

An Analysis of Existing Legislation and Land Reform Policy in the Context of Protection of Equal Rights to Land Tenure

Research report

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1.Introduction.

The Republic of Tajikistan is a typically mountainous country with a limited amount of arable land (93% of the state territory is located in high altitude zones of the Pamir-Alai mountain system); although, agriculture is the main source of existence for

people living in villages. It was estimated that 73.7 % of the population had a rural lifestyle at the beginning of 2007 and women made up 49.8% of the population.¹

The total area of arable land is 720.2 thousand hectares, 502.8 thousand hectares of which are irrigated.

The population of the republic is growing year-by-year but the area of arable land is, unfortunately, reducing. Under such conditions, the issue of equal and fair distribution of land and access to land resources, ensuring equal rights to land for men and women, is of great importance.

Tajikistan is primarily an agrarian country and the country's development depends in a great degree on prosperity of the rural population and on creating good living conditions for this category of people.

Much research concerning the land reform development has already been conducted; however, in this report by the Rights and Prosperity Organization the particular focus is on examining the adequacy of the presently existing legislation of the republic for the provision of rural women's rights to land.

According to official data, 55.7 % of the population were women in 2007, although according to the data of the State Committee for Statistics of the Republic of Tajikistan the female percentage of the population at the beginning of 2007 was 49.8%. The discrepancy in the figures is most likely due to male labour migration. Given the gender-specific nature of such migration, this significant factor should be taken into account when assessing the legislatively secured rights to land and opportunities to work the land for rural women.

RESEARCH OBJECTIVES:

The purpose of conducting this research was to analyse and assess how gender sensitive the present national legislation and existing policies for the land reform implementation are, concerning the protection of equal rights to land of men and women. A further purpose was to produce recommendations for the achievement of real gender equality in the field of land legislation in the Republic of Tajikistan.

¹ Women and men of the Republic of Tajikistan. Dushanbe 2007. The State Committee of Statistics of the Republic of Tajikistan.

GENDER DEFINITION:

'Gender' refers to the socially constructed roles of and relations between men and women in all spheres of public life, including rights, ideology and culture. Gender is a 'social sex' representing a set of characteristics of male or female behaviour, lifestyle, ways of thinking, norms and preferences. Unlike biological sex, determined from birth, gender is constructed in concrete social and cultural contexts during particular historical periods and hence, varies with time and space.

Gender policy is the purposive state policy, limited by resources and time, aimed at ensuring gender-equal treatment of women and men by society. It means that men and women should be in identical conditions, have equal opportunities to enjoy all the rights guaranteed by the state and have equal potential for contribution to national, political, economic, social and cultural development.

The Republic of Tajikistan gender policy goals within the framework of NSR and SSB are the following:

- Creation of mechanisms for integrating gender policy into the process of reorganisation of the system of state government.
- Advancement of active legislation by the inclusion of additional legislative and other normative legal acts which will specify details of the mechanisms of rights fulfilment.
- Provision of equal access to resources.
- Elimination of gender inequality in the development of human potential.

Documents referenced in the research:

1. UN Convention on the Elimination of All Forms of Discrimination against Women. (CEDAW), of 18 December 1979.
2. Convention of the International Labour Organization on Protection of Maternity, of 28 June 1952.
3. Convention on Protection of Wages of International Labour Organization, of 1 July 1949.

4. Convention on Worst Forms of Child Labour of International Labour Organization, of 17 June 1999.
5. UN Convention on the Rights of the Child, of 26 January 1990.
6. International Covenant on Civil and Political rights, of 16 December 1966.
7. The Constitution of the Republic of Tajikistan, of 6 November 1994.
8. Law of the Republic of Tajikistan on Land Reform #594, of 5 March 1992.
9. Law of the Republic of Tajikistan on Lease, of 6 December 1990.
10. Land Law of the Republic of Tajikistan #356, of 5 January 20
11. Law on State Social Insurance in the Republic of Tajikistan #517, of 13 December 1997.
12. Law on Labour Protection in the Republic of Tajikistan #460, of 24 December 1991
13. Law of the Republic of Tajikistan on Reproduction Health and Reproduction Rights # 72, of 2 December 2002.
14. Law of the Republic of Tajikistan on Citizen’s Appeals #343, of 14 December 1996.
15. Law of the Republic of Tajikistan on Investment #260, of 12 May 2007.
16. Law of the Republic of Tajikistan on Arbitration Courts #344, of 5 January 2008.
17. Law of the Republic of Tajikistan on State Guarantees of equal rights for men and women and equal opportunities in the exercise of such rights #89, of 1 March 2005.
18. Law of the Republic of Tajikistan on Pension support for the citizens of the Republic of Tajikistan #796, of 25 June 1993.
19. Law of the Republic of Tajikistan on Dekhan (private) Farms #48, of 10 May 2002.
20. Law of the Republic of Tajikistan on State Support of Entrepreneurship in the Republic of Tajikistan # 46, of 10 May 2002.

21. Land Code of the Republic of Tajikistan #23, of 13 December
22. Tax Code of the Republic of Tajikistan, of 3 December 2004.
23. Code on Administrative Violations of the Republic of Tajikistan # 40, 5 December 1985.
24. Labour Code of the Republic of Tajikistan #418, of 15 May
25. Decision of the Government of the Republic of Tajikistan on alterations and amendments to the state programme titled 'Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010' #196, of 30 April 2001.
26. Decision of the Government of the Republic of Tajikistan on State Programme on Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010' #391, 6 August 2001.
27. State Programme titled 'Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010', #395, of 8 August 2001.
28. Presidential Decree on Enhancing the Role of Women in Society, #5, of 3 December 1999.
29. Regulation on the Committee on Women and the Family under the Government of the Republic of Tajikistan, #513, of 31 December 2004.
30. Decree of the President of the Republic of Tajikistan on Additional Measures for Reorganisation of Agricultural Enterprises and Organizations, #1775, of 30 June 2006.
31. State Programme of Economic Development of the Republic of Tajikistan for the period till 2015, approved by Decision of the Government of the Republic of Tajikistan, #86, of 1 March 2004.
32. Regulations on the President's grants allocation for supporting the development of small and medium-size enterprises, involving women and girls in professional training, upgrading legal literacy and creating new working places in 2006-2010, # 307, of 4 July 2006.
33. Conception of Entrepreneurship Development in the Republic of Tajikistan

till 2015, approved by the Decision of the Government of the Republic of Tajikistan, #469, of 3 December 2004.

34. State Programme on education, selection and placement of gifted women and girls in the state leading positions of the Republic of Tajikistan in 2007-2016 was approved by the Decision of the Government of the Republic of Tajikistan, #496, of 1 November 2006.
35. Regulations of reorganization and reforming of agricultural enterprises and organizations, approved by the Decree of the President of the Republic of Tajikistan #1775, of 30 June 2006.

