

Land Tenure in Transition: Case Uzbekistan

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ABSTRACT

This paper presents results of a land tenure research that was carried out in August 2001 in Uzbekistan. The aim was to review the land tenure rules and practises; and their influence to real property market. The paper commences with a short introduction to the land policy and to the present statutory tenure in the country. Turning into the research data, both rural and urban land tenure systems are explored. Uzbekistan celebrating the tenth year of independence has the land tenure still in transition. The Soviet era systems have been replaced, but often with similar practises. Land belongs to the government and people may enjoy only use rights to land. The privatisation process of the collective farms and the establishment of individual land rights are still topical in Uzbekistan. Apart from land, the immovable properties have been privatised. The artificial division between land and buildings that is built-in to the concept of real property has affected negatively the security of tenure and the functionality of real property market. In the urban settings the real property market has emerged, but many of its crucial elements do not function. The mortgaging is in an infant stage and the banks rather except movables as collateral than real properties. The public control on land use is high, but for example the environmental authority has only a marginal mandate. The paper ends with conclusions and suggests lessons to be learned from the land tenure situation of Uzbekistan.

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1. INTRODUCTION

In the pre-soviet Central Asia numerous land tenure variations followed Islamic law and local tradition. The Khan or Emir owned all undeveloped land and the public lands that were administered communally. People could take over unused land and eventually become owners. The land was transferable and subject to tax depending on its nature. Private lands were inheritable to all sons and over times land holdings became fragmented (Eckert and Elwert 1995). After the 1917 revolution land properties were nationalised and Sovkhoses and Kolkhozes were established. By the thirties all remaining peasant farms were collectivised. The Soviet Union introduced a planning economy. A massive irrigation system was created to Uzbekistan, practically employing the country for cotton production. Since the independence in 1991 the government of Uzbekistan has focused in increasing the agricultural productivity via a land reform. The objectives included retaining the state ownership on land, but introduction of lifelong land use rights, inheritance and full ownership of non-land assets, a gradual transition to market conditions for agricultural production and a change of the central planning system to the organisation through markets. In general, the idea was not to privatise land, but the farm enterprises only (EU Tacis 1998/99). This paper looks at the land tenure system that the reform created. In August 2001, the author researched the topic for the EU Tacis Land Registration Project (Törhönen 2001). The project is located at the Uzgeodescadastre, the state cartography and cadastre authority. The research aim was to review the land tenure rules, the land use rights and their application in practise. The perspectives explored were the efficiency of the land use, the status of real property market, the functionality of credit markets and the ability of the land tenure to provide incentives for investments. The research was implemented in three weeks through background studies, discussions with the local land administration, agriculture, business and bank professionals; field interviews with landholders and an analysis. Despite the research's limited scale the results can be taken to reasonably reflect the land tenure situation in Uzbekistan as the data proved to be relatively homogenous.

2. LAND TENURE SYSTEM

2.1 Legal Base

The constitution of the republic of Uzbekistan neither establishes nor eliminates the possibility of private land ownership in Uzbekistan. Since the independence a number of statutes of different levels have been passed. The two main ones in terms of land tenure are the Civil Code and the Land Law. According to the Land Law, land belongs to the State; individuals may only enjoy use rights on land, which cannot be transferred. Land plot is a registered area with fixed boundaries and it is formed in a planning process. However, should the attached immovable objects be transferred, the land use right was reissued accordingly. The land tenure types stipulated are the ownership; which is only reserved to the foreign

embassies etc., the lifelong inheritable possession, the permanent use, the temporary use, the lease and the joint possession and use. All other forms of rights on land are subject to land tax except the lease, which is subject to the rent. A use right allocation can be cancelled in case the stipulated land use is constantly violated. The division between land and permanent structures attached to land is strongly present in the Land Law. However, there are also other philosophies found in the legislation. Contradicting with the Land Law, the Civil Code stipulates the real property to consist of a land plot, permanent constructions, permanent trees and underground constructions. The Civil Code real property is also fully transferable. The Civil Code real property concept is often argued among experts, but it is insignificant as the Land Law is considered as the specific statute in land tenure.

