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**LAND REFORM AND FARM REORGANIZATION IN THE  
KYRGYZ REPUBLIC**

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**Report on Fieldwork  
Conducted in the Kyrgyz Republic**

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## TABLE OF CONTENTS

<u>Executive Summary</u> .....	1
<u>I. Introduction.</u> .....	3
<u>II. Agriculture in the Kyrgyz Republic.</u> .....	4
<u>III. Development of the Legal Framework for Land Reform and Farm Reorganization</u> .....	8
<u>IV. Development of Institutional Framework for Land and Agrarian Reform</u> ...	15
<u>V. Land Reform and Farm Reorganization Issues</u> .....	18
<u>VI. Conclusion and Recommendations</u> .....	40

## **Executive Summary**

Rural land reform and restructuring of collective and state farms have progressed significantly in the Kyrgyz Republic. However, while the legal framework for farm reorganization is well established and largely workable, improvements in several areas of the law are needed to enhance the conditions for development of a viable land market. This report reviews the legal basis for land reform and farm restructuring, and recommends the needed changes to promote land market development. The report is based on analysis of the relevant legislation as well as findings from field research conducted by the Rural Development Institute in the Kyrgyz countryside between 1995 and 1997.

## **Agriculture in the Kyrgyz Republic**

Approximately 50 percent of the arable land in the Kyrgyz Republic is held by private farm enterprises. Of those farms that have not entirely reorganized, many have divided into two or three large cooperatives. Land reform and farm restructuring appear to be associated with better agricultural sector performance. In 1996 Kyrgyz agricultural production increased for the first time since the breakup of the Soviet Union.

## **Development of the Legal Framework of Land Reform and Farm Reorganization**

While the Constitution of the Kyrgyz Republic does not allow private ownership of land, use rights of up to 99 years are permitted for agricultural land. These use rights can be sold, mortgaged, bequeathed, gifted, or leased out. Members of collective or state farms are common share owners of the land and property and are able to withdraw from such farms and receive land and property in kind. Land use right holders can hold any amount of land and can establish a private farm enterprise with a minimum of five hectares of land. While 25 percent of land is held in the Land Redistribution Fund, much of this land is being leased out to members of the community.

However, few legal transactions are occurring in the Kyrgyz Republic. Those transactions that do occur are not being registered or tracked. Federal laws on registration and mortgage are needed, as well as regulations for purchase and sale of land use rights.

## **Development of Institutional Framework for Land and Agrarian Reform**

Since 1994, when the Ministry of Agriculture and Water Resources took responsibility for farm reorganization, land and agrarian reform has moved forward at a much more rapid pace.

*Raion* and village governments are primarily responsible for on-the-ground reorganization of farms. These local governments sometimes impede reorganization. In response to this problem, farm enterprise committees were established, which are to be composed of local government officials, representatives from the federal government, and representatives from the reorganizing farm. In addition, centers for land and agrarian reform, which are funded by the federal government, have been established at the *oblast* and *raion* levels. These centers have the potential to further assist farm reorganization and provide information to individuals who need assistance. More support and financial resources need to be provided to these local centers.

### **Land Reform and Farm Reorganization Issues**

Most of the private farm enterprises that have been established in the Kyrgyz Republic have resulted from whole farm break-up. Members of collective and state farms, however, have a continuing right to withdraw land and property and establish a private farm enterprise, or to sell, lease, mortgage, gift or bequeath their land shares. The rights of land share and land plot owners could be strengthened by a public information program designed to inform them about their rights as land holders.

Transactions in land occur only on a limited basis. Public education and legal regulations are necessary in the areas of purchase and sale, and registration of land use transactions in land use rights. The government needs to protect land use rights, and remove the threat of confiscation for non-use from legislation.

Issues of former collective and state farm debt and land taxes have been addressed by legislation, and private farmers generally appear to be less burdened by these costs than they were in 1995. However, private farmers will soon become responsible for debt that has not been forgiven by the government, and this may hinder further farm break-up. Debt of former state and collective farms should not be passed on to private farm enterprises. Moreover, the productive assets of farms should not be sold to cover such debt, but rather should be distributed to resulting private farm enterprises.

Finally, many service cooperatives have been established to provide access to machinery for private farmers resulting from whole farm break-up. These service cooperatives are managed by village governments. Legal rules on service cooperatives might provide the framework for more independent and privately controlled service entities.

## I. Introduction.

The Kyrgyz Republic continues efforts it began in 1991 to transform its agricultural sector from collective to private farming, to ensure secure private land rights, and to create the legal and administrative infrastructure necessary to support a freely functioning land market. Such efforts will contribute significantly to the strengthening of democratic institutions, the expansion and modernization of agricultural capacity, and the creation of a market economy.

This report is based on extensive field research as well as analysis of Kyrgyz legislation pertaining to land reform and farm restructuring. The report discusses whether the laws currently in effect are facilitating meaningful farm reorganization, a secure and remunerative relationship to the land for those who farm, and the development of a land market. Where the legal analysis and field research indicate that there are problems in any of these three areas, the report recommends possible changes to the legislation currently in effect.

The Rural Development Institute (RDI) first conducted field research regarding issues of land tenure and agrarian reform in the Kyrgyz Republic in 1992 at the invitation of Kyrgyz Secretary of State Amangeldy Muraliev. Since 1992, RDI researchers have conducted four additional rounds of major field research and two minor rounds in the Kyrgyz Republic.<sup>1</sup> RDI's field research in the Kyrgyz Republic generally focuses on three main questions: (1) are individual households able to farm in any form they choose without a legal bias for or against their choice; (2) does a legal framework exist which enables farmers to have a secure and remunerative relationship to the land they farm; and (3) is a land market developing?

RDI conducts field research using Rapid Rural Appraisal techniques, which are designed to gather and process field information rapidly and to avoid problems that have been identified in other rural research models. Such problems include, for example, neglect of interviewees located far from cities, concentration upon locales where projects are being undertaken, and the tendency to meet with officials and local elites rather than those who are powerless or in distressed circumstances. Rapid Rural Appraisal involves semi-structured interviews with rural people who have valuable knowledge regarding issues that affect their lives. Carried out appropriately, such appraisal not only provides

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<sup>1</sup> The author participated in fieldwork in May and June 1995 and October 1997. Earlier findings are reported in: Robert Mitchell, On Development of Agrarian Reform in Kirghizia, presentation to national conference on agrarian reform, Tamga, Kyrgyz Republic (June 6, 1995) (transcript on file with Rural Development Institute); ROY L. PROSTERMAN AND LEONARD J. ROLFES JR., LAND REFORM AND FARM RESTRUCTURING IN THE REPUBLIC OF KYRGYZSTAN (January 1994); Timothy Hanstad, *Protecting the Kyrgyz Republic's Land Resources*, in 12 SURVIVING TOGETHER (Spring 1994); ROY L. PROSTERMAN, TIMOTHY HANSTAD & LEONARD J. ROLFES JR., RECOMMENDATIONS TO ASSIST THE AGRARIAN REFORM IN THE KYRGYZ REPUBLIC (RDI Report No. 75, July 1992).

efficient and rapid identification of problems and issues, but also provides a relatively thorough, comprehensive and insightful framework in which to analyze issues.<sup>2</sup>

This report covers the results of RDI's three most recent rounds of field research in the Kyrgyz Republic. The first round occurred in May and June of 1995, during which RDI researchers traveled to Issyk-Kul, Naryn, and Talas *oblasts* to visit farms that had made substantial attempts to reorganize into smaller private farm enterprises.<sup>3</sup> The second, much shorter round of field research occurred in July 1996 and focused on the issue of whether lease and sale transactions in land use rights were occurring in Chui *oblast*. The third round of field research was conducted during October 1997, at which time RDI researchers traveled to Issyk-Kul, Naryn, and Chui *oblasts*. During the third round of field research, RDI researchers visited small private farm enterprises that resulted from whole farm break-up and several farms that had reorganized into large cooperatives.<sup>4</sup>

## II. Agriculture in the Kyrgyz Republic.

The agricultural sector in the Kyrgyz Republic accounted for approximately 42% of the Gross Domestic Product between 1988 and 1993.<sup>5</sup> Approximately one-third of the republic's citizens depend on agriculture for their livelihood.<sup>6</sup> Yet, only seven percent of land in the Kyrgyz Republic is arable (Table 1).<sup>7</sup> Almost all of the 1.4 million hectares of arable land are irrigated. The main crops are: cotton, winter and spring wheat, corn,

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<sup>2</sup> Rapid Rural Appraisal techniques are further described in Tony Dunn, *Rapid Rural Appraisal: A Description of the Methodology and Its Application in Teaching at Charles Stuart University*, 4(3/4) RURAL SOCIETY (December 1994); ROBERT CHAMBERS, RURAL APPRAISAL: RAPID, RELAXED AND PARTICIPATORY, (Institute of Development Studies Discussion Paper No. 311, October 1992); and Robert Chambers, *Shortcut and Participatory Methods for Gaining Social Information for Projects*, in PUTTING PEOPLE FIRST: SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT 515-537 (Michael Cernea ed., 1991).

<sup>3</sup> Under Kyrgyz law (Government Resolution No. 158 "On Adoption of the Regulation on Categories of Subjects of Agricultural Enterprise in the Kyrgyz Republic" (April 12, 1996)), the term "farm enterprise" is used to refer to single family farms of at least five hectares of irrigated land. The term "peasant enterprise" is used to refer to small private farms comprised of two or more families cultivating five to 100 hectares of irrigated land. In this report, the term "private farm enterprise" is used to refer to the group of private farms, including peasant enterprises, farm enterprises, and personal household enterprises (producing on a household plot).

<sup>4</sup> Production cooperatives are voluntary associations of members of a former state or collective farm who have received land and property shares but continue to farm the land jointly.

<sup>5</sup> Kathleen Braden, *Kyrgyzstan*, in ENVIRONMENTAL RESOURCES AND CONSTRAINTS IN THE FORMER SOVIET REPUBLICS (Philip R. Pryde ed., 1995).

<sup>6</sup> FOOD AND AGRICULTURE ORGANIZATION, 1996 PRODUCTION YEARBOOK 29 (1997). This figure includes all persons actively engaged in agriculture and their non-working dependents.

<sup>7</sup> Figures are for 1994. FOOD AND AGRICULTURE ORGANIZATION, FAOSTAT Database (visited January 12, 1998) <<http://apps.fao.org/lim500/nph-wrap.pl?Landuse&Domain=LUI>> (last updated September 1, 1997).

barley, oats, vegetables, and tobacco. Sheep, goats, cattle, and horse herds are a significant part of the Kyrgyz Republic's agricultural output.<sup>8</sup>

**Table 1. Land in the Kyrgyz Republic (in hectares)**

Total Land Area*	19,180,000
Agricultural Area	10,420,000
Arable Land	1,400,000
Permanent Crops**	20,000
Permanent Pasture	9,000,000
Forest and Wood	730,000
All Other Land	8,030,000

\* excludes area under inland water bodies

\*\*excludes land under trees grown for wood or timber and is not meant to indicate the amount of land that is potentially cultivable

The Kyrgyz Republic endured forced collectivization, the destruction of herds, and famine between 1927 and 1932.<sup>9</sup> In 1991, at the time of the collapse of the Soviet Union, the Government of the Kyrgyz Republic began its efforts toward privatization of land and reform of the agricultural sector. At that time, the 470 state and collective farms held 96 percent of all agricultural land. Collective farms held 43 percent and state farms 53 percent of agricultural land.<sup>10</sup>

Reformers in the Kyrgyz Government aggressively pursued reorganization and privatization of these collective and state farms. International evidence is strong that private farm enterprises achieve greater total factor productivity than collective or state farms.<sup>11</sup> One broad study on the agricultural performance of collectivized farms concluded that collectivized agricultures are associated with lower total factor productivity.<sup>12</sup> Another study of collective farms in Israel, Ethiopia, Nicaragua, Cuba, Peru, China, and Vietnam drew three main conclusions. First, collectivization of small farms was always associated with productivity losses.<sup>13</sup> Second, cooperative forms of production were not efficient.<sup>14</sup>

<sup>8</sup> Braden, *supra* note 5 at 313.

