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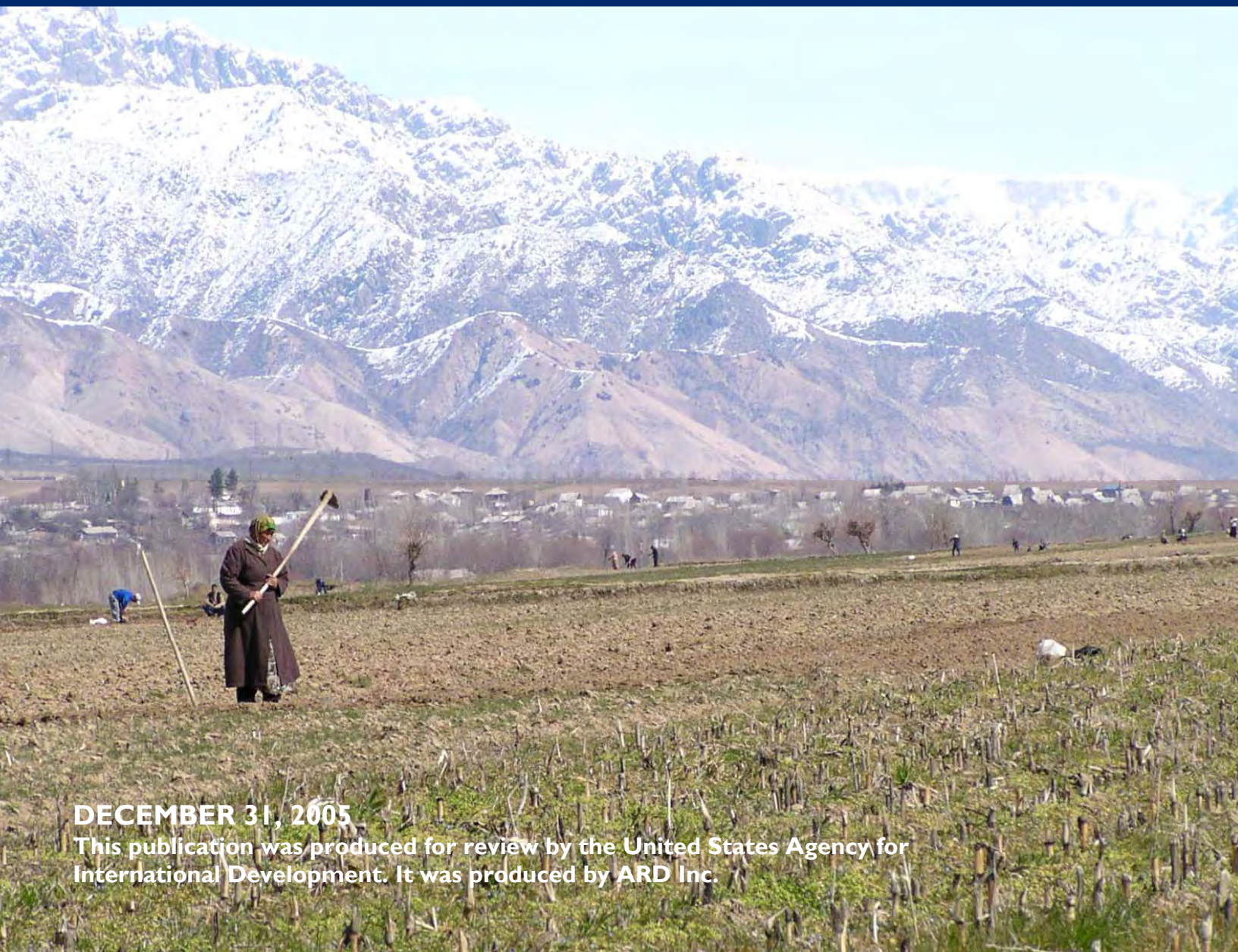
LAND LEGISLATION DEVELOPMENT PROJECT

FINAL REPORT



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Implemented by:

ARD, Inc.
P.O. Box 1397
Burlington, VT 05402

COVER PHOTO:

Woman cotton farmer on model farm established under the International Finance Corporation Farmer Ownership Model Program, Private Enterprise Partnership, Khojand, Tajikistan, June 2005, by Nigel Thomson, Chief of Party (COP), USAID Tajikistan Land Legislation Development Project.

REAR COVER PHOTO:

A view of summer mountain pasture (approximately 3000 m), from Anzob Pass, Vazob District near Dushanbe, Tajikistan, August 2005, by Nigel Thomson, COP, USAID Tajikistan Land Legislation Development Project.

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

CAR	Central Asia Republics
CIS	Commonwealth of Independent States
CO	Contracting Officer (USAID)
CTO	Cognizant Technical Officer (USAID)
CIS	Commonwealth of Independent States
DFID	Department for International Development (UK)
EC	European Commission
FAO	United Nations Food and Agriculture Organization
GDP	Gross Domestic Product
GOT	Government of Tajikistan
IC	Independent Commission
IFC	International Finance Corporation (a member of the World Bank Group of Agencies)
IMF	International Monetary Fund
LTRP	Land Tenure Reform Project (USAID/ARD)
MoJ	Ministry of Justice
NGO	Nongovernmental Organization
NIS	Newly Independent States
PD	Presidential Decree
RAISE	Rural and Agricultural Incomes with a Sustainable Environment
RT	Republic of Tajikistan
SLC	State Land Committee
SIDA	Swedish International Development Agency
SOW	Scope of Work
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

The purpose of the Tajikistan Land Legislation Development Project was to work with the Government of Tajikistan (GOT) to implement the necessary legislative reforms required to improve security of land tenure. The two main areas of approach to achieving project objectives were:

1. Legislative reform activities; and
2. Legislative training/education activities.

In addition to these primary activities, the project collaborated with the allied activities of the United States Agency for International Development (USAID) Central Asia Republics (CAR) Land Tenure Reform Project (LTRP). The LTRP worked with the GOT's State Land Committee (SLC) to highlight and develop land reform needs particularly in the rural sector. The LTRP provided some of the policy input on which the current land legislative development project is based. This project also provided advice to the LTRP on training topics related to land concepts and policy that were needed to help the GOT draft appropriate new land legislation.

LEGISLATIVE REFORM ACTIVITIES

The focus of legislative reform activities under the project were as follows.

Technical Assistance for Legislative Development: Provide technical assistance to the GOT agencies responsible for developing land-related legislation and implementing regulations to develop or, as appropriate, modify land legislation specifically to improve security of land tenure through:

- Streamlined farm restructuring procedures;
- Strengthened land/leasehold rights; and
- Promotion of land market transactions.

Lobby Government for Adoption of Legislative Reform: Lobby the GOT (the SLC and other ministries, in particular, the Ministry of Justice) for adoption of appropriate laws and regulations that are needed for the development of a vibrant land market.

The expected results were the promulgation of amendments to relevant land legislation or the enactment of new legislation.

Legislative Training/Education Activities: Provide training to the appropriate GOT agencies responsible for drafting land laws in technical areas related to the project's legislative drafting activity, including land tenure rights and security, land markets, farm restructuring, land reserves, and land transactions.

The expected results under these activities were the successful completion of at least five training workshops for legislative drafters and land policy makers focusing on land reform legislative models in other jurisdictions. It was anticipated that the results of these workshops would translate directly or indirectly into legislative changes by the GOT.

For the purposes of this project, ARD proposed the following local activities:

1. Undertake a Rapid Farmer Survey on perceptions of the current process (focusing on processes related to the application of the Law on *Dekhan* Farms and Presidential Decree 522 on the Reorganization of Farms).
2. Integrate with the existing SLC Legislative Working Group to have oversight of the development of the legislation necessary to meet the project objectives.
3. Hold five workshops on comparative law models and the produce a report on the results.
4. Draft legislation amending the Law on *Dekhan* Farms and Presidential Decree 522 on Farm Reorganization. In addition to this, the project will work with the SLC Legislative Working Group to develop a work plan designed to amend at least two laws (with a secure land tenure focus) from the list provided in the work plan.
5. Draft amendments to legislation affected by the changes in Deliverable 3 (for example, the Civil Code, Law on Leasing, and Law on Land Reform).
6. Hold draft legislation feedback workshops in the four *Oblasts* and prepare reports on the results for presentation to the Working Group.
7. Refine and obtain approval (by the Working Group) of legislative amendments to the draft legislation on the basis of feedback from the draft legislation feedback workshops.
8. Establish a public notice period for gathering comments on the draft legislation and complete a report to the Working Group on the results of the public notice process.
9. Perform a final review and amendment of draft legislation on the basis of feedback from the public notice process.

RESULTS (GENERAL)

The project experienced a number of highlights. While not achieving the breadth of legislative reform hoped for, it nonetheless facilitated and witnessed some important advances in the very early stages of the transition to a market economy. These include:

- Proposed legislative changes to Presidential Decree 522 on Farm Reorganization, Law on *Dekhan* Farms, and Law on Land Reform, which point to a reduction in *Khukumat* interference in the farm reorganization process; a more streamlined farm restructuring process by simplifying procedures for the facilitation of farm restructuring; a reduction in the time from start of restructuring process until issuing of rights certificates for restructured farms; and an increase in the rate of farmers (either individually or jointly obtaining formal access to land rights per annum) (see Appendix 5 detailing amendments proposed by the GOT).
- The development of a planning process and plan for future land reform over the next three years.
- More openness within government to discuss the problems with legislation and to discuss and develop ways to address those problems (see Appendix 6, Food Security and Agrarian Industrial Complex Development for GOT Planning for attaining the Millennium Development Goals).
- A psychological shift in the attitude of government to the acceptance of more open debate on legislative reform (which can perhaps be interpreted as a movement away from the concept of government as absolute power to one of government as service provider).

RESULTS (SPECIFIC)

Rapid Farmer Survey

The main findings of the Rapid Farmer Survey are presented below.

- In many cases, the farm reorganization process had failed in its primary objective, and many farms were reorganized in name only (not a new suggestion).
- Most farmers believed that productivity had increased since reorganization. (There are clearly differing views on the extent of productivity, based on gender; while both men and women agreed that productivity had improved since reorganization, women are more finely balanced on the point).
- Promisingly, most farmers claimed to have a certificate to use the land he or she worked, although this did not necessarily suggest that farmers broadly felt that their land tenure was more secure. Instead, security of tenure seemed to hinge on the region in which the farm was situated. Women also appeared to be at a disadvantage in terms of the types of certificates that they possessed (i.e., they were more likely to hold lesser [share] certificates). Women are less likely to say that they feel their land tenure is secure.
- Not surprisingly, the levels of debt were higher in the cotton growing regions. In regional terms, farmers from family *dekhans* consistently claimed less debt than collective *dekhans* in the same region.

From the analysis of the data, the project provided a number of policy development suggestions.

1. Work with partners to develop a targeted education campaigns for farmer (while noting the special need for women) on the farm reorganization process.
2. Develop clear safeguards in legislation to ensure that women are not disadvantaged in the reorganization process (for example, mandate that review committees have women on them, that a quorum of women is required at a meeting, or that meetings are held at a times when women are likely to attend).
3. Consider permitting reorganized collective *dekhans* to be reorganized again (query whether the current process under the Law on *Dekhan* Farms is detailed enough to permit this in an effective way—an amendment may be required).
4. Cut the link between what is grown on the land and land use rights. (This is being addressed in part in the context of the *Government Minutes of 28 July 2005*, looking to reduce cotton quotas, and in the context of the government's *Cotton Farm Debt Strategy.)*
5. Permit farmers to grow what crops they like. (Refer to the policy initiatives already commenced by the government mentioned in the point above.)
6. Ensure that mechanisms are in place so women are not disadvantaged in the use of land and in the exercise of their rights.
7. Support the SLC's ongoing review of the certificate/sub-certificate process to ensure that all farmers are included as rights holders.
8. In the case of family *dekhans*, permit the issuance of joint rights holding under a land use certificate rather than simply identifying one person or the "head of household."
9. Undertake a close review of land withdrawals in Khatlon (in particular) and Sugd to ascertain more details about how withdrawals are being undertaken and their legality.

10. Ensure that regional authorities are familiar with the law. (Conduct training sessions dealing with the issue and with the legal obligations of regional governments.)

11. Clearly prescribe the mechanism for the withdrawal of land use rights in the Land Code to ensure the paramountcy of secure land tenure (currently being reviewed by the SLC).

12. Clearly prescribe in the Land Code (amend Articles 37 and 38) the reasons under which land can be withdrawn by government. (Currently there is little balance between the rights of government and those of farmers.)

Farmer Survey Impact

The impact of the survey is important in the following ways:

- The results confirmed a number of theories about farm reorganization and security of tenure issues (e.g., farm reorganization in many cases has failed to achieve its objectives—women are particularly disadvantaged in the farming sector).

- The results also suggested that, despite the failings of reorganization, there were perceptions in the farming community that productivity had improved and, possibly, that this is due to the reorganization. (This conclusion needs further testing.)

- The SLC is now openly admitting that the farm reorganization process has not always been successful and that many reorganized farms need further reorganization. As a result, the SLC is making greater changes to Presidential Decree 522 on Farm Reorganization.

Despite these positive results, it is clear that much work is still required at a government level to recognize the specific disadvantage faced by women farmers in the farm reorganization process. This issue is addressed below.

Workshops

The project held five workshops for the benefit of SLC's Legislative Working Group representatives tasked with developing land reform legislation. The objective of these workshops was to provide the attendees with comparative examples of land legislation from other countries that had contended with and resolved issues similar to those facing the Tajiks. Further, the workshops were designed to provide an understanding of the land legislation concepts being reviewed by the attendees (particularly those involved in drafting amendments to land legislation). The workshop topics were held in late April and early July, and they covered the following areas:

1. How Private Use Rights Increase Productivity;

2. Approaches to Developing the Legal Infrastructure for Land Markets;

3. Regional Security of Tenure Approaches;

4. Farm Structures (detailing the differences in production between large collective farms and smaller single family farms and farm structure options); and

5. Farm Reorganizations: Details from the Kyrgyz Republic of the Specific Procedure for Farm Reorganization.

While some of the original topics focused on specific legislative amendments (they were of a more general land reform policy nature), a change was considered necessary because of the relatively low level of land reform policy understanding within the SLC Legislative Working Group.

Workshop Impact

The workshop series resulted in progress in the legislative reform debate in the following ways:

- It encouraged (and resulted in) very active participation and discussion from those in attendance;
- It provided important policy background on basic land reform issues;
- It provided a comparative framework for GOT to consider legislative reform; and
- It resulted in the development and statement of clear ideas for legislative reform in some important areas.