2.2 Rural Land Tenure

Apart from failed attempts to auction lands by the Aral Sea shores there is no private land ownership in rural Uzbekistan. The rural land tenure mainly consists of the restructured Kolhozes called as Shirkat farms. The Shirkat is a rural concept of living, farming and enterprising, which consists of fields, agricultural installations and settlements that de facto form small towns. The Shirkat contracts annually fields to farmers with tight conditions on crop types and production levels. The Shirkat, as a community, possess the land through the lifelong inheritable possession. In some areas farmers have invested considerably for their Shirkat fields and have been cultivating same land parcels for years. Still, no hint was seen about the Shirkat system going through an unforced privatisation process. There is a growing desire for private farming as the Shirkats are largely cash stripped. The government has recently started to implement the privatisation policy. A small percentage of farms have been privatised. Privatisation is the official term, but actually it is a question of a controlled semi-private farming on a leased farm. The agricultural authority and the local government plan the fields to be privatised, select the farmers among applicants, define the crop types, impose production levels, finance the farming, sell seeds and fertilizers and finally buy and market all the products. The selection of farmers is based on demonstrated managerial and farming skills, but complaints have been heard about unorthodox practises having been applied. The maximum lease term is 49 years, but the small couple of hectares farms have been presently leased for 10-15 years. Apart from the imposed cotton or dairy production fields a lease farm includes a garden where vegetables etc. may be planted. This should be a fractional portion only, however sometimes area is enlarged, but it is tolerated as long as the conditions are met. The garden products are freely sold and money used for paying the necessary labour in the fields, pesticides etc. Presently, the small lease farmers struggle with unrealistic production levels often failing to fulfil, which eventually leads to the lease termination. There were concerns heard about unjust terminations having taken place. Lately, some terminations have been cancelled in the court, but the public mistrust to the system is evident. The leases are neither transferable nor inheritable without a new authoritative decision. Farmers seemed not to rely on it as many opted to take the leases under the name of the son, who is planned to continue farming after the present generation. Another type of lease farms can also be found. These are large over hundred hectares farms or dairy farms leased for 49 years. There can content farmers be seen running profitable labour farms, but these are rare. Farmers' houses and gardens may be held in the form of Dekham farm, which is often referred to as a land ownership right, but which is actually standard lifelong inheritable possession right. It is an

inheritable but not a transferable right. Still, sales have been taken place. The Dekham farms, which are not part of governmental production, are very effectively cultivated being important food producers in the country. The few forests in the country are directly managed and profitably operated by the government. However, new forest leases are issued to legal persons (such as construction companies) for planting forests. This is in part business and in part environmental work as the planting allocations are made to the areas with environmental problems such as the Aral Sea shores. The lease is paid annually and the log sales are subject to income tax. According to the forest officials the forest leases may be sold and inherited, but this should be mentioned in the lease contract.

Credits are available in rural areas, but in practise without a mortgaging procedure. The Dekham and lease farms in principle would qualify as collaterals. A governmental non-commercial bank was specifically formed to provide credits to farms and agricultural investments. According to the bank the properties in the rural areas are not liquid and therefore the bank prefers to accept movable properties as collateral, for example cars. The agricultural loans are mainly issued for dairy production and utilise sometimes houses as collateral. The government plans to introduce a new credit system, using individually held real properties as collateral. The mortgage would be to 20% value of buildings and the land use right. The farm lease right would become subject to a forced transfer, if the lease were not paid. The challenge lies in the determination of the value of the land use right. The idea is that a committee of experts would define the production value and possibly also the market value.

So, despite the years of privatisation, restructuring and the new tenure forms, the rural land tenure in Uzbekistan is still dominated by the agricultural authority and the local government. Less than one would expect has changed from the era of the Soviet Union.