<sup>9</sup> Braden, *supra* note 5 at 308. Kirghizia became a Union republic of the Soviet Union in 1936.

<sup>10</sup> James Delehanty and Kathryn Rasmussen, *Land Reform and Farm Restructuring in the Kyrgyz Republic*, 36 POST SOVIET GEOGRAPHY 571 (1995).

<sup>11</sup> Total factor productivity is the value of output achieved for every som of input including land, material inputs, and labor. One U.S. dollar equals approximately 17 soms.

<sup>12</sup> FREDERIC L. PRYOR, *THE RED AND THE GREEN: THE RISE AND FALL OF COLLECTIVIZED AGRICULTURES IN MARXIST REGIMES* 259 (Princeton Univ. Press, 1992).

<sup>13</sup> KLAUS DEININGER, *COOPERATIVES AND THE BREAK-UP OF LARGE MECHANIZED FARMS: THEORETICAL PERSPECTIVES AND EMPIRICAL EVIDENCE* 19-20 (World Bank Discussion Paper 218, Nov. 1993). In Ethiopia in 1974-76, China in the late 1950s, and North Vietnam in 1958-71, collectivization of small farms significantly decreased productivity. Even the *kibbutzim* in Israel -- probably the best-known case of voluntary formation



Third, reversal of collectivization facilitated gains in production and efficiency in a number of instances.<sup>15</sup> In China, economists Justin Yifu Lin and John McMillan concluded that the main cause of China's 48% increase in production within a few years following decollectivization in the early 1980s was due to the change from collective to individual tenure.<sup>16</sup>

Some evidence suggests that Kyrgyz agriculture is adjusting rapidly to the radical transformation toward a market economy and that private farm enterprises have increased productivity. As of October 1, 1997, there were 38,964 private farm enterprises, 677 collective farms,<sup>17</sup> and 43 state farms in the Kyrgyz Republic.<sup>18</sup> In 1996, collective and state farms held 600,000 hectares of plowed land and private farm enterprises held 593,000 hectares of plowed land. Total agricultural production for the Kyrgyz Republic was 15.3 billion soms. Collective and state farms contributed 3.05 billion (20%), and private farm enterprises contributed 12.25 billion soms (80%).<sup>19</sup>

Moreover, land reform and farm restructuring in the Kyrgyz Republic appears to be associated with better agricultural sector performance. In 1995 the agricultural sector slowed its decline. In 1996, the projections show that the agricultural sector expanded. In

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of production cooperatives -- are not a valid example to demonstrate the economic efficiency of cooperative production in agriculture, as their establishment was heavily subsidized, they were allocated quotas for inputs and outputs and thus never had to compete with a domestic small-scale agriculture, and they now derive the majority of their income from industry rather than agriculture. See *id.* Lack of fiscal responsibility on the *kibbutzim* has led to an accumulated debt of \$4.5 billion, equivalent to \$56,000 per member. *Israel: Average Kibbutz Member Owes \$56,000*, ISRAEL BUSINESS TODAY (October 21, 1994).

<sup>14</sup> Deininger, *supra* note 13 at 20.

<sup>15</sup> Deininger, *supra* note 13 at 20.

<sup>16</sup> Justin Yifu Lin, *Rural Reforms and Agricultural Growth in China*, 82 THE AMERICAN ECONOMIC REVIEW (1992); John McMillan, John Whalley and Lijing Zhu, *The Impact of China's Economic Reforms on Agricultural Productivity Growth*, 97 JOURNAL OF POLITICAL ECONOMY (1989).

<sup>17</sup> When presenting information regarding post-Soviet types of farms, the term "collective farm" will be used to refer to large farms where the members farm jointly. Under Kyrgyz law the term collective enterprise is used to refer to those farms that are over 150 hectares but are not state farms. (Government Resolution "On Categories of Subjects of Agricultural Enterprises in the Kyrgyz Republic" (adopted by Government Resolution No. 158 "On Adoption of the Regulation on Categories of Subjects of Agricultural Enterprise in the Kyrgyz Republic" (April 12, 1996)). Two types of cosmetically reorganized state or collective farms are included in this definition: (1) collective peasant enterprise, which are voluntary associations of members of a former state or collective farm who have received land and property shares but continue to farm the land jointly. Sometimes these enterprises contain nearly all the members of the former farm and sometimes the former farm was divided into two or three enterprises; and (2) joint stock companies, which are corporate organizations, with assets of the former farm held by shareholders (farm members).

<sup>18</sup> Ministry of Agriculture and Water Resources, *Statistics on the Number of Agricultural Subjects as of October 1, 1997* (on file with author).

<sup>19</sup> Interview with Karimsher Abdimomunov, Vice Prime Minister of the Kyrgyz Republic (October 1997).

addition, the Kyrgyz Republic's agricultural sector has done well compared to other former Soviet Republics, many of which are not as far along in the farm reorganization process.

**Table 2. Percent Change in Agricultural Production in Russia and the Central Asian Republics<sup>20</sup>**

	1994	1995	1996*
Russia	( 12.0)	( 8.0)	( 7.0)
Kazakhstan	( 20.1)	( 27.1)	(10.0)
Tajikistan	( 25.0)	( 28.0)	(15.0)
Turkmenistan	( 11.0)	( 10.0)	( 2.0)
Uzbekistan	( 7.7)	( 3.0)	( 7.0)
Kyrgyzstan	( 17.4)	(2.0)	3.0

( ) indicates a negative value

\*1996 figures were preliminary

### **III. Development of the Legal Framework for Land Reform and Farm Reorganization**

Land reform and farm reorganization in the Kyrgyz Republic is divided into two distinct time periods. The early reforms principally focused on voluntary reorganization of failing state and collective farms. Individuals who wanted to leave such farms were allowed to withdraw from the farm with land and property (including sheep and other animals) and set up private farm enterprises. The later reforms encouraged all farms to wholly reorganize and gave members of the former state and collective farms land use rights which they can sell, lease, mortgage, and bequeath.

#### **A. 1991-1993**

Land reform in the Kyrgyz Republic began several months prior to the Republic's declaration of independence in September 1991.<sup>21</sup> Early reform laws focused on voluntary reorganization. The Kyrgyz Republic Law "On Peasant Farms" (February 2, 1991) encouraged private farm enterprises by allowing individuals to apply to the local Council of People's Deputies<sup>22</sup> for unused land or land to be allocated from failing collective or state farms. Private farmers were able to receive inputs from the state at the same prices as a collective or state farm.<sup>23</sup>

<sup>20</sup> UNITED STATES DEPT. OF AGRICULTURE, INTERNATIONAL AGRICULTURE AND TRADE REPORTS, NEWLY INDEPENDENT STATES AND THE BALTICS 37 (May 1997).

<sup>21</sup> *Key facts about Kyrgyzstan*, REUTERS NORTH AMERICAN WIRE (December 22, 1995), available in LEXIS, News Library.

<sup>22</sup> The Council of People's Deputies was the Soviet name for the local administration at both the *raion* and *oblast* levels.

<sup>23</sup> Law "On Peasant Farms" (February 2, 1991).

The first comprehensive law on agrarian and land reform in the Kyrgyz Republic, the Law “On Land Reform” (April 19, 1991), followed. This law sought to provide, among other things, a framework for the “equitable development of various forms of farming,” and began the process of redistribution of land. The Law “On Land Reform” called for: (1) inventory and classification of all public and private land; (2) voluntary reorganization of “inefficiently operated” collective and state farms; and (3) creation of a special land fund, which was to contain unused and inefficiently used lands for redistribution to other land users. Inefficiently operated collective and state farms could voluntarily reorganize as cooperatives, other types of legal entities, associations of peasant farms, or private farm enterprises. Land commissions were established at the local level to consider requests for distribution of land within the locality. Similar commissions were to be created at the *raion*, *oblast* and federal levels.<sup>24</sup>

Six months later in November 1991, newly elected President Akayev signed a Presidential Decree,<sup>25</sup> which sought to overcome resistance to agricultural reforms by local officials and directors of collective and state farms. This decree and related regulations<sup>26</sup> moved the land reform effort forward in three ways. First, the decree and accompanying regulations mandated that those collective and state farms with less than 15 percent profitability be privatized, with redistribution of land and other assets to farm members to be used for creation of private farm enterprises and cooperatives. The farms that were to be privatized were to be chosen by the State Property Committee together with the Ministry of Agriculture and the *oblast* and *raion* Councils of People’s Deputies.

Second, the decree and regulations allowed individual members of non-reorganized state and collective farms to withdraw a share of land and property (non-land assets) from the farm to start a private farm enterprise. The property share of each member was to be determined based on the member’s length of service and labor contribution.

Third, the decree and regulations redistributed land held by state and collective farms in two ways. First, the decree called for 1.5 million hectares of agricultural land (out of a total of approximately 10.4 million hectares) to be added to the special land fund for redistribution to rural and urban citizens who wanted to create private farm enterprises, small cooperatives, gardens and private individual plots. Second, it provided that, in addition, no less than “50 percent of irrigated arable lands allocated for the organization of peasant farms” would be transferred to the newly created and separate land fund, the

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<sup>24</sup> For further discussion of the governmental structure for oversight of the land reform, see section IV of this report.

<sup>25</sup> Presidential Decree No. VII-369 “On Urgent Measures to Secure the Realization of the Laws of the Kyrgyz Republic Regulating Land Relations and Other Relations in Agriculture” (November 10, 1991).

<sup>26</sup> Government Resolution “On the Peculiarities of the Destatization and Privatization of State Farms and Other State (Municipal) Agricultural Enterprises in the Kyrgyz Republic” (January 13, 1992).

National Land Fund (NLF), to support the way of life of Kyrgyz peasants.<sup>27</sup> The reference to Kyrgyz peasants was apparently intended to allow distribution of NLF land only to ethnic Kyrgyz, and to exclude the 43 percent of Kyrgyz citizens who are ethnic Russians, Germans, Uzbeks, Tajiks, etc.<sup>28</sup>

Setting aside land for use by ethnic Kyrgyz presented three major problems. First, this provision appeared to be inconsistent with the new Constitution because it violated provisions stating that all persons in the Kyrgyz Republic would be treated equally. Second, the provision created the potential for furthering ethnic conflict. Third, the provision created insecurity of tenure for those farms waiting to have half of their land taken. Due to these concerns, the provision referring to Kyrgyz nationals was later removed.

After the 1992 planting and harvest, a new decree was issued.<sup>29</sup> This decree reiterated the above mentioned decrees and added: (1) a requirement that National Land Fund land be allocated to commodity producing private farm enterprises on a competitive basis (the reference to supporting the way of life of ethnic Kyrgyz was dropped); and (2) a recommendation that collective and state farms divide their land into shares to insure that every worker or member has the right to a land plot. This right to a land plot is called a "land share." A land share represents a share of land on the territory of an agricultural enterprise and may be demarcated or undemarcated. An individual member or worker on the agricultural enterprise owns the use right attached to the land share. The land share system was created as a means to distribute land of the collective and state farms to individuals. The *raion* state administrations were given control over the implementation of this land reform system with input from the rural committees on land reform (village governments).<sup>30</sup>

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<sup>27</sup> Presidential Decree "On the National Land Fund of the Republic of Kirghizstan," (March 10, 1992) provided details as to the manner of the NLF's formation, distribution, and use.