METHODOLOGY:

The research was conducted in three phases:

1. Review of the international legal instruments concerned with provision of gender equality, recognised and ratified by the Republic of Tajikistan:

- a) Convention on the Elimination of All Forms of Discrimination against Women.
- b) Convention on Maternity Protection.
- c) Protection of Wages Convention.
- d) Worst Forms of Child Labour Convention.
- e) Convention on the Rights of the Child.
- f) International Covenant on Civil and Political Rights.

2. Examination of the current legislation, affecting all spheres of life and work of the rural population, which is concerned with the incorporation of international standards into the national legislation base.

3. Assessment of the ability of national legislation to ensure gender equality in Tajikistan.

The review has shown that some definite steps for achievement of gender equality according international standards are being taken in Tajikistan. The following list of activities and events, in chronological order, produced by UNIFEM in collaboration with the Gender Theme Group, illustrates those steps:

- The first women's NGO, SIMO, was established in 1989.

- The first women’s NGO was registered by the Ministry of Justice in 1991 (The Association of University Women).
- The Convention on the Elimination of All Forms of Discrimination against Women was ratified in RT in1993.
- Gender equality of men and women was included by the Constitution of the Republic of Tajikistan in 1994. (Article17 of the Constitution).
- Quotas for admission to higher educational institutions for girls from remote regions were introduced and adopted in 1997.
- National Plan of Actions of RT on Enhancing the Status and Role of Women for the period of 1998-2005 was adopted in 1998.
- The first National Gender Report was published in 1999.
- The Gender and Culture Manual for studying gender issues in higher educational institutions was published in 1999.
- The State Programme titled ‘Main directions for state policy to ensure equal rights and equal opportunities for men and women of the Republic of Tajikistan for the period 2001-2010’ was approved by the government in 2001.
- A special committee for implementation of international obligations in the area of human rights, including gender equality issues, under the Government of RT was established in 2002.
- The Law on Reproductive Health and Reproductive Rights was adopted in 2002.
- Amendments for improvement of access to land were incorporated into the Land Code of the Republic of Tajikistan in 2003.
- The Coordination Council on Ensuring Implementation of Women’s Rights to Land and other Economic Resources was established in 2003.
- The Inter-Departmental Committee on Combating Trafficking in Human Beings was formed in January 2005 and approved in April 2005.
- Official statistics forms were amended to collect details of women’s participation in agricultural enterprises.

- The Law of RT on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the exercise of such rights was adopted in 2005.
- The first national report on implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the Republic of Tajikistan was submitted to the UN CEDAW Committee in 2005.
- The first women People's Deputies were elected for the Lower House (Majlisi Namoyandagon) of the National Parliament (Majlisi Oli).
- The National Development Strategy for the period 2006-2015 and the Strategy to Reduce Poverty for the period 2006-2008, including necessary measures for acceleration of gender equality, were adopted.
- The Law of RT on State Registration of Civil Acts was adopted in 2006.
- The inter-departmental Council on prevention of violence against women was established in 2006.
- The first report of the Government of the Republic of Tajikistan on implementation of the Convention on the Elimination of All Forms of Discrimination against Women in RT was presented at the meeting of the 37th session of the CEDAW Committee in 2007.

2. Results and Expectations of the Land reform.

In the concluding comments on the report on RT, the CEDAW Committee recommends that the following action should be taken:

- a) To make special efforts to protect and ensure the rights of rural women, including single women heads of household, to land ownership, management of land and marketing of products by providing them with legal, management and business training and by simplifying the procedures of registration of private farms.
- b) To modify existing gender-role stereotypes through awareness-raising campaigns targeted at community and religious leaders, teachers, parents, girls and boys.
- c) To enable the participation of rural women in decision-making at the local, regional and national levels through training.

d) To include in the next report, sex-disaggregated data and information on the *de facto* situation of rural women of all ages in the areas of land ownership, income generating activities and health and education, as well as the concrete measures taken by the government in that respect, including results achieved.

We believe that implementation activities of the land reform in Tajikistan should not focus only on the issues concerning women's rights to land. The existing state policy of land allotment, in addition to specifying rights to land, should include some motivational means for involving rural women in land management and marketing of products.

In the past, agricultural workers on state farms and collective farms generally had very narrow and specific duties. Now, after being allotted a plot, a dekhan (a farmer) has to be an entrepreneur, a manager and a logistics expert at the same time, and if the farmers do not have the capacity to take on these broader roles, the changes the land reform will not bring the results of improving rural people's life and insuring food security which are being anticipated.

It is obvious that the modern status of rural women in Tajikistan in comparison with men's status is more constricted in various areas of socio-economic life including employment opportunities, access to high-paid jobs, and access to property ownership, land ownership and land use. Due to their having less than parity status in Tajik society, women often lack confidence in their abilities and talents. Sometimes rural women fear to take on new opportunities because of lack of knowledge of the legal management of land and because they have more duties and responsibilities, in comparison with men, connected with their households, birthing and bringing up children and taking care of other family members. Reproductive functions of rural women generally prevail over other functions. Taking into account this fact, the authors chose to widen the area of research by including assessment of women's access not only to land, but also to other resources which are needed for productive working of the land; therefore, the focus also includes examination of the labour, social and entrepreneurship opportunities for women working in the field of land use.

The aim of the research was to analyse the current land use legislation and to determine how the laws concerning women's access to land work *de facto*, and which legal impediments stand in the way of women's desire to become land-users.

It is well known that often a woman is only formally a head of her dekhan farm enterprise, while the men of her family are the real managers of the land and agricultural production. The reason for this is not only lack of education or lack of leadership skills of rural women, but also the low economic development of the

country, the increase of poverty in families, the increase in prices for many services or their complete absence in rural areas, all of which lead to an increase in women's workload and can create obstacles to managing land and resources and taking part in the agricultural market. There are, however, a lot of real examples of women successfully being heads of their own dekhans, which confirms the fact that women do have the potential and it simply is not being used properly and thus there is a necessity to free the latent talents of rural women.

3. The gender question in the land reform legislation.

Unemployment and labour migration of men to other states has brought about changes in the traditional model of family relationships, which is traditionally based on the principle of the man being the breadwinner of the family, and an increase in the economic activity of women in the informal labour market in Tajikistan. More and more women, including rural women, are becoming involved in small family businesses producing different food products for sale, as well as in market and street retail trading.

Employment of women in informal sectors has many advantages, such as allowing for the combination of work with housework, spending more time on taking care of children and other members of their families, and spending less time for getting to work and back home.

