and shelter, followed by security on the next level, above that the requirement to love, esteem and finally at the top self actualization. Maslow developed self-actualization as a goal to all men. Men – humans – have unique levels of potential development. Unique in relation to observable life because the human's individual potential is open-ended. This is in particular what Maslow is calling attention to. People, once satisfying more basic needs, tend to develop higher needs which drive them to attain more of their own potential.

I presume that the statement – without saying it explicitly – in the National Food Security Policy report of the Kyrgyz Republic of 27 July 1999 was inspired by Maslow's thoughts:

"First of all, man is a biological being. It is only after his basic needs are satisfied that he can develop into a full-fledged social, cultural, economic, or public being. An adequate daily food intake is the first among man's basic needs. The state, with its form and course of food policy in society, can play a key role in promoting the level of this development. An appropriate food security policy, therefore, is vital for the nation's future"

#### 7.1.2 INFORMAL MARKETS

It can be assumed that people will investigate all possible ways to obtain a reasonable daily food intake. In rural areas where income from agricultural employment is not sufficient, ways of supplementing this income are limited. It is possible to find some non-farm labor, but in many countries the poor rural regions do not have much to offer in this respect. Migration to urban areas can be considered, or the less drastic solution of commuting to urban areas. Families living not too far from urban areas often practice the latter. In several near urban areas 'semi non-farm' income comes generally from the informal sector. Unofficial "table-shops" along main urban routes for sale of farm produce not through official markets, and

also work in sweatshops unrelated to farms are well known examples. Hernando DeSoto describes in his book "The other Path" [23] aspects of this informal sector. He concludes that it is a safety valve created by the poor themselves. But an informal sector competes with the formal sector and deprives the government of tax income while it generally creates poor working circumstances and sometimes unhealthy conditions for workers.

Field observations in Kyrgyzstan reveal that there is a widely spread informal economy. Farmers can be seen along major routes in towns and villages selling some of their produce. Along the walkways in the capital Bishkek many farmers are selling farm produce, others are setting up a table (so called 'table-shops') and sell candy, cigarettes (by the piece and lighting is free!), and – a very popular item – sunflower seeds. Near official markets – where people pay for a stall – various vendors are active trying to sell freshly baked bread (out of old prams, bags, buckets, or baskets), home made pasta products, home made artistically decorated cakes, and in season berries picked in the fields and sold in jars. Occasionally the police (militia) will organize a raid to chase these informal vendors away from the streets near the official markets, but generally the next day they return to occupy their places again.

Another example of a contribution to the informal sector is the habit to obtain priority treatment by winning the mood of officials with some extra cash. Among officials it is common to accept some extra cash to smoothen difficult procedures or to shorten long periods of time to complete requests and give official approval. It goes a little too far to qualify this attitude as corrupt. In most of the former communist countries it was always very normal to use relations and "political capital" or to establish relations with extra cash. Like a saying in Surinam "Kenniss is minder belangrijk dan kennissen" (Knowledge is less important than knowing whom to address). Using your relations, knowledge of the system, or some extra cash to your advantage was part of the culture in Soviet times.

People use opportunity sets to pressure for individual private property rights as revealed in a study by Platteau. He shows that there is an evolutionary development toward a more individual property regime without formal institutional arrangement changes. Platteau argues that "The evolutionary theory of Land Rights (ETLR) can be considered the dominant framework of analysis used by mainstream economists to assess the land tenure situation in developing countries, and to make predictions about its evolution. A central theme of this theory is that under the joint impact of increasing population pressure and market integration, land rights spontaneously evolve toward rising individualization and that this evolution eventually leads right-holders to press for the creation of duly formalized private property rights". (Jean-Phillippe Platteau [66] in the 'Abstract').

### 7.1.3 RE-EMERGING CUSTOMS

Traditionally Kyrgyzstan was a society dominated by the male population in representing the family or the community. Paternalism was common in family matters especially when the Kyrgyz people lived as roaming families in their yurts on the common mountain pastures of the country. Under Soviet rule women gained (almost) equality in matters of citizenship and individual decision making, education became obligatory for boys and girls. And although formally much of these improvements in the status of women are still in effect, there is a tendency to return to the former male dominance in matters of family decision making and in representing the family. Family farms are registered in the name of the male head of the family and women leave property matters mostly to men. Women are the first to let go if the

labor force is shrinking. With the cutback in social services and social provisions (especially on the large farms) women are shunted into (part-time) lower level jobs and they take up more of their traditional role of home maker and child raiser. Islamic tendencies in the region and particularly in the south of the country will most likely encourage this development. The registration system could be of assistance in preserving rights of women by insisting that they are registered as co-owners of rights. This can avoid that they are left without property rights when it comes to a break up of the family.