<sup>28</sup> Point 1 of the regulations attached to Decree "On the National Land Fund," *supra* note 27, provided that the amount of land could be increased or decreased in certain regions where a majority of the population consisted of one ethnic group.

<sup>29</sup> Presidential Decree "On Measures for Further Implementation of the Land and Agrarian Reform in the Republic of Kyrgyzstan" (December 10, 1992).

<sup>30</sup> See section IV of this report for further discussion of rural committees. The January 13, 1992 Government Resolution "On the Rural Committees on Land Reform in the Republic of Kyrgyzstan" established rural committees, which were farm level committees given authority over the intra-farm reorganization. Rural committees are essentially the executive branch of the village. They are also referred to as rural soviets. The rural council, which was formerly called the rural soviet and is sometimes called the village council, is the legislative body at the village farm level. Often, in practice, the rural council and the rural committee are made up of the same people and the terms are used interchangeably. In 1996 the rural committee's name was changed to "village government" (*Ailokmotu*), and this term will be used in this report to distinguish the village government from the farm reorganization committees, which are also called rural committees.

The Constitution of the Kyrgyz Republic adopted on May 5, 1993 provided that land belongs to the State and cannot be privately owned, but that land plots may be given to citizens and legal entities for private use. The purchase and sale of land is not allowed under the Constitution.<sup>31</sup>

While some reform occurred between 1991 and 1994, several important issues were insufficiently addressed. Specifically, the process for restructuring farms and the rights of individual farm members were not outlined in detail. Moreover, the types of enterprises allowed were not defined and described, so that people did not have clear choices or even an understanding of their options.

## **B. 1994-Present**

A number of positive legal developments occurred in 1994 to redress these and other problems. Whole farm reorganization was encouraged, while at the same time individuals were given a legal right to agricultural land. Most prominently, a February 1994 Presidential Decree guaranteed (rather than recommended) the right of members of collective and state farms to receive land share use rights and gave these holders of land share rights the right to transfer them.<sup>32</sup> In the absence of a Constitutional amendment allowing full ownership of land, the President allowed 49-year,<sup>33</sup> fully disposable and mortgagable rights to agricultural land.<sup>34</sup> The decree guaranteed the right of land share owners to sell, lease, exchange, bequeath or mortgage their land plot or land share.<sup>35</sup>

In addition to providing clear rights to land for members of collective and state farms, the decree reduced the National Land Fund in half, to 25% of all arable land except pastures. A maximum size of land plot per family was established.<sup>36</sup> The decree

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<sup>31</sup> KYRG. CONST. art. 4. While the purchase and sale of land is not allowed, the purchase and sale of land use rights is allowed by presidential decree. See Presidential Decree No. 23 “On Measures to Enhance (Deepen) Land and Agrarian Reform in the Kyrgyz Republic” (February 22, 1994).

<sup>32</sup> Presidential Decree No. 23, *supra* note 31.

<sup>33</sup> Presidential Decree “On Measures for Further Development and State Support of Land And Agrarian Reform in the Kyrgyz Republic” (November 3, 1995) extended the 49-year use rights to agricultural land to 99-year use rights.

<sup>34</sup> See Presidential Decree No. 23 at §§ 2-3.

<sup>35</sup> The decree authorized land plot users and land share owners to sell their plot or share immediately to other members of their collective or state farm, but prohibited sale to non-members until after January 1, 1995. See Presidential Decree No. 23 at §§ 2, 6 .

<sup>36</sup> The maximum size of land that could be held was twenty hectares for intensive agriculture, 25 hectares for less intensive agriculture, and 30 hectares for mountainous areas. This limit was abolished in November 1995 by Presidential Decree “On Measures for Further Development and State Support of Land and Agrarian Reform in the Kyrgyz Republic” (November 3, 1995).

transferred privatization powers from the State Property Fund to the Ministry of Agriculture and Food (MOAF).<sup>37</sup>

Detailed regulations on the National Land Fund were promulgated in May 1994, which corrected some of the earlier problems.<sup>38</sup> The regulations called for the land to be distributed: (1) in lease to livestock breeders, seed producers, and rural household enterprises; (2) as land shares to collective and state farm workers not otherwise entitled to land shares from the farms they had joined; and (3) in lease or temporary use to other agricultural commodity producers. The rules set out in this resolution were still unclear as to what quality of land was to be selected for the fund, the use terms of the land in the fund, and who was to allocate the land.<sup>39</sup>

In August 1994, the Government promulgated regulations that provided rules for the process of determining land share use rights.<sup>40</sup> All land within collective and state farms (with the exception of NLF land, village land, pastures and other well defined types of non-arable land) was required to be allocated as land shares. Such land shares were to be distributed free of charge to farm workers, pensioners, invalids, and specified social sphere workers. Land share certificates were to be distributed, listing the names of each recipient's family members and providing an additional share for each family member. Certificates are issued to the head of the household and must be registered to be legally enforceable.

These regulations also provided that commodity producing agricultural enterprises must consist of at least 10 hectares of plowed land in intensive cultivation zones, 15 hectares in average zones, and 20 hectares in the mountains. Although these minimums were set to encourage development of farms of sufficient size to produce for the market, to encourage retention of present irrigation systems, and to discourage breakdown of crop rotation patterns, they made it difficult, if not impossible to establish a single family farm.<sup>41</sup>

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<sup>37</sup> See section IV. of this report for further discussion of this issue. The Ministry of Agriculture and Food is now the Ministry of Agriculture and Water Resources.

<sup>38</sup> Government Resolution No. 345 "On the National Land Fund" (May 19, 1994).

<sup>39</sup> Government Regulation "On the Procedure for Determining Citizens' Land Shares and for Issuance of Certificates Containing Land Share Use Right," Adopted by Resolution No. 632 (August 22, 1994) addressed the issue of who would allocate the land by providing that with the consent of the *raion* administration, the Ministry of Agriculture could delegate to the village government the right to lease out NLF land. Following this regulation, the Board on Land and Agrarian Reform under the Ministry of Agriculture passed Decision No. 7, "On the National Land Fund" (February 8, 1995), which provided that NLF land could not be divided into land shares unless the *raion* administration, with permission from the MOAF, made such a proposal for the purpose of: (a) raising yields, making an enterprise profitable, increasing production of beef and milk, increasing employment; or (b) allocating shares to workers in specified fields of the social sphere. Other land in the fund could be temporarily leased to peasant farms with permission from the village government.

<sup>40</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 39.

<sup>41</sup> Individual land shares vary in size from 0.3 to 1.5 hectares. See discussion at section V.A. of this report.

In January 1995, the Ministry of Agriculture and Food published the “Program of Land and Agrarian Reform in the Kyrgyz Republic for 1995-1996.” This program focused on whole farm break-up and called for the reorganization of all state and collective farms by 1996 into smaller management units created from land and property shares. The program established committees to inventory the assets of farms to be reorganized, calculate land and property shares of members, develop a plan for reorganizing the farm, and then implement the plan.

The program described classifications of agricultural producers into which enterprises could reorganize according to size and mode of production. A later government regulation<sup>42</sup> defined seven new enterprise categories. These categories were intended to eliminate some of the confusion caused by the tendency of some collective-type enterprises to adopt names suggesting that they are associations of independent peasant farms. The categories are as follows:

1. personal household enterprise (household plot cultivated by family members);
2. farm enterprise (farm operated by one family on at least 5 hectares of irrigated land or at least 1 hectare of suburban vegetable land);
3. peasant enterprise (two or more families cultivating 5 to 100 hectares of irrigated land or 1 to 100 hectares of suburban vegetable land);
4. collective peasant enterprise (cultivating more than 150 hectares of irrigated land),<sup>43</sup>
5. joint stock company (enterprise capitalized with shareholders’ non-land property which uses shareholders’ land shares);
6. state enterprise (enterprise using state land and performing a state program); and
7. agricultural cooperative (composed of independent farm enterprises or peasant enterprises).

In November 1995, a presidential decree<sup>44</sup> significantly furthered the rights of land share owners. Existing 49-year use rights to agricultural land were extended to 99 years.

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<sup>42</sup> Government Regulation “On Categories of Subjects of Agricultural Enterprises in the Kyrgyz Republic” (adopted by Government Resolution No. 158 “On Adoption of the Regulation on Categories of Subjects of Agricultural Enterprise in the Kyrgyz Republic” (April 12, 1996)).

<sup>43</sup> There appears to be no category for 100-150 hectares of land.



Heads of *oblast* and *raion* governments were instructed to complete the issuance of land share certificates by December 31, 1995. The decree abolished the maximum size of plots that one family may use, and reduced the minimum size of land plots to 5 hectares in all cultivation zones (and to 1 hectare for rural and suburban vegetable operations).

In addition, the November 1995 decree abolished the National Land Fund and transferred the land remaining in the fund to the new Land Redistribution Fund (LRF) to be run by the Ministry of Agriculture. The decree provided that land parcels from the fund are to be used for expansion of rural settlements, creation of experimental agricultural facilities, auctioned as 99-year use rights for organizations of “peasant communities,” and other purposes to be decided by the government.

One year later (November 1996), Presidential Decree No. 327 called for (1) registration of land use rights transactions, (2) sale (tender and auctions) of use rights to 50 percent of land of the Land Redistribution Fund, and (3) one-year lease agreements for the remaining land in the Land Redistribution Fund.<sup>45</sup> Procedures for the sale of this land were promulgated by the Government of the Kyrgyz Republic in January 1998.<sup>46</sup>

A temporary government resolution was passed that provides specific rules for leasing out land plots from the LRF.<sup>47</sup> Local residents and agricultural producers living on the territory of the village have priority for the LRF land.<sup>48</sup> A model lease agreement is attached to the resolution.<sup>49</sup>

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<sup>44</sup> Presidential Decree of November 3, 1995, *supra* note 33.

<sup>45</sup> Presidential Decree No. 327 “On Measures Aimed at Introduction of Market of Land Use Rights and on Establishment of the Market Credit System in Agriculture” (November 25, 1996).

<sup>46</sup> Government Resolution No. 14 “On Measures Aimed at Introduction of the Market of Land Use Rights” (January 9, 1998) and accompanying Regulations “On Republican and *Raion* Executive Commissions on Sale of Rights to Use Land Plots of the Agricultural Land Redistribution Fund Under the Ministry of Agriculture and Water of the Kyrgyz Republic,” and “Temporary Regulations on Auction Sales of Rights to Use Land Plots of the Agricultural Land Redistribution Fund Under the Ministry of Agriculture and Water of the Kyrgyz Republic” (January 9, 1998).

<sup>47</sup> Temporary Government Resolution No. 480 “On Lease to Land Users of Land Plots from the Land Redistribution Fund of Agricultural Land Belonging to the Ministry of Agriculture and Water Resources of the Kyrgyz Republic” (August 20, 1997).

<sup>48</sup> To receive a land plot, the individual or legal entity must apply to the six person commission established by the law. The commission includes members from the *raion* administration, the Center for Land and Agrarian Reform, the State Agency for Land Management and Land Resources (SALMLR), a member of the village government, and a member from the council of elders. The application must state the purpose for which the leased land plot will be used.

