



Women's rights to land in the Kyrgyz Republic

Renée Giovarelli, Chinara Aidarbekova, Jennifer Duncan
Kathryn Rasmussen, Anara Tabysaliev

Summary

Since 1991, the Kyrgyz Republic has followed a programme of economic reform designed to transform the centrally planned economy to one based on market principles. Approximately 60% of the population lives in rural areas, and about one-third of the country's population of 4.8 million depends on agriculture. Roughly one-third of the land area is considered unusable. A cornerstone of economic reforms has been the land and agrarian reform programme designed to: (i) transfer land and non-land assets of the state and collective farms into the hands of individuals, (ii) ensure secure private land rights, and (iii) create the legal and administrative infrastructure necessary to support a freely functioning land market. This paper is based on the research conducted in May 2000 by a team of three lawyers (one Kyrgyz, two U.S.) and two sociologists (one Kyrgyz, one U.S.) to understand and give voice to the needs, aspirations, social and legal constraints, and opportunities of rural women in the Kyrgyz Republic relating to land; identify stakeholders in the institutions affecting women's access and rights to land; and assess the structure and capacity of institutions related to women's land rights and recommend steps that could be taken to strengthen these institutions.

The team used Rapid Rural Appraisal techniques to interview groups of rural women and men, local and regional officials, judges, members of village Courts of Elders, religious officials, rural gender advisors, and NGO activists. The team collected comparative data about women's land rights and a stakeholder workshop was held in the country to inform various stakeholders of the research findings, to verify findings wherever possible, and to consider whether future action is needed to address the findings and how best to

accomplish this. The researchers looked at what the law was, what actually happened, and why.

Land is allocated on a household basis. When the head of the household, usually male, dies, abandons the household, or seeks a divorce – or when women themselves seek a divorce, the woman’s access to the household land is at risk, especially if she is childless. The primary finding from field research is that the written law addresses members of a household as individuals and provides and guarantees individual rights. Customary law, on the other hand, addresses the household as a unit and works to preserve the unit as a whole. Given this split, written laws are virtually irrelevant in rural villages in many instances. Although customary law does not vest land rights specifically with women, women’s needs are addressed in many cases through their access to household land.

According to legal regulation of matrimonial relations in the Kyrgyz Republic, only marriages registered in the state registry offices and village government are considered to be valid. Courts and the state registry offices protect the rights bestowed by marriage. To register a marriage, the parties must be 18 years or older. Marriage is not permitted if either or both persons are already married.

Under customary law, dowry (gifts given to a daughter by her family upon marriage) and bridewealth (gifts given by the groom’s family to the bride’s family) give the bride status and security in a way that marriage registration does not. However, the Kyrgyz tradition of bride stealing often puts the unknowing bride in a vulnerable position because it may take up to six months for her parents to provide the dowry. If her husband sends her home before her dowry is given and her bridewealth is paid, her price will be much lower for a subsequent marriage. Moreover, if her marriage is not registered, she loses any rights provided by the law. An estimated 15 to 30% of all girls are kidnapped against their will. In ethnic Uzbek families, parents marry off their daughters at a younger age, even as young as 14, so that their bridewealth is high and they have a better chance of marrying a wealthy man.

While polygamy is prohibited, in practice the *mullah* (Islamic priest) can perform and register the marriage of a second wife. Wealthy men often secretly get married a second time. Women expressed concern at losing their husbands and the rights to his income in the event of a second wife. Second wives have no legal rights to the man’s property and are therefore very vulnerable.

Analysis: A new wife is vulnerable if her marriage is not registered. Especially troubling is the trend for younger girls to marry. Girls who marry young, under the age of 17 or 18, cannot be legally married because the official marriage



age is 18, and in some rare cases, 17. A girl who marries at 14 has no legal rights under the law until the marriage is registered three or four years later – in many cases, after the children have been born.

The trend of not registering marriages also has several effects on women's land rights. In the event of a divorce or death of the husband, it is more difficult for a woman to prove her interest in jointly held property if her marriage is not registered. It is also easier for the head of the household to alienate jointly held land without the written permission of his wife because the notary or registrars have no way of identifying the wife as joint owner.

A marriage may be dissolved by divorce based on a statement of one or both spouses. When deciding a marriage dissolution, the court may take measures to protect the interests of under-age children and disabled spouses. At the request of one or both spouses, the court may divide common joint property, in which case the shares of both spouses are generally considered to be equal. The person who applies for property division (almost always the woman) must pay the state fee, although the court can exempt payment, and poor women often pay less than the stipulated amount. The charge must be paid for the commencement of the judicial procedure, however.

Customary law does not encourage divorce, and extended families, village elders, and the village government usually makes an effort to keep the family together. If a divorce occurs, the land and house stays with the husband as they are considered to be his portion of his family's wealth. The wife most often takes the children and returns to her family. It is not traditional and is, in fact, considered shameful for her to take a share of the land, even if she has children.

Exceptions can be made if the couple has children and the husband has left the house (perhaps to marry another woman). In general, the written law is enforced – and women who provide proof of their investment in the house are compensated. The court may also compensate women for their portion of the household land share if their name appeared on the land share certificate. Besides the social stigma of divorce, one barrier to women going to court is the state fee charged for division of property.