Apart from these re-emerging customs there are evolutionary developments that should be monitored to avoid rapid growing inequalities. Platteau's [66] research in Sub-Saharan Africa has implications for the situation in Kyrgyzstan as he warns for some evolutionary developments. He draws attention to three points in this respect.

Firstly there are gainers and losers at land tenure changes and land titling programs. He states that losers are most likely women, pastoralists, hunter-gatherers, and outcast people. Most often these groups benefit from a form of (in)formal usufruct which likely will become difficult to continue. The land is generally registered in the name of the compound head and it depends on him what is going to happen next. Increasing land sales tend to exclude women and even when they acquire title to land it might be difficult to get it sanctioned or protected and their customary access to land (and that of other minority people) may be limited. In June 2000 I had a lengthy discussion with Suzanna Lastarria [47] a researcher at the LTC who did extensive research on the changing position of women in former communist countries. We concluded that women are generally inclined to leave it to men when it comes to land tenure. The situation in Kyrgyzstan confirms this assumption. There are 3,481,800 individuals or more than 510,500 families residing in rural areas and they all have been allocated their land shares. In single family farms those land shares have been registered as land certificates by combining them to one certificate per farm. In June 2000 it is reported that 510,500 land certificates of the proper format were distributed. Mostly these certificates are registered in the name of the head of the household – commonly the oldest male. In this way females are subordinated to males according to previous customs and are facing difficulties of obtaining their share of land in case of falling apart of the family. This is also reflected in the political arena. In times when the parliament's power is limited – like in communist times - striving to gender equity is often present. It certainly was not unusual to meet women in parliament and women in other high ranking political positions in Soviet times. However, the political role of women is quickly downsized after independence and the return to increasing power of politicians and political bodies. Men show an eagerness to regain their dominant position. For many researchers it is not surprising that women return to housekeeping after the change in a transition economy. The responsibility of women for running the household did only marginally change under Soviet rule and they had to attend to both career and household, while men commonly hardly bothered about household chores. Among women nowadays there is often a feeling of being able to again assume responsibility for childcare and household chores, forced also by decreasing possibilities to have childcare in government supported child nurseries, and by lack of sufficient full-time job opportunities. However many women have to work because of the otherwise insufficient household income.

As mentioned before, it is important that staff of new registration offices is vigilant (and educated in this respect) to register married women as (co)-owner of property rights.

The second point raised by Platteau is that in a social context dominated by considerable differences in education levels and by differential access to the state administration and governing bodies, there is the often met likelihood that the adjudication/registration process will be manipulated by the agricultural elite to its own advantage. Original occupants may have difficulties defining their (customary) rights to land under such circumstances. Bureaucrats, insiders, and land surveyors dominate land allocation procedures while most of the peasants are still unaware of the new provisions. So land tenure changes and land titling procedures can have a negative effect on vulnerable sections of the population at a time when their survival depends on access to land. A solution for this problem might be complete openness of registration and drawing attention to 'suspicious' or remarkable accumulation of land ownership by certain individuals or groups in the population.

A third point by Platteau is that it is often difficult to diligently keep record of changes in land ownership after completion of a land reform and land registration project, making "cadastral" records rapidly incomplete and outdated. The failure to maintain a valid record of successions and the absence of updated records constitutes some of the major disappointments of any land-titling program. Titling is cumbersome and weighing heavily on a government with limited resources and it is almost unrealistic to expect overall valid record keeping. It is not sufficient however to conclude that discrepancies between records and reality come from administrative failures. It is also demand factors that contribute to it. If the new laws fail to gain popular understanding or acceptance, individuals continue to transfer land according to local customs. If the title shown on the record is increasingly at variance with actual use and possession, considerable confusion is the result. Conflicts can not be solved by cheaper procedures with local authorities, but require litigation of official courts costing so much money that only the well-to-do can afford it. Incompleteness or out of dateness of records is a serious matter because it undermines trust and the perception of security of tenure. Once the decision is made to set up a (new) land registration the government is committed to do an excellent job to avoid such a negative development.

#### 7.1.4 FIELD OBSERVATIONS

The reality in many former communist countries is that institutional arrangements for land registration will only adequately address the last element of Platteau's critique. The general attitude toward "following the official rules to secure any obtained formal rights" is positive in former communist countries. Many years of an almost all-encompassing bureaucratic regime have left their mark in this respect. When asked why they register, people show a kind of utterly surprised reaction. The answer was generally something like: "Of course we register, because it is our only proof of security and safeguarding of our input". However, there are also several contradictory observations. Formal rights and formal documentation are carefully monitored and rules are arduously followed, but as soon as it is possible to achieve anything outside the formal circuit it is also almost a "formalized" rule that one should not hesitate to jump at such a chance.