<sup>49</sup> Legal entities are able to rent in up to 50 hectares of irrigated land and 100 hectares of dry land. Individuals may rent in up to 25 hectares of irrigated land and 50 hectares of dry land. Land plots are to be leased out on a competitive basis for a period of one year, although a minimum price has been established for irrigated land in each *raion*. Lease payments are to be paid into the local government budget. The

While farm reorganization and distribution of land to private individuals has progressed, federal laws on land (the land code), mortgage, and registration have not yet been passed by the *Zhoroku Kenesh*, the Kyrgyz parliament. The draft land code and draft registration law are in advanced stages and are being considered by the parliament at this time. The draft land code supports the development of a land market and individual choice and freedom regarding land use. At a minimum, a law on registration and regulations on purchase and sale are necessary for the development of a land market.

#### **IV. Development of Institutional Framework for Land and Agrarian Reform**

The institutional framework for land and agrarian reform has had a significant impact on both the pace and the depth of the reforms in the Kyrgyz Republic. Until early 1994, the State Property Committee was responsible for privatization of enterprises, including agricultural enterprises. Presidential Decree No. 23, discussed above, transferred responsibility for farm reorganization from the State Property Committee to the Ministry of Agriculture and Food.<sup>50</sup> The Ministry of Agriculture moved the land and agrarian reform effort forward by establishing and implementing a policy that mandated farm restructuring.

The institutional framework is fairly complex and has many overlapping actors and organizations. At the federal level, the Republican Center for Land and Agrarian Reform is under the Ministry of Agriculture and is responsible for policy on land and agrarian reform and for privatization of the agricultural sector. *Oblast* and *raion* Centers for Land and Agrarian Reform assist in farm reorganization at the local level, but are funded by the republican budget.

The State Agency on Land Management and Land Resources (SALMLR) was created in 1996 and includes *Kyrgyzgeprozem*, the department that contains the land surveyors and cadastre specialists (sometimes referred to as land engineers).<sup>51</sup> The SALMLR is responsible for the physical demarcation of land boundaries, issuing certificates for land shares, and registering land shares. The *oblast* and *raion* SALMLR offices are responsible for recording land shares and surveying newly created private farms.

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Kyrgyz government can exempt or discount lease payments. The lessee must pay the lease amount plus the land tax.

<sup>50</sup> Presidential Decree No. 23, *supra* note 31.

<sup>51</sup> Presidential Decree No. 104 "On the Land Management and Land Resources State Agency Under the Government" (March 20, 1996) created this new agency and transferred *Kyrgyzgeprozem* duties to this new agency.

While land and agrarian reform policy is developed at the republic level, local government has been largely responsible for the on-the-ground reorganization of farms. The *raion* administration and the village government have had primary responsibility for farm reorganization and land and property share distribution.

The first local government organization involved in land reform was the local land commission. As early as 1991, land commissions were established at the republic, *oblast*, *raion*, and village level.<sup>52</sup> The land commissions consider requests for distribution of land within the locality when land share holders want to form a legal entity and their land has not already been demarcated.

Rural committees (village governments) were introduced in January of 1992 and were responsible for the physical aspect of the on-farm restructuring.<sup>53</sup> The *raion* administrations had control over the rights of land share owners to withdraw and set up private farm enterprises. The village government was given the right to participate in this reform process with the *raion* administration by a December 1992 presidential decree.<sup>54</sup>

RDI's 1993 field research (conducted with the World Bank) indicated that the process of land and agrarian reform in the Kyrgyz Republic was largely controlled by *raion* administrations.<sup>55</sup> At that time, local administrations often set their own rules and, in many cases, land reform was obstructed because the local administrators were not in favor of farm reorganization.

A regulation was passed in March 1994 in an effort to broaden and define the functions of the village governments.<sup>56</sup> The regulation gave the village government a wide range of power over implementation of the agrarian reform and general development in rural areas. It permitted appointment of the head of a collective or state farm as the head of the village government that operates on the territory of that farm.<sup>57</sup> The village government was generally responsible for enforcing laws and regulations regarding rights to land, land reform, agrarian reform, rational land use, formation and registration of enterprises, land and water relations among farmers, economic disputes among farmers, and the granting of land shares and property shares. In addition, with the consent of the

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<sup>52</sup> Law "On Land Reform" (April 19, 1991).

<sup>53</sup> Presidential Decree "On the Rural Committees on Land Reform in the Republic of Kyrgyzstan" (January 13, 1992).

<sup>54</sup> Presidential Decree "On Measures for Further Implementation," *supra* note 29.

<sup>55</sup> Prosterman, *supra* note 1.

<sup>56</sup> Government Regulation "On Rural Committees on Land and Agrarian Reform" Adopted pursuant to Government Resolution No. 148 (March 25, 1994).

<sup>57</sup> In fact, in many instances the former head of the collective or state farm is also the head of the village government.

*raion* administration, the Ministry of Agriculture could delegate to the village governments the right to lease out National Land Fund land.<sup>58</sup>

In response to fears that the village governments were dominated by collective or state farm leaders who might impede the reform process, the government adopted a regulation in January 1995 creating a “committee for implementation of land reform and reorganization of agricultural enterprises” on each reorganizing farm enterprise.<sup>59</sup> These committees were set up to be more broadly representative of those involved in the land reform process and are more narrowly focused than the village government. Each committee is charged with inventorying the assets of enterprises to be reorganized, calculating land and property shares of members, developing a plan for reorganizing the enterprise, and then implementing the plan. The committees must be composed of no more than 15 members, including the head of the village government, and representatives of the Ministry of Agriculture, the *raion* administration, the *oblast* and *raion* Centers for Land and Agrarian Reform, financial bodies who have a stake in the enterprise, and elected representatives of the reorganizing enterprise. It is unclear from field research how effective these committees have been during farm reorganization. This issue should be studied further.

During RDI’s October 1995 field research, many farmers stated that the *raion* administration had thrown up obstacles to reorganization. One example given was that the *raion* administration had intentionally delayed processing land certificates. Farmers were also unhappy that they needed to travel great distances to visit the *raion* offices, whereas the *raion* officials could have visited the farm a single time and saved the farmers hundreds of individual trips. The farmers stated that the *raion* administration was reluctant to allow the reorganization, since it meant that the farmers would be less dependent upon the *raion* officials. The farmers also reported that the *raion* officials did not treat them as well as the officials treat the farms that had not reorganized.

*Raion* and village level governments continue to have a great deal of authority and ability to either move the reforms forward or hinder them. However, federal legislation attempts to insure that the reforms are not hindered by conflict of interest and resistance by those in power at the local level by providing for rural committees on implementation of land reform and for centers on agrarian reform. It is not a feasible or necessarily desirable goal to substantially diminish the power of local officials. Farmers who control their own land and have a stake in the land and its productivity will be more willing to advocate for themselves and play a role in the existing local processes as a means of securing rights, allocations of resources, and the attention of the local *raion* officials.

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<sup>58</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 39.

<sup>59</sup> Annex to Decision of the Board No. 3, Government Resolution “On Committee for Implementation of Land Reform and for Reorganization of Agricultural Enterprises” (January 23, 1995).

The *oblast* and *raion* level centers for land and agrarian reform can play a key role in assisting in *raions* where there is local resistance to reforms. These centers should be involved in distributing information regarding the rights of private land-use holders and in resolving conflicts between local administrations or farm leaders and individual right holders. The centers are not funded from local budgets, and therefore can function as mediators. These centers should be strengthened and supported so that they can play a more active role in dissemination of information.

## **V. Land Reform and Farm Reorganization Issues**

Use rights to agricultural land in the Kyrgyz Republic are: (1) held by private citizens who are farming independently or with other families in small groups; (2) held by private citizens working on large collective farms in the form of land shares; or (3) leased in by private citizens or collective farms from the agricultural land redistribution fund. Approximately half of the arable land in the Kyrgyz Republic is held by private farm enterprises and farmed by single families or small groups of families. For the most part, these individual or multi-family farms were created when a former state or collective farm as a whole reorganized into much smaller units. The farms that have not yet broken into private farm enterprises have cosmetically reorganized and are still functioning essentially as collective farms. Most of these farms, however, have distributed land share certificates to their members.<sup>60</sup> Approximately 25 percent of the arable land in the Kyrgyz Republic is held in the Land Redistribution Fund and leased out or given to private individuals or legal entities to use on a temporary basis.

Following is a discussion of nine important land reform and farm reorganization issues, including land shares, whole farm reorganization, the land redistribution fund, farm debt, documentation and registration of rights, land transactions, security of land tenure, machinery and service cooperatives, and taxes.

### **A. Land Shares**

Workers, pensioners, invalids, and specified social sphere workers of collective and state farms (and their dependents) hold the right to a portion of the arable land (not pasture land) on those farm. Generally, the system developed in the Kyrgyz Republic for distributing this land is as follows. The collective or state farm's land is divided on paper into shares. The shares are then divided equally among the farm population. An individual's land share is generally between 0.75 and 1.5 hectares in Talas, Chui, Issyk-Kul, and Naryn *oblasts* and between 0.1 and 0.3 hectares in Osh and Djalal-Abad *oblasts*.<sup>61</sup>

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<sup>60</sup> See Section V. E. (Documentation and Registration of Rights to Land) of this report for further discussion of this issue.

<sup>61</sup> Delehanty, *supra* note 10 at 572.

While each person among the farm's population is entitled to a share of the land, the family, not the individual, receives a certificate from the village council that indicates that family's share of the land.<sup>62</sup> The rights to land of individual family members are not clear under Kyrgyz law. On some farms, the families' land shares are located on a map, while on other farms they are not. However, when families withdraw their land shares to start a peasant enterprise (two or more families), each family within the peasant enterprise generally knows the precise location of its land.

Land share owners can withdraw their land shares to establish an individual farm enterprise, or they can pool their land shares with other families and withdraw land to establish a peasant farm enterprise, cooperative, or association of peasant farms provided that the farm contains a minimum amount of land.<sup>63</sup> Conversely, the land share owner can leave his share with whatever large farm enterprise replaces the collective or state farm. Land share owners who live in suburbs may withdraw smaller plots for cultivation of vegetables. RDI's field research indicates that even farms that are exempt from reorganization must distribute land share certificates and allow land share owners to withdraw their land shares in kind.<sup>64</sup>

While approximately half of the arable land in the Kyrgyz Republic is still farmed by collective and state farms, the vast majority of the arable land is held by private families either as a land plot or a land share. In theory, collective farms that use the members' land shares should lease these land shares from the members. One director of a cooperative that RDI researchers visited stated that later in 1997 the cooperative would pay rent, in money or in-kind, for use of the land shares, and would pay dividends for use of the property shares of its members.<sup>65</sup> RDI researchers were not able to find any family that had withdrawn their land share from a collective farm that continued to operate as a collective. The leaders of all of the collective farms interviewed stated that no families had

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<sup>62</sup> While Government Regulation Adopted by Resolution No. 632, *supra* note 39, stipulates that each family will receive a certificate, in Chui *Oblast*, a land share certificate has been issued to every member of the family. The Ministry of Agriculture and Water Resources does not recognize these certificates.

<sup>63</sup> The minimum size requirement is five hectares in all cultivation zones (and one hectare for rural and suburban vegetable operations). See discussion at Section III in this report.

<sup>64</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 39 states that all land within the boundaries of agricultural enterprises is subject to division and allocation of land shares. Exceptions are listed, but exempt enterprises are not excepted. The Kyrgyz Republic has reduced the number of agricultural enterprises that are exempt from reorganization to 62 specialized enterprises (out of a total of 720 large enterprises) producing seeds and breeding livestock. Interview with Kachkynbay Kadyrkulov, Deputy Minister of Agriculture of the Kyrgyz Republic (July 1996). In contrast, approximately 30 percent of agricultural land in Russia is currently being used by exempt enterprises and is not distributed in the form of land shares and is not subject to withdrawal by individual land share owners.