In relation to the specific area of legislative development, specific changes were mooted to the following legislation:

1. Restrict government involvement in *dehkan* farm operations.
    a. Delete the exception in Article 5 that would allow legislation to be promulgated that would give government the authority to intervene.
2. Make management of *dehkan* farms more democratic and transparent.
    a. Change Article 13 so that land certificates are distributed to the *dehkan* farm (not the head) and that all members of the farm are listed on the certificate.
    b. Change Article 15 so that those all members of the *dehkan* farm that have land shares are included in the list of members.
    c. Change Article 17 so that decisions are made with the consent of all members and not just by the individual head.
3. Increase the rights of *dehkan* farm members
    a. Change Article 19 to allow members of the *dehkan* farm to pass their land and property share by inheritance.
    b. Consider changes to the rights and obligations of *dehkan* farm members.

Furthermore, the workshop attendees also came to the conclusion that a law on service cooperatives would be important to the reorganization of farms. Some of these proposed amendments are discussed in Section 3.2.5 concerning legislative amendment project activities.

Legislative Reform Activities

The development of appropriate land reform legislation in accordance with the project deliverables proved difficult for a number of reasons. The project dealt with these difficulties through a variety of mechanisms. First, it provided advice to the SLC Legislative Working Group. This involved being present at Working Group meetings where legislative drafts were being considered and providing comments. It also involved providing comments directly to the SLC and other interested ministries (for example, the Ministry of Justice). This provided some limited success to trying to guide GOT legislative development.

Secondly, and most importantly, a breakthrough in the process came when the project coordinated with the European Commission's (EC's) Budget Support Program on the issue of land legislation reform. The EC's program tied approximately €400,000 to certain legislative reform benchmarks. By doing this, the project's benchmarks were suddenly given €400,000 in leverage. This fact seemed to focus the SLC on more substantive legislative development. It must be said, however, that the legislative development process that was finally approved by the EC Independent Commission fell short of this project's hopes. Despite an extensive list of proposed amendments to legislation required to meet the benchmarks submitted by the project, the SLC failed to meet that list completely and the commission apparently ignored the oversight.

Notwithstanding the slower-than-hoped-for progress on legislative reform, amendments for three important pieces of legislation were proposed by the SLC Legislative Working Group during this project. They include:

1. Draft Government Resolution Farm Reorganization (formerly Presidential Decree 522 on Farm Reorganization);
2. Draft amendments to the Law on *Dekhan* Farms; and
3. Draft amendments to the Law on Land Reform.

None of the amendments proposed in the draft changes go as far as this project hoped, but there were some substantial moves forward in streamlining the farm reorganization process as well as laying the groundwork for more secure land tenure.

The proposed amendments did achieve the following:

- Excluded *Khukumats* from the allocation process (and attached sanctions);
- Attempted to limit *Khukumat* power to withdraw land-related rights;
- Moved towards the fair allocation of land (drawing of lots in certain circumstances);
- Permitted appeals to the courts from certain administrative decisions;
- Set clearer procedures for the distribution of non-land property; and
- Identified women as a specific class of person entitled to land shares.

Despite these positive elements (see Appendix 5), the legal changes still require more work in terms of detailed procedural clarity, consolidation of rules and process, and ridding the law of ambiguity.

Legislative Reform Impact

The legislative development activities of the project clearly had a positive impact on a number of fronts.

As a result of project activities, a representative of the project was given advisory/observer status on the SLC Land Reform Working Group, reflecting the respect that the GOT had for the project and its staff. In addition to this, the project was regularly invited to SLC activities, suggesting that a significant level of trust was developed over the course of the project term.

In terms of coordinating activities, this project worked with the EC in its Budget Support Program and with the GOT to gain substantial leverage on the legislative development front. It did this by developing legislative benchmarks that were accepted by the SLC and that were translated into legislative reforms. Ultimately, the advocacy and more direct technical assistance to the SLC, and its Working Group from the project, resulted in a number of significant and positive proposed changes to the existing legal regime, particularly in the area of farm reorganization and land reform.

Over the course of this project, there appeared to be a significant psychological shift in the SLC's thinking, such that there was open talk about reorganizing failed farm reorganizations under Presidential Decree No. 522 and even some discussion of land "ownership." Overall, there was also advancement on process issues such as discussing faults in the existing system (an improvement from conditions at the project's start, when the GOT was unwilling to admit problems or even to suggest that legislation required amendment) as well as proposed changes to legislation. This advancement is perhaps best exemplified in the GOT's Draft Planning document for the implementation of its Millennium Development Goals (Food Security and Agrarian Industrial Complex Development) where the problems with land reform are openly stated and the need for intensification of land reform is highlighted for the 2006–2008 period (see Appendix 6).

While it is too soon to say whether the results will be positive against all the relevant primary indicators, it can be said that a reasonable degree of progress was made in laying the groundwork for more secure land tenure under these project activities.

The impact of the feedback process that informed the policy makers and legal drafters was significant. But the impact of discussing draft legislative proposals not only provided useful feedback to the GOT, it achieved two other critical goals. First, it raised the estimations of the GOT (and especially the SLC) in the eyes of ordinary farmers who often feel left out of the policy development process. This is empowering for the GOT and gives them more credibility in dealing with the public. Second, the process of asking farmers for their opinions is especially empowering for the community. It does this by educating them about government operations and by telling them that their opinions are important. These are perhaps the first steps in a shift from government as absolute power to government as service provider. This transition is critical in the development process, and the feedback workshop series was useful in demonstrating the all around benefits of such a process.

The adoption of the process represents a huge leap forward conceptually for the SLC. At the beginning of this project, it was clear that it was secretly developing draft legislation without reference to other interested parties. In April 2005, it seemed as if the draft legislation (amending Presidential Decree No. 522 on Farm Reorganization) would simply be pushed through without comment. The fact that there has now been broad comment (indicating room for further improvement) and the fact that the government has been seen *listening* to ideas from outside government means that significant improvements have been made to the legislation. This is a significant step forward in the legislative development process.

The planning aspect of this project made an impact not only in terms of producing a document that can be used as a proto-plan for land reform (essentially for the SLC), it had the psychological impact of showing the GOT the importance of planning. As one internationally-funded project said, this represented a "breakthrough" with government.

The period of final public notice before the finalization of the legislation period contemplated under the project activities was unable to be implemented primarily because, at the time of the project completion, the draft legislation had not been determined. Furthermore, the SLC did not agree to the idea of pre-publishing draft legislation.

Cotton Farm Debt Stakeholder Meetings

While not contemplated in the original Scope of Work, the project was asked by USAID to undertake a series of roundtables with stakeholder on the cotton farm debt issue. The purposes of these roundtables were threefold:

1. Listen to stakeholders' views about cotton farm debt (especially their ideas for how to deal with it now and in the future).
2. Try to understand the extent of stakeholder knowledge of the GOT's cotton debt strategy.

3. Report the views of the stakeholders back to the GOT in time for its proposed cotton farm debt strategy retreat (held on 20 June 2005).

Despite a short lead-time for the preparation of the process and the conducting of the roundtable discussions, the objectives (noted above) were met. A report on the roundtables was separately published by this project. The results indicated surprisingly consistent opinions across stakeholder groups (farmers and creditors alike).

The impact of the opinions voiced by stakeholder groups in the roundtables, however, was limited because the cotton farm debt strategy had already been undertaken by the GOT. Nevertheless, stakeholder groups, especially farmers, seemed to have been well engaged by the process and eager to provide opinions. In this sense, the activity can be said to have been an empowering process in the development of public debate about the critical issue of cotton farm debt.

Lessons Learned

The following lessons can be drawn from project activities.

- The timeframe was too short to undertake the sort of legislative reform contemplated under the project. It was also too short to measure the activities' results (i.e., in accordance with the primary project indicators).
- It appears that the GOT was not fully prepared for the project objectives at the time of the start of the project despite the efforts of the earlier policy project (USAID Central Asia Republics Land Tenure Reform Project).
- In hindsight, a Memorandum of Understanding between the project and the SLC may have clarified some accountability issues.
- Despite efforts to coordinate international donor activities and their projects, substantial overlap in activities remain, which can serve to frustrate project objectives. In the case of this project, overlapping/uncoordinated responses between the United Nations Food and Agricultural Organization (process-orientated) and this project (detail-orientated) meant that activities under the former project moved forward despite the fact that, for example, legislative reforms were incomplete.
- Nevertheless, some donor coordination seemed to work relatively well. This occurred in the activities on the EC's GOT Budget Support Program. In this case, the EC had the money to provide the GOT budget support while this project provided technical assistance. While there were positive results from this partnership, better coordination would have probably yielded better results.
- The development of strong working relationships with GOT personnel was critical to project progress.
- The GOT was still in a formative stage of land reform, which meant that at the beginning of the project, the government was resistant to legislative change (which is now changing).
- Despite the fact that full legislative change has not been completed to provide theoretical security of land tenure at the time of writing, the project feels that support for SLC drafting activities was the correct action (as opposed to having international experts write the law and then present it to the GOT). This may change over time, but buy-in to the process is encouraging.
- The Tajik legislative development model is a linear one; there is a tendency to amend one piece of legislation at a time rather that amending all relevant legislation at once. This makes legislative reform longer than it might otherwise be. Furthermore, it tends to increase the chances of conflicts between laws and confusion in

the society. As a result, there is a need for further work with the GOT (SLC) to develop a multi-amendment approach that encourages all necessary amendments be made simultaneously.

- The SLC was more inclined to support suggestions for legislative amendment rather that having outsiders draft legislation. (They wanted to do it themselves.)
- General policy development and institutional/policy planning is lacking within the GOT and, specifically, within the SLC. Until clear policy and, hence legislative, priorities can be adopted, legislation on other reforms is likely to remain piecemeal.
- Stakeholder workshops worked well as long as the attendees were primed for the exercise. Working with the Academy for Educational Development, this project's successful formula included:
  - Setting clear workshop/seminary objectives;
  - Keeping stakeholder groups separate during initial discussion so as to avoid intimidation (especially between government and farmer stakeholder groups);
  - Facilitating meetings in the local language and avoid the use of interpreters;
  - Using preliminary meetings to prime stakeholder groups on the issues; and
  - Keeping agendas specific and asserting meeting rules at the beginning of each activity stressing conciseness and focus.

1.0 INTRODUCTION

Land reform in Tajikistan has evolved at a slow pace over the last decade following independence. There is no private "ownership" of land. All land remains the property of the state, which is also responsible for its effective use. This is a critical starting point for discussions with Tajik officials when dealing with land reform. Conversations almost invariably revert back to the Constitution:

> "Land, bowels of the earth, water, airspace, animal and vegetable kingdoms, and other natural resources are owned by the state, and the state guarantees their effective use in the interests of the people." (Article 13)

Leaseholds exist as well as "use rights," yet in rural areas in particular, there are significant hurdles to obtaining or clarifying these rights. Moreover, even if these rights are granted they are often confiscated without clear reasons, often contrary to the law. While more than 60 land laws, regulations, and decrees have been enacted since independence in 1991, many have failed in implementation, been inconsistent with other legislation, or are now simply out of date. The greatest problems with the formalization of land use rights relate to:

- Lack of public awareness of the laws that already exist;
- The manipulation of the system by a few well-connected individuals;
- Informal fee structures that are applied inconsistently at regional levels; and
- A high level of state farm debt that is passed on to individual farmers or farming groups.

These problems, combined with a devastating civil war almost immediately after independence in September 1991 and limited productive resources, have left Tajikistan the poorest country in the former Soviet Union. Eighty-three percent of the population is classified as "poor." Given the large number of female-headed households (due to war and out-migration), women and children suffer disproportionately from this system.

While agriculture only contributes 20% to gross domestic product (GDP), a large and poor rural population depends on agriculture for employment and food security. Only 7% of the county's land base is arable, while 72% of the population is rural. Consequently, the ways in which people secure access to, use, and manage scarce land resources are critical to their survival and the country's economic growth.

Data on land reform of the agricultural sector has been limited and often inconsistent. It is estimated that approximately 50% of the former state farms and collectives have been "restructured" and their lands distributed. The Government of Tajikistan (GOT) plans to complete the restructuring process by 2005, but the reality is that many former state farms have restructured in name only.

The beneficiaries of farm restructuring largely have been limited to a number of well-connected individuals. Access to land for these individuals is based on a system of political and family connections. The larger part of the rural population, who previously worked on the state collective farms, now work as landless laborers for these new "private" farmers. The United Nations Development Fund for Women (UNIFEM) estimates that only 5% of the rural population has gained access to restructured (*dekhan*) farmland. In many instances, a peasant's quality of life is measurably worse than it was before farm restructuring began.

Nevertheless, some poor farmers have been able to access farmland (by a lease from a collective or another farmer, from a distribution of a restructured farm, or by access to presidential land), and have been able to earn profits on their investments. Evidence suggests that with better access to land and information, more

secure rights, and access to micro-credit, smallholder farmers could see a measurable improvement in household income. However, farm debt is still very high, particularly in cotton growing areas. In many cases, there is an attempt to pass on this high level of debt to the *dekhan* farmers in the land distribution process. Debt, then, becomes a major impediment to land access because new farmers are not able to absorb the debt. During the course of this project, the GOT, with the assistance of the international community, has made efforts to deal with this issue by the establishment of an Independent Commission (IC) for the assessment of farm debts. At the time of writing, however, the IC's draft action plan has not been adopted by the GOT.

Land's role in Tajikistan's development agenda continues to evolve. Policymakers in GOT have identified land tenure rights as a basic and important institution for social and economic relations. Most recently, government and other stakeholders have clearly identified secure land tenure as the priority issue in dealing with land reform. This is especially true in rural areas where land relations have profound implications for agricultural productivity, environmental sustainability, and the economic and social status of rural households. Nonetheless, designing a legal framework that promotes a smooth and effective transition to agricultural land tenure relations that are consistent with market-oriented development remains a major challenge.

The president of Tajikistan and some donor organizations have come to realize that the current processes for land redistribution and administration are seriously flawed. In response to reported abuses, the president has instructed the State Land Committee (SLC) to investigate and analyze the land distribution and administration processes throughout Tajikistan and to report on problems and abuses uncovered during the investigation. The investigation and monitoring of performance is being undertaken in close cooperation with UNIFEM. In parallel, some donor organizations no longer appear hesitant to advocate privatization of agricultural land in Tajikistan. In more recent times state agencies like the SLC have acknowledged some of the failures of the land reform process (especially in respect to farm reorganization) and have started actively to recommend that some reorganizations need to reoccur, conducted properly.

From May 2004, the United States Agency for International Development (USAID) and ARD, Inc., working under the framework of the Central Asia Republics Land Reform Project (which included Tajikistan), undertook two important studies on land tenure issues in Tajikistan. Both of these studies looked specifically at the break up (reorganization) of the former state farms into smaller *dekhan* farms. The second of these reports focused on reform priorities for the legislative reform in this area. The author of those reports, Renee Giovarelli, noted the following problems currently facing farmers.

