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KAZAKHSTAN

ASSESSMENT OF THE IMPLEMENTATION OF THE INTERIM PROVISIONS, LAND CODE FINAL REPORT

OCTOBER 12, 2005

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FINAL REPORT

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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

CLS	Conditional Land Shares
GOK	Government of Kazakhstan
Ha	Hectare
JSC	Joint Stock Company
LLP	Limited Liability Partnership
LRMA	Land Resources Management Agency
PC	Producer Cooperative
PF	Peasant Farm
RK	Republic of Kazakhstan
SP	Simple Partnership
USAID	United States Agency for International Development

I.0 INTRODUCTION

In 2003, the Government of Kazakhstan (GOK) enacted a new Land Code. The Land Code is a major policy initiative by the government to allow private land ownership, increase efficiency, and encourage sustainable land use. It reflects the GOK's awareness that agricultural productivity did not improve as expected by the land reforms and farm restructuring during the 1990s. Government stated the main reason for this disappointing performance is that, in many cases, "capable farmers" have not used the land due to it being leased or subleased to other users, which the GOK believes affected the farmers incentive.¹ The code demonstrates the GOK's hopes for its evolving agrarian structure and agriculture. The Land Code also contains interim provisions (Article 170) intended to accomplish a shift toward direct cultivation, requiring those who had leased or subleased their conditional land shares (CLS) to others to cancel those contracts. They then have three options: (1) to assume direct cultivation of the land under government lease; (2) to purchase the leased land; or (3) to contribute their land shares or land plot to the capital of an agricultural enterprise. They were required to act by a deadline of January 1, 2005, or lose their land or land share.

The interim provisions directly affected 25 to 30 percent of those who originally received land shares from 1995 to 1997 and 25 to 50 percent of the land involved in the farm restructuring.² Some categories of landholders have been affected directly, for instance, the many rural people whose land shares were held by farm enterprises of one type or another. A much larger number of rural people were affected indirectly, some substantially so for groups that are critical to the future of Kazakhstan's agriculture (such as those who had converted land shares to land plots and begun to farm) (see Section 4). The implementation of the interim provisions is an important shift in the pattern of land reform in Kazakhstan. It has reallocated the use of land holdings among different agricultural organizations and citizens and has brought to an end a transitional period in the reform during which much of the property rights in land were represented by land shares not tied to particular parcels of land.

The Central Asia Regional Land Tenure Reform Project, funded by the United States Agency for International Development (USAID) and implemented during this major change, has been able to provide assistance in the achievement of the interim provisions through its legal aid program. The project has established eight legal around the country to provide free legal services for local residents to help them understand the interim provisions and their rights under them. The idea for an assessment came from the legal aid offices' working experience with the Land Resources Management Agency (LRMA) of the Republic of Kazakhstan (RK). The agency supported the idea of an assessment, and this report presents the findings and recommendations for presentation and discussion at the National Conference on Implementation of the Land Code in late September 2005.

¹ Officials of the State Land Agency have expressed their concerns to the USAID project staff on many occasions that the agricultural enterprises have to pay rent to those who own land and do not use it but choose to lease it out. These officials feel strongly that the situation has to be changed. The interim provisions aim to remedy this situation and let those who are actually farming take control of the farmland and use it more efficiently, with the possibility of owning it at some point.

² The estimation is from Table 3.1 and Table 3.3.

WHAT CAN BE ASSESSED

This assessment is part of the project's efforts to assist the GOK, civil society, and international donors in understanding how land allocation worked before and how it will work after the implementation of the interim provisions of the Land Code. However, the implementation of the interim provisions is still in process while those affected exercise their rights, even though the deadline for cancellation of leases and subleases is passed. The affected population and farm organizations and the government implementing bodies continue working to complete the necessary procedures and formalities. As a result, the assessment can only review short-term impacts of the implementation. In addition, there has not been adequate time to evaluate other anticipated impacts. For example, the GOK expects the interim provisions to lead to more efficient land use, but this will not be clear for some years. This assessment may, however, provide some early indications of emerging issues in the post-implementation period, which may be useful for GOK land management.

The assessment gathered the following empirical information on the changes and their immediate impact: 1) the state of progress with regard to implementation of the interim provisions; 2) the resulting changes in farm types, the reallocation of land among farm types, and the types of property rights held by farm types; and 3) how these changes affected the intended beneficiaries.

The information in this report is drawn primarily from three sources:

1. Statistical data on the holdings of CLS and land plots by different forms of farm organizations and CLS holders before and after implementation of the interim provisions, from the LRMA and other sources;
2. Qualitative information gathered through field research and the legal aid offices;³ and
3. Information gathered through administration of a simple questionnaire to a random sample of 400 affected persons (100 in each of the same four project *Oblasts*) carried out by a contracted firm (BISAM).

ORGANIZATION OF THE REPORT

This report is organized as follows. Section 2 provides the historical background of the land reforms and the farm restructuring since independence, including the changes anticipated under the 2003 Land Code. Section 3 presents the changes resulting from implementation of the code through the government's statistics and our quantitative and qualitative studies. It deals with changes in farm types, reallocation of land among different farm types, and the kinds of property rights held by different farm types, as well as the attitudes of affected citizens toward the implementation. Section 4 examines issues that arise for landholders and the government in the post-implementation period, including issues about how those affected complete the processes involved in the exercise of the three options. Section 5 presents the conclusions and suggestions of the study teams, including areas that deserve attention in the coming years.

³ The project's legal aid offices in Shymkent, Taldykorgan, Aktobe, Petropavlovsk, and East Kazakhstan conducted the field research. They targeted three groups of affected people: a) agricultural enterprise entities' shareholders who contributed their CLS or land plots; b) peasant/individual farmers; c) managers of agricultural business entities. The information gathered primarily uses focus group interviews and key informant interviews carried out by the project's Legal Aid Program Coordinator, working with the staff of the legal aid offices. There were in total around 100 interviews taken with different landholders. The researchers also met with *Oblast* government bodies to discuss the interim provisions.

2.0 BACKGROUND: LAND REFORM/AGRARIAN RESTRUCTURING AND LAND CODE

2.1 THE IMPORTANCE OF AGRICULTURE IN THE NATIONAL ECONOMY

Agriculture is an important sector in Kazakhstan's economy. The country was famous for its livestock in Soviet times and is one of the major producers of marketable grain, meat, and wool in Central Asia.⁴ The country has 222.6 million hectares of agricultural land, which is 74 percent of the country's total area. Of the total agricultural land, arable land makes up 10.18 percent; hay land, 2.27 percent; and pastureland, 84.9 percent.⁵ The rural population is about 43 percent of the total population. During the Soviet period, the state owned all agricultural land with two main types of farm organizations: state owned and run farms (*sovkhoses*), totaling more than 90 percent of the farms and collective farms (*kolkhozes*). After independence, like other Commonwealth of Independent State countries, the country's agricultural structure has been through reforms.

2.2 LAND REFORMS AND AGRARIAN RESTRUCTURING (1991–1997)

Land reforms and farm restructuring was gradual and carefully planned by the GOK. This process goes back to before independence in 1990. Kazakhstan passed the first national law “On Peasant Farms in Kazakh SSR” in May 1990, when it was still part of the Soviet Union. That law allowed workers leaving the collective farms to establish peasant farms (PFs). It made it possible for individuals to obtain a variety of land rights over land taken out of collective and state farms: for individual farmers to obtain inheritable land rights; for legal entities to obtain full ownership of land; and for other users to obtain lifetime or temporary use rights.

Farm restructuring got underway in 1991⁶, when the GOK started pilot restructuring projects in some *Oblasts* to encourage cadres who managed the state or collective farms to form smaller agricultural enterprises from the big farms including joint stock companies (JSCs), collective enterprises, and producer's collectives. While

⁴ The statement was made by the GOK on its foreign affairs Web site.

⁵ Ibid.

⁶ It might have been affected by the uncertainty of the political situation in the Soviet Union in 1990.

some farms were privatized, many state and collective farms remained virtually intact from 1991 to 1993⁷. In this period, the directors of the state and collective farms distributed land to some cadres who wanted to be pioneers of the farm restructuring. In 1992, the main cadres of one *sovkhos* in Akmola established four Producer Cooperatives (PCs) with some of the farm workers from that *sovkhos*. The director gave each PC 2000 hectares, totaling 8000 hectares of the *sovkhos*'s 27,000 hectares of farmland. The newly established PCs also received machinery as a loan. (See Annex A: Land Reform and Farm Restructuring, A Farmer's View.)

Housing and enterprise privatization took place on a major scale between 1991 and 1995; and urban land privatization moved faster than that of agricultural land. The independent GOK passed huge numbers of decrees, regulations, and laws in this period. In 1993, the Decree of the President on the National Program of Privatization issued housing and privatization coupons as a mechanism for selling housing and other state-owned property to workers in all sectors to "compensate for their contribution to the country's welfare." In rural areas, the government allowed workers and pensioners of the state and collective farms to use these coupons to buy not only housing but also other farm property in order to establish peasant farms. However, in reality, "not everyone who wanted to form a farm was allowed to have one."⁸ It was mostly the managers, cadres, and specialists of the state and the collective farms who formed the new farms. In that period, the directors of the state/collective farms could give land and machinery directly to individuals (usually members). From 1991–1995, about 47 percent of the total agricultural land was distributed to these newly formed farms and by 1995 most of the farm machineries and other property were gone.

In 1994, this tendency to award farms to officials of former collective and state farms was taken a step further. The President enacted a new decree (Decree No. 1585) on "transferring *sovkhos* property into ownership of directors." The new law allowed 10 percent of the state farm property ownership to be transferred to state farm directors who held the position for 20 years or more, as a reward for their contributions. In addition, the directors were allowed to use 10 percent of the state farm property with a 5-year contract.⁹ The aim of this was to: 1) increase the effectiveness of management; 2) improve the capacity of agricultural production; and 3) increase economic efficiency and social welfare. It seemed to many rural people at this time that these officials *were* the state. The remaining 80 percent of state farm property could be divided among farm members.

By 1994 and 1995, most of the state and collective farms had liquidated all land and other farm property.¹⁰ During the period of 1991 to 1995, many new farms were established and then collapsed, and still newer farms were established. In addition, many state and collective farms transferred to JSCs, Limited Liability Partnerships (LLPs), and PCs, but they generated huge debts. Kazakhstan people refer to this time as the period of economic crisis.

On December 22, 1995, the GOK adopted the Decree of the President on Land. It contained interim provisions (Article 122), which allowed "all citizens of the RK who, previous to the present decree coming into force, had received land plots for household farming, gardening, construction, and maintenance of apartments, houses, and dachas, to receive life-time inherited ownership, from the moment the present Decree comes into force." According to this provision, all those who had these plots automatically became owners. However, this did not apply to citizens who changed their citizenship, foreigners, and those who

⁷ This was confirmed in one of the key informant interviews in August 2005. Please see Annex A.

⁸ A statement made in an interview with a Deputy Director of a former *sovkhos* in Akmola Oblast, August 19, 2005.

⁹ It was said by Mr. Menshaev, Head of the Department of Land Survey, LRMA that about 30 directors in the country received this grant.

¹⁰ Mr. Raimbekov, Deputy Director of LRMA of Kazakhstan confirmed that by the end of 1995, almost all collective and state farms were restructured into private businesses through the distribution of property and land shares among the new farms' owners/founders. However, in many cases, these farms were formed in such a way that the former collective/state farm managers were the owners/founders of new farms and land shareholders were either cooperated or joint-stock with the new owners/founders of farms.

leased the land for temporary use.¹¹ This provision also included the privatization of rural citizen's household plots. According to government statistics in 2004, individuals owned about 387.8 thousand hectares of such land.¹²

The term conditional land share was first used in this 1995 decree.¹³ Article 79 specified that lands of restructured agricultural enterprises were to be divided into CLS on paper and were to be granted in long term leases for 3–99 years to members of the *sovkhozes* and *kolkhozes* and citizens of rural areas who worked as part of the social sphere (e.g., doctors and teachers). These CLS were issued as “undefined common shares,” which means that the limits of the land rights were undefined as physical units and, consequently, the holders of the certificates were not aware of the location and shape of the land to which they were issued the rights.¹⁴

Most CLS were given from the end of 1995 until 1997. By 1997, 2.3 million CLS (about one-third of the total rural population), an area of 118 million hectares of agricultural land (about 53 percent of the total agricultural land), were granted. After 1997, CLS were still being distributed, but most of them had been doled out by that time.

Article 79 of the Decree of the President on Land states that CLS holders have a right to: 1) contribute their entitlement to CLS to the authorized capital of business partnerships or as a share to PCs; 2) receive a land plot in accordance with CLS for establishing a PF or any other agricultural entrepreneurial activity; 3) give or sell entitlement to CLS (members of the same agricultural enterprise had a prior right to buy it from him); and 4) lease out CLS rights to be used for mortgage.

In 1994, the GOK passed a regulation on definition and size for measuring the CLS to allow the CLS holders to lease land plots free from the government at the *Rayon* level, but in the same regulation, the procedure for receiving land was also changed. The individuals who had CLS and wanted to obtain land plots had to apply for the land from the local executive body. The same regulation stated the CLS distribution would not affect the people who already received land and farm property through the implementation of the Presidential Decree in 1993.

