The reality of land rights in Kazakhstan and Uzbekistan

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Introduction

After gaining independence in 1991, Central Asian countries have introduced a number of agricultural reforms to make a shift from command economies to market economies. Kazakhstan and Uzbekistan have followed a ‘conventional’ approach to land reforms that involves the transfer of agricultural land used previously by collective and state farms to individual farms and households (LERMAN and SEDIK 2018). Yet the two countries followed divergent paths towards the privatisation of agricultural land, leaving land users with unequal legal tenure environments. Country-specific legislative and policy failures have also resulted in a reduction of land rights’ effectiveness.

Kazakhstan granted land ownership to rural households first in 1991 and then to commercial farmers in 2003. About 99 per cent of the total agricultural land, however, is still used under long-term lease contracts due to bureaucratic obstacles. The overall regulatory environment in Kazakhstan remains weak, and most economic policies, therefore, are ineffective (WORLD BANK 2018). High uncertainty in law enforcement originating from the unpredictable judgment of local authorities undermines trust in formal institutions and deteriorates the investment climate for farmers (HANSON 2017).

The Uzbek government transferred land use rights to farmers only, reserving the individual right to land ownership. Over 80 per cent of agricultural land allocated to farmers is under government-mandated cotton and wheat production. Frequent reforms to optimise farm sizes—almost every year since 2006—undermine farmers’ management and investment incentives, increasing land tenure insecurity. In addition to these distorting government interventions, the strict control over the majority of agricultural activities in cotton and wheat production, such as input and output allocation and land management, does not leave room for effective land use. The highly centralised agricultural sector makes considerable profits for the state and a few elites and, therefore, the government imposes a strong law enforcement strategy.

Taking into account the current land tenure conditions and the regulatory environment in Kazakhstan and Uzbekistan, in this study we aim to analyse the real picture of farmers’ land rights in those two countries.

Land rights’ bundles and actual practices

Land laws and land policies exist to regulate agricultural land use by formally recognising or binding certain farmers’ actions with land. These actions make up a set of land rights, which can be grouped into several groups or bundles. Schlager and Ostrom (1992), for instance, distinguish between two groups of property rights: operational-level rights (which allow individuals to access property and withdraw its ‘products’) and collective-choice level rights (which grant authority to elaborate on operational-level rights).

Yet the relationships of farmers with their land is determined by land tenure settings that include not only legally defined land rights but also customary rules, such as

1 The state-ordered quota system was abolished with the Presidential Decree on March 6th, 2020.
as commonly accepted practices and unwritten norms in use. These actual practices may match or mismatch with land rights, and differ from farmer to farmer.

**The reasons for mismatches are …**

that traditional practices might be stronger than formal rules or, if the country goes through structural changes, farmers need to adapt to new social, political, economic, and technical arrangements by taking risk-reducing actions.

Combinations of legal rights and actual practices define how secure the tenure environment for farmers is and how much to invest in farming. Actual farming practices that are fully supported by the relevant land right bear fewer risks for farmers, increasing future returns to land. In the case of a partial or full mismatch, the situation for farmers differs depending on whether the mismatch is in favour of land rights or actual practices. When land rights are more prominent than actual practices, farmers might have low awareness about their legal privileges or be restricted from the full potential of tenure rights. When actual practices dominate land rights, farmers violate limitations and prohibitions in land law and disregard the authority of regulatory institutions. Both types of mismatches may increase the perceived tenure insecurity of farmers, distorting their production incentives (BROEGAARD 2005).

Klümper et al. (2018) reconsidered the aforementioned classification of land rights and used them to investigate the extent to which actual practices of households in Tajikistan match or mismatch with land rights. They identify
three main bundles of land rights: land use rights, control and decision-making rights, and alienation rights. We adopt the approach of Klümper et al. (2018) in this study to analyse the extent to which farmers in Kazakhstan and Uzbekistan can use their land rights and how effective the current tenure settings are.

**Figure 1** demonstrates the list of bundles and the respective land rights that we analysed. Following studies that attempted to reconsider the bundles of rights, we split the right to lease into two: the right to rent out and the right to lease from land tenants (farmers who lease state land and are not allowed to sublease). The purpose of this segregation is to mirror whether land tenants violate legal restrictions in land use. Moreover, we added the bundle of government protection, which comprises the protection of land rights by courts and the legal validity of land certificates. The rationale behind this adjustment is that some scholars claim that tenure security and government protection might be a full-fledged independent land right (PLACE 2009, MA et al. 2017). By government protection, we imply the right to protection in courts when farmers have disputes with other farmers, foreign investors, or local authorities. The assessment of certificate validity is introduced because the purpose of certificates is to confirm the possession of land rights. Land certificates should give security to the holder by default, but the perception of validity can differ completely from that which is originally conceived.
Table 1: The evaluation scale of legal land rights and actual farming practices

<table>
<thead>
<tr>
<th>Scale</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal right</td>
<td>No rights</td>
<td>—</td>
<td>Limited rights</td>
<td>—</td>
<td>Full rights</td>
</tr>
<tr>
<td>Actual practice</td>
<td>Never hold</td>
<td>Rarely hold</td>
<td>Occasionally hold</td>
<td>Frequently hold</td>
<td>Always hold</td>
</tr>
</tbody>
</table>

The evaluation method of land rights and actual practices is presented in Table 1. We analysed the national land codes of Kazakhstan and Uzbekistan to evaluate land rights on a 3-point ascending scale, where 1 stands for the absence of rights, 3 for rights with limitations, and 5 for full rights. Each relevant actual practice was assigned a score from 1 to 5, where 1 stands for ‘never holds the practice’ and 5 for ‘always holds the practice’. Questions to assess farmers’ actual practices were formulated as: ‘To what extent are you free to access, withdraw from land, etc.? ’ Subtracting the value of actual practices from the value of land rights, we found differences in our study.