The results of research conducted in Tajikistan by different international and non-governmental organizations, as well as the UNIFEM assessment of rural women's enjoyment of rights to land in Tajikistan, show that even though women work on the collective and dekhans and individual plots more than men, they do not have equal access to economic resources, including land. Due to deeply rooted customs and the male inheritance tradition, women have access to land only through their relation to men: be it their fathers or spouses. Land Certificates are mainly assigned to men and it is mainly men who take the leading posts in the farm work hierarchy.²

According to statistical data, in 2006 in Khatlon oblast (region), only 1985 out of a total of 10291 dekhans were headed by women, which is only 19.3 %, and in Sogdi oblast, only 430 dekhans out of 4447 were headed by women, or only 9.5%.³

2 The State Programme titled 'Guidelines for state policy to ensure equal rights and equal opportunities for men and women of the RT (2001-2010), of 8 August #395

3 Gender indices of dekhans activities for 2004-2006, provided by National Statistics Committee of RT.

Rural women are generally unaware of their economic rights, property rights, rights to land use and rights to use of natural resources. As a result, it is usually men who are the owners of land and other socio-economic resources. Such a situation is caused not only by a lack of awareness of women of their own rights, but also by more general problems which restrict the development of agricultural entrepreneurship such as:

- constant growth of prices for agricultural equipment, fuel and oil and other raw materials;
- underdevelopment, or in some places absence of developed and fair intermediary-dealer networks for agricultural products marketing;
- underdevelopment of instruments of financial credit support and insurance of dekhans;
- low level of professional and legal education of agricultural entrepreneurs.

Taking these facts into account we believe that the gender assessment of current legislation and real opportunities for its implementation offered in the present report can be the starting point for monitoring activity in that direction and a basis for drafting the next steps for the advancement of gender policy.

CONCLUSION:

Despite the fact that some definite steps towards development of legislation orientated towards gender equality in accordance with international standards are being taken in Tajikistan, gender issues are still treated in a formalistic and limited way. From the legal point of view, legislation that is non-discriminatory against women exists in Tajikistan, but we believe that proper instructions and official explanations enabling women to be more confident in decision-making and thus, to feel more secure, should be added to current legislation. It is important because, at present, women in Tajikistan, especially rural women, face inequality with men. Tajikistan is entering a so called 'transition period towards gender equality', attempting to exchange an existing stereotypical devalued status of women with a status of women as high level decision-makers.

Rural women face a lot of challenges caused by poverty. We can say that women, especially those who are heads of their households, have suffered significantly the consequences of land reform, collapsing of social infrastructure and reformation of agricultural organizations because of losing their stable paid jobs.

Women in Tajikistan are paid less than men for the same work, especially in cotton farm enterprises, and that discouraging factor, on top of others mentioned above, is the reason why very few women are the heads of dekhans today.

Recommendation:

To create legal instruments explaining the application of the RT laws concerning land and land use; to introduce legal penalties for breaking the laws concerning the land allotment and to integrate transparent procedures in every aspect of land use.

4. The analysis of current and developing legislation in the context of gender sensitivity.

a) Equal access to resources.

The main legislation concerning land relations in Tajikistan are the Constitution of the Republic of Tajikistan, the Land Code and the Law on Dekhan Farms, as well as other laws and regulations.

Under the Constitution of the Republic of Tajikistan, land and land resources, water, air space, flora and fauna and other natural resources are owned exclusively by the State, and ‘the State guarantees their effective use for the benefit of people’.

Article 17 of Constitution of the Republic of Tajikistan states that ‘men and women have equal rights’, and that statement applies in all spheres of life of the people of Tajikistan, including land rights issues.

The issues of land distribution and access to natural resources, including land resources, are also regulated by the following legal documents:

- The Law of the Republic of Tajikistan on ‘State guarantees of Equal Rights for Men and Women and Equal Opportunities in the exercise of such rights’ which states activities for provision of constitutional guarantees of equality of men and women in social, political, cultural and other spheres and was adopted in order to prevent gender discrimination against women and to guarantee equal opportunities for men and women.
- The Land Code which sets forth the rights and responsibilities of land-users; its purpose is to secure rational land use and protection of land resources, improvement of soil fertility, protection of the environment, and the equal development of all forms of agricultural activities in RT.

- The Civil Code of the Republic of Tajikistan which defines the legal position of the participants in civil activities, the grounds for property rights and rights to the results of intellectual activities, and regulates contractual and other obligations based on equality, autonomy of will and property independence of the participants.
- The Law of the Republic of Tajikistan on Land Reform which states that the goals of the land reform in Tajikistan are to create a favourable environment for equal development of various forms of farming, for sufficient land management and land protection in order to increase agricultural output.
- The Law of the Republic of Tajikistan on Dekhan Farms which defines the legal basis for establishing and managing dekhan farms.
- The Law of the Republic of Tajikistan on Lease which sets forth the rules of leasing and regulations on procedures of land leasing registration in the Republic of Tajikistan.
- The Law of the Republic of Tajikistan on Land Tenure which regulates the legal aspects of land use and land management relations between the Government of the Republic Tajikistan and local governing bodies and land users.
- The Decree of the President of the Republic Tajikistan 'On the Reorganization of the Agricultural Enterprises and Organizations'.
- The Regulations on the reorganization of the agricultural enterprises and organizations, attached to Presidential Decree #522, of 25 June 1996.
- The State Programme 'Main directions for state policy to ensure equal rights and equal opportunities for men and women in the Republic of Tajikistan in 2001-2010', approved by the Decision of the Republic Tajikistan on 8 August 2001. #395.

As mentioned earlier, The Law on Land Reform, adopted in 1992, marked the launch of the land reform process in Tajikistan, providing the opportunities for rural people to gain access to land. The first Law on Dekhan Farms was adopted the same year. In 2002, several amendments were made to the Law on Dekhan Farms and a new amended law with the same title was published. Since then the Law on Dekhan Farms has been practically the only legislative instrument regulating all aspects of dekhan farm activities.

The Decision of the Government of the Republic of Tajikistan # 621, of 11 October 1995, states that 'in order to create the necessary conditions for development of new organizational forms and increase the efficiency of agricultural production, unprofitable and low-profitable kolkhozes and sovkhoses (collective farms and state farms) are to be restructured into lease-share enterprises, cooperatives, dekhans farms and other organizational forms; profitable sovkhoses are to be restructured into collective farms'. Presidential Decree of RT # 522, on 25 June 1996, outlined the regulations on organizational restructuring. Agricultural workers of former sovkhoses and members of former kolkhozes obtained legally guaranteed rights to receive land shares from their former sovkhoses or kolkhozes and rights to shares of agricultural property and equipment.