In the same year, the President urged that CLS be “personalized”; that is, each share within an enterprise should be identified with its owner and with a particular piece of land. Attempts were made to carry this out through lotteries, as the fairest way to distribute land without conflict, but this led to serious fragmentation, with family members receiving shares in different places and the family having their land plots scattered

¹¹ When asked the procedure of the privatization of dacha land, the LRMA official said that the GOK allocated a budget for conducting inventory and registering and issuing title documents for free. The process was implemented without informing the citizens, as no one would object to becoming an owner. These title documents were distributed through the so-called “communities” or “partnerships,” and were given to the group's Chair. Every community had its own Chair, Treasurer, and Guard. The reason for the partnerships was because, apart from land and buildings owned by individuals, there was property, such as water pipes, that was owned communally and belonged to the association. Property was maintained through membership fees, and decisions were made at the general meetings.

¹² The figure is calculated based on the data provided by the LRMA of Kazakhstan.

¹³ Term shares (part) of the collective farms existed before, but the “conditional land share” term is thought to have been adopted at the same time as the Decree of the President “On Land” of December 22, 1995.

¹⁴ Looking back, the Deputy Chairman of the LRMA reflects that the CLS mechanism was overdone: “The legislative norms on assignment of employees of agricultural entities with standard land shares, initially introduced with good intentions, were later bureaucratically perverted and this led the foundation for the campaign aimed at distributing the land areas of state and collective farms, becoming a formula for land distribution with a leveling approach.” Particular thanks are due to Deputy Chairman Raimbekov, whose paper (prepared subsequently for the September 2005 conference) has been drawn upon here to remedy a number of omissions in the earlier draft of this assessment. That report is included as Annex 3 of those proceedings.

throughout the enterprise's lands. In addition, farm managers strongly resisted this process, and it had to be abandoned.¹⁵

In 2001, a new Law on Land reduced the maximum terms of lease from 99 to 49 years, not only reducing the term of future leases but also those of existing leases.¹⁶ It also contained a provision that was a precursor to the interim provision of the 2003 Land Code. Government was anxious to eliminate the CLS at some point, and move on to a simpler system in which there would only be land rights in specific pieces of land. Article 124 of the Law on Land for the first time imposed a deadline: holders of CLS who had leased them out had to cancel those leases by January 2004 or lose their land shares.

Land reform was, in fact, tangled in concept and implementation with other economic reforms. The privatization of housing, business, factories, and transportation moved more quickly and required land reform in urban and in rural areas. Implementation of land reform moved more rapidly in the urban areas. During this period, the tenure in which rural land was reforms shifted. In the beginning, the more dramatic legal provisions, such as that of allowing private ownership of land, were theoretical because the exclusive state ownership of land was such a strict norm in people's minds. Gradually, the tenure allowed shifted away from state ownership, in several incremental shifts over the years, toward longer term leases from the state—"permanent use" (99 years) and then "long-term use" (49 years)—and then the right to purchase the leased land from the state to obtain full private ownership.

2.3 POST-REFORM FARM ORGANIZATIONS AND THE DISTRIBUTION OF LAND AMONG THEM

A variety of forms of farm organization has been developed for the reformed agricultural sector, and there are important differences among them. Using the categories from most government statistics, these forms are the Peasant Farm, the Joint Stock Company, the Producer's Cooperative, the partnership (including the LLP and other partnerships), the state-owned agricultural organizations that conduct scientific agricultural research, and the recently adopted Simple Partnership (SP). In legal terms, the PF and SP do not have legal personality (and so are simply individuals farming on land held as individuals), but other farm organizations do have legal personalities.

Table 2.1 shows the steady, if gradual, process of the land reform; this can be seen if one examines how the number and average size of farms of the various types of farm organization have changed over the period 1991–2005. The number of peasant (family)/individual farms has grown steadily, but the average size of the farms has declined, not dramatically, but steadily. This may suggest that the optimum size is somewhat smaller than those originally created. The pattern has been the same for farms belonging to partnerships (LLPs) and JSCs: growth in numbers and a modest decline in average size of farm. At the same time, the number and size of state farms, PCs, and farms held by other state agencies have declined steadily (with a few specific exceptions).

¹⁵ Much of this information was received during a meeting with Mr. Saduev B.K., Chief Specialist, State Scientific Production Center on October 7, 2005.

¹⁶ During our field research in July 2005, local people expressed concerns over less secure land tenure rights when the law changed

TABLE 2.1 AVERAGE LAND HOLDINGS BY FARM ORGANIZATIONS, 1991–2005

CATEGORY OF FARM ORGANIZATIONS	1991			2002			2003			2004			2005		
	NO. OF FARMS	AREAS		NO. OF FARMS	AREAS		NO. OF FARMS	AREAS		NO. OF FARMS	AREAS		NO. OF FARMS	AREAS	
		1000 HA/AVERAGE HA	%		1000 HA/AVERAGE HA	%		1000 HA/AVERAGE HA	%		1000 HA/AVERAGE HA	%		1000 HA/AVERAGE HA	%
1. Peasant/Individual farms	2480	1615.1/651*	0.7	137/905	31,524.3/229	36.6	151,878	32,770.7/215	39.4	151,878	32,017/211	34.2	166,236/90.5%	34,232.2/206	36.8
2. Non-State Agricultural Organizations, including Kolkhozes	548	15560.5/28395	7.1	20542	51,715.2/2518	60.0	17972	47,744.8/2,657	57.3						
	416 Kolkhozes	15284.7/36742	7.0												
Partnerships (PS, including LLPs) and JSC				3491	35,632.9/10207	41.3	3735	33,846.4/9062	40.6	3,748	31,135.9/8307	33.2	4,011/2.2%	30,108.3/7506	32.4
Producer Cooperative	132	257.8/1,953	0.0	1666	12,681.4/7,612	14.7	1504	9770.4/6,496	11.7	1,504	8,849.2/5884	7	1,416/0.8%	7,161.2/5057	7.7
Other Agricultural Organizations			0.1	15385	3400.9/221	4.0	12733	4128.0/324	5.0	12,734	3,765/296	9.4	10,805/5.9%	3,745.4/347	4
3. State Agricultural Organizations, including Sovkhozs	3640	201,200.2/55,275	92.2	1742	2895.5/1,662	3.4	1325	2738.1/2,067	3.3						
	2094 Sovkhozes	195,322.7/93,277	89.4												
State-owned Research Institutions and Educational Institutes	273	2304.4/8,441	1.1	650	1358.4/2,090	1.6	361	1289.7/3,573	1.6	361	1,249.7/3462	1.3	367/0.2%	1,137.3/3099	1.2
State-owned Seeds Stations and Extension Services	1003	1911.7/1,906ha	0.9	820	396.0/483	0.5	719	342.1/476	0.4	245	953.3/3,891	1	219/0.1%	911.6/4,163	1
Other State-run Farms	270	1661.4/6,153	0.8	272	1141.1/4,195	1.3	245	1106.3/4,516	1.3	719	325.3/452	0.3	723/0.39%	366.4/507	0.4
4. State Special Land Fund											15,413.1	16.4		15,287.2	16.4
TOTAL	6,668	218,375.8	100.0	160,189	86,218.8	100	171,175	83,253.6	100.0	171,189	93708.5		183,777	92,949.6	100

* Before the 1998 Peasant Farm Law was adopted, the PF could be formed with family members, relatives, friends, and neighbors. After 1998, the PF could only be with family members. This is why there is a sharp drop in farm size between 1991 and 2001.

How is land among these forms of farm organization distributed today? The vast majority of agricultural land in Kazakhstan is farmed in very large units by farm enterprises that are usually operated by former directors or cadres of the state and collective farms. Table 2.1 shows that, in 2002, the rural population was about 43 percent of the total population and the agricultural labor force was 20 percent of the total labor force. In 2003, there were 159,433 farms¹⁷ in two categories: the agricultural enterprise and the peasant (individual) farm. In the agricultural enterprise category (including state farms and associations, LLPs, JSCs, and PCs) there were 9,447 (5.93 percent of the total) farms. The 149,986 PFs (also called family farms but including individual farms) make up 94.7 percent of the total farms.¹⁸ Comparing land areas held according to the type of farm organization holding them, one finds that the 6 percent of farms that are agricultural enterprises hold 56.2 percent of the arable land, while the 94.7 percent that are peasant farms hold only 37 percent of the arable land.

2.4 INITIAL PRODUCTIVITY IMPACTS OF THE LAND REFORMS

Land reforms and agrarian restructuring are pursued in the quest for greater economic efficiency. In most studies of pre-reform agriculture, collective and state farms were found to be inefficient producers (Joseph Brada and Arthur King, 1993; Karen Brooks, 1983; Robert Meade, 2000; Justin Y. Lin, 1990; Louis Putterman, 1992). The reformers in countries in transition have resorted to land reform to try to improve economic performance in the agricultural sector.

Unfortunately, as in several other Commonwealth of Independent State countries, the initial farm restructuring and those newly established “farm enterprises” in Kazakhstan did not perform as well as expected. Transitions proved difficult. The agricultural outputs decreased for nine years after the farm restructuring of 1992 (See Table 2.1).¹⁹ Kazakhstan people still speak with fear of the “economic crisis” during those years. During that period, household garden plots, instead of the new forms of farm organization that were struggling to survive, provided food supplies.

A recent study on economic impact of farm restructuring by the World Bank found that, on average, between the years 1994 and 2002, the yields of three main crops (wheat, cotton, and sugar beet) by PFs (including family farms and individual farms) have been 73 percent higher than those from corporate farms.²⁰ PF yields rose faster than corporate yields from 1994–2002. As a result, the yield gap between individual and corporate farms grew more than threefold (see Table 2.2).

The GOK was aware of these issues and resolved to implement the interim provisions (Article 170) in response. The chief reason asserted by the government for this disappointing performance was that “capable farmers” have not used the land because, in many cases, land was leased and subleased to other users. The GOK believes this affects the incentives of the farmers. The interim provisions (Article 170) intended to

¹⁷ We also find that the data sources present different figures on farms. According to the embassy’s publication, there were about 70,000 farms, of which 99.6 percent were in the private sector. Sixty-one thousand were transferred to long-term tenure, involving 27.2 million hectares of land, 4,300 farming cooperatives, over 4,000 partnerships, and 505 JSCs and other entities. Large farms account for 73.5 percent of land; small farms (peasant farms and individual farms), 18.8 percent; and state-owned agricultural enterprises, 4.0 percent.

¹⁸ This type of peasant farm defined by the 1990 Law on “Peasant Farm” could be one person, one family with relatives, or one person with friends or neighbors. In 1993, this law was changed and only family members and relatives could run peasant farms. However, the law was revised in 2001 and 2003, to be called the Law of Peasant’s Farm in the most recent version; it only allows family members to make up the peasant’s farm, but the definition of family member is broad.

¹⁹ Rozelle and Swinnen (2004: 3 and 8) indicated that productivity in Russia, Ukraine, and Kazakhstan not only fell sharply during the immediate post-reform, it continued falling or remained stagnant during most of the first decade of transition to a low of around 50 percent of pre-reform output.

²⁰ “Stock Taking: Economic Impact of the Farm Structuring,” World Bank, Washington D.C., 2005, p.14.

accomplish a shift toward direct cultivation, requiring those who leased their land shares or subleased their land to others to cancel those contracts.

TABLE 2.2 CHANGE IN YIELD GAP BETWEEN INDIVIDUAL AND CORPORATE FARMS IN AZERBAIJAN, KAZAKHSTAN, AND MOLDOVA (%)

COUNTRY	AZERBAIJAN	KAZAKHSTAN	MOLDOVA
Years	1994–2002	1994–2002	1993–2002
Change in individual farm yields	-10	96	-42
Change in corporate farm yields	21	17	-23
Percent of yield gap closed*	40	330	96

*For Kazakhstan, percent increase in gap.
Source: Calculations from Agency of Republic of Kazakhstan for Statistics (2003); Department of Statistics and Sociology of the Republic of Moldova (2003); State Statistical Committee of the Republic of Azerbaijan (2003).

2.5 THE LAND CODE AND ITS INTERIM PROVISIONS

As discussed in Section 1, the GOK adopted the new Land Code for the privatization of agricultural land to promote more sustainable land use. To achieve land privatization, the Land Code is to go through the interim provisions. In theory, land privatization is a significant step forward, but in the end, little land was fully privatized, if full privatization is taken to mean private ownership. The interim provisions (Article 170) require those who leased and subleased CLS and land plots to cancel their leases or subleases. There are three options available to those who cancel: 1) assume direct cultivation of land under lease from the government; 2) purchase the ownership of the leased land; or 3) contribute land share or land plot to the capital of an agricultural enterprise. If one of the options is not exercised by January 1, 2005, the rights will be cancelled and the land will return to the state to form part of a special land fund, to be reallocated by the government.

It is important to understand the motivation of the GOK in enacting the interim provisions. As stated by Mr. Raimbekov, Deputy Chair of the LRMA, the government was grounded in its conviction that an efficient agriculture could not develop under existing tenure arrangements. The CLS holders were not land users according to relevant laws and, therefore, they were not subject to land tax obligations and land use regulations. This was in spite of the fact that they leased/subleased their CLS/land plots and received profits (untaxed). The GOK wanted to stop growth of what it considered to be a parasitical spirit among CLS and land plots holders who did not work but received rent from lease/sublease and officially considered unemployed. Kazakhstan's pending entry into the WTO convinced policy makers that the reforms were urgent and to strengthen agricultural production by efficient national producers before that event occurred.²¹

As noted earlier, there was a precursor to the interim provisions in the 2001 Law on Land. That law required cancellation of leases of CLS, but did not deal with subleases of land plots. A deadline was set but was apparently not met in many cases. In the 2003 code, the prohibition was extended to subleases of plots, and a new deadline was set. The earlier attempt took place in the context of a government policy to associate each conditional land shareholder with a plot of land within the enterprise holding the land share. By 2003, an important shift had taken place. The GOK seemed less interested in the creation of small farms and more ready to accept that most land shares would convert into shares of stock in large farm enterprises, stock held by the former land shareholders.