- There is a lack of transparency in the process, with most of the power in the hands of local government.
- There is no requirement for a general meeting or any other public education for farm members that would describe the farm reorganization process and the options available to members of the farm.
- The debt of the farm is distributed to the newly created farms, often eliminating any real choice to farm privately.
- The regulations related to distribution of non-land property can limit the choices for individuals or small groups of individuals, favoring a cosmetically reorganized collective.
- There are few protections for farm members. Under the law, a farm can be reorganized and members can lose their right to their land plot without being aware that a decision made by them (or that was made for them) could lead to the loss of their future right to land.
- The legislation on cooperatives is weak and does not encourage the establishment of service or marketing cooperatives that might serve both large and small farms.
- No information is provided to farm members regarding possible alternative forms of farm management. (Giovarelli, June 2004, 11)

In identifying priorities for legislative reform, Giovarelli suggested the following broad principles for reform:

1. Amend Presidential Decree, "On Procedures for Reorganizing Agricultural Enterprises and Organizations," #522, 1996 to provide for a transparent process of farm reorganization and distribution of land.

    1.1 Provide for specific requirements related to more notice, process, and distribution of information associated with farm reorganization.

    1.2 Establish transparency in terms of location, quality, size of the land plot assigned, and cost of withdrawal.

    1.3 Provide guidelines as to who will be on the farm commission and ensure that the commission make-up will encourage transparency.

    1.4 The land committee is responsible both for distribution of land and hearing disputes about this distribution. Separate these two functions.

    1.5 Provide clear guidelines for determining how much land will be in the land fund.

2. Strengthen the regulations for distribution of land use right certificates to all households who have a right to agricultural land.

    2.1 Eliminate the requirement for approval from the district *Hukumat* to withdraw land from a farm.

    2.2 Require all land within collective and state farms be *divided equally* among all those who are eligible and then allocated as land shares.

    2.3 Eliminate the requirement that farmers who wish to leave the collective and state farms pay off a portion of the debt that ought to be the responsibility of the original debtor—the collective and state farms.

    2.4 Distribute land shares *free of charge* to farm workers, pensioners, invalids, and specified social sphere workers.

    2.5 Distribute land share certificates, listing the names of each recipient's family members and designating a share for each family member. Require registration of land share certificates (as per Art. 9 of the Regulation on Procedure and Issuance of Certificates of Land Use Right and Entitlement to a Land Share, No. 389, September 4, 1999).

3. Develop a regulation for distribution of non-land property.

    3.1 Provide that the farm commission described above will distribute both land and property. (Currently, the farm commission distributes non-land property; the *rayon* land committee distributes land.) Create an open and transparent procedure.

    3.2 Eliminate the distinction between state and collective farms in terms of property distribution. State farms must sell their non-land property to the members of the farm, while collective farms distribute the non-land property for free.

    3.3 Currently, the major assets of the farm (social establishments and inter-farm systems) are transferred to government bodies and are not privatized at the time of farm privatization. Review these provisions and amend.

4. Amend the legislation to reduce the power of the GOT to withdraw land.

    4.1 Require a court decision for withdrawal of land.

    4.2 Provide clear guidelines on when the right of withdrawal can be invoked.

4.3 Do not allow state withdrawal of land for private use (i.e., land can only be withdrawn for a public purpose).

5. Allow land use rights to be sold.

5.1 Develop regulations on purchase and sale of rights.

5.2 Develop provisions for valuation of land.

These are far-reaching recommendations. Although there are members of the GOT who maintain that there are adequate laws in place to deal with many of the issues raised by Giovarelli, evidence from the field clearly indicates that mere education and "enforcement" of the law are not enough. In any event, it is by no means clear that the GOT has the resources to deal with large-scale enforcement. There needs to be further streamlining of procedures to facilitate the objectives of land reform towards a land market and for the purposes of dealing with the central issue of security of tenure.

The purpose of this project was to work with the GOT to implement the necessary legislative reforms required to improve security of tenure.

2.0 PROGRAM APPROACH

The two main areas of the Tajikistan Land Legislation Development Project's approach were:

1. Legislative reform activities; and
2. Legislative training/education activities.

In addition to these primary activities, the project collaborated with the allied activities of the United States Agency for International Development (USAID) Central Asia Republics (CAR) Land Tenure Reform Project (LTRP). The LTRP worked with the Government of Tajikistan's State Land Committee (SLC) to highlight and develop land reform needs particularly in the rural sector. The LTRP provided some of the policy input on which the current Land Legislative Development Project is based. This project also provided advice to the LTRP on training topics related to land concepts and policy that were needed to help the Government of Tajikistan (GOT) draft appropriate new land legislation. The project also coordinated with:

- The USAID/ARD CHECCI Commercial Law Project on issues touching land tenure and associated issues such as the registration of land rights and mortgages;
- The United Nations (UN) Food and Agriculture Organization (FAO) in its support of the SLC Legislative Working Group (responsible for developing draft legislation relating to land reform);
- The Swedesurvey Cadastral Reform Project, which worked with the SLC in laying the groundwork for a cadastral based reform in land administration.

The purpose of this coordination was to ensure a measured and coordinated response to the needs of the GOT and to ensure a minimum of overlap in activities. This coordinated approach had mixed success, primarily due to overlapping project priorities, especially between this project and the FAO's activities with the SLC's Legislative Working Group. (Project activity limitations are discussed in Section 3.0).

2.1 OVERVIEW OF MAIN ACTIVITIES

The main activities undertaken during the project are set out below .

2.1.1 General Activities

Legislative reform activities and legislative training/education activities comprised the major part of this project.

Legislative Reform Activities

Given the problems identified with the security of tenure (particularly at the rural level) and the clear importance of this issue for the GOT, the following activities were identified in the Work Plan and re-stated in Appendix 4.

Technical Assistance for Legislative Development: Provide technical assistance to the GOT agencies responsible for developing land-related legislation and implementing regulations, to develop or, as appropriate, modify land legislation specifically to improve security of land tenure through:

- Streamlined farm restructuring procedures;
- Strengthened land/leasehold rights; and
- Promotion of land market transactions.

Lobby Government for Adoption of Legislative Reform: Lobby the GOT (the SLC and other ministries, in particular, the Ministry of Justice) for adoption of appropriate laws and regulations that are needed for the development of a vibrant land market.

The expected results from these two activities were anticipated to be the promulgation of amendments to relevant land legislation or the enactment of new legislation in accordance with the deliverables set out below.

Legislative Training/Education Activities

Provide training to the appropriate GOT agencies responsible for drafting land laws, in technical areas related to the project's legislative drafting activity, including land tenure rights and security, land markets, farm restructuring, land reserves, and land transactions.

The expected results under these activities were the successful completion of at least five training workshops for legislative drafters and land policy makers focusing on land reform legislative models in other jurisdictions. It was anticipated that the results of these workshops would translate directly or indirectly into legislative changes by the GOT.

2.1.2 Specific Activities

Local Activities

For the purposes of this project, ARD proposed the following local activities to address the primary project indicators:

1. Undertake a Rapid Farmer Survey of perceptions of the current process (focusing on processes related to the application of the Law on *Dekhan* Farms and Presidential Decree 522 on the Reorganization of Farms).
2. Integrate with the existing SLC Legislative Working Group to have oversight of the development of the legislation necessary to meet the project objectives.
3. Hold five workshops on comparative law models and the production of a report on the results.
4. Draft legislation amending the Law on *Dekhan* Farms and Presidential Decree 522 on Farm Reorganization. In addition to this, the project will work with the SLC Legislative Working Group to develop a Work Plan designed to amend at least two laws (with a secure land tenure focus) from the list provided in the Work Plan.
5. Draft amendments to legislation affected by the changes in Deliverable 3; for example, the Civil Code, Law on Leasing, and Law on Land Reform.
6. Hold draft legislation feedback workshops in the four *Oblasts* and prepare reports on the results for presentation to the Working Group.
7. Refine and obtain approval (by the Working Group) of legislative amendments to the draft legislation on the basis of feedback from the draft legislation feedback workshops.
8. Establish a public notice period for gathering comments on the draft legislation and complete a report to the Working Group on the results of the public notice process.

9. Perform a final review and amendment of draft legislation on the basis of feedback from the public notice process.

ARD's Performance Monitoring Plan, as presented in the Performance Management: Activity Timeline (refer to Section 5 of the Draft Work Plan), contemplated a linear approach to activity management.

The results of these activities are described in more detail in Section 3.0.

Primary Indicators of Project Activity Success

The USAID Mission in the Central Asia region set out the following indicators for the Tajikistan Land Legislation Development Project for more secure land tenure rights.

Streamlined Farm Restructuring Process Indicators

- Simplified procedure for the facilitation of farm restructuring
- Reduction in time from start of restructuring process until issuing of rights certificates for restructured farms
- Greater rate of farmers (either individually or jointly) obtaining formal access to land rights per annum

Strengthened Land/Leasehold Rights Indicators

- Legal clarification of the nature of rights granted
- Increased knowledge within the farming community of their legal rights
- Clear legal limitations on the rights of government (central and regional) to confiscate and redistribute land rights
- Reduction in number of rights confiscated and redistributed by government or regional government bodies
- Increased number of market transactions in respect of land rights (e.g., transfers and mortgages of rights)

Promotion of Market Transactions Indicators

- Increased number of market transactions in land rights (e.g., transfers and mortgages of rights)

2.1.3 General Qualifications to Primary Indicators of Activity Success

It is the nature of a number of these general indicators that they cannot be tested within the life of this project. This is primarily due to the short term of the project, which did not contemplate implementation and testing of results. These limitations are discussed in more detail in Section 3.0.

3.0 PROGRAM IMPLEMENTATION

3.1 OVERVIEW AND HIGHLIGHTS

The project experienced a number of highlights. While not achieving the breadth of legislative reform hoped for, it nonetheless facilitated and witnessed some important advances in the very early stages of the transition to a market economy. These include:

- Proposed legislative changes to Presidential Decree 522 on Farm Reorganization, Law on *Dekhan* Farms, and Law on Land Reform, which point to a reduction in *Khukumat* interference in the farm reorganization process; a more streamlined farm restructuring process by simplifying procedures for the facilitation of farm restructuring; a reduction in the time from start of restructuring process until issuing of rights certificates for restructured farms; and an increase in the rate of farmers (either individually or jointly obtaining formal access to land rights per annum) (see Appendix 5 detailing amendments proposed by the GOT).
- The development of a planning process and plan for future land reform over the next three years.
- More openness within government to discuss the problems with legislation and to discuss and develop ways to address those problems (see Appendix 6, Food Security and Agrarian Industrial Complex Development for GOT Planning for attaining the Millennium Development Goals).
- A psychological shift in the attitude of government to the acceptance of more open debate on legislative reform (which can perhaps be interpreted as a movement away from the concept of government as absolute power to one of government as service provider).

Details of these highlights are discussed more fully in the following sections dealing with local activity implementation and in the various reports referenced here and published separately by the project.

3.2 LOCAL ACTIVITY IMPLEMENTATION

3.2.1 Rapid Farmer Survey

The Rapid Farmer Survey (officially known as the Rapid Survey of the Land Tenure of Farmers in Tajikistan: July–August 2005) is the subject of a separate, published report.

The idea for this study was provided by Tajikistan's chairman of the SLC, Mr. Gulmahmadov. Accordingly, the exercise formed Phase 1 of the USAID Land Legislation Development Project's Work Plan.

In the preparation of the study, the project was assisted by the first deputy to the chairman of the SLC, Mr. R. Umarov, and the head of the SLC's Legislative Division, Mr. Karimov. As such, there was a reasonable degree of buy-in from the GOT on the process, although its participation was less than whole-hearted. The

SLC had completed a similar survey 12 months before. While it would have been useful to compare the results of the farmer survey with those earlier results, the previous report was not made available to the project.

It was anticipated that the survey results would inform the Comparative Law Workshops Series, but delays in the data collection process meant that this did not happen. Nevertheless, the process was completed and the report's Executive Summary was provided to the SLC during its review of comments on the new draft Presidential Decree 522 on Farm Reorganization.

For the purposes of data collection and the development of the survey itself, this project relied on the input from Mr. Karimov and staff from CARE International. The data collection staff conducted individual interviews of more than 300 persons. In August 2005, additional data was collected by local nongovernmental organizations (NGOs) Shahnoza and the Union of *Dekhan* Farmers through their USAID-supported legal aid offices in Qabodiyon and Qurgan-teppe respectively, in Khatlon *Oblast*.

The Rapid Farmer Survey considered the views of 436 farmers in the Direct Rule District, Khalton *Oblast* and Sugd *Oblast*. Those interviewed were comprised of approximately 50% men and 50% women. Most were from either family or collective *dekhan* farms.

The main findings are presented below.

- In many cases, the farm reorganization process had failed in its primary objective, and many farms were reorganized in name only (not a new suggestion).
- Most farmers believed that productivity had increased since reorganization. (There are clearly differing views on the extent of productivity, based on gender; while both men and women agreed that productivity had improved since reorganization, women are more finely balanced on the point).
- Promisingly, most farmers claimed to have a certificate to use the land he or she worked, although this did not necessarily suggest that farmers broadly felt that their land tenure was more secure. Instead, security of tenure seemed to hinge on the region in which the farm was situated. Women also appeared to be at a disadvantage in terms of the types of certificates that they possessed (i.e., they were more likely to hold lesser [share] certificates). Women are less likely to say that they feel their land tenure is secure.
- Not surprisingly, the levels of debt were higher in the cotton growing regions. In regional terms, farmers from family *dekhans* consistently claimed less debt than collective *dekhans* in the same region.

From the analysis of the data, the project provided a number of policy development suggestions.

1. Work with partners to develop a targeted education campaigns for farmer (while noting the special need for women) on the farm reorganization process.
2. Develop clear safeguards in legislation to ensure that women are not disadvantaged in the reorganization process (for example, mandate that review committees have women on them, that a quorum of women is required at a meeting, or that meetings are held at a times when women are likely to attend).
3. Consider permitting reorganized collective *dekhans* to be reorganized again (query whether the current process under the Law on *Dekhan* Farms is detailed enough to permit this in an effective way—an amendment may be required).
4. Cut the link between what is grown on the land and land use rights. (This is being addressed in part in the context of the *Government Minutes of 28 July 2005*, looking to reduce cotton quotas, and in the context of the government's *Cotton Farm Debt Strategy.)*
5. Permit farmers to grow what crops they like. (Refer to the policy initiatives already commenced by the government mentioned in the point above.)