The Government of the Republic of Tajikistan approved Resolution 'On Simplified Procedure of Registration of the Rights to Land Use' # 29, on 4 February 1999, which sets forth the procedure of registration of the rights to land tenure and the types of documents necessary for the registration of the rights to land tenure. Government Resolution 'On Simplified Procedure for Determination of Land Share and Registration' # 30, issued on 4 February 1999, placed authority over farm restructuring with the Land Resources Committee under The Government of RT and its local executive bodies to determine the land shares in all agricultural organizations. Four months after that the Presidential Decree # 1232, of 9 June 1999, ordered the restructuring of 160 kolkhozes and sovkhoses by 30 March 2000.

Presidential Decree # 478, of 2 February 2001, ordered the restructuring of 120 large-scale agricultural organizations by 31 December 2001. Resolution of the Government of RT # 385, of 1 October 2002, was aimed at reorganising another 225 such agricultural organizations by 31 December 2005.

By the 1st of January 2007, according to the Agency of Land Tenure, Geodesy and Cartography, there were 59 large-scale agricultural organizations in Tajikistan, which was 91.8% less than the amount of agricultural organizations in 1995. In 2006 there were 24901 dekhans farms in RT, which shows a 14-fold increase of the amount of dekhans farms in comparison with 1995.

The conducted legislation analysis shows that none of the above listed legal instruments includes women's rights to land shares in particular; neither do any of them set rules for assessing the knowledge, experience and skills of people for working on land. The authors think that such amendments to current legal instruments could contribute to the involvement of more women into land management.

The Decree of the President of RT # 522, of 25 June 1996, only sets forth the allotment of land shares for members of kolkhozes and does not define any action

for training new farmers generally or, what is more important, training of women-farmers.

While working on various projects of the Right and Prosperity organization in the sphere of the legal aspects of land relations, women's lack of awareness of their rights to land has been identified by the authors as a significant. Research indicates that a lot of rural women still do not know that the lands of former large-scale agricultural organizations are being distributed among small-scale individual and family land users, and that every holder of the right to a household plot is entitled to register this right and receive a land tenure certificate; nor do they know how and where to obtain such a certificate. This confirms not only the fact of women's lack of awareness, but also the fact that the process of land reform is not transparent. From our point of view transparency of that process can be achieved only when the legislation clearly outlines the processes and information on land allotment is made widely available.

The analysis of current legislation also shows that none of the decrees on reconstruction considers the interests of vulnerable members of kolkhozes and sovkhazes; for example, there are no quotas for land allotment to boys and girls who have lost their parents.

We recommend that appropriate measures should be taken and the right to land allotment for orphans and social orphans (boys and girls) be secured in legislation.

While studying The Law on Dekhan Farms, which states that every citizen of RT has the right to establish a dekhan farm, it became clear that, invariably, in the laws and legislative acts in which the rights of a citizen are described in the singular, the citizen is referred to using the masculine gender. This may create and perpetuate a common assumption that it is chiefly male citizens who enjoy the rights referred to in the law or act and this is particularly the case in Tajikistan, where men traditionally hold positions of power and enjoy more rights than women.

The allocation of land shares and plots for inheritable life-long tenure to citizens of RT for establishing dekhan farms is set forth in the Land Code of RT. There are no gender restrictions on receiving land, and both men and women above 18 years old are entitled to the allotment of land.

According to Article 4 of the Law on Dekhan Farms, spouses, children, parents and other individuals working on a farm can be members of a dekhan farm. This statement is not gender-discriminative, because spouses, children, parents and other individuals can be women. However, the leadership of women in dekhan farms is under question, because according to Article 7, 'the head of the dekhan farm can be an able-bodied member of the dekhan farm who has knowledge and skills and

who has the practical experience of working in agriculture'. This means that women, who do not usually have formal agricultural education, have limited access to management positions in dekhan farms, and in some degree, to land.

The review of the Land Code shows that it also needs to be amended, in particular, chapter 2 of Article 12 establishing lifelong inheritable tenure rights, which states that the rights to lifelong inheritable tenure must be reregistered in the heir's name on inheritance needs clarification. The surveys of the Right and Prosperity organization show that men think that, according to religious traditions, female children do not have rights to inherit, despite the fact that it is not true even according to religious canons.

Recommendation:

The regulations on reregistration of rights to land tenure on inheritance should be clarified by legislation. Women's rights, in particular, to land tenure inheritance have to be explicitly secured by legislative acts.

Article 15 of the Land Code of the Republic of Tajikistan on 'State registration of rights to land tenure' states that the state registration of rights to land tenure concerning all physical and legal land users is carried out by the State Committee of Land Tenure and its local executive bodies. Article 17 defines the procedures of issuing documents for registration of the rights to land tenure. The right of a physical or legal person to land tenure begins only at the moment when the document of registration of the right to land tenure is physically issued. The procedure of registration of rights to land tenure is defined by normative legislative acts of RT.

Recommendations:

The authors think that Article 17 should be amended. There are regulations on 'procedures of issuing land tenure certificates and land share certificates', # 478, of 3 December 2004, but they do not identify the time period within which land tenure certificates or land share certificates must be issued, which allows prolongation of the process of issuing of those certificates. That is why a precise time period of preparing and issuing land tenure and land share certificates must be identified either by Article 15 of the Land Code of RT or by the regulations on procedures of preparing and issuing land tenure certificates and land share certificates. In addition, this article should identify penalties for officials responsible for not issuing those certificates in time.

Article 37 of the Land Code of RT on Grounds for termination of the rights to land tenure states that the right to use the whole plot or its part shall be discontinued in the following cases:

- a) in case of written refusal of the holder of the right to land tenure, signed by the land user;
- b) if land users discontinue their land using activities;
- c) in case of irrational use of a plot;
- d) if a plot is used for other purposes than stated in the documents confirming the right to land tenure;
- e) in case of use of techniques that can damage the soil or cause its chemical or radioactive pollution or result in harm to the environment;
- f) in case of the expiration of the period of time of land tenure;
- g) withdrawal of a plot for state or public needs in cases identified by the present Land Code.

According to point B of the article, the right to land tenure can be terminated if farmers do not use their plot. There are a lot of known examples when dekhani farmers cultivate their plots without registering their rights to land tenure for 2-3 years because they cannot obtain their certificates of land tenure in time due to procrastination by officials responsible for issuing the certificates, even though the farmers prepare and submit all the necessary documents to the officials in time.

Recommendations:

The point B of Article 37 should be amended to add the statement that the right to land tenure can be terminated due to not using a plot only after the certificate of the right to land tenure is issued. Women should be aware of this article because the threat of termination of a plot can affect their decision on whether to pursue land tenure.