Before the interim provisions were implemented in early 2004, there were debates within the government and among the government, nongovernmental organizations, and international donors. The major concern was over the way the interim provisions should be implemented; some said they should be carried out more

²¹ Personal communication, November 3, 2005.

cautiously to give rural citizens more time to understand their options to make better choices. Those who opposed the deadline of January 1, 2005, believed that the interim provisions could lead to the creation of a landless class of peasants. The reason for this assertion was that they suspected, of the three options, most peasants would be forced by lack of resources to select contributing their land or land shares to the share capital of large enterprises. This would make it difficult for them later to gain direct access to land. The strategy behind the interim provisions is, after all, the consolidation of land rights of people not actively farming into larger production units.²²

Mr. Raimbekov stated that the politics around the implementation may have caused some confusion and resulted in further delays. During the implementation of the Interim Provisions of the Land Code, many CLS/land plots holders were encouraged by candidates for the 2004 elections to the *Mazhilis* (the lower chamber of Parliament) to believe that government would extend the period for choosing an option. The matter was, in fact, heavily debated within government and Parliament, but in the end the deadline was not extended.²³

The interim provisions were rapidly implemented. By January 1, 2005, official statistics showed that nationwide only 20,800 hectares (less than 0.2%) remained under sublease. In the following chapter on the impact of implementation of the interim provisions, we will look at these government figures and examine how this was accomplished.

²² There was also a concern in the donor community about these issues. In April 2004, the Organization for Security and Cooperation in Europe conducted a conference in Almaty to recommend that the government postpone the cancellation deadline of the leases or subleases. The request reflected the desire of those whose leases were cancelled to have more time to complete the process after cancellation.

²³ Conversation cited *supra*, footnote 22.

3.0 RESULTS OF IMPLEMENTATION OF THE INTERIM PROVISION (ARTICLE 170), LAND CODE

The Land Code, with its interim provision (Article 170), was adopted in June 2003. This section seeks to summarize the results of the implementation process and potential impact that we could assess, first looking at some quantitative indications calculated based on LRMA statistics, then at some generalizations permitted by the qualitative data gathered by the Land Tenure Reform project staff.

3.1 QUANTITATIVE INDICATIONS

How far is it even possible to quantify the interim provisions implementation experience? The LRMA has been extremely helpful in providing the data contained in Table 3.1 (Land of CLS in Different Categories, June 2003) and Table 3.2 (Cancellation of CLS Leases, January 2004–January 2005), the contents of which are discussed here.

3.1.1 CLS Leased

Q: Approximately how many CLS were leased and, thus, affected by the implementation of the interim provisions?

A: Roughly 28 percent of the original CLS were granted and 24 percent of the areas of agricultural land allocated were represented by the CLS.

After 1995 to 1997 (the period when the CLS were allocated), LRMA records show that 2.3 million land shares (representing 118 million hectares of land) had been allocated. Those shares were not held in the abstract. The land they represented was with one farm or another, on a variety of terms, and with varying levels of formality. Some shares had been taken from farmer organizations and converted to land to become PFs. Others were left as shares and either remained with the former farm organization or were given to new farm organization to manage. The land represented by land shares was sold, leased, given, or contributed in return for shares in the farm organization.

The case that concerns us most (in relation to the interim provisions) is that of CLS leased to farm organizations. LRMA figures, as of June 2003, give a breakdown (see Table 3.1). At that time, 643,000 land shares representing 28.4 million hectares of land were leased by their owners to farm enterprises, which represent roughly 28 percent of original CLS granted and 24 percent of the areas of land allocated represented by the CLS. PFs used less than 28 percent of the land represented by the CLS, although they were about 30 percent of total shareholders (see Table 3.1).

In the months that followed June 2003, many land shares owners changed the nature of their shares, as was their right. It appears from the figures that they did so very actively, at least for land shares under lease. This may have been in part due to the enactment of the Land Code in 2003 and early responses by those most aware of the interim provisions requirements. The next comprehensive set of figures available from the LRMA has a baseline of January 1, 2004 (see Table 3.2). By January 2004, the area of land represented by leased CLS is shown as 14.36 million hectares and the number of shares as 0.36 million, about half of the June 2003 figures. We do not have data for how the land shares represented by that decline were handled.

Table 3.2 indicates what happened to the leased land shares (representing 14.36 million hectares) that remained after January 1, 2004, through mid-January 2005, after the cancellation deadline. Of the 14.36 million hectares represented by land shares under lease as of January 2004, 5.8 million hectares were converted to land and used to establish PFs and SPs, while 5.6 million hectares were contributed to the authorized capital of JSCs, LLPs, and PCs, and 1.7 million were returned to the state. There are no CLS today. All such shares have either been converted to land plots or transferred to share capital in enterprises.

For the 1.2 million hectares that were cancelled, those canceling had not, by mid-January 2005, made a decision concerning the three options.

3.1.2 Hectares Subleased

Q: How many hectares of land plots were subleased and, hence, affected by the implementation of the interim provisions?

A: At least 9,000 plots, totaling around 11 million hectares were subleased, but there may have been more, perhaps even double that figure.

Table 3.3 (Cancellation of Land Plots Sublease, January 2004–January 2005) gives data regarding plots subleased as of January 1, 2004, through mid-January 2005. We do not have a similar June 2003 figure like that available for land shares (from Table 3.1), so we cannot assess the level of activity concerning such subleased plots between June 2003 and January 1, 2004. However, we could assume the subleased plots areas might be larger than the figure in Table 3.3.²⁴ As of January 1, 2004, there were 8,814 land plots, comprising 10.6 million hectares, under sublease.²⁵ By mid-January 2005, just after the passing of the deadline for cancellation, 2.6 million of those hectares (24 percent) had come to be cultivated by PFs and SPs, and 6.9 million hectares (65 percent) had been contributed to the authorized capital of JSCs, LLPs and PCs, while 0.18 million hectare had been returned to the state. Only insignificant amounts were purchased into ownership or remained under sublease after the deadline. For 1.2 million hectares that were cancelled, those canceling had not, by mid-January 2005, made a decision concerning the three options.

²⁴ The LRMA confirmed that the figure would be larger, but they did not have records on the sublease of land plots. One of the key informants told us in his interview that he cancelled the sublease of 200 hectares in 2003 after he learned about Article 170. He even applied for and received 200 hectares from the State Special Land Fund the. In early 2004, he finalized all paper work He said, "I avoided the big paperwork wave." Of course, his case is very special and not everyone could receive the land for which they had applied.

²⁵ Given the figures for land represented by the leased CLS for the same periods, it might be permissible to double this figure to 17,000 plots and 20 million hectares.

3.1.3 Changes in Farm Organizations

Q: Is it possible to gauge what changes took place in the reallocation of land among different types of farm organizations during the implementation of the interim provisions?

A: Very generally, PFs and partnerships (mainly LLPs) increased their holdings, while most other forms of farm organization, public and private, held steady or declined.

As can be seen from Table 3.2, more than half of the land represented by the leased land shares went to types of farm organizations associated with smaller farms, but a sizeable amount of the land represented by the shares went into the capital of large farm enterprises as well. From Table 3.3, it seems that the largest part of the subleased land plots (65 percent) went into the farm organizations associated with larger farms, but a considerable amount (24 percent) did go to smaller farms.

Table 2.1 shows how the distribution of total agricultural land (not just land or shares under leasing arrangements) changed among the various types of farm organization between January 2004 and January 2005. Implementation of the interim provisions will have been a contributing cause of these changes, but there will have been other factors operating as well. The figures are interesting because the shifts are not great, suggesting a modest impact due to the implementation of the interim provisions, at least during the year covered. In January 2004, there was 80.5 million hectares held on lease from the government by all private operators. Table 2.1 shows that, during that year, the number of PFs (including SPs) and partnerships (LLPs, SPs, and general partnerships) increased by 9 percent and the land held by them increased by 6–7 percent. All other forms of farm organization (private or state) lost land, and there was a substantial decrease in the numbers and amounts of land held for JSCs and PCs. One exception was “subsidiary agricultural enterprises,”²⁶ a form of state enterprise, which increased in number by only 1 percent but experienced an increase of 12 percent in land held.

3.1.4. Effects to Land Area

Q: How significant was the land area affected by implementation of the interim provisions?

A: Approximately 25–50 million hectares, or between a quarter and a half of the 100 million hectares in the agrarian reform sector, were affected.

Regarding land area, Table 2.1 provides data on broad categories of land rights in the agrarian reform sector, for a total slightly under 100 million hectares.²⁷ We know from Table 3.2 and Table 3.4 that, as of January 2004, the leased CLS represented 14.36 million hectares and the subleased land plots were 10.6 million hectares, totaling 25 million hectares, or a bit less than a quarter of the total agricultural land involved in the reform process. However, the figure may be larger²⁸, and the total proportion of the land affected by the interim provisions during 2003 and 2004 was probably between 25 and 50 million hectares, or from 25–50 percent of the 100 million hectares in the agrarian reform sector.

²⁶ This category, according to the LRMA, consists of agricultural enterprises owned and operated by government bodies to subsidize the welfare costs of governmental and nongovernmental organizations paid for from the state budget, such as schools, hospitals, and various institutes.

²⁷ According to Table 2.1, this is land under individual ownership (less than half a million hectare), land held on leases from government by private enterprises from PFs to large enterprises (over 80 million hectare), land held by state agencies (under 3 million hectare), and land held as state special land stock (under 17 million hectare). The agrarian reform sector is only about one-half of the total agricultural land; the rest is in the state's agricultural land reserve.

²⁸ The number of hectares represented by the leased CLS was twice as large in June 2003 as it was in January 2004. If one assumes this to be true for subleased land plots also (though we lack this figure), then the number of hectares in subleased land plots would be doubled as well, resulting in the estimate given here.

3.1.5 Effect to Rural Population

Q: How significant was the proportion of the rural population affected by the interim provisions implementation?

A: Roughly more than one-fourth of persons in the rural sector were affected by the implementation.

There were originally 2.3 million land shares issued, each individual usually getting one share, roughly equaling 2.3 million beneficiaries. In June 2003, there were 643,000 leased shares, as compared to the total 2.3 million land shares originally issued. For January 2004, Table 3.3 shows 8,814 land plots on lease. However, that figure most likely needs to be increased to account for the leased plots disposed of between June 2003 and January 2004. Based on what was found to be the case with CLS figures for that period, let us double 8,814 plots to 17,000 plots. Then, adding the 363,133 land shares and the 17,000 land plots, one gets 380,000 persons affected. Compared with the original 2.2 million beneficiaries, this is about 17 percent of those who originally received land shares. However, for each entity leasing in out a share or subleases out a plot, another entity leases it in. The total figure would then be perhaps 20 to 30 percent higher, though one can only guess without information about single entities that leased in or out multiple plots or shares. A reasonable estimate would be that close to one-fourth of the persons in the rural sector were affected by the implementation of the interim provisions during 2003 and 2004.

3.1.6 Land taken by the State

Q: How much subleased land and land represented by leased CLS was taken by the state as part of the interim provisions implementation, and what has happened to it?

A: Substantial amounts of land were taken for failure to cancel leases and subleases—and the major contributions to the Special Land Fund appear to have come from early on in the interim provisions implementation. Considerable land was granted from the fund during the second half of 2003 and/or 2004.

Where a holder of a leased plot or CLS failed to comply with the interim provisions, the land or share was to have been taken by the State and become part of a Special Land Fund for future land allocations. Table 3.1 shows, as of June 2003, CLS representing 31.24 million hectares as “unclaimed shares being returned to the state and into the Special Land Fund.” Table 3.2 (January 2005) shows an additional 1.8 million hectares to be unclaimed. Table 3.3 (also January 2005) deals with cancellation of subleased land plots and shows 0.2 million hectares for the Special Land Fund. (We do not have earlier figures, as of June 2003, for subleased land plots.) It appears that the major cancellations that resulted in contributions to the Special Land Fund occurred very early in the implementation of the interim provisions. There also appear to have been major distributions from the Special Land Fund during the second half of 2003 and/or 2004. Table 3.2 shows only 16.8 million hectares in the fund, half of what is shown in Table 3.1 (June 2003).

3.1.7 Regional Patterns

Q: Were there important regional patterns in the implementation of the interim provisions?

A: There were dramatic differences as to the distribution of subleased plots and leased CLS among the regions

From Table 3.1, using 2003 figures, lease and sublease holders were concentrated in seven *Oblasts*, important for grain growing and raising livestock in North, East, and West Kazakhstan. North Kazakhstan alone accounted for 32 percent of all lease and sublease holders and assuming that there is one land share per person, those individuals made up 40 percent of North Kazakhstan’s rural population. Almaty, South

Kazakhstan, Atyrau, and Kyzylorda's CLS under lease were insignificant, and contributions to farm enterprises as stock shares in these four *Oblasts* were from 41–67 percent of the CLS granted. This is hard to interpret because Almaty and South Kazakhstan *Oblasts* had 58 percent of the total PFs in the country and a significant number of large PCs.²⁹

²⁹ In Taldykorgan, we found that some big PCs still covered several villages and were still managed by the same individuals who had been the directors of the previous collective farms.