6. Ensure that mechanisms are in place so women are not disadvantaged in the use of land and in the exercise of their rights.
7. Support the SLC's ongoing review of the certificate/sub-certificate process to ensure that all farmers are included as rights holders.
8. In the case of family *dekhans*, permit the issuance of joint rights holding under a land use certificate rather than simply identifying one person or the "head of household."
9. Undertake a close review of land withdrawals in Khatlon (in particular) and Sugd to ascertain more details about how withdrawals are being undertaken, and their legality.
10. Ensure that regional authorities are familiar with the law. (Conduct training sessions dealing with the issue and the legal obligations of regional governments.)
11. Clearly prescribe the mechanism for the withdrawal of land use rights in the Land Code to ensure the paramountcy of secure land tenure (currently being reviewed by the SLC).
12. Clearly prescribe in the Land Code (amend Articles 37 and 38) the reasons under which land can be withdrawn by government. (Currently there is little balance between the rights of government and those of farmers.)

3.2.2 Implementation Issues

The survey was not a scientific survey but instead, as the name suggests, a rapid review of farmer opinions about security of land tenure and related issues.

There was support from the SLC in some aspects of the survey's development but the project cannot say that there was 100% commitment. The first deputy to the SLC had to be reminded of the chairman's involvement before movement on the process began. Support for the preparation of the survey questions, while coming from the SLC's lawyer, happened primarily due to concerted efforts from project staff.

While it was anticipated that the results of the survey would directly inform the comparative law workshops, this was not the case. Delays in carrying out the survey meant that the results could only be provided after the workshops. One of the reasons for this delay was the fact that not enough data was collected from women in the field, and one of the data collection's objectives was to ensure that 50% of the information collected was from women farmers. This balance was achieved after further efforts in the field. These results fed subsequent review of draft legislation, in particular, Presidential Decree 522 on Farm Reorganization.

It was anticipated that there may have been some resistance to the survey process by regional governments (especially as they were specifically excluded from data collection for fear of affecting the data collected). It is noteworthy that there were no data collection problems in this arena.

3.2.3 Primary Indicators

The primary indicators are significant to the survey process (as the survey was developed after the start of the project). It can be said, however, the activity was designed to inform other areas of the project whose results could be measured by the following indicators:

- General security of land tenure issues
- Streamlined farm restructuring process indicators
  - Simplified procedure for the facilitation of farm restructuring

  - Greater rate of farmers (either individually or jointly) obtaining formal access to land rights per annum

- Strengthened land/leasehold rights indicators
  - Legal clarification of the nature of rights granted
  - Increased knowledge within the farming community of their legal rights
  - Clear legal limitations on the rights of government (central and regional) to confiscate and redistribute land rights
  - Reduction in number of rights confiscated and redistributed by government or regional government bodies

Impact

The impact of the survey is important in the following ways:

- The results confirmed a number of theories about farm reorganization and security of tenure issues (e.g., farm reorganization in many cases has failed to achieve its objectives—women are particularly disadvantaged in the farming sector).
- The results also suggested that, despite the failings of reorganization, there were perceptions in the farming community that productivity had improved and, possibly, that this is due to the reorganization. (This conclusion needs further testing.)
- The SLC is now openly admitting that the farm reorganization process has not always been successful and that many reorganized farms need further reorganization. As a result, the SLC is making greater changes to Presidential Decree 522 on Farm Reorganization.

Despite these positive results, it is clear that much work is still required at a government level to recognize the specific disadvantage faced by women farmers in the farm reorganization process. This issue is addressed below.

3.2.4 Comparative Law Workshops

The results of the comparative law workshops are the subject of two separate published reports that are in the possession of USAID.

The project held five workshops for the benefit of SLC's Legislative Working Group representatives tasked with developing land reform legislation. The objective of these workshops was to provide the attendees with comparative examples of land legislation from other countries that had contended with and resolved issues similar to those facing the Tajiks. Further, the workshops were designed to provide an understanding of the land legislation concepts being reviewed by the attendees (particularly those involved in drafting amendments to land legislation).

The workshops were held early in the project (originally envisaged by USAID to be held over the length of the project) because of the project's short timeframe for those deliverables relating to the development of specific legislation. The workshop topics were held in late April and early July, and they covered the following areas:

1. How Private Use Rights Increase Productivity;
2. Approaches to Developing the Legal Infrastructure for Land Markets;
3. Regional Security of Tenure Approaches;

4. Farm Structures (detailing the differences in production between large collective farms and smaller single family farms and farm structure options); and

5. Farm Reorganizations: Details from the Kyrgyz Republic of the Specific Procedure for Farm Reorganization.

While some of the original topics focused on specific legislative amendments (they were of a more general land reform policy nature), a change was considered necessary because of the relatively low level of land reform policy understanding within the SLC Legislative Working Group.

The workshop methodology was designed to encourage discussion through the use of group activities, such as the consideration of specific problems and ways to address them in a practical manner. This process was relatively successful. As a result, a number of legislative amendments were proposed by the group.

Implementation Issues

It was anticipated that all workshops would be held by May 2005, but because of some difficulties in securing the international consultant, Renee Giovarelli, completion of the five workshops was slightly delayed.

As noted above, the understanding of some details of land reform policy in the form of experiences from other jurisdictions seemed to be low. This meant that progress on issues like appropriate legislative reform was slowed. Nevertheless, advances were made as a direct result of the following.

Relevant Primary Indicators

- Streamlined farm restructuring process indicators
  - Simplified procedure for the facilitation of farm restructuring
  - Reduction in time from start of restructuring process until issuing of rights certificates for restructured farms
  - Greater rate of farmers (either individually or jointly) obtaining formal access to land rights per annum
- Strengthened land/leasehold rights indicators
  - Legal clarification of the nature of rights granted
  - Increased knowledge within the farming community of their legal rights
  - Clear legal limitations on the rights of government (central and regional) to confiscate and redistribute land rights
  - Reduction in number of rights confiscated and redistributed by government or regional government bodies
  - Increased number of market transactions in respect of land rights (e.g., transfers and mortgages of rights)

Impact

The workshop series resulted in progress in the legislative reform debate in the following ways:

- It encouraged (and resulted in) very active participation and discussion from those in attendance;
- It provided important policy background on basic land reform issues;
- It provided a comparative framework for GOT to consider legislative reform; and

- It resulted in the development and statement of clear ideas for legislative reform in some important areas.

In relation to the specific area of legislative development, specific changes were mooted to the following legislation:

1. Restrict government involvement in *dehkan* farm operations.

a. Delete the exception in Article 5 which would allow legislation to be promulgated that would give government the authority to intervene.

2. Make management of *dehkan* farms more democratic and transparent.

b. Change Article 13 so that land certificates are distributed to the *dehkan* farm (not the head) and that all members of the farm are listed on the certificate.

c. Change Article 15 so that those all members of the *dehkan* farm that have land shares are included in the list of members.

d. Change Article 17 so that decisions are made with the consent of all members and not just by the individual head.

3. Increase the rights of *dehkan* farm members

e. Change Article 19 to allow members of the *dehkan* farm to pass their land and property share by inheritance.

f. Consider changes to the rights and obligations of *dehkan* farm members.

Furthermore, the workshop attendees also came to the conclusion that a law on service cooperatives would be important to the reorganization of farms. Some of these proposed amendments are discussed in Section 3.2.5 concerning legislative amendment project activities.

3.2.5 Legislative Development, Feedback, Refinement, and Planning

Legislation Development: The development of appropriate land reform legislation in accordance with the project deliverables proved difficult for a number of reasons (refer to Section 3.2.2). The project dealt with these difficulties through a variety of mechanisms. First, the project provided advice to the SLC Legislative Working Group. This involved being present at Working Group meetings where legislative drafts were being considered and by providing comments to the Working Group. It also involved providing comments directly to the SLC and other interested ministries (for example, the Ministry of Justice). This provided some limited success to trying to guide GOT legislative development.

Secondly, and most importantly, a break through in the process came when this project coordinated with the European Commission's (EC's) Budget Support Program on the issue of land legislation reform. The EC's program tied approximately €400,000 to certain legislative reform benchmarks. By doing this, the project's benchmarks were suddenly given €400,000 in leverage. This fact seemed to focus the SLC on more substantive legislative development. It must be said, however, that the legislative development process that was finally approved by the EC Independent Commission fell short of this project's hopes. Despite an extensive list of proposed amendments to legislation required to meet the benchmarks submitted by the project, the SLC failed to meet that list completely and the Independent Commission apparently ignored the oversight.

Notwithstanding the slower-than-hoped-for progress on legislative reform, amendments for three important pieces of legislation were proposed by the SLC Legislative Working Group during this project. They include:

- Draft Government Resolution Farm Reorganization (formerly Presidential Decree 522 On Farm Reorganization);

- Draft amendments to the Law on *Dekhan* Farms; and
- Draft amendments to the Law on Land Reform.

None of the amendments proposed in the draft changes go as far as this project hoped, but there were some substantial moves forward in streamlining the farm reorganization process as well as laying the ground work for more secure land tenure.

The proposed amendments did achieve the following:

- Excluded *Khukumats* from the allocation process (and attached sanctions);
- Attempted to limit *Khukumat* power to withdraw land-related rights;
- Moved towards the fair allocation of land (drawing of lots in certain circumstances);
- Permitted appeals to the courts from certain administrative decisions;
- Set clearer procedures for the distribution of non-land property; and
- Identified women as a specific class of person entitled to land shares.

Despite these positive elements (see Appendix 5), the legal changes still require more work in terms of detailed procedural clarity, consolidation of rules and process, and ridding the law of ambiguity.

Feedback and Refinement of Draft Legislation: The legislative development process for the project had a built-in system for providing feedback on draft commentary from the public so that legislation could be amended as considered appropriate. The feedback and refinement process was somewhat uncoordinated because of overlapping issues with the FAO's project (see comments below under Implementation Issues). Nevertheless, this project was able to obtain comments on proposed land legislation reform from a number of sources:

- Previous commentaries on the law made under this and other projects;
- Cotton Farm Debt Roundtables held in June 2005;
- A Rapid Farm Survey conducted from July to August 2005; and
- Feedback workshop series held in three regions and conducted in November 2005

In the case of the workshops, the project coordinated with the Union of *Dekhan* Farmers and trainers from the SLC to make presentations about proposed legislative reforms to ordinary farmers. In this way, the SLC was able to directly hear the farmers' opinions on proposed legislation. It is clear that this feedback process was especially useful for both farmers and the SLC. Questions were answered, issues clarified, and insights made (see the Impact section below).

Legislative Reform Plan: In concert with the USAID CAR Land Tenure Reform Project (Tajikistan), the project successfully facilitated the development of a broader Draft Frameworks Strategy for Land Reform in Tajikistan. That strategy is the subject of a separate report published under the Land Tenure Reform Project. Within the strategy is a plan for legislative reform for the next three years, specifically set out under the draft framework's section on land administration. The complete strategy is included in Appendix 4.

Under the framework are contemplated legislative amendments to:

- Land Code, Law "On Land Reform," Law "On Land Management," Law "On Land Assessment (Valuation)," Water Code, Tax Code, Management and Procedures Code, and code about administrative violation.

Also under the framework are contemplated developments of new laws:

- On Land Cadastre, On Mortgage, On Registration of Rights for Immovable Property, and interactions with those laws.

The period contemplated for this plan for legislative reform is one to three years, although the recent history of land legislation amendment suggests that the agenda proposed is unlikely to be easily met. Therefore, this plan requires further refinement[1].

Implementation Issues

There was clearly a lack of time within the project period to undertake the sort of broad legislative reform required to significantly improve security of land tenure in Tajikistan. This is reflected in machinations in the development the primary piece of legislation considered during the project period (Presidential Decree 522 on Farm Reorganization). Redrafts of this legislation have been in the pipeline since December 2004 and, at the time of writing, they appear to have been finalized (after effectively 12 months). Notably, this is legislation that does not need to be passed by Parliament; all that is required is the president's signature.

The project had little leverage early in the project phase to drive legislative reform. While the FAO had encouraged the establishment of the SLC Legislative Working Group and paid its members to attend two times per month (an approach of dubious merit), there was an expectation on the part of the SLC that this project may be able to do something similar. This enhanced the perception that FAO activities were always going to come ahead of those of this project. Nevertheless, as outlined above, the project's coordination with the EC's Budget Support Program provided great leverage for the attainment of project objectives.

Operations of the SLC Working Groups were not managed very well, often resulting in lack of preparation for discussion, late (or no) notice of meetings, and only a cursory discussion of issues. This made the development of legislation a slow and problematic process. The resulting draft legislation was often quite defective even before substantive policy issues could be considered. This was both a management problem and a problem with lack of capacity within staff at the SLC (despite this project's attempts to provide more direct assistance).

Contributing to these difficulties were: early reluctance on the part of the SLC and other GOT agencies (initially even to admit that legislative changes were necessary); strong resistance to market-type reforms largely based on a lack of a registration law (which today remains unresolved); a lack of understanding of market principles; and constitutional limitations.

Ultimately, the SLC's legislative reform policy was largely *ad hoc*. Aside from early resistance to substantive reform, a failure within the institution itself to have a legislative plan for reform or to have any clear institutional/policy plan hobbled progress on legislative development.

Donor coordination issues in the land reform sector also worked to blunt the objectives of this project. For example, while the Swedish International Development Agency (SIDA) cadastral project worked well with this project and had similar objectives of more secure land tenure, an immovable property registration law, and a mortgage law, the FAO land reform project overlapped with a number of this project's activities, with what seemed to be different objectives. While this project was concerned with the substance of draft legislation being produced by the SLC Legislative Working Group, the FAO seemed more concerned with the process. Hence, this project felt that the legislation being produced was often defective and yet given little critical attention before being sent out for review at a district level (a process supported by FAO). It was this project's view that it would have been more productive to develop better draft legislation first before funding a process of legislative review in the field.

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[1] Refer also to the recommendations in the Executive Summary of the Final Report on the Workshop Series "Towards a Draft Framework Strategy for Land Reform in Tajikistan" for how this can be achieved.

Donor coordination in relation to the planning aspect of the project activities (shared with the USAID CAR Land Tenure Reform Project) meant that the World Bank opposed the planning process and FAO, who wanted to be a part of the process, made essentially no contributions to it.

Relevant Primary Indicators

The relevant primary indicators relevant to these project activities include:

- Streamlined farm restructuring process indicators
  - Simplified procedure for the facilitation of farm restructuring
  - Reduction in time from start of restructuring process until issuing of rights certificates for re-structured farms*
  - Greater rate of farmers (either individually or jointly) obtaining formal access to land rights per annum*
- Strengthened land/leasehold rights indicators
  - Legal clarification of the nature of rights granted
  - Clear legal limitations on the rights of government (central and regional) to confiscate and redistribute land rights
  - Reduction in number of rights confiscated and redistributed by government or regional government bodies*[2]

The draft amendments to the legislation mentioned above, while not fully addressing all the suggested issues for streamlining the farm restructuring process and strengthening land/leasehold rights, have moved forward in a generally positive way. (At the time of writing, the legislation was still in draft and was yet to be promulgated.) A fuller complement of suggested changes to legislation was advanced to the SLC in the context of the EC Budget Support Program (whose benchmarks on security on land tenure were negotiated by this project). That more complete list appears in Appendix 5.