<sup>65</sup> Ten percent of the profit will be distributed as a dividend to the members.

left. Thus, it appears that generally whole farms decide to break-up or stay together<sup>66</sup> with few individual families choosing to leave.<sup>67</sup>

Since half of the private arable land in the Kyrgyz Republic is still held by land share owners who have not left the collective, land share owners' rights remain crucial to a continuing reform process. Land share owners have the right to use, dispose of, or withdraw the land represented by the land share.<sup>68</sup> Of the farms on which RDI researchers held interviews, all members and leaders stated that individual families have a continuing right to withdraw their land shares from the farm, even if the land shares had been contributed to the charter capital of the agricultural enterprise. This ongoing right to withdraw is critical because the land share use right holders are the most qualified to decide how to use the land their shares represent. Thus, while many land share owners remain on the collective farms, they may choose to leave the collective to start their own farm in the future as economic conditions improve. Only those individuals who retain their ability to withdraw land to start a private farm enterprise in the future will have a meaningful choice.

While members have a right to withdraw their land shares, there appears to be some inconsistency in terms of which land can be withdrawn. Many collective farms have demarcated each family's land share on a map, but collective farm leaders told RDI researchers that when a land share is withdrawn from the existing farm it will be withdrawn from the perimeter of the farm. Where individuals or small groups of land share owners wish to leave the collective with land shares in kind, or to rent or sell their land shares to already established private farmers, a procedure known as withdrawal by "mutual selection"<sup>69</sup> might greatly improve their ability to do so rapidly and with reasonable

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<sup>66</sup> Included in those that stay together are enterprises that divide minimally into two or three still-large entities in which each maintains the collectivized mode of operation. Thus, in 1991 there were 470 collective and state enterprises and by October 1997 that number had increased to 720 (many of the original 470 had broken up completely by then, but in some cases the now nearly landless and asset-less collectives had retained a technical existence and may have been counted in the 720).

<sup>67</sup> This stands in sharp contrast to the land reform in Russia, where very little whole farm break-up has occurred and therefore peasant farm creation only occurs when individuals or families leave the larger farm. In the Russian case, the pace of formation of private farm enterprises has been very slow.

<sup>68</sup> Presidential Decree No. 23, *supra* note 31.

<sup>69</sup> Under this procedure, an individual land share owner (or small group of owners) withdrawing from an enterprise and a representative of the owners remaining on the enterprise take alternating turns proposing a field on which the withdrawing owner's land share will be demarcated. If one side rejects the other side's proposal of a particular field, that field is removed from the negotiation. The process continues until one side accepts the other side's proposal, or until only one field is left. At that point, the local land engineer demarcates the plot or plots in a contiguous area on the edge of the selected field. Vladimir *Oblast* in Russia has recently adopted this as a recommended procedure.

assurance that the land allocated would be of average quality and location.<sup>70</sup> Such a procedure should be considered for adoption.

Land share holders' rights to land could be strengthened in two ways. First, the government should consider eliminating the minimum farm size entirely. While reducing the minimum farm size to five hectares increased the opportunity of farmers to establish individual private farms, some families will still not be able to set up a single family farm, but rather will have to join with other families.<sup>71</sup> However, families whose land shares equal less than 5 hectares can lease, sell, bequeath, or give their land shares to others to farm, or they can withdraw their land share in conjunction with other families.

Second, land share holders' rights would be strengthened by a public information program designed to inform them about their rights as land share holders and the risks and benefits of particular land share transactions. RDI research indicates that farm managers and local leaders do not always follow the law. One collective farm manager in Chui *oblast* stated that the charter of the collective farm only allows members to withdraw their land if the land withdrawn is at least 50 hectares. This is clearly in violation of the current law described above. It is not possible to say how common such violations are. However, this example demonstrates the need for a public education campaign throughout the countryside.

Legal material is available in Bishkek for those who have access to Bishkek's markets. One informed peasant farm enterprise leader stated that he purchased legal information in the market at Bishkek and looks at the law before he makes any decisions. However, more general dissemination does not occur on a systematic basis. The head of the Center for Land and Agrarian Reform in Issyk-Kul *oblast* stated that dissemination of information should be their main duty, but they are not able to do much of this due to lack of funds and the presence of other responsibilities. The center occasionally has a television or radio spot, and they publish articles explaining documents and regulations.

The public information program should also provide information on land values and prevailing lease rates so that land share transactions will be well-informed. Targeted legal assistance programs could also encourage the exercise of land share rights.

The impact of the land share system on intra-household relationships requires further study and consideration. Under current law, only one land share certificate is issued per family. It is unclear whether individual members have a right to withdraw their land share, or sell or lease their land share. This issue becomes important if the family breaks

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<sup>70</sup> Currently the land commissions consider requests for distribution of land when land share holders want to withdraw from a farm.

<sup>71</sup> It should be noted that farms that are much smaller than five hectares produce commodities for the market in other countries. For example, in China farmers produce crops for market often on farms of less than one hectare. The same is true in Japan, South Korea and Taiwan.



down, or if one or several family members want to leave the farm. It is not clear from RDI field research whether the head of the farm, in whose name the certificate is registered, has more rights to the land than his spouse or children. RDI researchers recommend that all adult members have the right to partition their land. Moreover, RDI researchers recommend that a transfer of land require the signature of all adult members.<sup>72</sup>

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<sup>72</sup> Part I of the Civil Code of the Kyrgyz Republic provides some rules as to division and disposition of shared and joint ownership property; however, these rules do not adequately protect individual share holders. Article 276 provides that the property of a peasant farm enterprise will be held in joint ownership unless otherwise agreed. When property is held in joint ownership, an individual's share may not be partitioned unless it has been "previously defined." Article 272 requires consent for disposition of property held in joint ownership, but does not require written consent.

## **B. Whole Farm Reorganization**

Approximately half of the arable land in the Kyrgyz Republic is farmed by private farm enterprises. In April of 1995, the acting Vice Prime Minister of Agriculture reported that at least 36 collective or state farms had been thoroughly reorganized and broken-up into smaller private farm enterprises. In May of 1995 RDI researchers visited eight of these farms in Naryn, Issyk-Kul, and Talas *oblasts*. Most of the farms visited had broken up, but were still in the process of reorganizing. RDI researchers had the opportunity to speak to the former leaders of these farms as well as to the heads of many of the resulting private farm enterprises.

Seven of the eight farms visited made the decision to reorganize between August and December of 1994. The other farm began reorganization in November of 1993. All of the farms decided to reorganize because they saw no other way to continue operating on the failing farm. Approximately ten to fifteen percent of farm members opposed reorganization, but in each case the majority ruled and the whole farm broke up.

Most of the farms divided into peasant enterprises and farm enterprises. One farm divided first into groups of families but had not yet formally created legal entities. One farm divided along clan lines into 19 groups. The private farm enterprises that were formed were demarcated on the ground and on paper.

There were two general models for dividing the land. Some reorganizing farms held a lottery among the private farm enterprises for all the land. On other reorganizing farms the private farm enterprises agreed among themselves regarding allocation of most of the land, and then held a lottery for the remaining land. Although several reorganizing farms divided fields among enterprises, on at least one reorganizing farm there was a reluctance to divide fields. On that farm the private farm enterprises which controlled the number of land shares equal to the size of a field participated in a lottery for that field and the field was awarded to one enterprise. If a bidder had fewer shares than the size of a field, he bid with another member who also had fewer shares. Where there was a difference in the quality of land, the reorganizing farms in general attempted to ensure that each family received a portion of good land and a portion of poorer land.

On every reorganized farm visited, each family within the private farm enterprise had been assigned its own plot of land (in some cases a family would have at least one good plot and one poorer quality plot). On some reorganized farms, such family plots had been physically demarcated with stakes or irrigation canals. On other reorganized farms, the boundaries of the family plots were known but had not been physically demarcated on the ground within the peasant enterprises. All peasant enterprises and farm enterprises made independent production decisions.

Although RDI researchers visited farms that were in the process of reorganizing in 1995, the farmers interviewed had, at that time, already made important improvements to production since the reorganization:

1. Farmers on reorganized private farm enterprises all reported that they work longer hours and are happy to work longer hours because they're working for themselves.
2. Private farmers irrigate in a shorter period of time and therefore more efficiently than before reorganization.
3. Some private farmers irrigate more times per season than before reorganization.
4. Private farmers irrigate at night now (which is less wasteful since there is no evaporation), whereas state and collective farm workers refused to work at night.
5. Private farmers are clearing stones from their fields.
6. Private farmers are using machinery only when absolutely necessary and are performing work manually when possible to save money and to conserve the machines.
7. Private farmers are using strips between the fields and the roads, which were previously unused.

The private farmers RDI researchers visited were specifically concerned about: (1) the burden of debt that they had to assume; (2) their need for working agricultural machinery and spare parts; and (3) the high and numerous taxes. Each of these issues is discussed below in more detail.

### **C. Land Redistribution Fund**

Twenty-five percent of the arable land in the Kyrgyz Republic is held in the Land Redistribution Fund (formerly the National Land Fund) and controlled by local communities and the Ministry of Agriculture. The questions of who should control disposition of this land and who should receive use rights to this land have been debated since the National Land Fund was created in 1991.

The May 1995 field research, in which RDI researchers interviewed members of farms which had broken-up, indicated that National Land Fund land was being managed differently from farm to farm. Six farms had demarcated and given between 20 and 25 percent of their land to the land fund. One farm gave no land to the land fund. The farms

generally donated the worst and most distant land. On some farms the village government managed the NLF land. On one farm, the private farm enterprises had established a “board” to manage the NLF land. In general, the managers of the NLF land did not lease land out to private farm enterprises, but instead farmed the land and intended to use the proceeds either to pay for social services or infrastructure, to pay for spare parts for the service cooperatives,<sup>73</sup> or to pay debts of the former state farm or collective farm. However, one farm leased NLF land to private farm enterprises for 100 soms per hectare (60 soms for rent and 40 soms for land tax) payable to the village government. The village government and the *raion* administration determined the rental payment.

During the October 1997 field research, the head of the Center for Land and Agrarian Reform in Issyk-Kul *oblast* reported that 49 percent of the land in the LRF in the *oblast* (about 18,000 hectares) was leased out in 1997 to private farm enterprises and collectives. The 51 percent that was not leased out was used for development of seeds, cattle breeding, and for enlarging household plots of citizens of the village. This land continues to be available for leasing in. The head of the center stated that the Ministry of Agriculture controls the LRF land.

Although the Ministry of Agriculture controls the LRF land, there appears to be a great deal of local control as well. For example, two villages in Issyk-Kul *oblast* each operate a service cooperative. In 1996, the village government gave 100 percent of the land from the LRF to people who did not have land — villagers and those who work at the sanitarium. In 1997, however, the service cooperatives cultivated the land for themselves. The revenue was used to pay the land tax, to buy fuel, and for other needs. Another cooperative leader in Issyk-Kul *oblast* stated that the cooperative rents in all of the land it had been required to set aside for the land redistribution fund. The cooperative pays one percent of the income from the rented land to the local budget.

The two issues: (1) who controls the land, and (2) who has the right to receive the land from the LRF have begun to be addressed in the law. First, the current law divests local communities of some of their control over LRF land by establishing a commission made up of village, *raion*, and central government officials to determine who has priority for leasing in land, and by calling for auctions to sell the use rights to 50 percent of the land.<sup>74</sup> Second, current law provides that “local residents and agricultural producers living on the territory of the village” have priority for the LRF land that is leased out, although the land will be leased out on a “competitive basis.” The land use rights sold at tender or auction will be sold to individuals and legal entities for “organization of peasant communities and other purposes.”