TABLE 3.1 LAND OF CLS IN DIFFERENT CATEGORIES, JUNE 1, 2003

OBLASTS	TOTAL GRANTED CLS		INCLUDING:											
	TOTAL CLS HOLDERS (1000 SHARES)	TOTAL AREA (1000 HA)	SOLD		GIFT		CONVERTED TO LAND PLOTS FOR SELF-FARMING (PF)		LEASED OUT TO AGRICULTURAL ORGANIZATIONS ^A		CONTRIBUTED TO "AUTHORIZED CAPITAL" ^B		RETURNED BACK TO GOVERNMENT IN THE SPECIAL LAND FUND FOR REDISTRIBUTION ^C	
			CLS	Area	CLS	Area	CLS	Area	CLS	Area	CLS	Area	CLS	Area
2	3	4	5	6	7	8	9	10	11	12			15	16
Akmola	216.2	8698.5	17.9	590.3	5.9	278.7	42.0	1610.1	108.2	3768.1	30.1	1871.1	12.1	580.2
Aktobe	168.7	15,883.8	0.7	29.1	0.04	3.3	34.9	2631.6	55.5	2888.4	36.4	2839.7	41.16	7491.7
Almaty	245.1	7742.1	2.4	33.7	6.5	55.0	139.0	2082.8	11.9	874.0	74.3	4166.0	11.0	530.6
Atyrau	21.5	2568.2					10.3	806.8	0.2	30.4	11.1	1731.0		
East KZ	173.5	10,272.5	2.5	76.2	1.2	47.4	44.6	2810.6	86.7	5068.3	8.9	610.9	29.6	1659.1
Jambyl	71.6	4856.6					21.4	845.7	42.5	2941.1			7.7	1069.8
West KZ	240.5	8655.2	3.1	51.2	5.1	182.7	72.6	2492.5	14.3	382.4	41.5	1201	103.9	4345.4
Kyzylorda	121.8	3568.3			9.4	163.6	28.4	744.1	2.9	74.6	67.0	2290.6	14.1	295.4
Karaganda	98.1	14,965.8	0.3	12.3	0.4	42.7	43.1	7306.9	15.1	2078.6	20.7	1011.7	18.5	4513.6
Kostanai	166.3	10,471.6	15.7	606.1	31.4	2023.2	6.8	375.1	93.6	6336.0	11.1	500.8	7.6	630.4
Mangistau	21.2	9973.9					7.2	2863.3			13.9	7090.6	0.1	20.0
Pavlodar	215.7	9947.5	0.2	7.4	4.0	86.0	35.3	1170.3	42.8	1320.5	13.4	405.1	120	6958.2
North KZ	323.3	4843.7	34.2	468.6	4.8	61.1	88.9	1202.9	160.7	2565.9	6.3	69.9	28.4	475.3
South KZ	193.9	5824.1	1.2	3.9	0.6	2.3	78.3	683.9	8.4	83.2	94.3	2379.5	11.1	2671.3
TOTAL	2,277.4	118,271.8	78.2	1,878.8	69.34	2,946.0	652.8	27,626.6	642.8	28,411.5	429.0	26,167.9	405.26	31,241.0
%	100	100	3	2	3	2	29	23	28	24	19	22	18	26

^a Usually, this means JSCs, PCs, and LLPs.

^b The "authorized capital" is usually JSCs, PCs, LLPs, which are "legal persons" (as the project legal specialist calls "legal entities").

^c It is said "CLS holders failed to claim."

Produced based on LRMA database, September 2005.

TABLE 3.2 CANCELLATION OF CLS LEASE, JANUARY 2004–JANUARY 2005

OBLASTS	CLS UNDER LEASE ON JANUARY 1, 2004		CHOICES AFTER CANCELLATION ON JANUARY 15, 2005												RETURNED BACK TO GOVERNMENT IN THE SPECIAL LAND FUND FOR REDISTRIBUTION	
			PF		SP		CANCELLED, BUT YET NOT MADE DECISION		CONTRIBUTED TO AUTHORIZED CAPITAL							
									JSC		LLP		PC			
Total CLS	Area 1000 ha	No. of CLS	Area	No. of CLS	Area	No. of CLS	Area	No. of CLS	Area	No. of CLS	Area	No. of CLS	Area	No. of CLS	Area*	
2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Akmola	64,954	2,665.5	8,994	434.2			22,630	624.4			31,253	1338.0	467	32.2	1,610	237.0
Aktobe	2,200	140.0	647	29.5							1,071	67.1			482	43.4
Almaty																
Atyrau																
East KZ	33,066	1,182.8	11,534	626.8	4,817	189.2			305	16.0	16,217	344.7	193	6.1		
Zhambyl	31,143	1,800.7	8,454	546.0					2,252	111.3	10,821	682.4	9,616	461		
West KZ	6,283	164.9	322	13.6			4,335	120.3			575	13.7			1,051	17.3
Karaganda	37,625	4,022.2	26,188	2,862.3	796	16.0	596	11.5	1,099	14.1	5,861	429.2	1,647	123.6	1,438	565.5
Kyzyorda	18,267	822.5	12,937	638.9			1,463	81.3			3,848	102.2	19	0.1		
Kostanai	6,416	255.9	1,582	59.4	248	11.1	213	5.8	10	0.1	4,003	168.8	1	0.2	359	10.5
Pavlodar	46,902	1,402.5	5,972	184.2	1,065	30.1	2,823	98.1			4,739	133.6	1,964	75.1	30,339	881.4
Mangistau																
North KZ	116,277	1,901.8	6,838	82.4	6,907	86.2	17,908	261.5	313	5.0	83,006	1447	177	1.3	1,128	18.2
South KZ																
TOTAL	363,133	14,358.8	83,468	5,477.3	13,833	332.6	49,968	1,202.9	3,979	146.5	161,394	4,727	14,084	699.6	36,407	1,773
%	100	100	23	38.1	3.8	2.3	13.8	8.4	1.1	1	44.4	33	3.9	5.2	10	13.2

Produced based on LRMA statistics, September 2005.

TABLE 3.3 CANCELLATION OF LAND PLOTS SUBLEASE, JANUARY 2004–JANUARY 2005

OBLASTS	LAND PLOTS UNDER SUBLEASE, JAN 1, 2005		CHOICES AFTER CANCELLATION, JANUARY 15, 2005														RETURNED BACK TO GOVERNMENT IN THE SPECIAL LAND FUND FOR REDISTRIBUTION		NOT CANCELLED SUBLEASE	
			PF		SP		CANCELLED BUT NOT YET MADE DECISION		CONTRIBUTED TO AUTHORIZED CAPITAL						LAND PURCHASE					
			No.	Area, 1000 ha	No.	Area	No.	Area	No.	Area	JSC		LLP		PC					
2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Akmola	743	3702.4	311	288.8			193	589.6	1	19.6	232	2758.8	3	23.0			2	1.8	1	20.8
Aktobe	2235	2748.4	1184	1388.7					29	84.0	697	850.0	151	289.8			174	135.9		
Almaty	44	5.0	39	2.9			1	1.5			4	0.6								
Atyrau																				
East KZ	1250	717.2	280	377.1	19	15.7					949	321.7	2	2.7						
Zhambyl																				
West KZ	21	10.9	17	7.5							1	0.2					3	3.2		
Karaganda	14	33.0	10	11.4	3	18.6	1	3.0												
Kyzyorda	118	728.1	40	93.4			32	14.4			46	620.3								
Kostanai	973	1880.9	642	277.9	7	2.7	108	323.2	1	19.5	189	1219.6					26	38		
Pavlodar	679	42.7	171	23.8							104	9.6					404	9.3		
Mangistau																				
North KZ	2193	726.8	264	30.1	149	19.6	53	15.4	197	36.9	1529	624.6			1	0.2				
South KZ	544	5.0	544	5.0																
TOTAL	8814	10600.4	3502	2506.6	178	56.6	388	947.1	228	160.0	3751	6405.4	156	315.5	1	0.2	609	188.2	1	20.8
%	100		39.73		2.02		4.4		2.59		42.56		1.77		0.001		6.91		0.01	

Produced based on LRMA statistics, September 2005.

3.2 QUALITATIVE INDICATIONS

The qualitative research carried out by the project and the legal aid offices also provided some important insights.

3.2.1 Proactive Government

By the January 1, 2005, deadline, virtually all CLS leases and land plot subleases were cancelled. Only one parcel of 20 hectares was left in sublease. The government implementing bodies in all *Oblasts* were effective in informing local people affected by the provisions. According to data gathered from our field focus group surveys and interviews, all people affected by the interim provisions were aware of them and their options through the media, our legal aid office, and the government's information campaign. Survey results also showed that all the respondents who leased CLS or subleased land plots were aware of the cancellation requirement of Article 170. Many of them told us that local government agencies met with them and explained the law. As the deadline neared in 2004, these efforts were intensified.

As we started the study, 50,000 people remained who had cancelled their lease or sublease but had not made the decision on the three options. The GOK informed them that they would be allowed one year beyond the deadline to finalize their choices and complete the required process involved in implementing their choices; that information received a very positive response from the affected people.³⁰

3.2.2 Effects to Farm Organization

Implementation of the interim provisions affected the land holdings of different farm types differently. It did not affect farms that did not lease or sublease in/out any CLS or land plots due to the fact that they were able to keep the original documents. If farms leased or subleased in CLS or land plots, they needed to cancel the agreements with those who had leased them in so their available land might be reduced.³¹ Some farms might have received new CLS or land plots as "contributions," their former owners becoming stockholders in the farm. In this case, the farm's land increased. Let us examine this by type of farm organization.

Peasant Farms

Peasant farms are also referred to as "family farms."³² They are not legal persons. From 1990 to 1998, the GOK adopted and then amended the Peasant's Farm Law. Before 1993, the PFs could include family members plus others. Currently, this type of farm is only allowed to consist of family members, but the definition of family members³³ is broader than the western nuclear family. These types of farms are treated as non-commercial farms (not enterprises), with a simpler and smaller tax burden. The registration procedure and costs are also simpler and lower than those for farm enterprises.

Since the PFs have these advantages, many people prefer to form these kinds of farms, even if their farms are not small and are commercial enterprises. The PF is a complex and variable farm type. Land in the south is scarce due to high population density. The farm sizes are at 3–6 hectares, and many of them are subsistence

³⁰ Reported by the rural people interviewed in Taldykorgan in August 2005.

³¹ If local administrators saw the affected farm to be well run, it might have quickly received new land from the *Akimat* (See Annex A).

³² This type of farm has shifted character from a legal standpoint. In 1990, the law called this type a "farmer's farm," which could be formed by one person or one family with others. Later the term changed to "peasant's farm/family farm/individual farm." This type of farm could only be formed within family members and close relatives. Even among the lawyers who have been working with our legal aid offices, there are different interpretations of the nature of this farm type.

³³ Family members in Kazakhstan include immediate family members plus brothers and sisters in-law and a couple's parents.

farms. In Almaty *Oblast*, there were 245,000 CLS issued initially, and there were 45,928 PFs by August 2005.³⁴ However, in the north, east, and west, where grains are the major crops, the PFs are more diverse in size and business activity (ranging from 50–2000 hectares).³⁵ But there are also many small PFs that have struggled with farm input investment, machineries, and output marketing.

Many of the PF owners interviewed said that the interim provisions did not affect them because they did not lease or sublease in or out any CLS or land plots. They did not need to do anything. Country wide, the numbers of PFs increased by 9 percent after implementation of the interim provisions Land Code.

Simple Partnership

A new agricultural form of farm organization, the simple partnership (SP), was created and became popular in the grain production areas during the implementation of the interim provisions period.³⁶ When local people formed this type of farms, the local government bodies did not know how to work with them, and the taxation department was not happy with them (because SPs are treated like the PFs and pay much lower taxes than farm enterprises). However, the LRMA recognizes the simple partnership and lists it on their records.³⁷

The people who formed SPs indicated this type of farm had the same advantages as PFs: a) farm property of each PF remained separate, which reduced the chances of disputes, leaving only the need to share labor and machinery during farming's busy season; b) less paperwork is required for registration and c) farm type only requires simple taxation with easy calculation.

It is worth noting that there are not any SPs in the south. Local people there would rather form PFs. From our field interviews, we understood that some people chose the SP because the partners had leasing or subleasing relationships before implementation of the interim provisions (Article 170). When they cancelled their previous agreements, they reformed the relationship as a partnership, with the former leaser providing the land and the former lessee providing the capital, machineries, and labor, but did not cancel the rental relationship. Then, according to the three choices, the former leasers or subleasers formed their own PFs, but they could not farm due to lack of production means. They started forming SPs with the previous leasees or subleasees. In fact, some claimed that they would just keep the old leases. In theory, the PF must be a family operation and the SP is a multi-family operation, but, in practice, there are many exceptions.

³⁴ Data provided by the LRMA, Almaty *Oblast*, August 9, 2005.

³⁵ For example, we interviewed a PF owner in Akmola *Oblast*; he used to be a state farm deputy director and formed a producer's cooperative in 1992. He formed his PF in 1994, subleased in 200 more hectares of land from another PF, and cancelled the sublease with the villager. He managed to obtain 200 hectares of land from the *Rayon Akimat* in 2004. Now he has 2,000 hectares of land and other businesses, including a mill, a bakery, a pasta workshop, a grain storage facility with a 2,000-ton capacity, and a herd of sheep. He hires 4 combines every year, employees who work in the mill and the bakery, plus a herder. His farm produces grain and processes the wheat and rye to flour. He is a local influential figure. (See Annex A: A farmer's experience of land reform and farm restructuring in Kazakhstan.)