Article 39 of the Decision on Termination of the Rights on land Tenure states that the decisions on termination of the rights to land tenure on the grounds of points A, B and F of Article 37 of the Land Code are to be made by local executive bodies of districts/towns.

The decisions on termination of the rights to land tenure on the grounds of points C, D and E of Article 37 of the Land Code are to be made by local executive bodies of the Government of RT or the local Land Committee and are to be approved by the court. According to legislation of RT, the notification about the decision on termination of the rights to land tenure must be presented to all land tenure bodies, appointed to make such decisions. The plots confiscated due to the decision on termination of the rights to land tenure are to be added to a special land fund of a district/town or a special reserve land fund of a district/town.

Recommendations:

The process of making a decision on termination of the rights on land tenure can be a long one and sometimes takes months. The time period of considering the issue of termination of the rights to land tenure and also the time period within which the land users are notified about such decision should be defined by Article 39. Chapters 3 and 4 of Article 39 should define the executive body responsible for notifying land users of termination of the rights to land tenure. The procedures of courts to approve the decisions of local executive bodies and local land committees on termination of the rights on land tenure should be clarified.

Article 46 of the Land Code, devoted to the land tenure rights security, states that land tenure rights are secured by the Civil Code, the Land Code and other legislative acts through:

- A) the acknowledgement of land tenure rights;
- B) the prevention of interference of the state or other land holders into land users' activities with the exception of cases of breaching of the land legislation by land users;
- C) the enumeration of all cases of termination or limitation of land holders rights by the state;
- D) the provision of legal guarantees of protection of land holders' rights in case of their termination or limitation;

Recommendations:

This Article should define and list the existing state guarantees on land tenure rights and clarify by which legislative acts the state guarantees to land tenure rights are secured. In particular, the state guarantees on security of the land tenure rights for women-farmers should be defined.

According to Article 47 of the Land Code of RT, the land disputes arising in land relationships are considered by the State Land Committee of RT and its local executive bodies according to the requirements of the Land Code of RT. In case of non-execution of their decisions, the State Land Committee and its local executive bodies can apply to court.

Recommendations:

The list of disputable issues, which are considered by the State Land Committee of RT, should be defined in this article. The State Land Committee should design regulations or instructions on procedures of land dispute resolutions, including the procedure of establishing of the Commission on Land Dispute Resolution and the time period in which disputes must be considered. From our point of view all land disputes must be resolved by the state arbitration or the court, depending on the subject matter jurisdiction. We suggest that a court of arbitration be established under the Agency of Land Tenure, Geodesy and Cartography, whose decisions can be appealed in other courts of jurisdiction.

Article 49 of the Land Code sets out that the acknowledgment of the land tenure rights is provided by the local land departments who make decisions on establishing of the land tenure rights; that decision is the legal basis for issuing documents confirming the land tenure rights.

Recommendations:

The article should clarify the meaning of 'acknowledgement of the land tenure rights' and the time period within which the State Land Committee and its local departments have to provide the decision on acknowledgement of the land tenure rights.

According to Article 54 of the Land Code, economic stimulation of rational use of land and protection of land is aimed at enhancement of the land user's interest in conservation and regeneration of soil fertility and protection of land from negative effects of industrial activities, and includes the following measures:

- A) the allocation of financial means for restoration of damaged land, and for conducting agro-technical, meliorative and other soil protection actions from the state and local budgets and also from special bank accounts, established for accepting payment of fines;
- B) the withdrawal of the land holding fee for those land holders, whose plots are in an agricultural reconstruction or development stage, for the period of reconstruction or development.
- C) the provision of privileged credit for land improvement activities.
- D) the partial compensation from the state budget for profit reduction caused by temporary land conservation.
- E) the encouragement of improvement of soil fertility and land productivity of the state forest fund (protected forest areas) and the production of environmentally friendly goods.

Recommendations:

In order to involve more women into agriculture and management of dekhan farms, Article 54 should be amended to include practical measures of the state for encouragement of female heads of dekhan farms. It is necessary to define the concrete additional measures of encouragement for women who decide to head a dekhan farm.

Article 101 states that the responsibility for infringement of land legislation is stipulated by the present legislation of RT.

Recommendation:

Normative legislation acts, defining administrative penalties, fines and other sanctions for noncompliance with the Land Code of RT should be created.

The analysis of the beginning of the process of land reform from a gender sensitive point of view shows that the legislators did not take into consideration the existing gender stereotypes, family and religious traditions and did not secure the implementation of women's rights to access to land. That is probably one of the main reasons why at present only 3328 dekhan farms are headed by women out of a total amount of 24901, and 21573 are headed by men, which is 13.4% against 86.6%. Although, later, the legislators did amend some legislative acts, for example the Presidential Decree on Additional measures for reorganization and reformation of agricultural organizations # 1775, of 30 June 2006, is more gender-sensitive; the legislation still falls short of providing women with equal rights to men. The decree provides some benefits for female heads of households, but more through securing the rights of socio-vulnerable women to work, than by securing privileged rights to land tenure for women generally. For example, point 21 of the supplement to the Presidential Decree # 1775 secures the rights to redemption of property and obtaining of land share of sovkhoses in the process of restructuring, for single and breast-feeding mothers.

It should also be noted that at present the process of restructuring of agricultural organizations has been practically completed; therefore, the above mentioned Decree and the Regulations define means for the reorganization of agricultural organizations which have now practically ceased to exist.

There are many questions concerning the procedure of allotment of individual household plots. In practice, at present some better off and more powerful rural people can obtain individual plots of bigger than normal sizes, sometimes even of a size bigger than 1 ha. Because of this the majority of the poorer rural population, including women, does not have access to land.

In conditions of extensive labour migration, an individual plot is often the means of survival for women and their children. The President's constant criticism of the chairmen of some districts for their methods of land allotment, and complaints of rural people about the land allotment issues to consultative centres of international organizations confirm the fact that illegal land allotment takes place in some districts.

The Rights and Prosperity organization, in the implementation of the project 'Public mechanisms of complaints on local level', conducted a survey of appeals and complaints of citizens, which was aimed at studying the level of transparency and accountability of local authorities in four districts: Vakhdat, Baldzhuvan, Shaartuz and Roomi districts, which were chosen by the PRUN project on transparency and accountability. 360 people were questioned; 12% (40 people) of which were civil servants (the employees of jaomats, the land committees, the tax committees and law enforcement departments, plus court clerks). 44.5% of respondents were women, 52.5% were men and 3% did not fill the column about their sex. The survey shows that the annual number of appeals and complaints, starting from 2005, has been increasing by an average of 9.3% per year. The number of applications for allocation of individual land plots was 26% out of the total amount of applications. 35% of applicants were applying for land allotment for building. Such low percentages show that a large part of the rural population do not trust civil servants because of their corruptibility and bureaucratic delays in considering ordinary people's applications.