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<sup>73</sup> Many of the former state and collective farms established “service cooperatives” to manage the machinery and equipment. The village governments often manage these service cooperatives.

<sup>74</sup> Temporary Government Resolution No. 480, *supra* note 47.

A Government Resolution and accompanying regulations that were promulgated in January 1998 provide guidelines and procedures for auctioning land from the LRF.<sup>75</sup> The auction procedures provide a list of ten criteria to determine who is eligible to bid at these auctions. Members of the village where the land is located are given priority as are direct producers. The procedures allow for payment over three years at the discretion of the auction commission. Several pilot auctions will be held this year.

If the auction procedures are refined after these pilot auctions, RDI researchers would recommend that winning bidders be allowed to pay the purchase price over at least a five-year period. Allowing payment over at least five years will make auctioned land affordable for more producers, especially small producers. In addition, while the criteria that has been developed is quite good, it is complicated. The auction commission should keep track of the early sales to determine who is purchasing land and who is favored by the current criteria. The criteria may need to be changed depending on whether the auction sales are meeting the original policy objectives of the criteria.

#### **D. Farm Debt**

Former state and collective farms accrued massive debts owed to the state. This indebtedness has been a significant issue in terms of formation of new farms. In the 1995 field research, RDI found that debts created by state and collective farms were a crushing burden on newly created smaller farms. Debt continues to be an issue for newly created farms and appears to restrict the potential profitability of these new farms.

Former members of state farms have an additional debt burden that former members of collective farms do not have. While members of both state and collective farms have the right to claim non-land property assets, members wishing to claim non-land property assets from state farms have to purchase the property, while collective farm members do not have to purchase non-land property assets.<sup>76</sup> State farm members have to pay for non-land property they receive, even when the entire enterprise is reorganized into some other legal form(s), and even if the debt of such state farm has been repaid. State farm members must take on this additional debt although no significant practical difference in the farm operations of state or collective farms exists which would justify disparate treatment.<sup>77</sup>

Government Decision No. 42 (February 16, 1995) somewhat mitigated this difference in treatment by providing that the payments for property by state farm members will be spread out over 10 years and effectively carry no interest. Moreover, Government

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<sup>75</sup> **Government Resolution No. 14 and accompanying regulations, *supra* note 46.**

<sup>76</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 39.

<sup>77</sup> By comparison, Russia has not treated collective and state farms differently during its agrarian reform process.

Decision No. 42 reduced the debt of reorganizing state farms by 50 percent and reduced the debt of reorganizing collective farms by 25 percent. These debts are to be paid over a period of 15 years beginning on January 1, 1997. Although Decision No. 42 does not state that it applies only to farms that were reorganized before January 1, 1996, the Ministry of Agriculture indicated that Decision No. 42 is being implemented this way.

A later decree recommends that the Government reduce debts of reorganized state farms by 100 percent and debts of reorganized collective farms by 75 percent, provided that the Ministry of Agriculture regarded the farm as reorganized as of December 31, 1995.<sup>78</sup> However, implementation of this recommendation does not appear to have occurred on a systematic basis, if at all.

The field research in May of 1995 indicated that newly created farms were struggling to repay the debts owed to the state even though under Decision No. 42 debts were not owed until January 1, 1997. On one reorganized collective farm, farmers were forced to give 100% of their wool production to the village government, which had assumed the responsibility for repaying the debts of the former enterprise. The treatment of debt before and after reorganization seemed to have been dealt with differently on each farm, although generally the farms had not yet taken the step of legally dividing the debt among the new enterprises. Past-due taxes that had accrued interest and penalties were a major debt for some of the reorganized farms.

Most private farmers interviewed in RDI's October 1997 field research indicated that they had not yet begun to pay back the debt owed by the former state and collective farms. Each of the farmers indicated that they would soon begin to pay back a portion of the debt, although many of the farmers interviewed did not know whether the debt had been accruing interest or what the amount or terms of repayment would be. The state had forgiven some of the debt on most of the farms. One peasant farm enterprise head stated that although the state forgave some of the debt, the amount forgiven was only equal to the fines and penalties for not paying the debt on time.

Many, but not all, of the collective and state farms RDI visited had sold some of their property to pay off some of the debt before whole farm reorganization.<sup>79</sup> The rest of the property was then distributed in the form of property shares. One cooperative in Issyk-Kul *oblast* had already paid off all of the debt owed by selling sheep barns, animals, and machines of the former state farm. In another case, one village leader stated that five associations of peasant enterprises had been created out of the former collective farm. Some of the property of the collective farm had been put aside to cover the debt. Of this property, some had already been sold and a portion of the debt had been paid off. The

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<sup>78</sup> Presidential Decree of November 3, 1995, *supra* note 33.

<sup>79</sup> Government Regulation "On Reorganization of Agricultural Enterprises," Adopted by Resolution No. 632 (August 22, 1994), provides that consideration must be given to the debt owed by the enterprise in determining the value of the property shares.

remaining debt will be divided among the five associations and each association knows how much of the debt must be paid. The village leader stated that none of the debt had been forgiven. He stated that although interest is not accruing, they will have to pay back the debt in-kind, and the product is now worth more than it was worth in 1992.

None of the former state farm members interviewed complained about having to pay for non-land property, although they all stated that they did have to pay for the property they received. Most of these stated that the amount they had to pay for the property was nominal and was to be paid over a period of ten years. Nonetheless, RDI researchers recommend that the debt owed to the state for property from reorganized state farms be forgiven for two reasons. First, there is no real reason to treat state and collective farms differently. Second, the local centers for land and agrarian reform, which collect these funds, are already limited in their capacity and funding, and collection of debt is counter to their primary focus of supporting private farmers.

RDI researchers recommend that all farm debt that existed or exists at the time of reorganization be written off for farms that voluntarily reorganize into private farm enterprises. No debt should be collected against resulting farms whenever they are formed. At a minimum, Decision No. 42 should apply to all farms that reorganize into private farm enterprises, not only those that reorganized before January 1, 1996.

Moreover, no debt should be collected against the productive assets of a farm that is in the process of whole-farm reorganization. Resulting private farm enterprises need productive assets, and the return to the government on these assets is likely to be greater (in the form of taxes) than if productive assets are sold to pay off old debt. Further reorganization may be hindered if enterprises must sell their productive assets. However, debts should not be written off or reduced for farms that undertake a “cosmetic” reorganization, but only for those farms that break into private farm enterprises.

## **E. Documentation and Registration of Rights to Land**

Land rights' documentation and registration is necessary in a market economy both to protect such rights and to provide information to land users, potential buyers, and mortgagees. If land rights are protected through documentation and registration, land users will develop confidence that their rights have meaning, are protected, and can be relied upon. Without documentation a market for land rights is not possible.

A register of titles should contain a description of the land plot as well as a record of the legal attributes associated with the plot. The legal attributes that should be recorded in the register include the name of the owners or users, the nature of the tenure, any encumbrances (mortgages, long-term leases, servitudes, etc.), the price paid for land

transfer, any exclusion of rights, and any information a third party may need.<sup>80</sup> There should be no need to look at supporting documentation; the register of titles should be complete and current.

A federal law on state registration of rights to immovable property (land and buildings) has not yet been adopted in the Kyrgyz Republic. However, government regulations control the process of documentation and registration of land plots and land shares.

The documentation procedure for land shares is described in regulations attached to Government Resolution No. 632, which provide that the village government will determine the size of land shares, and this determination will be adopted by the *raion* administration.<sup>81</sup> The regulations also establish that citizens will receive land rights certificates, which will contain a list of family members, the number of hectares as well as their specific agricultural use, and the starting monetary value of the land. In addition, the model form attached to Resolution No. 632 contains a place for the land share map and a description of the neighboring boundaries.

The regulation further requires that the certificate be registered at the *raion* land engineering service. (The land engineering service is now managed by the State Agency of Land Management and Land Resources.) The certificate form itself (attached to the resolution) states that the second copy of the certificate<sup>82</sup> is to be kept with the village government; and RDI's field research indicates that this does in fact occur. However, RDI researchers recommend that a copy of the land share certificate be kept at the *raion* land engineering service, rather than the village government, since the land engineering service actually carries out the registration and has supporting land records and other documents.

Registration is required for the certificate to have legal force. Certificates can be bequeathed, sold, exchanged, or mortgaged, and these transactions must take place at a notary office. Such transactions require the consent of the village government and the *raion* land engineering service.<sup>83</sup>

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<sup>80</sup> Peter F. Dale & John D. McLaughlin, *LAND INFORMATION MANAGEMENT* 37 (1988). See generally, Hanstad, *Designing Land Registration Systems for Developing Countries*, 13 *Am. U. J. Int'l L. & Pol'y*, (1998) (forthcoming).

<sup>81</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 39.

<sup>82</sup> The first copy of the certificate is held by the rightholder.

<sup>83</sup> In this case "consent" appears to mean that the village government and *raion* land engineering service can veto the transaction.



A 1995 presidential decree instructs heads of *oblast* and *raion* governments to complete the issuance of land share certificates by December 31, 1995.<sup>84</sup> The Decree also instructs the Ministry of Agriculture to begin a uniform system of registration in January 1996 for agricultural land use rights and land shares, as well as registration of sales, exchanges, inheritance, mortgage and lease of use rights and shares.

One year later in a 1996 presidential decree, the Government was again instructed to register the sale, exchange, pledge, and inheritance of use rights to land shares and land plots, this time beginning January 1, 1997.<sup>85</sup> Pursuant to the 1996 decree, regulations for registration were promulgated.<sup>86</sup> These regulations gave the responsibility for state registration of land use rights to the State Agency of Land Management and Land Resources.<sup>87</sup> The regulations require registration of land use rights and transactions involving land use rights.

Documentation of land share rights in the Kyrgyz Republic is fairly advanced, although several problems remain. Most land share certificates, at least in some form, have been issued to the heads of households and registered.<sup>88</sup> However, in Chui *oblast*, land share certificates have been issued to every member of the family unit, not only to the head of the household. Thus, these certificates do not conform to the law. Moreover, many *raions* have issued temporary land share certificates. These temporary certificates do not require a map to be attached. Some *raions* attach a map and others do not. The permanent certificates do require demarcation of the land share and an attached map. The newly promulgated registration regulations require that land plots be demarcated on the ground for registration.<sup>89</sup>

In October of 1997 RDI researchers visited several *raion* registration offices. In one *raion* visited in Issyk-Kul *oblast*, temporary land share certificates had been issued. The head of the land engineering office stated that he was waiting for the permanent

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<sup>84</sup> Presidential Decree "On Measures for Further Development and State Support of Land and Agrarian Reform in the Kyrgyz Republic" (November 3, 1995).

<sup>85</sup> Presidential Decree No. 327 "On Measures Aimed at Introduction of Market of Land Use Rights and on Establishment of the Market Credit System in Agriculture" (November 25, 1996). There is no requirement for registration of long-term leases in this decree.

<sup>86</sup> Government Resolution No. 172 "On Implementation of State Registration of Land Use Rights" (April 2, 1997).

<sup>87</sup> The village governments exercise control over registration of private farm enterprises, which are also registered at the land engineering office under the control of the State Agency of Land Management and Land Resources. Regulation "On Rural Committees on Land and Agrarian Reform," adopted pursuant to Government Resolution No. 148 (March 24, 1994).