³⁶ Those who chose this type of farm argued that, according to the Law on Peasant (Individual) Farm (March 31, 1998), individual farms in the form of SPs could work on the basis of share holding and an agreement on joint economic activities.

³⁷ Table 3.2 and Table 3.3 of the LRMA have data on SPs. In March 2005, many local government bodies denied the SP's legal status when the American ambassador met with farmers and local government bodies in Petropavlovsk. The farmer participants argued that the SP was based on the law. One official from the Land Committee also agreed and referred to the Civil Law and other laws, but most officials at that meeting said that it was illegal. There apparently has been some confusion on this point. Earlier, we had understood a state LRMA official to tell us that the GOK did not yet recognize this type of farm, but in comments on the draft of this assessment, the state LRMA stated that while there may have been confusion on this point in some regions, the LRMA recognizes this farm type as valid under law, and has always done so.

Simple Partnership

According to the manager of an SP in Aktobe *Oblast*, the main advantage for this type of agricultural enterprise is simplified taxes (as in PFs) and the absence of complicated registration procedures. They merged because it was “easier for them to share one herbicide machine, one seed dresser, and one seed storage” to cultivate all their land rather than work separately. Their joint agreement included sharing seeds, labor, machinery, and inventory.

They members of the SP wanted to farm and establish mutual self-help groups without establishing a legal entity. If they did not sign an agreement on joint activities, “all their services and income would be taxed.” Due to this agreement, each farm paid its own taxes (united land tax), without paying for the tractor/machinery they were using. According to the SP manager, this was “the most transparent and honest way to do agricultural business in terms of taxation and distribution of income between the people who contributed their conditional land shares.” That way, they “did not have to hide income or hire additional labor to report it.”

There was another example of partnership merging by researchers in Aktobe. According to Aktobe SP managers, all their SPs were owned by CLS owners who leased out their shares to join the PF that leased in. In fact, the farm operation is the same as in lease.

The problem reported by an East Kazakhstan SP manager in organizing this farm was that “no notary wished to certify an SP agreement. Finally, the agreement was certified by the rural district Secretary who was authorized to do that.”

According to the manager of an SP in North Kazakhstan, the tax department prefers all farms to form as legal entities so the amount of tax collected is more significant. By law, PFs pay fewer and simpler taxes and SPs are treated like PFs regarding taxation.

Farm Enterprises: JSCs, PCs, and LLPs

According to the GOK’s definition, farm enterprises are usually registered as legal persons, such as JSCs, LLPs (including other farm partnerships), PCs, and state owned farms. These forms of agricultural organizations are defined as “large farms,” “commercial farms,” “farm enterprises,” etc. These first three types of farm organizations are usually well equipped from the previous state and collective farms. They are considered the major agricultural players in the nation’s gross domestic product. Government policy and banks have been favorable toward them.³⁸ It is true that these large farms have played significant roles in providing for village, and even some *Rayon*-level *Akimat* financial needs.

Farm enterprises differ between the north and south. In the north, LLPs are the main form of farm enterprise. It seems that the formation of PCs is the initial stage of farm restructuring countrywide. Nevertheless, in the north, this form of farm organization did not perform well and generated large debts. In some areas, these debts transferred to PC members when the PCs went bankrupt and when local people received CLS. That is why PCs have a bad reputation. In 2004 in the north, there were 400 LLPs and only 6 PCs.

The PCs are still popular in southern *Oblasts* like Taldykorgan and Almaty. We were urged to interview two PCs when we visited Taldykorgan in August 2005. When we met some of the PC managers, we found these PCs were conversions of previous collective farms and even the current managers had been directors of the former collective farms.³⁹ Since converting from collective farms, these two PCs have never broken up into PFs. On one hand, the officials in Taldykorgan told us the local people prefer their own farms and have a

³⁸ When we visited a commercial bank in August 2005, we were told that the bank had denied the loan application of the largest PC in a *Rayon* of Taldykorgan.

³⁹ An incidence of note involves a list of famous people found in a museum located in a village elementary school. The museum listed all the directors of the village *kolkhoz* from 1936–2004. In the villager’s minds, the PC was still their *kolkhoz*.

clear sense of private property. On the other hand, one *Akim* at a *Rayon* expressed the importance of big farms for the local economy.⁴⁰

Based on our field research, more than 40 percent of the rural people who cancelled leases or subleases contributed their CLS or land plots to LLPs and said they did not have other options. Survey results showed that more than 60 percent of respondents opted to contribute to authorized capital, while about 23 percent selected the self-farming option. Of those who chose to join the big farms, 40 percent said they could not farm due to a lack of production means, and 30 percent said they chose this option because they trust the owner of the LLP.⁴¹

During the implementation of the interim provisions, the GOK conducted a campaign to merge small farms into big ones. The reason for this is that the GOK believes that only big farms are able to survive risks and have the ability to turn agriculture into a higher-level business. The merged small farms did not go far in the south because many PF farmers said they would not let anyone take their land and combine it with the property of others. In the north, farms are mainly merging with LLPs. Among the merged small farms, some huge LLPs (by land area) were established by outside investors. Based on our research, the number of LLPs in the north did not change, but the scale of land size changed significantly. The local LLP owners indicated there were now two different LLPs in the north since the implementation of the interim provisions: the LLPs owned by local people (local LLPs) and the LLPs owned by outside investors (outsider LLPs). Among 400 LLPs, 16 to 17 were owned by outside investors, with land areas from 30,000–100,000 hectares,⁴² while local LLPs with 500–20,000 hectares occupied about half of the agricultural land in the north. Differences between the local LLPs and the outsider LLPs are: 1) size scales differ between them; 2) the labor force is used differently, local LLPs use local labor (particularly enterprise stock shareholders), but the outsider LLPs hire labor from other regions; and 3) local LLPs have ties with the local community, but the outsider LLPs are controlled externally.

PFs and LLPs

During the merging small farms campaign in the north, it is interesting that many successful PF owners were encouraged by local officials to form LLPs. Under pressure, 60–70 PF owners formed new LLPs by merging with other PFs or accepting contribution of shares from CLS holders. However, when they formed new LLPs, some of them kept their own PFs separate from the LLPs they founded, because they were afraid of losing property if the LLPs did not become profitable.

⁴⁰ In the *Rayon* we visited, the *Akim* favored PCs and indicated what an important part PCs have played in the local economy's revenue.

⁴¹ This data is from the survey conducted by BISAM in July and August 2005.

⁴² One key informant said the largest LLP in his *Oblast* (Akmola) was 150,000 hectares.

PF Owner and LLP Co-founder

“When our president visited in 2004, he gave a speech on TV and indicated the inefficient results of 7 to 8 years of small PFs and that farms should merge to carry on better. My PF was the most successful among the ten in our village. The *Akim* of our *Rayon* called a general meeting and suggested that people merge their farms with my PF. Another person and I established a new LLP with nine other PFs that closed their farms. Both of us together owned 95% of the farm and others, with 5% ownership, totaled 336 stock shareholders representing 2,460 hectares of land. I established my PF in 1997. I received 342 hectares of land from the Special Land Fund. I formed the LLP, but kept my own PF separate. I had run my own PF successfully, but I did not know if I could run a much bigger farm profitably. I was forced to form this LLP, but was not willing to risk my own economic interests. When they decided to merge, I discussed all the terms of profit distribution and percentage of their shares in the authorized capital stock. They agreed to receive 5% of the total profits as dividend distribution.* The LLP is a legal entity with 336 stockholders. It reports on a monthly/quarterly basis and is subject to the general taxation system. It was very profitable because I was only responsible for my own work and profit, I did not have to report to or depend on anyone. Since the policy changed, I was burdened with merging these small farms. The farms were imposed on me.”

—LLP Owner in Petropavlovsk

*It is said that the investors with controlling interests (generally referred to as “owners”) of farm enterprises commonly have 95% of the shares, since the contributions of land and land shares are assessed at only 5% of the value of the farm, with the contributors only entitled to receive 5% of profits as dividends.

3.2.3 Implementation Contrast between North and South

Land purchase indicates the confidence of land users in their tenure rights. The Land Code does not allow subleasing of land leased from the state, but land purchased from the state in ownership can be leased out by the private owner and subleased by the lessee, if the lease contract allows this. One can acquire land in private ownership through purchase from the state or individual owners or by inheritance.

From October 2004 to July 2005, purchased land jumped from 32,253 to 109,357 hectares, an increase of 339 percent. There is a huge gap between the amount of land purchased in the south and north. By July 1, 2005, only 38 hectares were sold in the north, while in the *Almaty* and southern *Oblasts*, there were 76,021 hectares of land purchased, 70 percent of the total sold land in the country.⁴³ During our interviews, local people in different areas expressed different levels of confidence toward land tenure rights.

Many farmers in the study drew attention to issues such as lack of confidence in their land use rights because of the constant changes in land legislation. Some people cited the conversion of leases from 99 to 49 years and worried about rights of inheritance. Others expressed that implementation of the interim provisions (Article 170) did not strengthen their land tenure rights because it cancelled their right to sublease. The analysis revealed that farmers’ concerns pertain to lack of confidence and increasingly unstable land rights. Such insecurity causes the inability to mortgage. Some CLS holders who had to cancel the leases also worried about loss of social safety nets since they had to choose contributing their land shares to “authorized capital.”

⁴³ The LRMA indicated 85 percent of the total agricultural land was sold in *Almaty Oblast* alone in August 2005.

Lack of Confidence in Land Property Rights

“Implementation of Article 170 is the result of some covert interests. Many provisions in [it] did not meet rural people’s expectations and there are many disputable questions, for which nobody knows the answers yet.”

—Farmer, Tokushi, North Kazakhstan

“Rushing from one reform to another so frequently has led to the collapse of agriculture. First, they gave land use rights for 99 years and our children could use it as well, then they changed it to 49 years and we did not know if our children would inherit after all. We have reregistered documents for land five times. In our village, people call Article 170 ‘anti-people.’ It prevents small farms and ordinary people from using land because anyone with big money could take our land away. We do not feel secure in our land rights any more. We do not feel protected by this law.”

—Farmer, Chapaevo, North Kazakhstan

“In today’s rural life, the government does not govern our welfare any more. In order to make sure that Peter is paid without robbing Paul, we need to work efficiently. We need to increase profit every year, and people should see to it that not only the enterprise is getting rich but also the people who work there. People in the villages need employment, they have nowhere to go, nothing to do. They need an equal opportunity for survival, but we can’t see it.”

—LLP manager, Vlasovka, North Kazakhstan

“Many people lost because of these interim provisions. The state should have given us more time to make better decisions instead of doing it spontaneously. The local officials want as much land as possible to be transferred to the Special Land Fund so the state could re-sell it at market price. Since people gave their land shares away, many people will suffer when the harvest season comes; we had a bad season/lean year, so they won’t receive any/little dividends.”

—Farmer, Aktobe

In contrast, those in the south care much more about land ownership through land purchase and are more positive toward their farm’s future. We noted during the interviews that in the south near Uzbekistan there has been a long history of trade business and agricultural activities, whereas in the north people mostly engaged in nomadic livestock activities. The assumption was that people in the south are more commercialized and more entrepreneurial. Another factor contributing to these differences is the more favorable climate and soil conditions in the south, facilitating a wide variety of crops, while in the north, the climate is more severe and the kinds of crops are more limited. In addition, land is scarcer and farms are smaller, averaging 3–5 hectares in Shymkent. PFs are the major form of farm organizations (69 percent of the total farms, according to the Chair of the Economic Dept. of the Ministry of Agriculture in South Kazakhstan *Oblast*, Oral Communication, July 19, 2005).

More Confident of Land Rights in South

“There are no limits to what you can do now. In the *sovkhos* we used to have a plan, we were dictated what to grow, whereas now, we have a choice to grow whatever we want.”

“We are now owners of our land, we can grow our product on our land, and nobody can tell us what to do or check on us. Our thinking has changed.”

“We registered our land and have identified our land plots, so our rights are secure now. We are masters of our own life, we provide for ourselves, and we can enjoy the outcome of our own labor. The state helps us with taxes, credits and water.”

—Peasant Farmers, Shymkent

“We each have our own farms of about 6–7 hectares. We decide what to grow and have enough food, but lack cash. Last year, with the help of the Women’s Support Center, we established a craft group and have worked hard, and hopefully we will improve our income this year.”

—Women Farmers, Taldykorgan

Some said they would prefer working with enterprises because of the government’s policy on enlarging/merging small farms. Others argued that land rotation for the protection of the soil was not possible with small farms. Some of the recommendations made were for the government to establish rural advisory services, which would provide consultations on how to obtain credits for fuel, seeds, and minerals and seminars on marketing, agricultural production sales, and processing.

3.3 SUMMARY OF RESULTS OF THE IMPLEMENTATION

3.3.1 Successful Implementation with Some Unexpected Impacts

The implementation of the interim provisions has been quite effective. It appears that information about the interim provisions was broadly distributed and that considerable compliance took place during the first year after enactment. In the second year, the LRMA proactively pursued the remaining cases to ensure that implementation was substantially complete by the deadline.

There has been a degree of flexibility on the part of the LRMA in implementation. While the agency was not willing to extend the deadline for cancellation of leases/subleases and election of an option, it has allowed those affected an additional year beyond the deadline to process the option they selected and now indicates that there is no deadline for completing these processes.