Recommendations:

Considering that no other legislative documents except Articles 65 and 71 of the Land Code of RT define the regulations on land allocation, the legislative regulations should be amended to include a list of documents necessary for applying for land allotment and time frames for consideration of those documents by local authorities. The Code of Administrative Violations should be amended to include penalties for civil servants of jaomats and local executive bodies responsible for prolongation of the issuance of land tenure legal documents.

Conclusions:

The existing legislation on land reform and its development do not include rural women's interests, and normative legislation acts, regulating the process of land reform and the procedure of distribution of lands of reorganized agricultural organizations, are formulated in overly general forms. As a result, more men, because of their better education, confidence, customs and traditions, obtained land for establishing dekhkan farms than women.

The Regulations on Reorganization and Reformation of Agricultural Organizations #1775, of 30 June 2006, was the first legislative document defining the privileged rights of socio-vulnerable women to land allotment; however these regulations were adopted a little bit late and did not have much effect, because by that time almost all agricultural organizations were reorganised. Besides, that legislative document defines the rights only of socio-vulnerable women and because of that cannot be considered as gender equitable. The fact that the Regulations do not define the meaning of such terms as 'single woman' and 'widow' should also be taken into consideration. It is well known that in Tajikistan many women are *de jure* single because they do not have official marriage certificates confirming their *de facto* marriage. Many women are also *de facto* single because of male labour migration.

Recommendations:

- 1. to review the application of existing mechanisms of land allotment for agricultural and non-agricultural activities and define administrative sanctions and penalties for civil servants who are responsible for violation of the land legislation, regulating the process of issuance of land tenure documents. Following analyses of the review and its recommendations, amendments should be made to the Administrative Code of RT to include penalties for violation of land legislation;*
- 2. to change the structure of the Agency on Land Tenure, Geodesy and Cartography which is responsible for resolution of land disputes, by establishing a commission or some other body under the Agency, with clearly defined duties and responsibilities, for resolving land disputes. An inter-departmental arbitrating court for resolving land disputes should also be established to protect land tenure rights against violation;*
- 3. to amend the Regulation to include more detailed definition of the term 'single woman' to exclude abuse of the privileged rights to land tenure either by the de facto married women, who do not have an official marriage certificate, or by the civil servants responsible for land allotment, in order to secure the rights of real single women who need such privilege;*
- 4. to amend the existing legislation to include sustainable mechanisms of development of different types of dekhon farms, cooperatives and associations, in order to involve more women in land management;*
- 5. to enhance the opportunities for women to land access by clearly defining how they can obtain plots from special land funds and from the reorganising of agricultural organizations, and by creating new normative legal acts regulating the procedure of land allotment and registration of the rights to land tenure, or amending the existing ones, such as the regulations on procedure of issuance of the right to land tenure certificates, the land share certificates, and the regulations on procedures of land allotment;*

6. *to develop the existing legislation on agricultural cooperatives, associations of land tenants and other types of farms by including mechanisms for motivating women working on land or willing to obtain land. The most important at present might be the Law on Agricultural cooperatives, which could establish agricultural production cooperatives in which rural women could work, and the procurement cooperatives, which could better help female heads of dekhkan farms to provide their farms with agricultural equipment;*

7. *To carry out an inventory of land tenants in order to, allot the plots to those citizens who have not received them yet; to allot the land tenure right certificates to those entitled farmers who have not registered their land tenure rights yet, and to make maps of plots to end land disputes caused by discrepancies between the real size of a plot and the size of a plot identified in a land tenure certificate.*

4.2. Access to Work and Remuneration.

The following legislative instruments and normative legislative acts secure women's rights to work in RT:

- International Labour Organization Convention on Protection of Wages, of 1 July 1949
- International Covenant on Civil and Political rights, of 16 December 1966
- UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), of 18 December 1979.
- Constitution of the Republic of Tajikistan, of 6 November 1994.
- Law of the Republic of Tajikistan on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of Such Rights #89, of 1 March 2005
- Labour Code of the Republic of Tajikistan.
- State Programme titled 'Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010', #395, of 8 August 2001.
- State Programme on education, selection and placement of gifted women and girls in the state leading positions of the Republic of Tajikistan in 2007-2016.

- Law of the Republic of Tajikistan on Pension support for the citizens of the Republic of Tajikistan #796, of 25 June 1993.

At present women play an important role in the labour market. By working, women on the one hand gain economic independence; on the other hand they become more independent from the point of view of their social position, pension provision, quality of medical services and supporting their families. All these opportunities provide for the personal development of women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges all state-parties to implement and monitor such guarantees of realization of the rights to work as: elimination of discrimination against women in employment; equal salary for men and women holding the same position; women's rights to social security and pensions; and safe labour conditions, ensuring life and health for both men and women.

The following national legislative normative acts guarantee the rights to work, labour protection and safe labour conditions to the citizens of RT:

- Labour Code of the Republic of Tajikistan ;
- Law on State Social Insurance in the Republic of Tajikistan;
- Law on Labour Protection in the Republic of Tajikistan # 460, of 24 December 1991;
- Law of the Republic of Tajikistan on Pension Support for the Citizens of the Republic of Tajikistan #796, of 25 June 1993.
- Law on Dekhan Farms # 48, of 10 May 2002.

Employed women, including women working in dekhans, according to the Labour Code and other above mentioned labour legislative acts, have rights to equal remuneration and social benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; women also have equal rights to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

Despite the fact that all these rights are guaranteed by legislative acts, there are a lot of unemployed rural women. It is difficult for rural women to find jobs due to their lack

of relevant education and the prevalent social stereotype of women as having a primarily reproductive role. In many rural areas the only options for women are either to sell goods in the market or work in dekhan farms.

Implementation of guaranteed rights to social security can be a motivating factor for women to work in agricultural organizations or dekhan farms. However, in practice, women, due to their unawareness of their rights and unwillingness of civil servants to provide them, experience a lot of obstacles in enjoyment of their rights. In addition to civil servants' incompetence we should mention the fact that there are no legal norms regulating dekhan farm activities and in particular, no regulations for labour relations of women working on dekhan farms.

In the majority of dekhan farms there is no accounting of number of years worked by women just because there are no definite instructions defining the procedures for calculating and accounting the number of years worked for retirement, social benefits and paid leaves of any farm workers, including women. Very often local authorities responsible for social security answer the question of why rural women do not get their paid leaves or other social benefits, by claiming that they do not know how to calculate the number of years worked by women, because in winter time women do not work in dekhan farms and in summer they work part-time. The concept of seasonal work is not adequately defined in the legislation.