Impact

The legislative development activities of the project clearly had a positive impact on a number of fronts.

As a result of project activities, a representative of the project was given advisory/observer status on the SLC Land Reform Working Group, reflecting the respect that the GOT had for the project and its staff. In addition to this, the project was regularly invited to SLC activities, suggesting that a significant level of trust was developed over the course of the project term.

In terms of coordinating activities, this project worked with the EC in its Budget Support Program and the GOT to gain substantial leverage on the legislative development front. It did this by developing legislative benchmarks that were accepted by the SLC and that were translated into legislative reforms. Ultimately, the advocacy and more direct technical assistance to the SLC, and its Working Group from the project, resulted in a number of significant and positive proposed changes to the existing legal regime, particularly in the area of farm reorganization and land reform. These changes are noted above in Legislation Development.

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[2] The specific indicators marked with an asterisk could not be measured at the time of writing. This is because either the new process has not yet been implemented or not enough time has elapsed to properly measure the result, or both. Therefore, it can only be said that the proposed amendments *in theory* will be measurable in accordance with the above indicators.

Over the course of this project there appeared to be a significant psychological shift in the SLC's thinking, such that there was open talk about reorganizing failed farm reorganizations under Presidential Decree No. 522 and even some discussion of land "ownership." Overall, there was also advancement on process issues such as discussing faults in the existing system (an improvement from conditions at the project's start, when the GOT was unwilling to admit problems or even to suggest that legislation required amendment) as well as proposed changes to legislation. This advancement is perhaps best exemplified in the GOT's Draft Planning document for the implementation of its Millennium Development Goals (Food Security and Agrarian Industrial Complex Development) where the problems with land reform are openly stated and the need for intensification of land reform is highlighted for the 2006–2008 period (see Appendix 6).

While it is too soon to say whether the results will be positive against all the relevant primary indicators, it can be said that a reasonable degree of progress was made in laying the groundwork for more secure land tenure under these project activities.

The impact of the feedback process that informed the policy makers and legal drafters was significant. But the impact of discussing draft legislative proposals not only provided useful feedback to the GOT, it achieved two other critical goals. First, it raised the estimations of the GOT (and especially the SLC) in the eyes of ordinary farmers who often feel left out of the policy development process. This is empowering for the GOT and gives them more credibility in dealing with the public. Second, the process of asking farmers for their opinions is especially empowering for the community. It does this by educating them about government operations and by telling them that their opinions are important. These are perhaps the first steps in a shift from government as absolute power to government as service provider. This transition is critical in the development process, and the feedback workshop series was useful in demonstrating the all around benefits of such a process.

It should be noted that the process of seeking broader consultation on draft legislation was supported strongly by both the FAO and this project (the former focusing on feedback from regional government and the later focusing on grassroots feedback from ordinary farmers). The adoption of the process represents a huge leap forward conceptually for the SLC. At the beginning of this project, it was clear that it was secretly developing draft legislation without reference to other interested parties. In April 2005, it seemed as if the draft legislation (amending Presidential Decree No. 522 on Farm Reorganization) would simply be pushed through without comment. The fact that there has now been broad comment (indicating that there is still room for further improvement) and the fact that the government has been seen *listening* to ideas from outside government means that significant improvements have been made to the legislation. This is a significant step forward in the legislative development process.

The planning aspect of this project made an impact not only in terms of producing a document that can be used as a proto-plan for land reform (essentially for the SLC), it had the psychological impact of showing the GOT the importance of planning. As one internationally-funded project said, this represented a "break through" with government.

3.2.6 Final Public Notice Period

The final notice period contemplated under the project activities was unable to be implemented primarily because, at the time of the project completion, the draft legislation had not been determined. Furthermore, the SLC did not agree to the idea of pre-publishing draft legislation (i.e., Government Resolution [former Presidential Decree No. 522]). The reason for this is that the SLC thought this was an infringement of existing legislation, although they did not rule out the idea of publishing the Government Resolution after its adoption. In relation to the pre-publication of laws (e.g., amendments to the Law on Land Reform), these can only be pre-published in accordance with the law if Parliament agrees. At the time of writing, the amendments had not been presented to Parliament for such approval to be considered.

Implementation Issues

As noted above, pre-publication of relevant legislation for public comment was resisted by the SLC, although post-publication support was not ruled out. At the time of writing, no legislation had reached its "final" status to enable even post publication.

Relevant Primary Indicators

- Strengthened land/leasehold rights indicators
  - Increased knowledge within the farming community of their legal rights

Impact

Because this process could not be undertaken in the time available (the laws were not finalized) the impact could not be assessed.

3.2.7 Additional Activity (Cotton Farm Debt Stakeholder Roundtables)

While not contemplated in the original Scope of Work, the project was asked by USAID to undertake a series of roundtables with stakeholder on the cotton farm debt issue. The purposes of these roundtables were threefold:

4. Listen to stakeholders' views about cotton farm debt (especially their ideas for how to deal with it now and in the future).
5. Try to understand the extent of stakeholder knowledge of the GOT's cotton debt strategy.
6. Report the views of the stakeholders back to the GOT in time for its proposed cotton farm debt strategy retreat (held on 20 June 2005).

Despite a short lead-time for the preparation of the process and the conducting of the roundtable discussions, the objectives (noted above) were met. A report on the roundtables was separately published by this project. The results indicated surprisingly consistent opinions across stakeholder groups (farmers and creditors alike).

Implementation Issues

The activity was intended to inform the GOT in pursuing its cotton farm debt strategy. Clearly, however, the activity was undertaken too late to have any real impact on the strategy, primarily because it had already been adopted by GOT three months earlier. Therefore, the impact of the activity was likely to be limited.

The main implementation issues associated with this activity were coordination with other donors (many donors were interested in the project, and each had their own opinion on how it could be undertaken). This meant that the activity's start was delayed while a consensus was found.

There was an extremely short lead-time (about four weeks) to conduct the roundtables and to report back on them. This meant that the number of roundtable discussions that could reasonably be held in the period were very limited.

Ultimately, delivery of the report flowing from the roundtable series was not delivered in a timely manner to its intended recipient by a third-party donor. Although the report was finally delivered, the reasons for its failure to be delivered in a timely manner were never fully explained.

Relevant Primary Indicators

The relevant primary indicator associated with this activity is strengthened land/leasehold rights (legal clarification of the nature of rights granted). This exercise was associated more with community empowerment by asking for opinions.

Impact

As noted above, the impact of the opinions voiced by stakeholder groups in the roundtables, however, was limited because the cotton farm debt strategy had already been undertaken by the GOT. Nevertheless, stakeholder groups, especially farmers, seemed to have been well engaged by the process and eager to provide opinions. In this sense, the activity can be said to have been an empowering process in the development of public debate about the critical issue of cotton farm debt.

3.3 OVERVIEW OF INDICATORS ADDRESSED

3.3.1 Limitations on Performance

Aside from the implementation issues mentioned under each of the project activities, there are some points that need to be made on some of the proposed project indicators. In particular, qualifications need to be made about the ability of project activities to be measured by the following indicators:

Streamlined Farm Restructuring Process Indicators

- Reduction in time from start of restructuring process until issuing of rights certificates for restructured farms
- Greater rate of farmers (either individually or jointly) obtaining formal access to land rights per annum

Strengthened Land/Leasehold Rights Indicators

- Reduction in number of rights confiscated and redistributed by government or regional government bodies
- Increased number of market transactions in respect of land rights (e.g., transfers and mortgages of rights)

Promotion of Market Transactions Indicators

- Increased number of market transactions in land rights (e.g., transfers and mortgages of rights)

In relation to the indicators under Streamlined Farm Restructuring Process Indicators, the draft form of the legislative amendments at the time of writing this report means that the proposals cannot be measured. When the amendments have been made and implemented, comparison can be made between information gathered already from the SLC and, for example, the results of the Rapid Farmer Survey as baseline data to measure the changes. But such a review is unlikely to provide useful results until 12 months after implementation.

The same qualifications need to be made in respect to Strengthened Land/Leasehold Rights Indicators. First, leasehold rights never appeared on the agenda of legislative reform in any substantive way during the course of this project. Second, there is no formal land market in Tajikistan and, therefore, no variance can be measured at this time. Furthermore, in relation to "increased number of market transactions in land rights (e.g., transfers and mortgages of rights)," these indicators can only be useful as a yardstick when a law for the registration of immovable property and a mortgage law are in place.

Nevertheless, the GOT has foreshadowed a move to developing procedures for the transfer of land shares through proposed amendments to the new Draft Government Resolution on Farm Reorganization (see Appendix 5) and proposed changes to the Law on *Dekhan* Farms.

4.0 PRINCIPLE LESSONS LEARNED

A number of significant lessons were learned in the undertaking of the project activities. For convenience, they are categorized as follows: project design lessons, administrative and coordination lessons, and methodology and practice lessons. Those lessons are expanded upon below.

4.1 PROJECT DESIGN LESSONS

- The timeframe was too short to undertake the sort of legislative reform contemplated under the project. It was also too short to measure the activities' results (i.e., in accordance with the primary project indicators).
- It appears that the GOT was not fully prepared for the project objectives at the time of the start of the project despite the efforts of the earlier policy project (USAID CAR Land Tenure Reform Project).

4.2 ADMINISTRATIVE AND COORDINATION LESSONS

- In hindsight, a Memorandum of Understanding between the project and the SLC may have made some accountability issues clearer
- Despite efforts to coordinate international donor activities and their projects, substantial overlap in activities remain, which can serve to frustrate project objectives. In the case of this project, overlapping/uncoordinated responses between the FAO (process-orientated) and this project (detail-orientated) meant that activities under the former project moved forward despite the fact that, for example, legislative reforms were incomplete.
- Nevertheless, some donor coordination seemed to work relatively well. This occurred in the activities on the EC's GOT Budget Support Program. In this case, the EC had the money to provide the GOT budget support while this project provided technical assistance. While there were positive results from this partnership, better coordination would have probably yielded better results.

4.3 METHODOLOGY AND PRACTICE LESSONS

- The development of strong working relationships with GOT personnel was critical to project progress.
- The GOT was still in a formative stage of land reform, which meant that at the beginning of the project the government was resistant to legislative change (which is now changing).
- Despite the fact that full legislative change has not been completed to provide theoretical security of tenure at the time of writing, the project feels that support for SLC drafting activities was the correct action (as opposed to having international experts write the law and then present it to the GOT). This may change over time, but buy-in to the process is encouraging.

- The Tajik legislative development model is a linear one; that is, there is a tendency to amend one piece of legislation at a time rather that amending all relevant legislation at once. This makes legislative reform longer than it might otherwise be. Furthermore, it tends to increase the chances of conflicts between laws and confusion in the society. As a result, there is a need for further work with the GOT (SLC) to develop a multi-amendment approach that encourages all necessary amendments be made simultaneously.
- The SLC was more inclined to support suggestions for legislative amendment rather that having outsiders draft legislation. (They wanted to do it themselves.)
- General policy development and institutional/policy planning is lacking within the GOT and, specifically, within the SLC. Until clear policy and, hence legislative, priorities can be adopted, legislation on other reforms is likely to remain piecemeal.
- Stakeholder workshops worked well as long as the attendees were primed for the exercise. Working with the Academy for Educational Development, this project's successful formula included:
  - Setting clear workshop/seminary objectives;
  - Keeping stakeholder groups separate during initial discussion so as to avoid intimidation (especially between government and farmer stakeholder groups);
  - Facilitating meetings in the local language and avoid the use of interpreters;
  - Using preliminary meetings to prime stakeholder groups on the issues; and
  - Keeping agendas specific and asserting meeting rules at the beginning of each activity stressing conciseness and focus.

4.4 SUMMARY

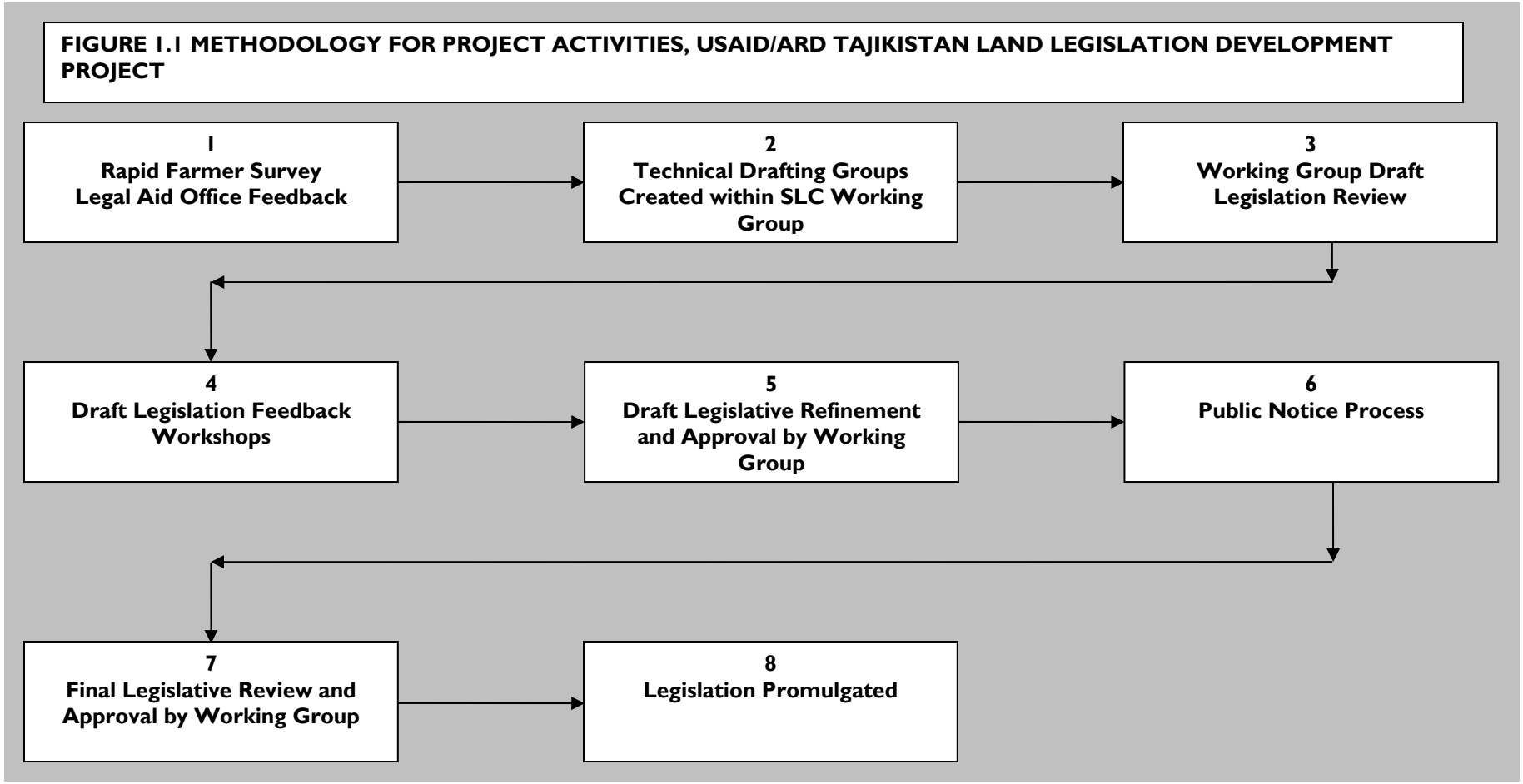
Notwithstanding some of the problems associated with the implementation of the project activities and the apparent slow progress in reaching project objectives, the project has witnessed some important advances. These include:

- The numbers legislative changes were advanced. At the time of writing, these proposed changes are yet to be promulgated. While they may not be perfect in terms of covering the field of project objectives, they represent a step in the right direction by the GOT. Proposed changes include:
  - Limiting the role of *Khukumats* in the land allocation process;
  - Adding fairness to the process by the use (in some circumstances) of allocating land by the drawing of lots;
  - Establishing clearer procedures for the allocation of non-land property;
  - Opening administrative decisions to scrutiny by the courts;
  - Putting the groundwork in place for the transfer of land-share entitlements; and
  - Identifying women as a clearly identified class of person entitled to land share entitlements.
- The government is now openly discussing its short-comings on the land reform issues and talking frankly about ways of addressing them.