In written law, an individual may bequeath all or part of their property to anyone even though they are not heirs at law. Surviving children, spouses, and parents take first in equal shares. A surviving spouse has the right to inherit by will or law a deceased spouse's share of common property and is also able to retain a share of the common joint property.

Customary law provides that all children get a share of the household's wealth, and the daughter's share is given in the form of dowry. It is very

shameful for a family not to fulfill this obligation. Women have the customary right to retain their dowry and to take it with them to their parent's home in case of divorce. With few exceptions, women interviewed valued the custom of dowry and bridewealth even though the gift exchange is a burden to the families. In the event of a husband's death, and if the couple has no children, the woman's in-laws decide her fate. Women interviewed responded that it is traditional to leave the woman with something.

An accurate recording of women's rights to land and farm assets within a household becomes important in at least three contexts: (1) divorce, (2) death of a spouse, and (3) alienation of the property by one spouse (if a wife's interest in the property is not documented, her husband could sell, mortgage, or lease it without her consent).

The 1998 Law on Registration calls for the implementation of new procedures through the gradual opening of registration entities throughout the country under a single state immovable property register (*Gosregister*). This section focuses primarily on the new system as implemented through pilot rayon-level registration departments. These new procedures apply both to land shares and to household plots. Married couples are joint owners of property unless otherwise specified by law or contract. Disposal of immovable property held in joint ownership (which includes sale, mortgage, and lease) requires the consent of all the joint owners.

In the authors' view, to ensure that all common shareowners' interests are adequately recorded in the registration system, the State Register could enforce current regulatory provisions so that: (i) common shareowners within a household are listed independently under the 'owner's name' field on the registration card, and (ii) the relative interests of common shareowners within a household are listed independently under the field for 'common or joint ownership'.

In the event that the spouse with the registered interest in the house attempts to transact it, Kyrgyzstan's system relies on notaries to identify and gain the approval of all common owners. Notaries provide important insurance for a woman's rights to her house. Despite this, recent legislation allows for land to be alienated for mortgage without the notaries' involvement. While this may have a positive effect in reducing transaction costs, it could jeopardise the rights of women joint owners within a household.

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



Farm operations are based on a charter (if registered as a legal enterprise) and an agreement defining the procedure of formation and division of common joint property. To register as a legal entity, a peasant farm must submit the charter and/or 'founding documents'. Either one of these will contain information on farm members, including the names and contributions of members within households.

At the Issyk-kul Oblast Ministry of Justice in Karakol, the registration process appeared to follow legislative guidelines for registration of peasant farms, but none of the 10 peasant farms registered thus far was founded or headed by a woman. At the Ak-su Rayon Bureau of Statistics (in Issyk-Kul Oblast), 745 peasant farms were registered, of which no more than 15 were registered in the names of women. An institution that affects women's access to land, both according to law and in practice, is the village government, headed by an appointee of the head of the *rayon* state administration. Rural women confirmed that there is no gender preference specified in legislation for the position of the village government head, but none of the heads of village government interviewed or encountered during field research was female.

In the Court of Elders (*Ak sakal sotu*), established for each village government, as accorded by a Presidential decree, all members interviewed during field research were retired and male. Of all women interviewed, few, if any, considered the Court of Elders as a body that is "friendly" to women. Likewise, in Jalal-Abad and Issyk-Kul Oblasts, the post of Village Elder was neither a gender- nor an age-specific one but, in practice, no female village elders were encountered during the field research.

The *Maila* Committee, akin to a neighborhood or block-level organisation, encountered mainly in Uzbek villages, was perceived by some women as very important in the everyday lives of village residents, while others claimed it was less important. The women's associations appear to be state-supported organisations, although they identify themselves as NGOs. Members of the Women's Association, in this instance, were generally the wives of the heads of village governments and this appeared to be the main factor in their becoming members. It is common for the extended family to be involved in divorce and inheritance cases, and also in disputes over land and property. Within the extended family, the husband's mother is a powerful person.

Religious institutions clearly have a role (often through the *mullah* among the Muslims) in sanctioning and addressing problems of village residents. Although women are not allowed in mosques, separate mosques and *madressahs* (religious schools) were seen functioning for women.

Conclusion

Despite legislation regulating the rights and freedoms of citizens, rural citizens, especially women, are not availing of their rights because of the lack of information. A lack of current information also impedes the ability of institutional actors, such as village governments and *rayon* courts, to respond adequately to issues involving women's rights (including rights to land) and provides opportunities for rural officials to violate the rights of unknowing citizens.

The research offered these conclusions:

- Access to credit, inexpensive inputs, and training is essential for women.
- While in many cases customary law supports women, it also renders them vulnerable and forces them to face serious violations of their individual rights. Women are marginalised and impoverished by the implementation of customary law in practice.
- Changes in customary law and its implementation will only occur when women no longer accept a particular custom and organise themselves to bring about change.
- Women interviewed did not want to disregard all customary law in favour of written law, nor did they want in all cases to exercise their individual rights at the expense of the household unit.