<sup>88</sup> See, Government Regulation Adopted by Resolution No. 632, *supra* note 39.

<sup>89</sup> Temporary Regulation No. 172, "On Implementation of State Registration of Land Use Rights" (April 2, 1997). It is not clear from the regulations whether individual families' land shares would have to be demarcated on the ground if several families started a peasant farm enterprise.

certificates to be sent to him, but that they had not been sent because of the expense of printing them. The temporary certificates comply with Resolution 632 and state the amount and type of agricultural land, the names of the family members, and the starting value. The temporary certificates were only effective until January 1, 1998, although the land engineer did not expect the permanent certificates would arrive before that time.

Potential problems exist in the transition from temporary certificates to permanent certificates. The head of the land engineering office in one *raion* stated that it would be the responsibility of the farmer to get a new certificate before January 1, 1998. The land engineering office will make a schedule so that they will cover the whole territory during 1998 (after the deadline). Each village government will exchange temporary certificates for permanent ones on a specific day. If a person misses this day, they will be able to go to the land engineering office and make the exchange. The permanent certificates are required to have maps attached, but the temporary certificates do not have maps in this *raion*. The land engineer stated that he would go to each parcel and compare the measures of the main map in his office to the actual parcel. He would then prepare a map and attach it to the certificate.

The process of demarcating every land share on a map or on the ground seems cumbersome, expensive, and lengthy. Moreover, several collective farm leaders reported that even if a family's land share is demarcated on a map, if the family leaves the collective farm, it will not necessarily receive that specific plot of land. Instead, the family will most likely receive a parcel that is on the edge of the farm. Thus, the process of demarcating land shares on a map for existing collective farms does not appear to be valuable to the land share holders.

RDI researchers recommend that the law eliminate the requirement for demarcation on a map or on the ground until a family or several families are ready to leave and establish a private farm enterprise. Demarcation is not worth the cost and the administrative resources necessary because it is, in many cases, irrelevant. At a minimum, the temporary certificates should have legal force until they are exchanged for permanent certificates, whenever that occurs.

In addition to these issues of documentation, there is not currently a unified, comprehensive system of immovable property registration in the Kyrgyz Republic. Most importantly, land and buildings are registered at different locations. The land engineering office is registering land share certificates and private farm enterprise land. Buildings, including farm buildings, are registered at the Bureau of Technical Inventory. This system is unnecessarily cumbersome and confusing for the land user.

The three *raion* registration offices RDI researchers visited (two in Issyk-Kul *oblast* and one in Chui *oblast*) are uniformly following the registration procedure described in the

regulation attached to Resolution No. 632.<sup>90</sup> However, the procedure provides that the entry in the registration book should list the name of the head of the family and the number of family members, but does not require the registrar to document the names of the family members who hold a land share represented by the certificate. RDI researchers recommend that the registrar be required to list the names of the family members in the registration book. Each family member owns the land in common, and those members who are not listed have less secure land rights. Moreover, listing the family members will make it easier for an individual to partition his land, if that becomes necessary in the future. Finally, the third party to a transaction will be put on notice that these individuals must consent to the transaction.

RDI researchers found during October 1997 field research that registration was thus far limited to transfers from the government to private farms. No registration of sales, bequests, gifts, or other transactions between private parties was occurring. Moreover, long-term leases were not being registered in any of the offices visited. RDI researchers recommend that the law be clarified to include registration of long-term leases. Typically, other countries register leases of significant length, often three years or more.

While the initial registration seems to be functioning reasonably well, all activity appears to stop at that point. One *raion* administration head told us that after a land share is registered, there is no further tracking. For example, a farmer in one *raion* received three hectares in 1991. Several years later, 1.5 hectares were taken away when the village re-distributed its agricultural land to members of the collective farm. His certificate still states that he owns the use rights to three hectares of land, and the register has not been changed.

There appears to be a lack of understanding by both officials and farmers regarding the necessity and value of registering transactions. RDI researchers recommend that one element of a public education campaign be a component explaining and promoting the value of registration. The register of titles must be complete and current to be an effective tool.

## **F. Land Transactions**

Purchase, sale, exchange, mortgage, inheritance, and lease of land use rights to agricultural land are allowed in principle by presidential decrees in the Kyrgyz Republic. Sufficiently detailed regulations concerning these transaction rights, however, are still needed and have not yet been promulgated. RDI researchers found that the lack of

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<sup>90</sup> In Chui *oblast*, the USAID pilot registration project apparently will not register land shares at all when the project begins registering land. (Currently land is still registered by the land engineer's office.) Only private farm enterprises will be registered. The registrar will list only the head of the private farm enterprise and not the individual members of the enterprise or the number of members of the enterprise.

adequate regulations has affected the willingness of individuals to engage in purchase and sale transactions.

Presidential Decree No. 23 (February 1994) guaranteed the right of members of collective and state farms to receive land shares, and guaranteed the right of land plot users and land share holders to sell, lease, exchange, give, bequeath or lease their land plots or land shares.<sup>91</sup>

Some rules, at least regarding land share transactions, were promulgated later that year. Land share owners may sell their land shares to other Kyrgyz citizens and legal entities, with the consent of family members, provided that the land will be used for agricultural production. Members of the enterprise have a priority right to purchase the land share. Purchase, exchange, inheritance and mortgage (but not lease) of land shares must be notarized, and require consent of the village government and the *raion* land engineering service. Land share owners may mortgage the land share, but only for the “starting value.”<sup>92</sup>

Several farmers in 1995 told RDI researchers that they were interested in specializing in particular types of agricultural production and would have liked to exchange their land plots with other farmers to acquire land that is more suitable for their plans. At that time, farmers did not see this as a possibility. The 1997 field research indicated that few sales of land or land shares are taking place. In Naryn *oblast* the head of a *raion* administration stated that sales were not occurring because there were no procedures. In Issyk-Kul *oblast* the *oblast* head of the Center for Land and Agrarian Reform stated that no sales of land have occurred in the *oblast* and that it is illegal to sell land now because there are no rules regarding sales. One private farmer stated that he wanted to buy land but there were no procedures and individual land shares were very small. He did not want to lease land from the land fund because “[a]ll land should have its owner.”

In July of 1996, government officials told RDI researchers that leasing of land share rights and land use rights was occurring throughout the country. Lessees generally made lease payments of 10-20 percent of the crop, roughly 1,000-2,000 soms per hectare,<sup>93</sup> plus payment of the land tax. At that time, RDI researchers spoke with private farmers in Chui *oblast* who had been leasing in plots of land for up to four seasons to grow vegetables for sale to processors and at local markets. These farmers generally had written lease contracts and rented in land from cooperatives that had more land than they could profitably cultivate. The farmers who lease in land pay either a percentage of the crop produced or agree to a cash rent to be paid after the harvest.

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<sup>91</sup> Presidential Decree No. 23, *supra* note 31.

<sup>92</sup> See Government Regulation Adopted by Resolution No. 632, *supra* note 39. Starting value is the minimum value of a land share. The village government determines the starting value.

<sup>93</sup> \$59-\$118 US dollars. These figures are for vegetable crops.

During the 1997 field research, the head of a *raion* administration in Naryn *oblast* stated that much leasing is occurring but lease transactions are not tracked and are not registered. Farmers and officials stated that leases between ethnic Kyrgyz are not common because Kyrgyz pensioners live with their families and their families use their land with no exchange of payment or formal agreement. Russian pensioners are much more likely to lease out their land plots or land shares. In fact, all of the lessors RDI researchers interviewed were ethnic Russians.

The pensioners interviewed in Issyk-Kul *oblast* had all been members of collective farms that had completely reorganized into smaller private farm enterprises. They described the process for leasing out their land shares as follows. The former collective farm made a list of all of those who wanted to lease out their land shares when the farm broke up. Approximately half the people on the farm were on the list and most of these were pensioners. The list was then divided into groups, and these groups of people leased out their land to different private farm enterprises. The collective worked with the groups of people who wanted to lease out their land and negotiated a lease with the private farmers. The private farmer holds the lease, and it is written, but the pensioner does not have a copy. The village government has a copy of the lease.

One pensioner told us that her lease agreement was for three years. She receives 80 kilograms of wheat for 0.3 hectares of land per year. She must pay one som per kilogram for turning the wheat into bread and a small amount for the electricity to bake the bread. A second pensioner from that same farm made a different agreement. She and her husband together received 1.3 hectares of land. Her husband chose a private farmer he knew to lease to. For 1.3 hectares they receive 1.5 tons of wheat. The amount of wheat they receive is based on a percentage of the harvest, although she did not know the percentage.

Two changes concerning land transactions are recommended. First, government consent should not be required for land share transactions. Requiring government approval can often lead to unnecessary and possibly harmful interference in what should be a private process controlled by private parties. The only element of the transaction where consent may be needed is in approving the form and formalities of the transaction as they relate to registration. The *raion* State Agency on Land Management and Land Resources, which has authority over registration, should therefore be able to approve the registration-related formalities, but should not have the power to approve the substance of the transaction itself.

Second, regulations and forms for purchase and sale should be promulgated.<sup>94</sup> These regulations and forms should provide a step by step procedure for a prospective

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<sup>94</sup> In Russia, the Federal Government issued specific procedures for the purchase and sale of small plots. These procedures facilitated transactions and a very active market developed. Over one million small plots

buyer and seller in a land transaction. In countries where land transactions are unfamiliar, regulations and model forms help people understand what issues they need to be aware of to make an equitable agreement.

## **G. Security of Land Tenure**

RDI researchers' comparative experience in various countries has shown that many legislators, government officials, and individual citizens believe that land, which is not used for a period of time, especially agricultural land, should be confiscated (taken without payment) by the government. Generally, they reason that inefficient land use should be punished. Ironically, the greatest impediment to efficient land use and protection of land is most often not the actions of private land use right owners, but the actions of the state or local authorities that undermine confidence in private land rights. Land use right owners have economic incentives to use land efficiently. Secure private rights to land will result in improvement of that land.

Agricultural producers must have confidence that their land rights will be protected, or they will be discouraged from making significant investments in their land. Moreover, potential buyers will be discouraged from purchasing land and potential lenders from accepting such land as collateral for loans if the right of ownership or of long-term use is insecure.<sup>95</sup>

The Law "On Land Reform" (April 19, 1991) created a special land fund, which was to contain unused and inefficiently used lands for redistribution to other land users. Lands granted for agricultural production and not used during the course of one year, or lands of agricultural enterprises whose actual productivity over the last five years was less than the standard determined by cadastral evaluation, could be taken (no payment for the land is mentioned). The Law "On Peasant Farms" (as amended April 19, 1991) has similar provisions.

*Raion* offices of the State Agency on Land Management and Land Resources are actively involved in controlling non-use of land. In Issyk-Kul *Oblast*, the head of the *oblast* Center for Land and Agrarian Reform stated that action had to be taken on 4,250 hectares of land that were uncultivated in 1996. The process is as follows. The SALMLR office inspects for non-use of land plots. If a person does not use his land, the inspector determines the reason for such non-use. If the reason is well-founded, the use right holder will be warned. (Presumably if the reason is not well-founded the land will be taken immediately.) If the land is not cultivated for a second year, the Center for Land and

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changed hands in 1996. The procedures were contained in Government Resolution No. 503, "The Procedures of Purchase and Sale of Land Plots by Russian Federation Citizens" (May 30, 1993).

<sup>95</sup> Russia has similar rules to the Kyrgyz Republic, and there RDI researchers found that peasant farmers were concerned about withdrawal of land for non-use. Many chose to lease in land rather than purchase it for this reason.