- There seems to be a psychological shift in the attitude of government to the idea of more open debate about legislative reform (which can perhaps be interpreted as movement from the concept of government as absolute power to government as service provider).

It is hoped that, by building on the momentum established by this project on land legislation reform and GOT planning and empowerment, the timeframe for legislative reform will shorten and so, too, will the transition towards more secure land rights and a more market-orientated land administration system.

APPENDIX 1. METHODOLOGY FOR PROJECT ACTIVITIES



APPENDIX 2. SUMMARY OF PROJECT DELIVERABLES

TABLE A2.1 SUMMARY OF STATUS OF PROJECT DRAFT DELIVERABLES

DELIVERABLE NUMBER	DRAFT DELIVERABLE (REFER TO WORK PLAN SUMMARY PAGES 19–20)	STATUS
1	The undertaking of a Rapid Farmer Survey and the preparation of a report on the findings of the survey to be delivered to the Working Group	Completed September 2005
2	The holding of five workshops on comparative law models and the production of a report on the results	Completed July 2005
3	The drafting of legislation amending the Law on *Dekhan* Farms and Presidential Decree (PD) 522 on Farm Reorganization. In addition to this, the project will work with the State Land Committee Working Group to develop a Work Plan designed to amend at least two laws (with a secure land tenure focus) from the list provided in the Work Plan.	• SLC completes amendments to PD 522 and Law on *Dekhan* Farms, November 2005 • Other amendments to be considered later
4	The drafting of amendments to legislation affected by the changes in Deliverable 3 (for example, the Civil Code, Law on Leasing, and Law on Land Reform)	• SLC completes amendments to Law on Land Reform and submits them to Parliament, October 2005 • Other amendments to be considered later
5	Development of a legislative reform plan covering the next 6–12 months	Draft Plan completed under Land Tenure Project but incorporating project goals for this project, October 2005
6	The holding of draft legislation feedback workshops in the four *Oblasts* and preparation of reports on the results for presentation to the Working Group	3 completed in November 2005. Fourth workshop in Gorno-Badakhshan Autonomous *Oblast* cancelled because of risk of poor weather
7	If required, the re-drafting of the draft legislation taking into account the results of the draft legislation feedback workshops	Completed in respect of PD 522 (new draft Government Resolution on Farm Reorganization submitted to government for review)
8	The establishment of a public notice period for gathering comments on the draft legislation	No formal notice period established, although wide-spread consultation and feedback occurred

TABLE A2.1 SUMMARY OF STATUS OF PROJECT DRAFT DELIVERABLES		
DELIVERABLE NUMBER	**DRAFT DELIVERABLE (REFER TO WORK PLAN SUMMARY PAGES 19–20)**	**STATUS**
9	Completion of a report to the Working Group on the results of the public notice process	No formal report is to be prepared and presented to the SLC on account of the fact that the SLC ran the process with the support of this project
10	If required, the re-draft of draft legislation on the basis of public notice process	Completed in respect of new draft Government Resolution on Farm Reorganization

APPENDIX 3. LIST OF REPORTS PREPARED SEPARATELY UNDER THIS PROJECT

USAID Tajikistan Land Legislation Development Project

- Report on Comparative Law Workshops Summary: April 22–30, 2005 (May 2005)
- Report on Comparative Law Workshops Summary: July 1–6, 2005 (July 2005)
- Rapid Survey of the Land Tenure of Farmers in Tajikistan: July–August 2005 (September 2005)

Reports Relevant to this Project but Produced under other Projects

- Report on the Tajikistan Cotton Farm Debt Strategy Stakeholder Meetings: June 2005 (June 2005)
- Report on Workshop Series "Towards a Draft Framework Strategy for Land Reform in Tajikistan" (prepared under the USAID CAR Land Tenure Project) (October 2005)

APPENDIX 4. LAND REFORM POLICY PRIORITIES "TOWARDS A DRAFT FRAMEWORK STRATEGY FOR LAND REFORM IN TAJIKISTAN"

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
1. LAND ADMINISTRATION						
1.1 Develop current legislation that regulates land relations	Ensures that land relations will become more transparent and effective	• Majlisi Oli (Parliament) of Tajikistan • Government of Tajikistan • State agencies (SLC, Ministry of Justice [MoJ])	Through amendments proposed to current legislation (Land Code, Law "On Land Reform," Law "On Land Management," Law "On Land Assessment (Valuation)," Water Code, Tax Code, Management and Procedures Code, and code about administrative violation) and development of new laws (On Land Cadastre; On Mortgage; On Registration of Rights for Immovable	Lack of financial resources to implement changes	Analysis of legislation	1–3 years

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
			Property and interactions with them; Decree on Reorganization of Agricultural Enterprises and Organization)			
1.2 Develop and simplify the process of land reform	Ensures that land reform is more effective and timely	• SLC, and other interested state agencies (MoJ, Ministry of Agriculture, State Property Committee)	Provision of transparency to the process of reorganization of farms and other trends of the process (as well ensuring that local authorities follow requirements of laws)	Involvement of local authorities	Creation of information and consulting centers	1–3 years
1.3 Conduct educational, informative, and analytical campaign (programs)	Ensure legal literacy of land stakeholders	• Government of Tajikistan • Local authorities • NGOs	Development of new programs or amending current state programs to enhance literacy of land stakeholders and methods of implementation of those programs (as well as editing special literature and other publications)		Conducting seminars, conferences, and meetings; disseminating special literature and other publications; mass media	1–3 years
1.4 Resolve debts and problems of reorganized and to be reorganized farms	Elimination of debts for farmers benefit	• State and international bodies	Establishment of independent commission on farm debts and the implementation of its mandate[3]	Lack of financial resources	Analysis of debts	1–3 years

[3] This independent commission has already been established, although, at the time of writing, its Action Plan has not been approved by the GOT.

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR						
WHAT? (STRATEGY PROPOSAL)	**WHY? (PURPOSE)**	**WHO? (SECTOR/ RESPONSIBILITY)**	**HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)**	**RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)**	**WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)**	**WHEN? (PRIORITY) (Timeframe 1–3 Years)**
1.5 Establish and maintain appropriate monitoring and evaluation mechanisms within government	Increase public confidence in government during land reform process	• Government of Tajikistan • Local authorities	Establishment of monitoring groups at regional level	Lack of financial resources to implement changes	Create departmental infrastructure and fund it	1–3 years
2. FARMS AND FARM STRUCTURES						
2.1 Review farm reorganization process to ensure that the processes are fair and transparent	Ensure that the farm reorganization process is real and effective, not merely token. The process of reform will accelerate; productivity of agricultural products will increase; living standards of rural people will enhance; confidence of people	• SLC • Ministry of Agriculture	Propose amendments to Law of Republic of Tajikistan (RT) "On Land Reform" and PD 522/1996	Ensure implementation of the PD of RT No 1314/2004 "On Bringing Amendments into Decree 522/1996"		1–3 years
2.2 Provide detailed regulation on the distribution of collective farm property upon reorganization	Property of former farms should be divided into shares and sold or transferred to newly-established *dekhan* farms. Same as above	• State Property Committee • SLC • Ministry of Agriculture • Union of *Dekhan* Farms • NGOs	Propose amendments to Law of RT "On Privatization"; develop relevant normative acts on procedures and mechanisms of privatizations of the state property	Decision-making by government (i.e., government commitment to the change)		1–3 years

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
2.3 Lay the foundations for ensuring that farmers can obtain reasonable and informed access to credit	Improve mechanical and technical base of *dekhan* farms and financial and productive activity of farmers, and give privileged credits Otherwise, same as above	• Government of Tajikistan • Special funds, banks, international organizations, local investors	Propose amendments to Law of RT "On Microfinance Organizations" Create a special fund to support farmers Accept a new law: "On Regulation of the Agricultural Sector by the State" (including guarantees and privileges for tax etc); Law "On State Support of Agricultural Organizations"; and Law "On Mortgage of Immovable Property"	Decision-making and law acceptance		2–3 years
3. GENDER						
3.1. Educational section 3.1.1. Enhance women's awareness about the mechanism of land reform and their rights for land share 3.1.2 Enhance public awareness about women's rights for land share and their economical security	Inform women in rural side on international standards of human rights; state policy, state guarantee of equal rights, and equal opportunities of men and women and implementation of policy; additional provision for state program "Women's Access to Land in Rural Side" into State	Leading agencies: • Committee of Women and Family Affairs at the GOT • Ministry of Justice • SLC Partners: • NGOs • International organizations	Establish coordination with donors and NGOs on providing legal services Bring amendment into state comprehensive public educational program	Problems at fulfillment of requirement at regional level Limitation of budgets	National complex public legal educational program is reviewed. GOT and donors came to agreement on implementation of its section to educate rural population on the mechanisms of land reform, rights of women for land access, as well to conduct of educational seminars	First and following years

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
through educational campaign	Program "Main Directions in the State Policy Toward Equal Rights and Equal Opportunities of Men and Women in Republic of Tajikistan for 2001–2010 Years"; access of women to land, etc.				on how to make *dekhan* farms headed by women more sustainable, etc.	
3.1.3 Strengthen potential of local authorities (to realize gender problem), state officials of all levels, and law enforcement	Ensure security of rights of women for land access through practical and legal education on women's rights for land	Leading agencies: • Institute of Improvement of Profess-ional Skills and State Officials • Justice Board through Educational Center Partners: • NGOs • International organizations	Development and unification of special educational programs strengthened by a gender sensitive approach for Institute of Improvement of Professional Skills of State Agencies, as well for Judicial Training Centre and NGOs		Developed educational programs are available	1 year
3.1.4 Develop highly qualified lawyers, specializing on land reform and women's rights during its process	Sensitize lawyers to gender issue Rights and opportunities are not kept at submission of petitions and complaints	• Ministry of Education	Introduce special courses for lawyers; review educational curriculums from gender point of view	It is necessary to conduct a research by specialists	Develop a program for lawyers that deals with land reform, women rights for land share, and economical resources	1 and 2 years
3.2 Support growing numbers of women heads of *dekhan* farms	Increase women's active participation in economical development of the country	Leading agencies: • SLC • Ministry of Agriculture • Ministry of Water	Start activity of monitoring group of SLC and use its experience			1 and following years

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
Give them support to make their farms more sustainable		Resources • Committee of Women and Family Affairs at the GOT Partners: • NGOs • International organizations	Include representatives of women's committees and informal women leaders into reorganization commissions at district level for protecting women's rights in women's interests Strengthen monitoring of implementation of Law "On People's Petitions" because there were many cases when women's application for establishing *dekhan* farms had been delayed or ignored Provide opportunities to develop the qualifications of women as heads of *dekhan* farms			

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
3.3. Review legislation and other current normative legislative acts from gender point of view taking into consideration international experiences on this issue	Comply with international standards of rights and reservation of those rights	Leading agencies: • Ministry of Justice • Committee of Women and Family Affairs at the GOT Partners: • NGOs	Establish a working group comprised from representatives of the MoJ, Committee of Women Affairs, and international organizations; or conduct tender for working group, NGO, or legal firms	It is necessary to conduct a research by specialists		1 year
3.4. Develop normative legislative acts for proper implementation of Law of RT "On State Guarantee of Equal Rights to Men and Women of Republic of Tajikistan and Implementation of This Guarantee"	Ensure de facto equality of men and women rights	Leading agencies: • MoJ, Committee of Women and Family Affairs at the GOT, Partners: • NGOs • International organizations	Establish a working group comprised from representatives of the MoJ, Committee of Women Affairs, and international organizations; or conduct tender for working group, NGO, or legal firms	It is necessary to conduct a research by specialists.		1 year
3.5. Integrate women's issue into national strategy and policy, and state programs, including State Strategy on Reducing Poverty	Comply with international norms of rights	• GOT • Monitoring Group at the GOT • Committee of Women and Family Affairs at the GOT				1 year

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
3.6. Review and amend state forms of reporting, showing women's contribution into agriculture economy	Include new indicators showing women's contribution into agriculture, allowing the development of gender policy based on state reporting system	Leading agencies: • Coordination board established at the GOT for providing support to UNIFEM project • State Committee of Statistics Partners: • NGOs • International organizations	Data processing, discussing results at coordination board with stakeholders, and bringing recommendations and suggestions to attention of the GOT on improvement of gender statistics			2005–2006
3.7. Conduct public research and monitoring the imple-mentation of additional provision for "Women's Access to Land in Rural Side" into State Program "Main Directions in the State Policy toward Equal Rights and Equal Opportunities of Men and Women in Republic of Tajikistan for 2001–2010 Years"	Ensure implicit implementation of the state program and supplementations to this program	• NGOs				1 and following years