3.3.2 Quantitative Results

- Roughly 28 percent of original CLS granted and 24 percent of the areas of allocated land represented by the CLS were affected by the implementation of the interim provisions.
- Nearly 9,000 plots, totaling around 11 million hectares, were subleased and so affected by implementation of the interim provisions, but the figure may have been more, even double that figure.
- Some changes in the distribution of land among different types of farm organizations during the implementation of the interim provisions can be gauged. Very generally, peasant farms and partnerships increased their holdings, while most other forms of farm organization, public and private, held steady or declined.

- The land area affected by the implementation of the interim provisions was probably between 25 and 50 million hectares, or between a quarter and a half of the 100 million hectares in the agrarian reform sector.
- The proportion of the rural population affected by implementation of the interim provisions was roughly one fourth of the persons in the rural sector.
- In the process of implementing the interim provisions, it appears that substantial amounts of land or land shares (on the order of 31.2 million hectares) were taken as a result of failure to cancel, much of this early in the implementation process. Much of this has been rapidly reallocated.
- There were important regional patterns in the implementation of the interim provisions in regards to the distribution of subleased plots and leased CLS among the regions. These were concentrated in the north and were much less significant in the south.

The CLS are gone, and the holders of CLS have become direct land users or stockholders in farm enterprises. Only time will tell how those who have acquired land and begun to farm directly will fare. However, for the former CLS holders or land plot holders who contributed these to the share capital of enterprises, the most important impact may be on their incomes. When they leased their shares out, they usually received rent that was a percentage of the gross output of the farms. In the future, they will receive their income as a share of the farm profits, since they are now investors. Whether they receive anything will depend on whether there are profits, and some difficult questions arise as to how a stockholder will be able to determine whether a profit has indeed been earned.

A considerable number of the new farms that have been established are SPs. The SPs are small and resemble PFs but are different in that they involve joint farming activities by a number of households. SPs combine their machinery and labor according to an agreement among the partners, but they do not jointly own their land. The farm activities are different from those in the single family PFs because they require interaction, cooperation and negotiation. This form of farm is no longer a “family farm.” It is possible that some SPs were created by lessor-lessee partners, the one provides his land and the other his labor and machineries, transforming what had been a soon-to-be illegal leasing of a land plot into a permissible form of business organization.

Through the cancellation and three options, the land holdings of different forms of farm organizations have changed. Existing farms have grown or shrunk, and new farm enterprises have been created. It should be emphasized that this is part of an ongoing process, one that is not just a result of implementation of the interim provisions, but for which the implementation of those provisions created new opportunities.

As an example, while the implementation of the interim provisions and the government’s campaign to encourage the merging/enlarging of farms were being carried out, this was an opportunity for outside investors to obtain land (sometimes in huge amounts), available because of the cancellation process for leases and subleases, to establish the special outsider LLPs. These new private-owned farms, well equipped with capital and machineries, have become a major economic phenomenon in the agricultural sector. Since they are owned (and may even be managed) by outsiders, they have a greater impact than local enterprises on the local population’s economic and social lives. There are new relationships: a) the relationship between outsider LLP owners, their managers, their stockholders, and their workers; b) the relationship between outsider LLP owners and managers and the local LLP owners and managers; and c) the relationship between outsider LLP owners and managers with local officials and government bodies.

During the implementation of the interim provisions and merging/enlarging farm campaign, it was noted with surprise that some local successful PF owners established new LLPs, but at the same time kept their own PFs separate. They did not contribute their own land to the share capital. This may cause a conflict of interest with their stockholders or co-founders in the long run; how will they manage two farms and will the resources be kept separate if one is doing well and the other is not?

4.0 NEW ISSUES ARISING AFTER THE CANCELLATION

New issues have emerged for different farm types after the implementation of the interim provisions, as the government continues its campaign to increase farm size. Our eight project legal aid offices have learned of some new problems from the affected local people. This section discusses these new issues.

4.1 UNCERTAINTY OF THE INTERESTS OF THE CONTRIBUTION TO AUTHORIZED CAPITAL

This concern came up both from the project legal aid offices and during our field research. When we discussed the differences between lease/sublease to an enterprise and contributing the land or share to an enterprise, the experienced farm managers understood it clearly. They indicated the new stockholder's income may be a problem. When a farm leased/subleased in land plots or CLS, the farm had to pay rent from gross output and the rents were, in kind, usually 5 percent of the gross output, customary across Kazakhstan. Now, the contribution to "authorized capital" is treated as investing, so new agreements between farm owners and stockholders indicate that the stockholders would receive 5 percent of the total farm profits. The interviewee's concerns are: 1) that there will be no profits and the only ones benefiting from the enterprise will be the managers and workers who receive their salaries before profits are calculated;⁴⁴ and 2) the danger that the manager will inflate his salary and pay himself bonuses or otherwise hide any profit actually being made, asserting that none has been made.⁴⁵

One *Akim* in the Taldykorgan district expressed his worries with us.⁴⁶ He believes that there will be more disputes over distribution of profits to the enterprise's shareholders, and he worries that local people do not understand the difference between rent and dividend. One PF owner in Akmola assumed he would be worse off from receiving income through distribution of the enterprise's profits. He said most farm enterprises easily inflate costs of farm operations and "deflated" the amount of profit to pay the stock shareholders as little as possible. He was very concerned about social, economic, and political unrest caused by this new relationship between farm enterprises and their shareholders.

One LLP owner in Petropavlovsk predicted fewer problems between the local LLPs and their shareholders over profit distribution because they were all from the same community and the local big farm owners also needed local people's support. He said it would be a big problem with "those outsider LLPs." He did not think the outside investors cared about local people's livelihoods, but only about earning money. He said

⁴⁴ Since some of those who hold shares in the enterprise are employees of the enterprise, they get a salary, but that is not for their share.

⁴⁵ When we interviewed the workers, shareholders, and manager at a PC in Taldykorgan, the manager told us that shareholders were not distributed any shares of profits because none had been made. All the shareholders said they had never received anything from the PC since it was formed in 1994. We were puzzled why they still had their land shares with this PC. We were told it was still a better choice than giving the land shares back to the government, because at least they still had their rights to land.

⁴⁶ This government official requested us not list his name when he talked about the issues in our August visit.

these externally controlled outsider LLPs are both large and powerful. Our field research also discovered concerns of the local people.

Outside Investors

“The large and powerful outside investors come and spend huge amounts of money for sowing complexes secured by the government. They say they do not need our machinery or people, only our land. They bring their own seasonal labor. They do not care what happens to the rural residents in the end. They only think about their own short-term profit. As a result, the rural area is left idle, the infrastructure is destroyed, and no farmer/peasant is engaged. In the end, this will lead to a migration of the rural population and the rural area will not survive.”

—Villager, Tokushi, North Kazakhstan

“The main issue is that most people are unaware of their rights and benefits. They are legally illiterate. They trust the *Akims* or “new investors” who come and make them sign blank sheets of paper and then use their signatures to take their land. In the fall, during the harvest, they deceive people by saying they did not make any profit and are bankrupt. No committee checks them, so they can force people who contributed their land to bear the loss. It is frightening. Furthermore, it would be very difficult to withdraw land from large business entities because you do not even know who you are dealing with.

Therefore, most people are left without jobs or salaries. The agricultural policy is not aimed at employing the rural population. Powerful businessmen come with their own machinery and do not use local labor. Forty-three percent of the people in the villages are jobless and only survive from their small household plots.”

—Villager, Kladbinka, Jambylsky Rayon, North Kazakhstan

“These provisions (Article 170) were one way to take the land from the people and help the rich become richer. I doubt that the priority of the state’s agricultural policy is to stabilize agricultural long-term/sustainable development, but rather to make a quick profit at the expense of our local people’s land.

I am a local manager, born and raised in this community so I have to live with and depend on local villagers, not only financially, but also psychologically and morally. Not only do I need to make a profit, but I also have to make sure that the people who entrust their land to my farm enterprise receive their due income. All this motivates me to work hard and efficiently. When I had my own PF, I did not have that burden, I was only responsible for my own profit and work. Now, I am accountable to all the shareholders.”

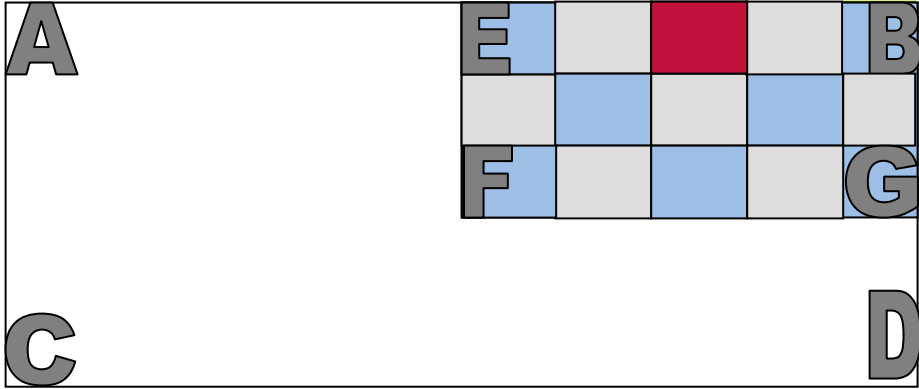
—Former PF Owner and New LLP Manager, Ortalyk, North Kazakhstan Oblast

From time to time, the project receives local residents in the office who complain about the difficulty of withdrawing their shares from the “authorized capital” of the farm enterprises. They still have the right to do this under the Land Code, unrelated to their old (and now cancelled) CLS. They are upset and say the promises made when they contributed their land or land shares were not kept. Some did not receive a document that shows they are now a shareholder or an agreement concerning their land contribution. Even with the written documents, legal enforcement of agreements is weak. In reality, withdrawing shares from the farm enterprises is not easy because the farm manager or owner usually thinks that withdrawal disturbs production. Often they say that the farm is a whole and it will be broken if anyone takes a piece from the it. Even if shareholders were allowed to withdraw, they would usually only get whatever land the manager is willing to give. Shareholders do not have a specific choice of plot or location.

There have been earlier attempts to address this issue. In 1997, the President made an address to people of Kazakhstan, in which he pointed out the necessity for the “personification” of conditional land shares of those who contributed them to authorized capital of business entities. According to that message, the LRMA commenced a program of CLS personification. Villagers who wanted to identify their conditional land shares with particular land could do so on a voluntary basis. However, the program was not completed. Most villagers who contributed their CLS to the authorized capital of different business entities never personalized their CLS.

During a meeting with Mr Saduev B.K., Chief Specialist, State Scientific Production Center, he suggested that it was better not to try to personify former CLSs, but to recommend to legal entities that they mark out a land area that could be used for withdrawal. The 1997 program showed some of the problems of trying to personify the CLSs, since when shareholders threw lots (the fairest way to distribute land shares without conflicts), members of one family could receive shares in places throughout the farm, with their lands separated. The approach recommended by Mr. Saduev is shown in Figure 4.1.

FIGURE 1 POSSIBILITY OF WITHDRAWAL LAND



The large farm concerned can have ABCD land plot, but they could separate a block of land EFG for withdrawal and divide it to separate plots. Every member who wants to withdraw a share will know that plots will be taken from the edge of this area. It is not a perfect solution, Mr Saduev admits, but it is the “lesser of two evils.”

Individuals who transferred their CLS as a contribution to authorized capital still have the right to withdraw land to form their own farms under 170(5) of the Land Code.⁴⁷

The rights of a shareholder are also governed by the provisions of the organizational documents for the enterprise, which may specify what rights a person contributing CLS or land plot has with regard to withdrawal of land.⁴⁸

⁴⁷ The laws on partnerships, producers’ cooperatives, and the joint stock company also have provisions on individual stock shareholders, specific to rights of withdrawal from the enterprises.

⁴⁸ In an April 2005 meeting, the State Land Agency official said there were many cases where the agreements either were not clear as to the rights or that could not be enforced.

4.2 THE TIME REQUIRED TO COMPLETE OPTIONS AND THE LACK OF INFORMATION

When discussing the effectiveness of government policies serving the purposes of productive and efficient land use, people in the study drew attention to problems, such as lack of transparency and accountability on the part of the government services that resulted in corruption, red tape, and costly and time-consuming procedures for receiving land title documents.⁴⁹ These attitudes towards the government result from a complex combination of factors. Mainly there is widespread belief that government officials have exploited circumstances to increase wealth, influence, and personal gain while ignoring the positions of peasants. In some areas in North Kazakhstan, people felt they were losing their lands because of outside investor's connivance with unscrupulous government representatives.

Concerns on the Registration Procedure

"The existing procedures for registering documents for land plots do not meet our requirements. Sometimes they take half a year when they should take a week. If you do not have a piece of paper stating it is your land, you can prove nothing. The laws keep changing, and there will be new ones, stripping the peasants of their rights. Each time the law changes, we have to reregister and pay more bribes to officials to get things done. The registration of land is like a profitable business for them."

—Villagers, Vlasovka, N. Kazakhstan

"We need one place to register all our documents instead of running around to different officials."

—Villager, Shymken

"The state has created this endless registration for us. Each time they change the laws and rules, we have to spend more money and time to deal with them. Can the state just leave us alone or give us credit instead of charging money for this or that? We hope they end this endless paperwork, and then changes would be for good."

—Villager, Aktobe

4.3 SUBSTANTIAL DEMANDS FOR RETURNS OF PLOTS AND CLS

During the privatization period, many rural residents left the country for a few years and lost their CLS or land plots. Many of them leased or subleased out their land rights to others, and then the persons who had leased in, transferred the leases to others or went bankrupt. When people come back, they often cannot get their CLS or land plots back. Now, the people returning to Kazakhstan realize they have an opportunity to claim their land rights. We visited a *Rayon* in Taldykorgan, and the *Akim* told us that his biggest headache was receiving the many people who daily ask for land and CLS.