Article 84 of the Labour Code of RT gives the definition of paid leave, types of paid leaves and the right of the citizens of RT to annual paid leave regardless of the types of working agreements or types of organizations. Women working in agricultural organizations are entitled to annual paid leave of not less than 28 days; however there are no specific regulations on the procedure of calculating the length of paid leave for such category of workers.

There are no legislatively guaranteed additional social benefits for rural women working in harmful conditions, though women work long hours in the fields under burning sun and work with fertilisers and agrochemicals.

In order to implement the Decree of the President of the Republic of Tajikistan on Enhancing the Role of Women in Society, and for implementation of the recommendations of CEDAW Committee, the Government of the Republic of Tajikistan approved and adopted two State Programmes: The State Programme on education, selection and placement of gifted women and girls in leading state positions of the Republic of Tajikistan in 2007-2010, and The Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010.

The analysis of the State Programme on education, selection and placement of gifted women and girls in the state leading positions of the Republic of Tajikistan in 2007-2010 shows that:

1. The state programme considers women's opportunities for getting leading positions only in state governing bodies;
2. The programme does not include the education of young rural women;
3. For implementation of gender policy, the state programme includes a chapter on development of the National Plan of Action for Enhancing the Status and Role of Women in Tajikistan; however there is no timetable for designing and developing this plan in the programme.
4. The programme states that all steps and measures for implementation of the programme should be financed from the state budget, but that statement puts achievement of the strategic goals in doubt as there is no allocation in the state budget for this programme; moreover, the mechanisms for implementation of the state programme's supplement 'Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010' #196 are not funded from the state budget.

The State Programme on Main Directions of the State Policy on Providing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan in 2001-2010 sets forth a number of various mechanisms for ensuring women's access to and enjoyment of different rights, such as enhancement of women's economic independence, access to work, access of rural women to land, access to the labour market and access to decision-making activities; however, the implementation of the programme needs to be funded from the state budget. The main reason of failure of implementation of these state programmes is unwillingness of civil servants to spend the resources of the state budget on implementation of all measures mentioned in the programmes.

Other important obstacles encountered by rural women in their access to work are social and cultural customs and traditions, which do not allow women to have their own opinions or to make their own decisions without getting men's approval. Men also assume that women must earn less than men. According to the Asian Development Bank Report on Gender Assessment of 2006, women in Tajikistan earn, on average, 46% of men's earnings. The strong social stereotype is of women having a primarily reproductive role, doing housework and cooking.

Young unemployed women aged 20 to 25 have even more problems. They often agree to do even very low-paid work, because, although unemployed, they may not receive unemployment benefit. Only those individuals officially registered as

unemployed are entitled to receive unemployment benefit. The practice of training women for professional qualifications is developing very slowly in Tajikistan, therefore women of this age group often have little choice in the type of work they do or the remuneration they receive. The lack of education and absence of professional skills is one of the reasons why rural women encounter obstacles in having access to the labour market.

Conclusion:

A number of normative and legislative acts of RT ensure women's rights of access to labour. The main obstacles preventing rural women enjoying their rights of access to labour are the following:

1. Absence of relevant education;
2. Lack of working places in rural areas;
3. The declaratory nature of the legislative base proclaiming the equality of men and women, but preference of male employment in practice;
4. The mechanisms for implementation of the adopted state programmes of RT aimed at ensuring women's rights to labour are insufficiently resourced from the state budget.

Recommendations:

The following measures to enhance women's involvement in land management and agricultural production should be taken:

- 1. To amend the existing labour legislation to include subsidiary legislative acts concerning the procedures of calculation of number of worked years for receiving pensions and social benefits; procedures for provision of paid leaves for agricultural workers with consideration of their seasonal types of work, and also to include the definition of 'work in harmful conditions'.*
- 2. To design a national programme on involving women in agricultural development aimed at the issues of professional and management training of women (for agronomists, veterinarians, agricultural economists, land specialists, etc.)*
- 3. The Decision of the Government of RT aimed at mainstreaming of gender perspective and gender equality into all normative legislative acts should be adopted, as was recommended by the UN.*

4.3 Access to agricultural production infrastructure.

The development of agricultural infrastructure in the areas of provision of electric power, water supplies, transport systems and road communications can help rural women in management of their agricultural enterprises; however, at present dekhan farmers have to solve all the infrastructure and management problems themselves. Special measures aimed at providing rural women with credits are defined in the State programme 'Main Directions of a State policy to ensure equal rights and equal opportunities for men and women of the Republic of Tajikistan for the period 2001–2010', which plans to support the business activities of women, including rural women, through preferential crediting to enhance the economic independence of women and provide sensible employment.

Unfortunately these measures and some other benefits defined by Article 26 of the Law on Dekhan Farms, such as: allotment of favourable credits, budget funding of professional training from the budget established for support of small enterprises and obtaining of free connection to electric power, are not implemented due to the following reasons:

1. The Government has not identified the mechanisms of deliverance of free connection of the dekhan farms to electric power, which makes this benefit purely declaratory.
2. The mechanisms of allotment of the state privileged credits for farmers have not been developed.

Even though there are many private banks which can identify their own mechanisms and conditions of credit allotment, it is very important for women, especially women who are heads of households and breadwinners, to have access to the state privileged credits.

Micro-credit projects are aimed at involving rural women in business but the micro-credit organizations are reluctant to allot credits for development of agricultural enterprises. The authors' experience shows that many micro-credit organizations at present are more willing to allot a microcredit to labour migrants for buying tickets than to farmers for their agricultural needs, because credit for agricultural development is not quickly paid back. Not very many rural women apply to microcredit organizations to receive credit, because they do not feel legally protected by the Law. It is obvious that credit policy for agricultural workers should be amended.

Even though the professional training and education, financially supported by the special fund established for entrepreneurship support, is determined by the National Concept of Development of Entrepreneurship for the period till 2015 as a prioritised

issue, in practice it does not work, because local budgets do not have resources for entrepreneurship support.

The development of transport infrastructure is also important and the establishing of functional transportation, creation of transit corridors and modernisation of internal roads between villages should become prioritised issues in district development. There were cases when rural women were crying over their rotting harvest of tomatoes because they were not able to transport them for marketing or processing. Tajikistan is a mainly mountainous country and many rural people live in remote mountainous areas. Rural women's enterprise activities, access to markets for selling their agricultural products and their access to various services depend on the condition of roads between villages and districts. Due to the high cost of transportation, the agricultural producers are often forced to sell their products to intermediary dealers for very low prices and thus, are not able to cover their production costs. The intermediary dealers, having access to the markets, dictate market prices. That factor is one of the reasons of high prices for agricultural products at the markets in Tajikistan.