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR						
WHAT? (STRATEGY PROPOSAL)	**WHY? (PURPOSE)**	**WHO? (SECTOR/ RESPONSIBILITY)**	**HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)**	**RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)**	**WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)**	**WHEN? (PRIORITY) (Timeframe 1–3 Years)**
3.8. Establish a board focusing on women's issues at Parliament, for reviewing proposed legislative drafts	Ensure gender review of legislation	• Parliament	To establish a board at Parliament. Possibly include experts from committees of women and family affairs, NGOs, and various ministries, and agencies			Permanently
4. EDUCATION/DISPUTES RESOLUTION						
4.1 Enhance education about land rights and land law with women in particular	Develop legal conditions and status of women in their rights in the farming sector	• Local authorities • NGOs • INTER • SLC • Ministry of Agriculture • Mass media • Prosecutor Office • Courts • MoJ	To enhance women's ability and their knowledge of their rights. High knowledge will allow to better manage farms, access to resources	Lack of finances	To develop action plan	1–2 year
4.2 Develop programs to improve education of farmers,	Farmers, overall, are largely unaware of their rights	• Local authorities • NGOs • INTER • SLC • Ministry of Agriculture • Mass media • Prosecutor Office • Courts • MoJ • Academy of Sciences	Creation of educational centers in cities, districts, regions; Legal aid offices; Marketing education	Lack of finances and specialists	Selection and preparation of specialists	1–2 year
4.3 Develop programs to improve education of regional government	To increase responsibility of regional government for following laws	• State Institute for Improvement of Professional Skills, • Government	Higher degree of executing of laws through their implementation	Difficulties at the regional level; Time-consuming	To find out needs for education	1–2 year

TABLE A4.1 PLENARY WORKSHOP: COMBINED LAND REFORM POLICY PRIORITIES BY SECTOR

WHAT? (STRATEGY PROPOSAL)	WHY? (PURPOSE)	WHO? (SECTOR/ RESPONSIBILITY)	HOW? (NATURE OF CHANGES/ INPUTS) (Details to be developed later)	RISKS/ IMPLICATIONS (Additional areas for support activities/ strategies)	WHAT HAPPENS FIRST? (STRATEGY PRECONDITIONS)	WHEN? (PRIORITY) (Timeframe 1–3 Years)
4.4 Develop programs to improve education of the Courts, *dekhans*, and students of law schools	To prepare specialists for working with debts solution, and for achieving more justice	• NGOs • Supreme Economical Court • Courts, • Jurists • Economists	Proper protection of rights and solution of disputes	Difficulties at the regional level; Lack of specialists and finances	Coordination of donor efforts; (DFID began activity on involvement of Arbitration Courts)	1–2 year

APPENDIX 5. SUGGESTED LEGISLATIVE AMENDMENTS FOR COMPLIANCE WITH EC BUDGET SUPPORT PROGRAM BENCHMARKS

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
3.1.1. The SLC Legislation Working Group, with support from technical advisory resources, drafts amendments to the Resolution "On the Reorganization of Agricultural Enterprises and Organizations," promulgated by the PD No. 522 (and to other necessary legislation) in order to introduce specific requirements related to notice, transparency and processes associated with farm reorganization.*	1. Ensure Farmer Understanding of Farm Reorganization Process *(i) Mandatory Notice*	PD 522/1996 "On the Reorganization of Agricultural Enterprises and Organizations"	*(i) Mandatory Notice* To add the following paragraph to point 4: "one month in advance to inform all members of the management about reorganization process and its procedures in accordance with given Provision"; To add new provision including procedure of notice about reorganization and general meeting, stating date, place, and goals of conducting meeting.	▪ Accepted by SLC with changes (Government Resolution Draft Point 3) COMMENT: While there is more detail about the process in the draft, there is no mandatory notice period mentioned in the draft Also, the amendment does not go in to detail about the operations of the Working Commission and how it must conduct its business

* The Agreement notes: "The amendments will aim at giving effect to the following: 1. ensure farmers' understanding of farm reorganization processes; 2. strengthen regulations for distribution of land use right certificates to all households holding a right on agricultural land; 3. encourage an equitable land distribution; 4. clearly identify reorganized land parcels for those with a right to agricultural land; and 5. limit government's interference with the farm reorganization process. More details in the attached Appendix 1."

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
	(ii) Compulsory General Meetings	PD 522/1996 "On the Reorganization of Agricultural Enterprises and Organizations"	*Compulsory General Meetings* In third paragraph of point 2, after words "general meeting" to add "with all." To add new point stating quorum for accepting decision at the general meeting—¾ of all members of farm.	▪ Accepted by SLC (Government Resolution Draft Point 3) COMMENT: The quorum provisions are useful, but the draft would benefit from some "consequences" from a meeting that was held without a quorum (e.g., the decision is void, voidable, or otherwise subject to challenge)
	(iii) Compulsory Establishment of Farm Commissions	PD 522/1996 "On the Reorganization of Agricultural Enterprises and Organizations"	*Compulsory Establishment of Farm Commissions* In point 5, phrase "commission at the local level" to replace with phrase "working commission at the local level comprised of members of the managements, representatives of Agriculture Ministry, SLC, and local land committees (furthermore, working group)."	▪ Accepted by SLC but with amendments. (Government Resolution Draft Point 3)
			Points 5.9 and 13 should be worked out considering precise role and activity of SLC.	▪ Accepted by SLC (Deleted) COMMENT: The draft rightly does away with the SLC in favor of decentralized local working commissions.
			In point 5, a provision should be added that SLC has no right for refusal in accepting decisions.	▪ Accepted by SLC (Deleted)
			Point 13 should be added with criteria of privileges and procedures of implementing them, and to exclude power of SLC.	▪ Accepted by SLC (Deleted)

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
			Repeal point 15.	▪ Accepted by SLC (Deleted)
			Point 16 is necessary to supplement with new revision of indicating source of payment of compensation, and after phrase "money compensation" to add words "in accordance with size of a share," and eliminate words "step by step."	▪ Accepted by SLC (Government Resolution Draft Point 14) COMMENT: The provision would benefit from details as to who can elect which option and how compensation will be paid and the value of such compensation.
			Point 17 to supplement the source of compensation.	▪ Accepted by SLC (Government Resolution Draft Point 15)
			Repeal points 18–20 and 25.	▪ Accepted by SLC with amendments (Government Resolution Draft Points 18–23) COMMENT: While the process in relation to the land fund is far from detailed, there are important new and positive features (e.g., this is authority for a land share holder to transfer his or her share [point 20]). It may be the case that some details with be picked up under proposed amendments to the Law on *Dekhan* Farms currently slated for the drafting of amendments in December 2005

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
			To first paragraph of point 21, after phrase "district land committee" to add "by proposal of working group."	▪ Accepted by SLC (Government Resolution Draft Point 19)
	2. Strengthen Regulations Relating to Distribution of Land Use Right Sub-certificates *(i) Farms to be divided equitably*	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations"	*Farms to be divided equitably* In points 21 and 22, to indicate additional "fair distribution of land"	▪ Accepted by SLC (New Draft Point 20) COMMENT: A positive suggestion is the drawing of lots in the allocation process, but the provision will benefit from making this the standard practice rather than a practice that is applied only when there are simultaneous applications. In addition, this provision importantly singles out women as a specific class of person entitled to the granting of land shares. This is an important step forward in respect of women's rights
			In point 22, a provision should be added stipulating grounds for refusal of land allocation (see part 3.1.4, point 4 below)	▪ Rejected by SLC COMMENT: To make land tenure secure, the circumstances in which rights can be withdrawn must be clearly articulated. This has not happened under these amendments but may change under proposed amendments of the Land Code (and other legislation) slated for early 2006 (also note changes to the Law on Land Reform mentioned below in relation to point 5(i)).

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
	(ii) Eliminate requirement for farmers to pay debt of state and collective farms		Eliminate requirement for farmers to pay debt of state and collective farms	THIS IS NOW THE SUBJECT OF THE COTTON FARM DEBT STRATEGY AND OUTSIDE THE DIRECT INFLUENCE OF THE SLC
	(iii) To issue sub- certificate for land share to each member, entitled to land share	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations"	Issuance of certificate for land plot to each member, entitled to land share	▪ Accepted by SLC (New Draft Points 19, 20)
			In first paragraph of point 21, after phrase "proved by relevant documents" to add by the following "In tenure certificate names of each members should be indicated. Certificate for land share is given to citizen, entitled to, stating his land size."	▪ Accepted by SLC (Draft Government Resolution Points 19, 20)
		Governmental Resolution No. 478/2004	Into point 7 of given resolution, to add procedures of issuance of tenure certificate and sub-certificate for land share. To add second paragraph of following context: "Sub-certificate for land share is given to each citizen, indicating its size"	NOT YET CONSIDERED BY SLC
	(iv) Distribute land share sub-certificates, listing names of all entitled	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations"	Distribute land share sub-certificates, listing names of all entitled. In first paragraph of point 21, after phrase "are confirmed by relevant documents" to add "in which a name of each family member, that has right for land plot, and size of his plot, is indicated."	▪ Accepted by SLC (Government Resolution Draft Points 19, 20)

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
	3. Encourage equitable distribution of land *(i) Establish Guidelines for Rayon Land Committee on land for the land fund*	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations"	*(i) Establish Guidelines for Rayon Land Committee on land for the land fund* In point 18, after phrase "land for special reserve" to add "in accordance with regulations of Government of RT."	▪ Accepted by SLC but with amendments (Government Resolution Draft Points 17, 18, 19, 20) COMMENT: Still uncertain as to how this process will work in practice (also note the issues mentioned above in relation to the drawing of lots in the allocation of land allotments).
		Law of *Dekhan* Farms	Repeal part 2 of Article 12	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
		Land Code	In Article 99, after phrase "for agricultural production" to add "in accordance with regulations of Government of RT."	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
	(ii) Remaining land to be equitably divided	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations"	Remaining land to be equitably divided. See point 2(i) above.	▪ Accepted by SLC (Government Resolution Draft Point 20) COMMENT: refer to the comments under point 2(i) above

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
	(iii) Amount of land received to be entered on land certificate	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations & GR 478/2004"	Amount of land received to be entered on land certificate See point 2 (iii) above.	▪ Accepted by SLC (Government Resolution Draft Points 19, 20)
		Government Regulation 478/2004 "On Procedure and Issuance of Certificates for Right of Land Use and Entitlement to Land Share"	To add the following points to Resolution 478/2004: Cost of Certificates • Prices for obtaining certificates must be posted on a special board at the place of its issuance; • A notice about asking for or receiving improper payments must be posted in the central SLC office; and • Failure by the offices to fulfill mentioned statements can lead to prosecution stipulated by relevant legislative acts.	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
	(iv) Establish procedure for distribution of non-land property	PD 522/1996	Establish procedure for distribution of non-land property. To add into resolution a separate point stipulating the procedure of just distribution of property, including property cost estimation and distribution of assets (review points 8–13);	▪ Accepted by SLC but with amendments (Government Resolution Draft Points 5, 6, 7, 8, 9, 10, 11, 12) COMMENT: As noted above, importantly, women are especially singled out as a class of rights holder. Nevertheless, more detail is required in respect of some aspects of the non-land property distribution process. Some aspects of this provision are still vague.

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
		"On Procedure and Issuance of Certificates for Right of Land Use and Entitlement to Land Share Government Regulation 478/2004"	To add to point 6, second paragraph of the following context: Names of all entitled farmers should be listed into certificate.	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
	4. Clearly identify land parcels in reorganized farms *(i) Ensure those entitled get a demarcated land use entitlement*	PD 522/1996 "On Reorganization of Agricultural Enterprises and Organizations"	*(i) Ensure those entitled get a demarcated land use entitlement* In the fourth paragraph of point 22, after phrase "which was worked out by the applicant" to add "and is indicated in relevant tenure documents."	▪ Accepted by SLC (Government Resolution Draft Points 19, 20)
	(ii) Land Use Certificates to clearly identify land entitlement with demarcated plot	GR 478/2004 "On Procedures and Regulations for Issuing of Certificates for Land Tenure and Certificates for Land Plot"	Land use certificates to clearly identify land entitlement with demarcated plot. In point 6, after phrase "the ground for issuing certificate of land tenure" to add "Borders of land plot, allocated for tenure terms, shall be indicated in certificate."	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
		Law on *Dekhan* Farms	Amend Article 13 in the same way as above for GR 478/2004	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
	5. Limit government interference with the farm re-organization process *(i) Eliminate District* Khukumats' *interference in the decision-making process of farm re-organization*	Law on Land Reform	Eliminate District *Khukumats'* interference in the decision-making process of farm reorganization. Delete Article 14(3) and (4).	▪ Accepted by SLC (Government Resolution Article 14) COMMENT: In a positive note, point 3 of new Government Resolution clearly states that local governments must not play a part in the general meeting process and provides sanctions for doing so. Additionally, amendments to Article 14 of the Law on Land Reform repeal a reference to a *Hukumat's* power

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
				to withdraw rights (although not specifically prohibiting withdrawal. It remains unclear if the lack of a power will amount to the same as a prohibition
3.1.4. The SLC Legislation Working Group, with support from technical advisory resources, drafts amendments to the Law No. 594 of 5 March 1992, as amended, and to the Resolution of the Tajik Government No. 30 of 4 February 1999 (and other necessary legislation) to introduce specific requirements related to land tenure.	1. Prohibit local authorities (or non-judicial authorities) from withdrawing rights to occupy land without a defined and transparent procedure	Law of Land Reform	Amend part 1, Article 11, to prevent local authorities from withdrawing right	▪ Not included in Government Draft because the SLC forwarded the Legislative Draft to Government for consideration before the amendments were tabled with the SLC Legislative Working Group
	2. Prohibit withdrawal of land rights for private use	Law on *Dekhan* Farms	Delete part 2, Article 12.	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
	3. Permit removal of land rights only with a court order	Law on *Dekhan* Farms	To add the following to Article 12: "If land tenure user is not content with decision of the executive board on district (city) level to cease his right to land use he has a right to sue this decision at court. And until court decision no state registration of cease of land use right shall be done."	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
		Land Code	To bring amendments to point "n" Article 6, point "c" Article 7, point "b" Article 8, in Article 39, in part 2 of Article 40, and in Article 473	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
		Law on Land Reform	To bring amendments into part 2 of Article 10 and Article 11	▪ Not included in Government Draft because the SLC forwarded the Legislative Draft to Government for consideration before the amendments were tabled with the SLC Legislative Working Group
	4. Develop guidelines for the withdrawal of land rights	Land Code	To add the following phrase to Article 5: "g) approval of list of state and public needs for land withdrawal cases." To add the following part 3 to Article 48: "The list of state and public needs shall be approved by the Government of Republic of Tajikistan."	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
		Law on *Dekhan* Farms	Article 9: Repeal Part 1 of Article 12: Repeal (c), (d), (f), (g) Add a new article into law providing: "Independency of *dekhan* farm," stating that no person, organization, or institution (state or otherwise) can force/coerce a farmer or farm in relation to the management of the land. Violation of this rule can lead to prosecution in accordance with the law of RT." Article 18: repeal (c), (e)	NOT YET CONSIDERED BY SLC (May be considered in December 05/January 06)
		Law on Land Reform	Article 3 paragraph 3 should be adjusted to conform with Land Code.	▪ Accepted by SLC (New Draft Article 3)
			Article 4 should be adjusted to conform with Land Code.	▪ Accepted by SLC (New Draft Article 4)