It is my experience that the effect of the first two elements of the critique by Platteau can be observed almost everywhere in former communist countries where land reform programs have been implemented. I did observe a number of occasions where a state or collective farm manager took care of the interest of elderly widows by manipulating the land reform to their benefit while assuring: "I will do it for you "Babushka" (grandmother)". I also noticed managers assisting almost illiterate peasants with filling out forms for land claims and

registration at a "small" fee or favor for themselves. In a society where for many years people publicly and blatantly used political capital and other relations to acquire favors for themselves such behavior comes almost naturally.

## 7.2 USE OF OPPORTUNITY SETS

### 7.2.1 INTERACTING OPPORTUNITY SETS

In most of the ex-communist countries part of the donor aid will always first benefit those who are well organized and have acquired political capital under the previous regime. The management of former collective and state farms and the upper echelon of farm workers know how to use land and agrarian reform for their own benefit and they can coordinate (and sometimes manipulate) political action and support.

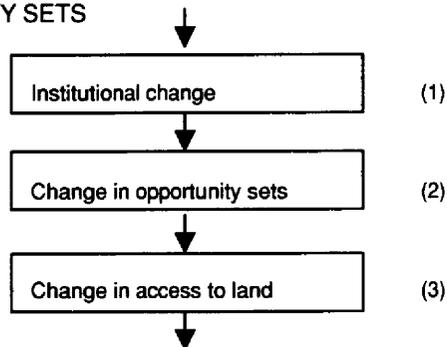
Furthermore it is almost impossible for the Western observer to fully understand the impact of the change in opportunity sets as it presented itself to the Kyrgyz agricultural laborers. Being an employee on the large state or collective farm without any concept of other possibilities than to just provide labor for the benefit of the communist ideal, following orders and not supposed to question most of them, all of sudden an opportunity was offered to become a private farmer. No wonder it took some time before it dawned on the majority of those workers before they reacted and started to explore the new opportunity sets.

It is interesting to note the effect of the measures as issued in the presidential decree of February 1994. In the newly organized collective farms, in particular when they are registered now as (new restructured) collective farms, the management is largely the same as in the former (old style) collective or state farms. However, decision making is not any longer centrally planned, but is made by the management, whether or not with active participation of members of the cooperative. (Some of the former farms can also have been re-organized into associations of peasant farms or cooperative farms and in many of the statistics these types are combined with private farms, presumably indicating that the management here has been largely replaced). Unfortunately the distinction between peasant and private farms and associations of peasant farms in one category and the agricultural cooperatives and smaller collective farms in the other category has been lost due to changes in definitions and in terminology. The distinction is not very reliable anymore in 2000 and so it is more correct to use the combined figure of 84%.

According to documentation received in June 2000 from the Ministry of Agriculture, 493 large farms have been restructured into 63,288 smaller farms. Nine years after the start of the land and agrarian reform program in Kyrgyzstan over half a million families or 3,481,800 individuals residing in rural areas now have their documents proving ownership of rights to land which is more than 72% of the population of the Kyrgyz Republic. Statistics show that about 70% of the population live in rural areas. It can also be presumed that in urban areas most of the real property is also privatized. Both in urban and rural areas it is easy to make daily observations of private owners registering their right to real property, not because they just achieved that right, but because they postponed registration although they had the official documents showing their right for some years. In part this is also the result of considerable confusion about where to register. Most people will certainly follow official rules, but since independence it has been unclear – to say the least – if and where rights to real property should be registered. One of the motives for the Land and Real Estate Registration Project in Kyrgyzstan is to improve this situation with a new registration system.