It is clear that the CLS are gone with the implementation of the interim provisions. But the former CLS holders might still have rights to apply for land plots from the State Special Land Fund. Whether these people can obtain land depends on the *Akim's* decision.⁵⁰ When an *Akim* discussed new land issues arising after the implementation of the interim provisions, he commented on the cancellation of leases. He said that prohibiting land rental was a backward manner of reform, because it did not promote development of the land market. He said that these former CLS holders could receive land by leasing in land from others if land rentals were allowed. It would reduce the number of conflicts between the administration and those

⁴⁹ It was said that two thirds of the land documents had not been processed when visiting Taldykorgan in August 2005.

⁵⁰ We have no information on how broad the problem is of returning people's request for land in the country.

demanding land. He even mentioned that land allocation through the rental market would be more efficient than through the method of administrative allocation.

4.4 CONCERNS ABOUT FARM SIZE, MANAGEMENT, AND PRODUCTIVITY

This topic came up in discussions with a few owners of new LLPs during our field research in Petropavlovsk. The owners, who had PFs before, formed their LLPs during the merging small farms campaign. They were certain that the farm size was related to farm productivity and that bigger was not necessarily better. One manager said, from their experience with current farm technology and farmers' skill, the best farm size for productivity in their area is about 500–600 hectares. They even provided information on profitable farms that had similar sizes. They were quite negative about the merging small farms campaign, particularly the mergers made under pressure from the *Oblast Akimat*. They said they did very well when they had their own PFs with 500–600 hectares and were not sure if they could operate as efficiently with 2000–3000 hectares.⁵¹

There is considerable support in literature on agricultural economics for the proposition that very large entities may be difficult to manage and may result in inefficiency, as compared to smaller units. There is no single correct farm size, as this will depend upon the crops grown, the technologies utilized, the relative availability of the components for production (land, labor, and capital), and access to processing. There is reason for caution in pressing for farm enlargement, and it would be better to allow for the continued existence of farms at a number of different scales, with a careful assessment of their relative productivity in light of experience.

4.5 THE MORE EFFICIENT ORGANIZATION OF LAND SERVICES

Finally, a number of those processing their options complained that local government offices and LRMA offices needed to be organized more efficiently. There should be one office, they argued, where they could go to complete the whole process. There has, in fact, been a recent reorganization of land services in local government, in which a new Department of Land Relationship has been created at the *Oblast* level, as a decision making body of land allocation and management, while the branches of the LRMA maintain an office with an executive role. However, the reform is only partly implemented in some areas, and its practical advantages and disadvantages are not yet clear. The other key player, GosNPT'sZem, the survey and cadastral agency, is a state monopoly and it should therefore be possible to obtain their cooperation in efficient provision of services. The debate on reorganization within GOK has not been concluded. But it is an important discussion, because multiple steps in multiple offices not only makes the process inefficient but also provides opportunities for corruption.

⁵¹ In the focus group meeting, in Petropavlovsk, June 22, 2005, one manager even questioned why the state decides which farm size farmers should have. He said that only those who farm know what the best farm size is.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

1. Privatization moved more rapidly for housing and enterprises than for land, and land reform progressed more smoothly for urban than for agricultural land. The GOK has carried out an incremental program of rural land reform, with some false starts and course adjustments along the way. From 1991–1995, the GOK developed many farm restructuring policies and laws. Former state farm managers and collective farm cadres, as well as technicians, played a leading role in this process and may have formed as much as 70 percent of the new farms. These cadres and directors played major roles in the land distribution and farm restructuring process. Almost 50 percent of all agricultural land and other farm property was distributed from 1991–1995, with CLS distributed very broadly to members in 1995–1997. Those shares represented land that was with a particular farm, but the arrangements between the shareholders and the farms involved a variety of terms and very different levels of formality. Some shares were taken from former organizations and converted to land to become peasant or farmer’s farms. Others were left as shares, remaining with the former farm organization or given to a new farm organization to manage.
2. The reforms have resulted in diverse farm organization types. State experimental agricultural science testing farms, big commercial farms (JSCs, LLPs, PCs) (legal persons with authorized capital), and others that are not legal persons (such as peasant farms, individual farms, simple partnerships, and household farming plots) are designed to meet the needs of both large and small farm operations. This diversity of options for farm organization is a positive element in the current legal environment for agricultural development because of the choices it provides for farmers.
3. In general, cancellation of CLS leases and land plot subleases in implementation of the interim provisions has been efficiently managed. All leases have been cancelled, and the CLS that were included in those leases no longer exist. Many of those affected, approximately 50,000 shareholders, have not completed the procedures for option selection (from among the three allowed). Implementation of the interim provisions entailed not only cancellation of leases, but also a new stage in farm restructuring in which sizes of farms grew and others shrunk according to choices people made. In the north, small farms have been urged to merge and new “super LLPs” have emerged; in the south, there has been greater reluctance to move away from small and medium farm structures.
4. Important shifts in the distribution of land among farm types have occurred, but this has been due to a combination of individual decisions concerning their options plus trends encouraged by government; the market has had little to do with it. Today, markets in land or even in land use rights play no significant role; in fact, very little land has been privatized to the extent that it has become full private ownership. The fact that very few of those leasing land from the government have bought the ownership of the land seems to be due to relatively low lease rates presently made available to those who lease land and current high prices for land purchase.
5. Implementation of the interim provisions has received mixed reactions from rural society.

- There is an increasingly positive attitude toward private land ownership, in spite of relatively low costs of leasing land from the government; the numbers of leaseholders purchasing land has recently increased significantly.
- Those who cancelled leases or subleases and contributed their land to authorized capital have mixed feelings about their future. Some were optimistic about the choice they made, while others were concerned, especially about the prospect of profit sharing.
- People were quite negative about the number of changes in their land holdings and the frequent requirements of re-registration.
- The government's emphasis on merging/enlarging small farms makes small landholders worry about their land rights; even some of those who benefited during implementation of the interim provisions, including some LLP managers, expressed concern about security of tenure.
- Concerns about rural unemployment and poverty were expressed at all levels.

5.2 RECOMMENDATIONS

1. The GOK should continue to provide information and assistance to those attempting to exercise their options under the interim provision. These people face a number of noted difficulties, and the government should facilitate the completion of these processes. This is partly a matter of educating farmers concerning their rights and training local officials and partly a matter of quickly resolving grievances and disputes. The legal aid offices can play a very helpful role in this area.
2. A number of post-implementation issues deserve the government's attention, in particular the difficulty that enterprise shareholders face when taking out their share capital in the form of land. Shareholders believe they have a right to this, and they value this right, but it is becoming clear that it may be difficult to realize.
 - a. This should not be viewed by government as entirely a matter between private parties, but rather a matter where the Land Code made promises that must be fulfilled. It may prove necessary to enact regulations under the law to ensure that enterprises fairly treat members seeking to withdraw land, but there is also an important need to make shareholders aware of their rights.
 - b. Government should require enterprises to identify the land that is available for withdrawal, ensuring that this is arable land. This would make the formation of individual farms easier and avoid the problem of the farm enterprise director selecting the location of the plot and being accused of assigning the worst land to those wishing to withdraw.
3. Another important issue concerns the incomes of shareholders who contributed land and land shares to the capital of large farm entities, especially those organized by outside interests. There is a danger that questionable accounting will deprive these investors of any income through the disguising of profits by managers. The government should monitor this and protect those who invested against the deceptions by farm management, especially the management of huge outsider LLPs. This issue needs to be monitored, the extent of the problem must be explored, and those with shares in agricultural enterprises need to be educated to ensure that they understand their rights and ways to pursue them.
4. Opinions differ widely among international experts and local people as to whether the up-scaling of farm production into larger units (the policy currently pursued by government) will, in fact, result in greater efficiency. In light of this, it would be better if government moderated its attempts to encourage consolidation of farms into larger units and if there were a continuation of farms in a variety of sizes. Monitoring the productivity of alternative production scales and modes of organization (taking into

account other factors such as subsidies and differences in land quality) will allow conclusions about the impact of scale to be derived from experience rather than theory. In addition, repeated adjustments in farm sizes and the downward changes of lease terms appear to have created uncertainty among landholders and a decline in perceived security of tenure. Government should facilitate a period of relative stability for rural land users on these points.

5. The GOK should give renewed attention to mechanisms for providing information to the public on the evolution of land use and property rights. The government body that is responsible for land services should publish an annual statistical report on land use, allocations, and transactions. The well-designed data furnished by the LRMA has been tremendously helpful in preparing this report, in that it shows changes in land according to the form of the farm organizations. The agency should develop standardized categories and use these consistently to provide annual data that would make changes in this important field public knowledge. There is also a need to begin gathering statistics on land transactions. This should be done in connection with the system for registration of those transactions, but it is important that the existence of informal, unregistered transactions also be captured. The system for registration of transactions needs to be examined in terms of its ability to handle what will likely be a growing demand. The law requires registration of transactions on land rights, but the requirements and processes to accomplish it are not widely understood. It would be helpful if government were to begin a public information campaign in this area.⁵²
6. Although the matter lies outside the scope of this study, the project wishes to note that there is a substantial demand for conversion of agricultural land to non-agricultural uses around a number of cities and in particular in the area of Astana. It appears that there is no law or regulation that provides a systematic process for such conversions. This type of transition throughout the world is often characterized by corruption and speculation, and important lessons can be drawn from other countries' experiences. It is suggested that the government review the relevant legal provisions, with particular attention to whether the land rights of rural lessees from the state and other rural property owners are adequately protected in this transition. In the course of this review, the GOK might want to consider whether public control of land use is best achieved through land use specification in leases of land from government (the present approach) or through a zoning system, in which land uses are prescribed for particular areas by regulation but do not form a part of the lease itself.⁵³

⁵² This recommendation is beyond our study focus, but the project thinks it is worth mentioning it to the government.

⁵³ In market economies, control of land use is accomplished through a system of land use zoning, tied to the town planning process, which stipulates how land may or may not be used in specified areas. Zoning restrictions tend to be negative, prohibiting specified uses, rather than requiring a single use. This allows the landholder greater freedom in responding to economic opportunities for better use of the land. Zoning restrictions are enforced through fines for violations, rather than termination of the land right. This approach to enforcement increases the security of tenure of users while ensuring compliance with the land use zoning restrictions.

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ANNEX A. LAND REFORM AND FARM RESTRUCTURING, A FARMER'S VIEW

Key Informant Interview, Akmola *Oblast*

August 17 and August 19, 2005

FARM RESTRUCTURING

The village in which I have lived since Oct 1988⁵⁴ is about 500 kilometers from Astana, in Akmola *Oblast*. There were 200 households with 900 people. There was one *sovkhobz* in my village with 27,000 hectares of farmland.⁵⁵ I was a deputy director of one of the production brigades and the secretary of the party organization. To me, the process of farm restructuring and land reform in our area has seemed gradual. In 1991, right after the collapse of the Soviet Union, the main change we felt was that the economic chains for input supply and marketing established by the Soviets were broken. The first reform by the government was a pilot project to change the procedure for selecting farm managers from one of appointment to election by members; it was done quickly but did not produce any results.

In 1992, the director of our *sovkhobz* asked me to a cadres' meeting about the farm restructuring, where they announced that we had an opportunity to have and operate our own farms independently. The *sovkhobz* would allocate land, machinery, seeds, and fuel in order to start our own enterprises. However, this restructuring was another pilot project and not every individual who wanted to form his/her own farm could do so. Since I was one of the *sovkhobz* cadres, I was encouraged to establish a Production Cooperative (PC) by the director. Then three other cadres and I applied for PCs. These were the first four PCs, with 2,000 hectares each (8,000 hectares out of 27,000 total hectares of agricultural land in our oblast). The *sovkhobz* continued in operation until 1994, when it finally broke up into other farms.

Our new PC, which I formed with five other members from our brigade, received not only 2,000 hectares of land, but also machinery from the director of the *sovkhobz* (2 tractors, 2 Caterpillar tractors, 4 combines, and trucks) with seeds and fuel. All these goods were valued as a loan, to be paid back in cash after the first harvest.

Our PC did very well in the first year and not only paid all its debts but also was able to purchase new equipment. Nevertheless, the members were afraid that the *sovkhobz* might take the farm machinery back, so we bought cars. One of the other three PCs broke up in that second year because the property was sold,

⁵⁴ He worked as the Chief of Dept, Chief of *Oblast* Committee, and other leadership positions since 1978.

⁵⁵ There were two farm types in Kazakhstan in Soviet times: *sovkhazes*, or state farms (90 percent of farms), and *kolkhozes*, or collective farms (10 percent of farms).

money was distributed, and the members left for Russia. Those who left soon regretted it and came back three years later; however, it was too late and they had lost their land.

When people saw our experiment with the four production cooperatives, they wanted to follow our example and establish their own farms. During 1992 and 1993, there were 3–5 Peasant Farms (PFs) formed. By 1993, the government had introduced a policy of distributing conditional land shares (CLS) to rural citizens. In our village, the residents asked for land or their shares. From what I remember, by the end of 1993 there were about 30 more PFs established, but these didn't receive any machinery. During this period, they distributed the CLS in our village. Distribution finished in 1994. By 1994, the *sovkhöz* finally broke up and was officially renamed the Association of Peasant Farmers based on these PFs. In the same year, 40 more PFs were formed. The people who had worked in the brigades knew where they wanted land for their PFs. Therefore, they were the first to receive land and often got it in the places they applied for. They wrote their applications to the director of the *sovkhöz* with the specific locations and sizes of their land plots. Those who did not work in brigades did not know which lands to apply for, so they usually got CLS or leftover lands.