2.3 Urban Land Tenure

As stipulated in the Land Law, the private ownership on land plots may be issued to the foreign embassies or representatives of foreign entities by the Cabinet of Ministers' decision. For example, the German government recently became the owner of their embassy property. In 1993 – 1994 the government auctioned few hundred shops as real properties with ownership rights to land. This was perhaps based to the Civil Code stipulation. The shops still exist and the right remains intact in transferring. However, even these rights are subjects to land use conditions that may not be changed. If it was a shop, a shop it shall be. If the Civil Code were applied more in the land issues, things would change. There is for example a rule of five years occupancy creating an ownership claim. Its application would create many new landowners in Tashkent. Presently this provision is enforced in cases where a long-term lodger claims for an apartment where he/she lived until the owner, who had no legal heirs, passed away. In practise, a land occupied without a land use right can be allocated to a third party without hesitation.

The land use rights that exist in the urban areas are the lifelong inheritable possession, the permanent use right and the lease. The land use purpose is specified in the deed and may not be changed without a new decision by the local government. The upgrading of the tenure

status is open to a formal application. The principle of buildings being owned and the land either possessed or leased prevails. The multi-storey house apartments are subjects to ownership and are registered to individual or public owners, but the building and the land areas belong to the government. A multi-storey house land plot covers an entire block. This system in which individuals take care of the apartments and the governmental company is responsible for the technical infrastructure, the building and the yard has clearly had a negative impact to the maintenance. A recent act stipulates a condominium type of arrangement, where the dwellers would form a community, which would be allocated the building and the land use right. This is seen as a great improvement, but the act has not been implemented due to a stipulation that prior to the forming of the community, the building would have to be restored to its original condition. The private houses, where individuals take care of all maintenance, possess the land use right and own the building, are in much better shape than the multi-storey houses.

The land development of vacant land goes as follows: planning, parcelling, allocation, registration of the land use right to the land cadastre, application for the building permit from the architecture department, construction, plot + house inventory and registration of the building to the property inventory register. As known, the land use rights may not be sold. However, the possessor/leaseholder may erect a building, or perhaps just a basement, on the land and sell it. A shop sale means in practise: a shop property sale with the land use right to the land in question becoming transferred later. There are 18 000 non-residential land leases granted during the past few years in Tashkent and around dozen sales only have taken place. The unverified notion is that the residential house and plot sales are also rare. The property sales (buildings, apartments) are not restricted. However, Alster (2001) found out that the residential building transfers outside the family requires an approval from the local government. He also learned that a limit of maximum two residential plots per person is applied. Despite the free market there are many empty apartments in Tashkent. The demand for apartments may have been affected by the fact that quite a number of former Tashkent habitants have recently moved to Russia. In addition, in the aftermath of bomb attacks few years back new residence registrations to the city have been restricted.

The dualism in the definition of real property, the division between land and the attached structures cause harmful phenomenon. For example, it is evident that the real properties cannot be transferred ignoring the location factor. The real estates are bought with the price of land, but if the property would be expropriated only the buildings were compensated. Until 1998 the banks accepted real estates as collateral with some eager in the hope that property prices were constantly raising. In 1998, the non-stable market situation in Russia had severe impacts on economical development in Uzbekistan. A rule of thumb theory suggests that the property values sank overnight in to one third of their previous values. Most banks made substantial losses and now they are very hesitant to issue real property connected loans. Debt settlement failures are very common. When foreclosing loans banks face difficulties in gaining the possession of the property. Courts do not evict people that would become homeless ie. who would not be registered anywhere. Even if the property was acquired the sale would be difficult. The public auctions, which would be used, have months long queues. Valuation is also problematic due to the normative tradition and absence of reliable market information. There have been cases where valuers have got jail sentences due to the

valuations, which had encouraged failed investments. In consequence, movables such as cars, personal guarantees and loan insurances are considered to be more secure than real property as collateral and are therefore preferred. At least one of the major banks do not accept apartments at all as collateral. In the bank's view only acceptable real properties are urban, mainly commercial, properties, as they are somewhat liquid. Alternative governmental apartment construction crediting systems are heavily subsidised, but still commonly too expensive for the ordinary people. The lack of clear land tenure system seems to have been an inhibitor for foreign investments, which are rare. In addition, the foreign enterprises have had difficulties in their businesses due to the heavy bureaucracy, control and the non-tradable currency. The foreign land developers would follow the same procedures than the local ones, but would be allocated only the permanent use rights. The property tax is collected on the properties and on the land use rights. A leased parcel is subject to a lease, which is minimum the amount of tax and maximum three times the amount of tax. The location factor affect taxes and leases according to a zoning scheme, which is outdated and has little or no connection to the market values. The tax valuation is based on normative values depending on the building type, materials, floor numbers, quality of construction etc.