The fact that in January 2000 over sixty thousand agricultural enterprises are registered does not imply that almost every Kyrgyz farmer has got the farm structure of his (or as an exception her) choice. Observation shows that it was not always possible to acquire the most wanted form of farm. In the south of Kyrgyzstan land shares were often too small to start operating a sustainable single family farm. And in some areas of the country the influence of former land managers – sometimes combined with the occurrence of small land share areas - simply allowed only slight changes in the organization of former large farms. As mentioned before, most of the new collective farms are re-organized smaller large state or collective farms from before restructuring of agriculture with part of the same management running the new collective farm. Here the opportunity sets opened only theoretically to farmers while social context dictated a practical way to follow. Whether the land shares were too small or where peer pressure limited the opportunity sets, time will tell how farmers cope with that situation. For the small shareholders it might be in the form of evolving land markets for lease of land that can make a difference. For the members of new collectives having sufficient land in their shares fading influence of the old agricultural elite might create new opportunities after a certain period of time. Nevertheless as far as the conditions allowed them, the peasants in Kyrgyzstan have taken advantage of the change. In urban areas, it was reported that almost everyone entitled to real property became owner since independence. The privatization program with its generous<sup>10</sup> payment schedule for acquiring real property was an enormous incentive to pursue private ownership. So the main conclusion is that: Kyrgyz citizens have taken advantage of the change in their opportunity sets to become private individual owners of rights to land.

### 7.2.2 CHANGING OPPORTUNITY SETS



Element (2) in the model, 'change in opportunity sets' will have a slightly different content whether the model is derived from the prosperity paradigm or from the food security paradigm. Most of the indicators in this element will only be observable after some time from the start of the implementation of institutional change.

In a dominant agricultural society like Kyrgyzstan, improvement of food security is primarily a matter of domestic food production and improvement of efficiency in agricultural production. The emphasis will thus differ between the prosperity and the food security paradigm in creation of opportunity sets. In the food security paradigm it is important that farmers will use new opportunities to enhance agricultural production and effective use of

<sup>10</sup> Law "On privatization of housing stock in the Republic of Kyrgyzstan" of December 20, 1991 Article 4

farmland. Their experience of the changes should result in an incentive to make the most of their farm in sustainable productivity terms. Although eventually everyone will benefit from this change in opportunities the focus is mainly on the rural population. Macro level indicators are:

- (proposed) change in the size of farms
- initiatives to start new agricultural enterprises
- start of new farms and changes in the farm management
- change in labor relations on farms (for example more family oriented)

In the prosperity paradigm it is important that from the start the whole population will take advantage of and will benefit from the changes and thus the scope has to be on creating opportunities for all citizens. Macro level indicators apart from the ones mentioned for agriculture are:

- change in numbers of formal and informal transfers by citizens with real property
- development of institutions assisting with transfers of real property (realtors)
- initiatives to start new farming enterprises

Opportunity sets are an important indicator for re-emerging customs and customary rules but also early warning signals of less-desired developments. Some general indicators of this type of change for specific property related issues are:

- decreasing female representation among property right holders
- changing property inheritance gender (in)equity
- changing number of females registered as co-owners of rights in cooperative properties
- changing use of common pasture lands (livestock expansion, hay and fodder gathering)
- increasing evidences of squatting (outcast people and ignored (ethnic) minorities)
- increased occurrence of fallow land (because of growing emphasis on capital investment in property and decreasing interest in farming)

Some of these indicators can also be used for other elements of my model. The last indicator for example will also be an indicator for increased food security.

Imported legal regulations will not always have a clear-cut solution to counter non-desired developments. As mentioned before, willingness both by local lawmakers and authorities is required to adapt imported rules and design additional regulations to guide the land reform.

## **7.3 RESULTS OF CHANGE IN OPPORTUNITY SETS**

### **7.3.1 INVENTORY OF CHANGE IN OPPORTUNITY SETS**

The effect of a change in opportunity sets (element 2 of the model) for the rural population in Kyrgyzstan is measurable in the increasing number of single-family and associations of peasant farms during the transition period. Starting from almost zero before independence, now more than 62,000 farms of such kind have been registered and are operational in Kyrgyzstan in June 2000. Almost 3,500,000 individuals living in more than 500,000 families in rural areas received land shares. However, the change to private ownership of farmland has not yet delivered in terms of economic development. Initially the private ownership of land designated for agriculture was excluded from the reforms. Farmers received use rights of this land first for a 49-year term that was later converted to 99-year term use rights. Farmers were pleased with those rights but they preferred and pressured for outright private ownership, which was achieved by an amendment on the Kyrgyz Constitution in November

1998. The new farmer entrepreneur left his mark on the development of agricultural production. The typical growing pains – seen also elsewhere in former communist countries – of inexperienced farmers, inappropriate farm machinery, and lack of agricultural support, resulted in a drop in agricultural production that lasted until 1996 – 1997. The agricultural gross domestic product experienced a negative annual growth for the first five years of independence but it started to recover in 1996. However, reports on the development of rural areas in the Kyrgyz Republic reveal a persistent lack of progress in battling rural poverty. There are signs that the opportunity sets of the rural population only altered with respect to the way of managing farms and planning agricultural production. Much of the necessary additional institutional arrangements to assist farmers in the development of their farms still are in an initial stage, have recently been planned, or are still part of rhetorical political statements. The issues that must be solved – in other words these are still persisting problems - according to the June 2000 report of the Director General of the Ministry of Agriculture are (in the original 'English' translation provided to the WB) [44]:

- “Execution and protection of peasants’ and villagers rights for industrial inputs, including land shares.
- Development and improvement of legislative and legal basis promoting rehabilitation of economic situation in the agrarian sector.
- To enhance responsibility for the status of national agriculture born by the executors at each level; to support rural manufacturers independent of property form.
- Introduction of effective tools for accumulation of food resources based on economic stimulation of the domestic producers and introduction of market relations and development of the appropriate infrastructure.
- Stimulation of integration and cooperation between private business entities involved into production, processing, supply and procurement of agricultural products.
- Training and development of human resources in conformity with requirements of the market economy.
- Strengthening of bodies involved into the implementation of privatization processes, and solving issues of reorganization and realization of citizens' rights.
- Finalization of issue and distribution of titles for land ownership and other types of property.
- Amplification of agriculturally suitable lands, their quality and quantity.
- Introduction of market relations in the area of utilization of agriculturally suitable lands and pasture lands, especially with regards to the new land assimilation.
- Improvement of irrigation and melioration networks, and operation of those.
- Improvement of the taxation system and customs policy.
- Development of local agricultural processing industries, taking into account foreign and domestic demand.
- Switch to the market system for introduction of new varieties, production of seeds, breeding work and pedigree animals' production.
- Timely provide villagers, farmers and peasants with necessary information, advise and practices at the local level.
- Improve functional capabilities of the bodies, responsible for the reform processes.
- Equip peasants and their cooperatives with necessary infrastructure.

- Development of competition among agricultural support services and transfer of management by those services under the charge of private peasants' associations.
- Activate investment processes and ensure effective usage of those.
- Improve legal basis of the state authorities and create stimulating conditions for the work of civil servants.
- Timely and efficiently resolve disputes and conflicts in the agricultural sector; act a guarantor of rights and agreements.

Above set of objectives differ from the previous years', and call for revising ministerial functions and its approaches in solving issues. Therefore, significant changes defining policy in the main national sector have taken place and continue to happen in the Ministry of Agriculture and Water Resources. Currently, deviation of function and role of the Ministry of Water Resources is in process."

This quote from the report of the Ministry of Agriculture to the World Bank shows that the restructuring process is not yet over. It also shows the intentions of the responsible politicians. Unfortunately – but not unusual - the report does neither give a time schedule of when, nor any specifics on how, the Ministry plans to act on the issues mentioned. Opportunity sets have changed in the transition period, but the full advantage of changes – in so far as there will ever be such a thing - could not yet be delivered to the majority of the (rural) population.

### 7.3.2 ASSESSMENT OF CHANGING OPPORTUNITY SETS

The next table shows the combined effect of changing opportunity sets and the changing access to land (the subject of the next chapter):

	1991	1992	1993	1995	2000
Total area of farming land held by all agricultural enterprises (in 1,000 ha)	1,289	1,284	1,298	1,302	1,496
Percentage of land held by Peasant and private farms, and associations of peasant farms	1%	8%	13%	24%	49%
Agricultural cooperatives (Partly also a number of newly organized smaller collective farms)	1%	13%	9%	11%	35%
State and Collective farms	98%	79%	78%	65%	16%

The area of land held by private farms has increased to 84% of total farm land, showing that many peasants took advantage of the change in opportunity sets in applying for privately held land. It is also interesting to note that the total area of arable land increased during the transition period as a result of private farms turning the best of pasturelands into agricultural land. In the table the amount of 1.496.000 ha ( $\pm$  3,740,000 acres) has been used, because of its correspondence with a figure of 1,500,000 ha of arable land in Kyrgyzstan in 2000 used by other sources.

Observations in the country imply that the number of peasants starting single-family farms is higher in the north (particularly in the Chui oblast) than in the south. World Bank sponsored

research shows that the size of land shares in the densely populated areas of the southern Djallal-Abad and Osh oblasts is generally too small to start a single-family farm. Taking advantage of one's opportunity set here does most likely imply that a form of peasant farming enterprise, cooperative farming, or the construction of (new) collective farming had to be chosen. While driving through the countryside in the south in spring, summer and fall, one can see the single families working their own rows of crop allocated to them in their location in the large fields of cooperatives or new collectives. Often pegged out by small wooden pegs in the field, it is clear to all families where their part of the crop is located and so which part of the field they will maintain and take care of.