Agrarian Reform will arrange for the land to be leased out to someone who wants to use it. The lease has to be with the land use right owner's consent. The lease is negotiated and the lessor has input, including a say in the length of the term of the lease. The terms of the lease are usually that 10-20 percent of all crops from the land will be paid to the land use right holder, and the lessee accepts responsibility for the land tax. The center helps lessors find lessees. The head of the Center for Land and Agrarian Reform stated that many times neighbors are interested in leasing in or out, but do not know of one another's interest.

The head of the Center for Land and Agrarian Reform for Issyk-Kul *oblast* stated that if the land is not used for three years, it will be taken and added to the land redistribution fund. The government would have to go to court to take the land, but would not have to compensate the land possessor because the government already owns the land.<sup>96</sup> No such cases have occurred in the *oblast*.

The land engineer in one *raion* in the *oblast* stated that the major goal of his office was to exercise control over the use of land. Giving a somewhat different account, he stated that if land is not cultivated in his *raion* for one year, the SALMLR can confiscate the land and include it in the land redistribution fund in the fall of the second year. The farmer will be warned at least two times before land is taken. If the land tax is paid on the non-used land, the owner is not fined, but only warned. If the land tax is not paid for one year, the land can be taken, but there have been no cases of this.

The land engineer stated that in 1996, 47 hectares on one territory governed by one rural committee were taken and 6 hectares were contributed (without warnings) to the land redistribution fund. This land primarily belonged to elderly people who could not cultivate their land and young people who moved away. The *raion* administration issued a resolution stating that they were confiscating the land. The land holder were informed of the resolution. The land use right owners could choose to go to court, but no one did so.

Provisions allowing for confiscation of land for non-use should be repealed. Land use right owners may need assistance in finding lessees, but under no circumstances should land be confiscated for non-use. It is not in the interest of land use right owners to hold land, pay taxes on that land, and not use it. If a land use right owner does not pay taxes on the land, graduated penalties should lead to forced sale, with the proceeds from such sale given to the owner. However, the proceeds should be reduced by the amount of taxes and penalties owed and the costs of the sale of the land.

## **H. Machinery and Service Cooperatives**

Access to machinery and other non-land assets is critical to the success of private farm enterprises newly emerging from former collective and state farms. In the former

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<sup>96</sup> The private holder has 99-year use rights. The Kyrgyz Constitution still forbids private ownership of land. See discussion at Section III *supra*.

Soviet Republics, many would-be private farmers have found that it is much more difficult to get access to machinery than it is to get access to land. Collective and state farm members often cite a lack of access to machinery as a reason for not withdrawing from a failing collective or state farm.

In the Kyrgyz Republic, workers and pensioners of the collective and state farms (but not their spouses and children if they are not members) have the right to a share of the non-land assets (property share) of the enterprise, such as buildings, machinery, fuel, and livestock. The size of each recipient's property share is determined by the length and nature of his service on the farm, such that higher salaried and longer-working recipients receive larger shares.<sup>97</sup> Dividing property among the members of the farm is the most difficult aspect of farm break-up.<sup>98</sup>

In principle, there are several possible models for allocating machinery when collective and state farms reorganize into private farm enterprises, including:

- (1) sharing machines and equipment so that each family only needs to have one or two types of machines;
- (2) related families claim property in common and all own machines together;
- (3) formal service cooperatives;
- (4) one family purchases a machine (new or used from another private or collective farm) and hires out the machine and a driver;
- (5) a residual organization of the former collective farm remains in the form of a service cooperative.

Members of former collective farms who want to farm independently have the right to withdraw their property shares in kind or in money. The village government is to allocate the property share out of the enterprise production fund.<sup>99</sup> However, under this same regulation, the village governments were given responsibility over objects of "production and technical purpose" (as well as social and cultural objects, repair shops, garages, gas storage, water supply, and common inputs) to render centralized services. These objects are to be owned by citizens based on common share ownership. Although RDI researchers spoke with many private farm enterprises that had received livestock or barns

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<sup>97</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 79.

<sup>98</sup> In Russia, lack of access to machinery is daunting to individuals who want to leave large collective farms and farm independently and is often cited as a reason for not withdrawing from the collective farm.

<sup>99</sup> Government Regulation Adopted by Resolution No. 632, *supra* note 79.



as their property share (usually purchasing a portion of the barn because the property share did not cover the cost), RDI researchers spoke with no one who had received a tractor or other farm machine as part of his property share.

All of the reorganized farms visited in 1995 had divided the livestock among the families on a per capita basis, and had divided the livestock barns (of which there were often very many in the mountainous areas) among the private farm enterprises. The farm machinery had been divided among the villages.<sup>100</sup> However, none of the reorganized farms had divided the farm machinery among enterprises or families. Some were planning to divide the farm machinery, but most reported that there was not enough working machinery to divide sensibly. Two of the farm leaders stated that they wished they had divided the farm machinery at the very beginning of the process, before land was divided. The main reasons given were: (1) the machinery had deteriorated over the past year since nobody felt he owned the machinery, and (2) spare parts and actual pieces of machines had been stolen. The farmers reported that, by contrast, individual families who could afford to purchase their own machinery kept it in much better condition.

During the 1997 field research one private farmer stated that he had purchased a tractor, restored it to working order, and now leased out the tractor and driver to private farm enterprises. He provided his service to eight or nine private farm enterprises and was paid both in-kind and in cash. If he is paid in-kind, he is paid 1.5 centners of wheat per hectare plus fuel.<sup>101</sup> If he is paid in cash, he receives 250 soms per hectare.

During the same research, village leaders stated that several families withdrew machines and shared them among themselves. For the most part, however, the machines from the former state or collective farms were either left with the farm and now act as “service centers” serving several villages or were pooled into a “service cooperative” run by the village government.

These latter models did not differ significantly. If the collective or state farm remained as a service center, the members of the former farm contributed their property shares to the service center. In the examples seen, the centers charged to plow land for the farmers of peasant and farm enterprises.<sup>102</sup> The centers will service anyone, including those who were not members of the former farm, although the price is higher for non-members. The money paid for the services is used to buy spare parts and to pay the wages of the drivers. Additional funds are generated because the service centers continue to farm a portion of the land of the former farm and use the profit to support the centers.<sup>103</sup>

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<sup>100</sup> Generally there are two or three villages on one collective or state farm.

<sup>101</sup> One centner is 100 kilograms, and that will usually be approximately five percent of production.

<sup>102</sup> Service centers charge approximately 200 soms per hectare to plow, including the cost of fuel.

<sup>103</sup> One service center RDI researchers visited was an exempt enterprise that still held 370 hectares and produced specialized seeds.

The service center has a written contract with every farmer and the contract is re-negotiated on a yearly basis. The service center has a charter and employs people. Drivers are seasonal and are paid per hectare. Mechanics are paid a fixed monthly wage. Service centers also buy fertilizers and seeds in bulk for the members of the private farm enterprises. The service centers do not do any marketing.

The second model is one in which the former state or collective farm divides the machinery between the villages that made up the farm. Each village runs a service cooperative and members of private farm enterprises may go to any of the service cooperatives. The service cooperative leases in and farms land from the land redistribution fund to pay for spare parts and to pay for mechanics' salaries. Those who use the service cooperative work on this land and receive services at a reduced rate. Those who receive services have a written contract with the service cooperative.

Although the law designates that the village government operate centralized services, members of the service cooperative should have the ability to vote on who will manage the service cooperative and how it will be managed. While the head of the village government (who is possibly also the former head of the collective or state farm) *may* be the best person to manage the cooperative, the members should have the power to make this decision. This is particularly true since they are common share owners of the property. The government should consider adopting regulations that provide guidelines for setting up and operating formal service cooperatives.

## **I. Taxes**

Private farmers told RDI researchers in 1995 that land taxes and the multitude of other taxes were making it difficult for them to be profitable. Government Decision No. 265<sup>104</sup> (May 1997) eliminated the Value Added Tax (VAT). The unified land tax, which is now based on soil quality and location, is now two to three times bigger than the previous land tax.

Farmers have had a mixed reaction to this tax although researchers heard far fewer complaints about taxes in 1997 than in 1995. The tax rate varies from *raion* to *raion* and is based on the general quality of land in each *raion*. Those farmers who have inferior quality land are less happy with the tax than farmers with high quality land. Generally the farmers interviewed thought the tax was simple and affordable. However, one small private farmer who did not have revenue from livestock thought the tax was unfair and prohibitive.

It would be possible to develop a more refined system for determining land tax rates based on yields and soil quality for individual fields, information that is already being gathered at the *raion* level. Such a system would need further consideration.

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<sup>104</sup> Resolution of the Government of the Kyrgyz Republic No. 265 "On Questions of Land Tax" (May 2, 1997).

## VI. Conclusion and Recommendations

The agricultural sector in the Kyrgyz Republic has undergone extensive reform, especially in the last three years. Half of the arable land is now farmed by private farmers, and it appears that these farmers are massively out-producing collective farms.

The legal framework for farm reorganization and privatization of agricultural land is well established and generally workable. The laws that have been promulgated allow individual families to choose to farm as private farmers or as members of a collective farm. There is no legal bias for or against either of these choices. However, more work needs to be done to establish a legal framework which will enable farmers to have a secure and remunerative relationship to the land, and which will allow farmers to participate in the land market.

Throughout this report, RDI researchers have offered various recommendations for creating the legal infrastructure necessary for development of a land market, as well as recommendations for improving the implementation of legal reforms already promulgated. A summary of the specific recommendations follows.

- The *oblast* and *raion* level centers for land and agrarian reform should be strengthened and supported so that they can more actively disseminate information regarding the rights of private land use holders and resolve conflicts between local administrations or farm leaders and individual right holders.
- A public information program should be implemented which is designed to inform land share holders about their rights, about the risks and benefits of particular land share transactions, and about the value of registration.
- A procedure known as withdrawal by “mutual selection” should be considered for adoption to assist individuals or small groups of land share owners who wish to leave the collective with land shares in kind, or to rent or sell their land shares to already established private farmers.
- To protect the rights of individual land share holders, legal provisions should provide that: (1) all adult members who are listed on a land share certificate have the right to partition their land and withdraw land in kind; and (2) transfer of land requires the signature of all adult members.
- If the auction procedures for land in the Land Redistribution Fund are refined, winning bidders should be allowed to pay the purchase price over at least a five-year period.

- Members of reorganized state farms should not be required to pay for the non-land property they receive as a property share. Currently, members of collective farms and state farms are treated differently in terms of property shares.
- All farm debt that existed or exists at the time of reorganization of a collective or state farm should be written off for enterprises that voluntarily reorganize into private farm enterprises. Moreover, no debt should be collected against the productive assets of a farm that is in the process of whole-farm reorganization.
- The requirement for demarcation of land shares on a map or on the ground should be eliminated until a family or several families is ready to withdraw the land share in kind. Land share demarcation is expensive and does not appear to assist in farm reorganization.
- Government consent for land share transactions should not be required. Requiring government approval can often lead to unnecessary and possibly harmful interference in what should be a private process controlled by private parties.
- The registrar should be required to list the names of family members listed on a land share certificate in the registration book. Each family member owns the land in common, and those members who are not listed have less secure land rights. Listing all names of land share holders also provides third party notice.
- Regulations and forms for purchase and sale transactions should be adopted to facilitate land transactions. Where land transactions are unfamiliar, regulations and model forms help people understand what issues they need to be aware of to make an equitable agreement.
- Provisions of law that allow for confiscation of land for non-use should be repealed. Land use right owners have economic incentives to use land efficiently, and secure private rights to land will result in improvement of that land.

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