By 1994, when the *sovkhöz* was officially broken up, other *sovkhöz* workers fervently asked to receive land. Fortunately, our settlement received some additional land from neighboring *sovkhöz*es and *kolkhoz*es, bringing the total land to 31,000 hectares. After the distribution of CLS, many farm workers were unhappy with the result and asked that all our settlement's land be redistributed equally, including the PCs' land, because all the good quality land and the non-land property of the *sovkhöz* was already gone. Currently there are 82 PFs in our village with a total 31,471 hectares⁵⁶.

Our PC operated for two years. After one person left in 1994 (he sold his share of the farm and left for Moldova), the rest of us gathered and decided that we would each establish our own PF. We divided all our PC property including the machinery and land according to family size. My family, including my brothers' family with 12 people, got 760 hectares consisting of pastures and hay and arable land, 1 tractor, 1 combine, 4 seeders, 1 plough/cultivator, and 1 water distributor with pump. We established our family PF in 1994. At that time, the procedure was simple. I only needed to write an application to the director of the *sovkhöz*, and then receive the resolution from the *Rayon Akim* to lease the land for 99 years.

After 1998, I extended my farmland by leasing an additional 200 hectares each year from other individuals or from the *Akimat*. In 2002, the term of lease changed from 99 years to 49 years. At present, my farm has 2,000 hectares of land and other businesses, including a mill, a bakery, a pasta workshop, a 2000-ton grain storage facility, and a herd of sheep. I hired one combine and use 4 of my own combines every year, and there are employees who work in the mill and the bakery, plus a herder. We produce grain and process the wheat and rye to flour.

Looking back, there were two main reasons for the farm restructuring: a) the collapse of the Soviet Union; and b) the collapse of the economic, social, and cultural ties among all the newly established countries. The productivity of the *sovkhöz* before the collapse was high in our *Oblast* because our *sovkhöz* was located near the Republican Center, hence issues were solved easily and it was in better economic condition. Our main production activities were grain and livestock raising (pigs, cattle, and sheep). The vegetables we grew were not sufficient to meet the needs of the whole population of the *Oblast*, so we imported vegetables from the southern *Oblasts*, and from Kyrgyzstan. People really did not want to break up the state farm. Even though the *sovkhöz* director told them they must do so, they were not willing. They suspected that the director wanted them to separate, and they did not believe that the state farm would just give them these things. Many people still regret they broke up the state farm into these smaller units. Those who left later regretted it.

⁵⁶ These farms occupy about 50 percent of arable land and 50 percent of pasture and hay land. Six to seven farms are around 1000–2000 hectares, about 68 farms are 200–1000 hectares, and 6 to 7 farms are 100 hectares or less.

CREDIT AND INPUTS/OUTPUTS

I have received government subsidies for fuel at the reduced price. I do not receive credit for fuel or fertilizers (not available in Kazakhstan), nor for seeds (I grow my own seeds). *Akimats*, through PRODCORPORATION, usually give such credit, and one has to pay it back out of future crops. Part of the product (usually 20 percent of the output) has to be sold to PRODCORPORATION at the fixed (low) price. Not everyone can receive this kind of credit since the *Akimat* has a lot of discretion as to who gets credit. I receive credit from the Rural Credit Partnership (RCP). Farmers established this organization. The state owns 35 percent of the RCP shares. It will reduce its shares when the farmers are stronger. To become a member of the RCP, one has to pay 80,000 Kazakh Tenge (KZT) as a membership fee. I also received 500,000 KZT credit at 10 percent annual interest. Every year the interest decreases by 1 percent. I also received a loan for 7 years for leasing machinery from KazAgroFinance at a 4.5 percent annual interest rate.

TAXES

I pay the united land tax per year (0.1 percent of land value). One hectare is worth 17,000 KZT in our area (that is, about 34,000 KZT annually). Then there are income tax, pensions, ecological tax (depending on amount of fuel purchased), and social payments. That adds up to about 174,000 KZT annually:

PEASANT FARMS TAXES					
TYPE OF TAX	2001	2002	2003	2004	2005
United Land Tax	22 788	27 728	30 500	30 500	36 066
Ecological Tax	26 920	28 550	29 280	30 584	
Social Tax	12 400	10 230	18 966	21 896	
Income Tax	4 140	7 650	8 550	4 448	
Pensions	29 684	37 069	56 950	86 600	
Total	95 932	111 227	144 246	174 028	

I practice land rotation, and each year there are 400 hectares idle.

SUBLEASING

In 1999, I subleased 200 hectares of land from an individual for a 5-year term. He did not have the capacity to use the land. By written agreement, I pay him 5 percent of the gross output (about 7½ tons of grain) as rent. In the beginning of 2004, I used a total of 2,000 hectares of land: 1,800 hectares leased from the *Rayon Akimat* and 200 hectares from this individual. Then I learned that we would have to cancel the sublease agreement, due to the interim provisions of the Land Code. In the beginning of 2004, we cancelled the sublease orally, because there was no point in writing it down and, in any case, it would automatically be cancelled by January 1, 2005, according to the interim provisions. This person now works his land as a peasant farm. I then applied to the *Rayon Akimat* for an additional 200 hectares of land from the state special land stock in early 2004. Since it was not a busy time, I managed to receive the land to complete the whole procedure. I changed the lease agreement with the *Rayon Akimat* from 1,800 to 2,000 hectares and finalized the land survey, as well as the mapping and registration. Since I handled the cancellation of the sublease in this way, it did not cause any negative impact on my landholding. I received another 200 hectares the same year, but that is unusual.

TITLE DOCUMENTS

Since 2004, I have had five separate land plot documents (State Acts) for the 49-year lease term (467, 400, 112, 174, and 200 ha). When I received the State Land Act, I paid for the land survey, then for mapping to GIPROZEM or NPT'sZem, and for registration of the title documents for the land plots. Overall, the total

costs were around 35,000 KZT. I accomplished all the procedures because I started early, in 2004. At that time, many people did not know or understand about these interim provisions, so most had not applied yet. Many farmers still have not received their Land Acts and many of them lost their lands.

The Land Act is a title document issued by the Territorial Division on Land Management Resources. It can be for the right for private ownership, the right for permanent land use, or for the right for temporary land use/lease (short- or long-term). It has a map with the land plot boundaries, the distances, the cadastre number, etc. I went through the state registration process at the Immovable Property Registration Center and received a Certificate of State Registration with a stamp for which I paid 1,000 KZT. The documents I provided for registration included the *Akim's* resolution on land plot allocation, the State Act, and my identification.

LAND REGISTRATION

The procedure for receiving a State Act begins with application to the *Rayon Akim* for identification of a specific land plot. The *Akim* gives the task to the special commission to consider the application. After the commission's approval, the *Akim* issues the resolution, which allots a specific land plot with specified quality, size, etc., to the applicant. The resolution, together with other relevant documentation, is taken to the Land Committee for the processing of the State Act issued by the Land Committee. All technical works, such as surveying and mapping, are done by the State Scientific Production Center of Land Resources and Surveying. It is to take 3 months to receive an Act for executive bodies, under the Land Code, Article 43. But survey work can take a year to get done, since it is seasonal work, and impossible in the winter.

If I had not registered my land, no bank would have taken the land for a mortgage, so I would not have received credit. But before 2004, many rural residents used land but did not register with the Immovable Property Registration Center. Most of them did not have State Acts and just used the *Akim's* resolution as a legal title document. In fact, when they applied for land, they first went to the director of the *sovkhos*, asking him to allocate specific land plots with size and location, according to their land shares. After getting the director's permission, one had to go to the *Akimat* with this permission to ask for the *Akim's* resolution, so that they would carry out land surveying works and identify land boundaries. Then, according to the number, size, and location, the applicant received the *Akim's* resolution for allocation of this plot. Until 2003–2004, most people did not have State Acts because they had to pay for them. The banks did not mortgage land for credit, and the *Akim's* resolution was not enough; they also needed a Certificate of Registration.

VIEWS ON IMPLEMENTATION OF THE ARTICLE 170, LAND CODE

When Mr. Umerbaev, President of Union of Farmers, and I were in the working group, we opposed these interim provisions. We asked to postpone the cancellation of the leases/subleases for at least 7 years. People needed time to complete the procedures. The procedures were so complicated that many people may have lost their land rights.

These interim provisions did not do any good for ordinary rural people. When people could lease their CLS out or sublease their land plots to anyone, they could receive income through rent, roughly around 5 percent of farm output. For instance, I paid about 7.5 tons of grain for subleasing 200 hectares. Now, those who contributed their CLS or land plots to “authorized capital” as an investment only get income when it is proved that the agricultural enterprise made a profit. It is very likely that the enterprises will just cheat and deny any profits. Therefore, the people who contributed their CLS have lost both the rents they had and their CLS or land plots.

Overall, the results are not positive for ordinary rural people. The real beneficiaries of the interim provisions are those monopolists who have obtained huge amounts of land through the cancellation of leases and subleases and established big LLPs. The sizes of the farms they occupy are from 30,000–150,000 hectares.

They are called latifundists (large landowners). They have power and access to financial resources and sit in either the Parliament or the *Akimats*, with the ability to access the laws and the power to make laws. Earlier they could not take the land from people, but now the law has helped them to do so.

Article 170 failed to protect people's rights. In the end, the people who held the CLS will suffer because they will never have the financial capacity to get their land shares back. To be honest, even with my decent business, I still cannot afford to buy land. Somehow, the implementation of the interim provisions has made me feel less secure in the land I have been using. I am afraid that someday, somebody with lots of money can come to the *Akim* and get permission to buy my land. They can take it from me just as they took from others during the cancellation of subleases. The first law, the one that provided for a 99-year lease, was the best, because it stated that land use rights could be inherited. The new Land Code does not have such a provision. Only when land is owned, can it be inherited. The only positive land tenure is private ownership.

Up to today, the director of the LLP or other enterprise (usually the former director of the *sovkhos/kolkhos*) decides whether to give land out or not. According to the protocols for the enterprises, the majority of stockholders at the General Meeting (GM) make these decisions. To have a major vote, 50 percent of the stockholders have to be at the GM. It never happens that 50 percent of the stockholders come to the same meeting. If there were 1,000 members in the LLP, a 50 percent forum would require at least 500 members to be present. At the meeting, only 50–100 members arrive, and 50 of them are the director's people (his specialists, relatives, their wives, etc.). This is why withdrawal of land is totally (99 percent of the time) decided by the LLP founders. The GM is a token measure. Whenever the LLP manager is not willing to give the land out, he can call a GM where all his people come and vote against allocation of the land plot. Every worker for the LLP would listen to his boss. Then they will write the minutes, according to which the meeting will base its decision not to give out the land, and this ensures that the LLP manager will not be blamed for the refusal.

LLP founders are powerful people who have all the resources. Most newly established LLPs are owned by people with strong ties to the people in power. These LLPs are big guys who occupy almost 60 percent of the land now. This is gradually becoming a problematic phenomenon. The main difference between the old sublease and the contribution to the authorized capital stock is that, with the sublease, one has to pay fixed rent regardless of whether there is profit or not, but, with the contribution, the dividends depend on the profit. The owner of an LLP can cheat the stockholders by saying there was no profit and so pay little or nothing. This phenomenon can lead to social, economic, and political instability, even a crisis.

When we went on a field trip recently, an old man told us that the *Akims* and big outside investors do not care about the livelihoods of the rural population. The recent Draft Law on Personal Household Plots said that the product from household plots should be taxed. We tried hard to make sure that draft did not pass, and met many times with farmers, discussing this issue, and provided the feedback on the draft at the Working Group meetings. We presented it to the Ministry of Agriculture and got the provision on taxation of household plots products changed. Otherwise, many people would have suffered because the household plots are some people's only means of survival.

ANNEX B. LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

Legislation of the Republic of Kazakhstan in the land reform area (in chronological order):

1. Law “On Peasant Farms in Kazakh SSR” of May 21, 1990;
2. Land Code of Kazakh SSR of November 16, 1990;
3. Law “On Land Reform in Kazakh SSR” of June 28, 1991;
4. Law “On Land Tax” of December 17, 1991;
5. Resolution “On Approval of Regulations on Procedure for Allocation of Lands for Use to Joint Ventures, International Unions and Organizations, Foreign Legal Persons and Individual Persons” by the Supreme Soviet of the Republic of Kazakhstan of July 3, 1992;
6. Resolution No. 633 by the Cabinet of Ministers of the Republic of Kazakhstan of July 20, 1993;
7. Presidential Decree “On Issues of Land Relations Regulating” of January 24, 1994;
8. Resolution No. 216 “On Sale of State Agricultural Enterprises to Citizens’ Private Ownership” by the Cabinet of Ministers of the Republic of Kazakhstan of February 24, 1994;
9. Presidential Decree No. 1585 “On Transfer of *Sovkhoz*es’ Property to Director’s Ownership” of March 9, 1994;
10. Presidential Decree “On Further Improvement of Land Relations Regulating” of April 5, 1994;
11. Resolution No. 611 “On Approval of Procedure of Concession of Right to Land Share (Part) During the Privatization of State Agricultural Enterprises” by the Cabinet of Ministers of the Republic of Kazakhstan of June 10, 1994;
12. Presidential Decree “On Land” of December 22, 1995;
13. Law “On Farms” of March 31, 1998;
14. Law “On Land” of January 24, 2001;
15. Land Code of the Republic of Kazakhstan of June 20, 2003.

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