3. CONCLUSIONS

The land tenure research revealed a land tenure system of a country in transition. Ten years of independence has not changed much. The privatisation policy has been implemented to the buildings and constructions, but the land is still formally state owned and largely also in practise. The agricultural land use rights provide no access to credit and the whole farming sector is still strongly controlled and managed by the government. The privatisation has not been real. In addition the farmland allocations and land lease terminations seem to take place without adequate publicity and orderly procedure, which has had serious negative impact to the security of tenure. The agricultural land use cannot be effective in a situation where new ideas and products cannot be freely explored and practically no long-term investments are done. So, the public control on land use is high, but for example the environmental authority has only a marginal mandate.

The real property concept has not been well adapted in Uzbekistan. The real property market recognises indivisibility between land and buildings, but the government maintains the old division. In case of expropriations the lost land use right is not monetarily compensated. While the property and especially real property crediting is not functioning most of the nation's wealth is not in productive use. De Soto (2000) explored how liquid property functions as a major catalyst for the economy. As De Soto saw to be the case in a vast number of countries, the property of Uzbekistan is not used as the catalyst for development. The real property market is not allowed to develop. In general, the ambiguous economical atmosphere does not support investing; especially the foreign investments are rare. The ambiguities in the real property legislation hardly help in this regard. Although other inhibiting factors like non-freely-tradable currency should not be forgotten. Having said all above, there are also positive sides in the land tenure in Uzbekistan. There is still a widespread access to land, which is different to many former CIS countries. In addition, the urban areas have not had to struggle with rapidly growing population and no squatting problems exist.

4. LESSONS LEARNED

The Uzbekistan case has shown that the land tenure transition in the former CIS countries is still not complete. As a matter of fact it has hardly started in Uzbekistan. Why? It poses a mystery. A western person easily thinks that the benefits to be gained would be so apparent that the question *if* would be passed and only *how* and *when* would remain. Although supporting policies have been passed evidently the desire for change is moderate. A reason can be sought from the country's relative isolation. Both in macro and micro levels the country has not been visibly touched by the increasing globalisation. Still, perhaps the biggest surprise is that there is no evidence of significant informal real property market to be found. The phenomenon familiar to transitional collective and customary tenures where market evolves unforced despite tradition and restrictions is not significant in Uzbekistan. The only thinkable reason is that the great majority of the population have no sense of the market economy. The philosophies and values of the Soviet era did not vanish when it ceased to exist. Still, the change is inevitable; the present economical situation is not sustainable. The land tenure transition will not be trouble free and it will touch people who are not prepared to operate in the market economy. It is wished that the Uzbekistan's slow progress would save it from mistakes made in the neighbouring countries. Perhaps this is the place where a smooth transition may be experienced. The good people of Uzbekistan would deserve that.

REFERENCES

- Alster, Jitzhak 2001. *Technical Report on Legislative Support and Land Policy*. EU Tacis Land Registration in Uzbekistan – Phase 2 SCRE/110618. Uzbekistan.
- De Soto, Hernando 2000. *The Mystery of Capital; Why Capitalism Triumphs in the West and Fails Everywhere Else*. Bantam Press. London.
- EU Tacis 1998/99. FAPU Land Reform Report. Uzbekistan.
- Eckert, Julia and Elwert, Georg 1995. *Land Tenure in Usbekistan*. Study for the Guiding Principles: Land Tenure in Development Cooperation. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).
- Törhönen, Mika 2001. *Technical Report on Land Tenure*. EU Tacis Land Registration in Uzbekistan – Phase 2 SCRE/110618. Uzbekistan.

BIOGRAPHICAL NOTES

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