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
			Article 8: review termination of land use rights under Articles 37 and 38 of the Land Code; repeal paragraph sixth part 1 Article 8.	▪ Not included in government draft because the SLC forwarded the legislative draft to government for consideration before the amendments were tabled with the SLC Legislative Working Group
			Article 10: delete all references to lands that are used irrationally.	▪ Not included in government draft because the SLC forwarded the legislative draft to government for consideration before the amendments were tabled with the SLC Legislative Working Group
			Article 11: repeal power of *Hukumats* withdrawing land plots from land users. Delete provisions that allow distribution of withdrawn land to new rights holders (refer to above).	▪ Not included in government draft because the SLC forwarded the legislative draft to government for consideration before the amendments were tabled with the SLC Legislative Working Group.
			Article 12: clearly define "residents, that live in the given area" and "agricultural knowledge and qualifications."	▪ Accepted by SLC, but the details are now included in point 10 of the new draft Government Resolution.
			Article 14, in part 3, to delete "on withdrawal."	▪ Accepted by SLC COMMENT: Refer to comments above on whether this amounts to a prohibition on the *Khukumat's* exercise of this power
			Article 17: change to bring in to conformity with the *Land Code*	Accepted by SLC

TABLE A5.1 SUGGESTIONS FOR LEGISLATIVE AMENDMENTS FOR SLC TO COMPLY WITH EC BUDGET SUPPORT PROGRAM AGREEMENT (AS OF DECEMBER 5 2005)

INDICATOR	CHARACTER OF CHANGE REQUIRED	LEGAL INSTRUMENTS AFFECTED	PROPOSED AMENDMENTS	STATUS OF PROPOSED AMENDMENT
			Article 18: In part 2 after phrase "land plot" to add "which is registered in written form."	▪ Not included in government draft because the SLC forwarded the legislative draft to government for consideration before the amendments were tabled with the SLC Legislative Working Group.
			To add new Article 18-1 to the law: "18-1. Grounds for refusal of land plot": Grounds for refusal of land plot shall be as following: a) Person not of an entitled class; b) Person already has an allocation of land; c) Person does not satisfy the experience criteria. Refusal to grant a land plot is not permitted for any other reason. A refusal should be subject to appeal to a court of competent jurisdiction	▪ Not included in government draft because the SLC forwarded the legislative draft to government for consideration before the amendments were tabled with the SLC Legislative Working Group.

APPENDIX 6. GOVERNMENT DRAFT PLANNING DOCUMENT 2006–2015

FOOD SECURITY AND AGRARIAN INDUSTRIAL COMPLEX DEVELOPMENT (MILLENNIUM DEVELOPMENT GOALS)

Section 1. Current Situation and Problems, Constraining Millennium Development Goals Attainment

Fighting poverty and hunger is one of the most important Millennium Development Goals (Goal 1). Poverty produces hunger. If poverty is incident to the society with the weak and underdeveloped economy, hunger is a result of insufficient quantity of food stuff and lack of physical and economic access to them. One of the main conditions for food security is ensuring access of the population to adequate food stuff (to satisfy the physiological needs of individual for nutrients and energy) for maintaining and strengthening health.

Nutrition assessment in Tajikistan found out a significant decline of animal proteins, vitamins (A, B1, B2, etc.), and micronutrients (calcium, iron, etc.) in the daily ration of population. It resulted in high morbidity rates of nutrition-related diseases of the Tajikistan population. It was stated (in 2003) that 38% of children under five and 41% of reproductive-age women suffer from iron deficiency anemia, 64% and 60% respectively—from iodine deficiency. The prevalence of Vitamin A deficiency in children from six months to five years makes 51.8%.

The data on high prevalence of malnutrition among children is alarming. It was found out, that in the country in 2004, the prevalence of acute malnutrition was in 7.6% of children from six months to five years while chronic malnutrition occurred in 31.4% of children.

The decline in the requirements for food quality and safety is obvious. Chemical and microbiological contamination of food stuff has become a serious problem; therefore, there is a need for ensuring a tight control over the most hazardous and wide-spread contaminants.

There is no proper system in the republic for the monitoring of nutrition disorders. Thus, it makes difficult to identify the causes and necessary measures for tackling and overcoming the issue of malnutrition.

Moreover, the minimum food consumption basket in Tajikistan is not identified yet.

Food security problems in Tajikistan are caused by malnutrition, lack of paying capacity of the population, and a big share of import of food commodities in overall balance. These problems pose serious food insecurity threat. In principle, there are already signs of the negative impact of food insecurity: shortened life expectancy, high morbidity rates, sick newborns, and the main issue—regressive changes in gene pool of the nation. Therefore, food security problems result in the loss of human capital, leading to more human resources without capacities for labor or any other creative activities, and this poses a real threat for national security.

It is obvious that the food market reflects the economic conditions and social stability of the society. Development of the food market has always been under focused attention of the Government of Tajikistan. Main efforts are directed at establishing food reserves with the aim to ensure self-sufficiency, i.e., food security. In current conditions of agrarian-industrial infrastructure, food security in Tajikistan is heavily dependant on the efficiency of its main branch—agriculture.

Close links between agrarian policy and food security are based not only on the importance of agricultures in producing and delivering food stuff, but also on the fact that agriculture is the main source of income and livelihood for the majority of the poor population of the country, which is 65% of the total population ($US 2.15 per day). Eighteen percent of population is considered as extremely poor (1 PPS per day).[4]

It should be noted that agriculture sector in Tajikistan experiences a difficult period of development caused by the collapse of the overall system and accumulated sectoral challenges, aggravating the situation. These challenges need to be addressed through the comprehensive reform of legislation and regulatory-legal basis.

First of all, land reform has not liberated the initiatives of farmers, it has not given incentives to increase productivity. A farmer does not have enough land rights and the freedom for producing and marketing his products.

Current ambiguous prescription of the land reform rights in the land legislation allows local authorities to interpret their meaning broadly and even make decisions on seizure of land in case of its "irrational" use. Farmers are threatened by the possible confiscation; therefore, they are imposed on by the plans of the local authorities on what crops should be produced. Thus, the freedom for entrepreneurship is restricted.

Land shares of farms remain under collective management. Process of establishing collective *dekhan* farms is going very slowly. Officially, the farms are registered as private ones; however, the actual management system did not change much—incentives for individual investments and increasing productivity are very low.

The procedure of establishing individual *dekhan* farms (taking the land share out of the privatized or collective *dekhan* farm) is very complicated and is strictly controlled by the local authorities. There is a provision in the law which allows establishing individual *dekhan* farms; however, this process is slow, non-transparent, and expensive.

Unclear statements of the law, complicated procedures, their high cost, non-transparent decisions and actions, and poor awareness of their rights by farmers produce unequal access to land resources and lack of confidence of the owners in utilizing the land. Fear of losing the land plot, and cropping and marketing of products imposed by local authorities' terms which are unprofitable for farmers, result in unwillingness of farmers to make any economic investments in increasing land productivity and growth of production. Therefore, newly established individual *dekhan* farms do not have the guaranteed rights for using land freely. Laws are unclear, the judicial system is weak, and state control over land use is excessive and irrelevant (i.e., actual planned volume of productivity and threats of confiscations).

1. Low financial capacities of farms remain as one of the most serious problems: insignificant income from sale due to the low prices on the produce products and limited opportunities for marketing; lack of individual revolving capital for seasonal financial support and lack of access to bank credits; and huge debts. The main part of these debts is burdened on cotton farms. Therefore, the bank accounts of the majority of such farms have been frozen, which accounts for non-cash in-kind credits, increase of barter, and shifting the transactions to the shadow economy, all which have negative consequences.

2. Due to the low profitability of the agriculture sector, its production and technical capacities have shrunk much more than in other sectors of economy. Lack of financial allocations caused significant decrease of the volumes of procurement of new equipment and machinery, and physical wear of existing agricultural

[4] PAU, WB, 2004

fixed assets. Therefore, even in case of high demand for domestic agricultural products, growth of its productivity will be constrained by limited resources.

3. Normal functioning of the agricultural sector is impeded by the weak agrarian market, lack of effective systems for market regulation, interregional trade barriers, and an artificial restraint of prices. Given undeveloped market infrastructure, there are no sufficient links between producer and consumer. Moreover, the possibilities for marketing local agricultural products at reasonable prices are very limited.

4. Lack of effective state and non-state systems for regulating the food market constraints the growth of agricultural sector. Old mechanisms for management and distribution have been eliminated; however, new mechanisms, that would meet the existing requirements, have not been established. This does not allow establishing a single (common) market space in the country and leads to the significant losses for agriculture and for population.

5. Challenges for the rural development today are not only related to social issues, but have also an adverse impact on the economy of agricultural production. Social infrastructure in rural area in most cases remained on the balance of agricultural farms, and this causes further financial crisis, increasing nonproductive expenditures. The difficulty of this problem is that in rural areas there is no other major source of income other than agriculture. In this situation the heads of agricultural farms have to keep exceeding the number of employees in order to ensure social stability in their area. However, this results in overall decrease of productivity and profitability of the sector.

Tackling this issue will have a significant impact on the overall productivity of agriculture, and as a result, on the economy of the country, especially in transition period to market relations.

In current relationships, production of agricultural products is regulated by local authorities rather than prices and expected economic gains.

Government control over the cotton production and export of cotton fiber is the main policy direction. Local authorities influence the decisions of farmers in choosing crops, investors, and gins.

The lack of a competitive system, in terms of logistical support to the production process, enables investors to be less responsible for contract implementation—terms of delivery are not followed, quality does not meet the requirements, and prices are going up.

Investors have created a system of a single purchaser (ginning factories), and this enables them to dictate their own conditions and eliminates any freedom of choice for marketing.

As a result, the producer suffers the most. The producer's income goes down and incentives for productivity growth are lost.

Ineffective cotton ginning in Tajikistan causes significant losses of cotton. Processing of one ton of cotton costs 140 USD and takes about 200 days, which is much longer compared to western countries (it takes 90 days in western countries). [5] Poor conditions of ginning factories (poor storage facilities, old equipment, lack of competition, etc) make an adverse impact on the overall cotton productivity.

Cotton farm debts are the most serious barriers for further development of agriculture.

Current production of fodder on the farms can cover less than half of the cattle needs in winter fodder. Significant decrease of plots for fodder crops (due to cotton expansion) produces a critical situation in *dekhan* farms, *kolkhozes*, and *sovkhozes*. Collapse of an outrun system in cattle breeding (despite the existence of summer pastures with multiple fodder resources) further deteriorates the current unfavorable conditions of agriculture.

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[5] Poverty and Social Impact: Privatization of Cotton Lands in Tajikistan, WB, 2004.

Lack of fodder causes low productivity—60 calves per 100 cows, 80 lambs per 100 sheep, milk productivity is 2–4 liters per day. Insufficient volumes of proper fodder cause domestic animals diseases, and even losses of cattle. Veterinary services are not delivered at a proper level, there is a lack of vaccines, poor immunization coverage, and reluctance to do preventive immunization. Annual loss of cattle because of infectious diseases is at 14%.

Land ownership lays basis for sustainable livelihood. Poverty and hunger will continue to have a negative impact of rural population unless there is fair access to land. Currently, the land and all natural resources of Tajikistan belong to the state, but farmers have long-term right to use this land.[6]

The agricultural sector cannot develop without a functioning infrastructure. Rehabilitation of irrigation systems, establishment of water usage mechanisms, and reconstruction of drainage systems require urgent attention. Sixty percent of arable land in Tajikistan is irrigated. Sixteen percent of irrigated land is salinated, one third of irrigated land does not give return. Technical capacities of water pump stations are limited, thus the water flow is not sufficient. Slope lands are affected by water erosion.

There is a need to make farms responsible for maintenance and operation of the irrigation and drainage systems, and establishment and strengthening of the role of public associations that are uniting water users.

Farms suffer from the lack of agricultural machinery, especially in the periods of harvesting. Farmers have to rent the required machinery at the prices that are higher than at the market. Many farms have to use handy and improvised tools.

Adequate storage and transportation are important for improving access to the market and to the consumers. Currently, there are not even basic storage facilities and transport at the farms, which result in significant losses.

Section 2. Priorities for 2006–2008 and for the Period by 2015

1. Intensification of land reform
2. Cotton farms debt resolution and sustainable growth in cotton sector
3. Reform of the management system of agriculture sector
4. Improving the potential of agrarian sector
5. Healthy nutrition

Section 3. Measures aimed at achieving national goals and priorities for 2006-2008 and for the period by 2015.

1. Intensification of Land Reform

There is a need to intensify the land reform, stipulating guaranteed, clearly stated and efficiently provided rights for individual use and transfer of the land to ensure the sustainable growth of agriculture productivity and formation of effective land user.

Guaranteed land rights will allow farmers to use their land in a profitable way, which will lay basis for sustainable growth, and will stimulate flow of investments to the increase of productivity. To ensure rational use of land plots of farmers, as the main production means and the subject of legal, economic relations, it is necessary have the following provisions in the law:

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[6] Long-term rights for land use are not defined quantitatively.

- Clear land user rights and all conditions for terminating these rights by administrative and judicial authorities
- Accessible and simple procedures of land allocation and its state registration
- Limited local authorities intervention into the process of land allocation, and elimination of administrative influence on the choice of areas under crops, cropping, and sale
- Assessing the possibility of using the land rights as a collateral for financial and legal deals
- Plans for improving the work of land committees and their management tools

This can be achieved by applying the following measures:

- Make amendments into the Civil Code of the Republic of Tajikistan to define the status of a *dekhan* farm as a legal entity, and make relevant amendments into the Law of the Republic of Tajikistan "On *Dekhan* Farm"
- Make amendments to the law of RT "On Land Assessment"
- Capacity building of the State Land Committee to improve and simplify land registration procedures
- Stop threatening farmers by local authorities, as if they would confiscate land use rights for the land, which is not used for cotton

It will be important to educate farmers on land user rights and freedom of entrepreneurship. In general, improvement of land reform process will result in better access of farmers to land, stronger incentives for productivity growth and bigger flow of investments along with the increasing income of farmers. The dominating position of private sector will ensure that farmers free use of land by their own choice.

U.S. Agency for International Development/Central Asia Republics
Park Place Building
41 Kazibek Bi, Street
050100 Almaty
Kazakhstan
Tel: 7 (3272) 50-76-12 or 7 (3272) 50-76-17
Fax: 7(3272) 50-76-35 or (3272) 50-76-36
www.usaid.kz