**The real situation of land rights in Kazakhstan and Uzbekistan**

The information on actual practices was collected via a farm survey conducted in March and April 2019 in the provinces of Turkistan (southern Kazakhstan) and Samar-kand (eastern Uzbekistan). The survey was financed by The Volkswagen Foundation, BMBF, and IAMO. Figure 2 shows the three districts in southern Kazakhstan and the three districts in eastern Uzbekistan chosen for selecting respondents. The sample was comprised of 460 Uzbek farmers and 503 Kazakh farmers, most of whom were cotton and wheat producers. We divided respondents
into three groups in accordance with their tenure settings: Kazakh farmers who own agricultural land, Kazakh farmers who lease state land, and Uzbek farmers who also lease state land.

Estimated discrepancies between the land rights and actual practices are summarised in Figure 3, which demonstrates the percentages of positive discrepancies, indicating the underuse of rights, and the negative discrepancies, indicating the violation of legal restrictions. ‘No’ discrepancies confirm the full use of rights. The assessments of legal land rights are presented as follows: FR—full rights, LR—limited rights, NR—no rights.

Our assessment shows that Kazakh land laws are more liberal compared to those of Uzbekistan, with almost all rights being granted to Kazakh landowners. The only exceptions relate to land use changes being partly restricted and leasing from land tenants, which is forbidden. Kazakh and Uzbek land tenants face a number of restrictions within the bundle of alienation rights, i.e. they are not allowed to sell, rent out, or lease land from land tenants. In addition, Uzbek farmers have limitations in the bundle of decision-making rights, as they are obliged to obtain permission from authorities before making land management and investment changes.

When looking at farmers’ practices with respect to the rights they should fully enjoy, it is clear that, in reality, not all farmers fully utilise their land rights. In cases where they fully enjoy their full legal rights, fewer Kazakh landowners report that they don’t use the respective rights compared to Kazakh land tenants. Uzbek farmers mainly underuse the fully granted legal rights. The right to protection by courts produces a similar pattern among Kazakh and Uzbek farmers, with the vast majority complaining about insufficient protection and showing low trust in state authorities.

About half of Kazakh land tenants perceive no or limited rights to inherit land.

Big discrepancies in the right to withdrawal and participate in income-generating activities among Uzbek farmers indicate that farmers cannot use these legally enabled privileges. The reason for this is that most of the Uzbek respondents are cotton and grain producers, who are exposed to strict limitations and frequent government interventions in land use.

Almost all formally limited and completely restricted land rights are being violated by farmers in all three groups. Significant amounts of negative discrepancies among Kazakh farmers indicate that they do not take legal restrictions seriously, confirming that law enforcement in the surveyed region is weak. Widespread violations of restrictions in the bundle of alienation rights by Kazakh land tenants, on the other hand, indicate that farmers try to find a way to effectively allocate land resources that is limited by law. Uzbek farmers are more compliant with the law than Kazakh farmers, despite having more restricted land rights. Most of them uphold prohibitions in the bundle of alienation rights, yet the large share of negative discrepancies for land investments shows that the limitation is often being violated.
Conclusion

The legislative basis for agricultural land use in Kazakhstan and Uzbekistan is still undergoing a process of formation. To speed up this process, it is essential to evaluate the effectiveness of farmers’ current land rights. Our findings reveal the reality of land rights for farmers in southern Kazakhstan and eastern Uzbekistan, most of whom are cotton producers. The analysis of estimated discrepancies shows that Kazakh farmers have a higher propensity to violate limitations in land rights in comparison to Uzbek farmers. Inconsistency between land code and specific decrees in Uzbekistan has led to a substantial underuse of land rights that play a significant role in increasing farmers’ incentives (the right to withdrawal, the right

Figure 3: Percentages of discrepancies between legal rights and actual practices

<table>
<thead>
<tr>
<th>Access</th>
<th>Kazakh landowners</th>
<th>FR</th>
<th>Kazakhstan land tenants</th>
<th>FR</th>
<th>Uzbek land tenants</th>
<th>FR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
<tr>
<td>Land use change</td>
<td>LR</td>
<td></td>
<td>LR</td>
<td></td>
<td>NR</td>
<td></td>
</tr>
<tr>
<td>Management</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
<tr>
<td>Investment</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
<tr>
<td>Exclusion</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
<tr>
<td>Income generating</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
<tr>
<td>Reallocation</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>NR</td>
<td></td>
</tr>
<tr>
<td>Selling</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>NR</td>
<td></td>
</tr>
<tr>
<td>Renting out</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>NR</td>
<td></td>
</tr>
<tr>
<td>Leasing from tenants</td>
<td>NR</td>
<td></td>
<td>NR</td>
<td></td>
<td>NR</td>
<td></td>
</tr>
<tr>
<td>Inheritance</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>NR</td>
<td></td>
</tr>
<tr>
<td>Protection by courts</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
<tr>
<td>Certificate importance</td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
<td>FR</td>
<td></td>
</tr>
</tbody>
</table>

Per Centages 0 25 50 75 100 0 25 50 75 100 0 25 50 75 100

FR – full rights
LR – limited rights
NR – no rights
to land management, and the right to generate income from land. The major reason for such results is that cotton and wheat producers are exposed to strict limitations and government interventions. For Kazakhstan specifically, insufficient law enforcement causes extensive violations of legal restrictions in land transactions among farmers who lease state land.

Zarema Akhmadiyeva and Thomas Herzfeld have also published their findings as a Policy Brief. IAMO Policy Brief No. 38 can be downloaded in English and Russian from the IAMO website.

References