The transportation problems give rise to issues concerning the processing of agricultural goods. At present there are neither agricultural processing plants nor organizations for buying agricultural products from rural women in the country and the problems mentioned above mean transportation to distant plants is often impossible.

Some international organizations support several newly created women's small processing enterprises, but sanitary conditions of their enterprises and the quality of products have not been checked by local authorities yet. They also do not pay taxes yet. These facts put those women in vulnerable position, because they not only violate the Law on Protection of consumers' rights, but in case of official state checking, they can be fined.

Conclusion:

Considering the conditions of existing infrastructure of agricultural production it is obvious that rural women need a lot of state support to be able to manage agricultural enterprises.

Recommendations:

- 1. To design a national programme of development of a complex infrastructure of agricultural production.*

2. To draw investors for the development of the infrastructure of agricultural production; to attract foreign investments in the form of credit with governmental guarantee.

3. To perform budget planning for the development of local infrastructure taking into account the strategies of the development of a particular area at a local governmental level first, and then at a state level.

4. To develop gender-sensitive strategies of development of agriculture in all districts to attract women to work in agricultural production.

4.4 Access to social security.

The rights and freedoms of the citizens of the republic of Tajikistan are guaranteed by the Constitution of RT.

Article 39 of the Constitution of RT states, that every citizen has the guaranteed right to social support in cases of sickness, temporary disability, or loss of a breadwinner. The Regulations on State Social Insurance in the Republic of Tajikistan # 122, of 23.06.2003, outline the procedures of state social insurance. The Law of RT on Insurance # 517, of 13 December 1997, obliges every organization, regardless of the type of property, to pay an obligatory social contribution. The dekhan farms, as any other enterprises, have to pay their members' social contributions.

As we can see, the state has created the normative-legislation base to provide the rights to social security guaranteed by International Covenant on Civil and Political Rights and the Constitution of RT. The rights to social security are guaranteed to both men and women.

The reason why rural women do not enjoy their social rights is their unawareness of the legislation concerning social support or mechanisms of realization of their rights and the incompetence of local social security bodies.

According to the Labour Law every worker has the right to paid leave, but mechanisms of provision of paid leaves in agricultural organizations are insufficient. Work in the dekhan farms is seasonal. Sometimes employees work in difficult conditions for 3-4 months without having any break and that is why there should be additional social benefits for agricultural workers, especially for women.

Due to absence of legal literacy farmers sometimes mix seasonal breaks in their work with paid leaves. Although, the Labour Code of RT states that the annual paid leave must be provided on the grounds of a schedule of leaves according to the worker's requests and approved by the head of the farm, the authors' experience

shows that usually farm workers have leaves in the period from December to February, when there is not much work to do in the farms anyway. There are a lot of examples of violation of guaranteed rights to paid leave in the dekhani farms. For example, many heads of dekhani farms provide the annual leaves for their employees in winter time and 'pay' with grain instead of money, which is a violation of the Law, because, according to the Labour Code of RT, the payment by agricultural products must not exceed 20% of the total amount of remuneration.

According to the Constitution of RT every citizen of RT has the rights to social pension support after achieving a certain age. The Law on Pension Support for the Citizens of RT outlines the individuals who have the right to labour pension support, and the condition that they are entitled to the right to pension support if they pay insurance contributions to the fund of social security of the population of RT. Entrepreneurs, however, are not covered in this Law.

Article 25 of the Law of RT on Dekhani Farms sets forth the rights of the members of dekhani farms to accounting of the years worked in a dekhani farm, the rights to receive social benefits for temporary sickness and the rights to other social benefits, defined by the Regulations of procedures of provision of social benefits due to the state social insurance of the citizens of RT, but there are no clear regulations of the procedures of the social benefits allotment.

The entrepreneurs, female heads of dekhani farms and the employees of dekhani farms should, in theory, be recipients of state insurance, because every month, according to point 4 of Article 1 of the Tax Code of RT, they pay their fee for a patent, which includes the social contributions, but they do not receive insurance because they are not listed in the Law of RT on the State Insurance of the Citizens of RT as individuals entitled to social pension support. We think that there should be special regulations for a procedure for calculating the size of pension for such category of workers. Due to the absence of legislatively secured guarantees, women are not able to enjoy such rights, which are especially important from a gender point of view.

The Regulations on provision of social insurance benefits stipulate that 'social benefits are paid to employees who work under working agreement (a contract) in organizations of any type, and whose working time is calculated according to the Labour Code of RT, and who are the subjects of social insurance according to the Law of RT on the State social Insurance'. It is known that entrepreneurs do not calculate their working time; at least they are not obliged by any official regulations.

The existing legislation must be amended to include the issue of provision of pensions and social benefits to the farm entrepreneurs. It is especially important for single women and women having children to secure their retirement and generally for encouraging women to start farm enterprises.

The first Law on Dekhan Farms, which was adopted on 5 March 1992, set out the establishment of dekhan farms with the status of legal entities and therefore the issues of social benefits were determined as for the employees of legal entities.

The amended Law on Dekhan Farms, of 10 May 2002, defined the dekhan farms as private enterprises, but it did not include any regulations for provision of social benefits for entrepreneurs.

As it is mentioned above, social security of employees of dekhan farms is not defined in the current legislation. It is not clear how rural women working in the dekhan farms can get their social benefits, because the mechanisms of provision of such social benefits as: benefits for temporary disability, benefits for maternity and others, are not detailed for entrepreneurs in the legislative acts. As a result, rural women working in the dekhan farms today are more slaves than entrepreneurs.

Conclusion:

The main social, economic and civil rights and freedoms of the citizens of RT are secured by the existing legislation in general terms, but the labour relations in agricultural production have been changing, therefore the labour legislation should be amended to include the mechanisms of provision of social benefits to rural women-entrepreneurs.

Recommendation:

To amend the Labour Code of RT and the Law on Pension Support of the Citizens of RT to include the mechanisms of provision of the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave for rural women.

4.5 Access to the markets.

According to the Law on Dekhan Farms, the farmers are the owners of produced agricultural goods and the profit gained after marketing. Article 17 of the Law of RT on State Support and Protection of Entrepreneurship sets forth the rights of entrepreneurs to set the tariffs and prices for their products independently. The general conception of the development of entrepreneurship also determines the issues of the development of agricultural entrepreneurship, including the development of a functional transportation and trade infrastructure for agricultural produce. At present, the dekhan farmers do not have opportunities to transport their products to the markets independently and sell their products profitably.

The agricultural producers have four ways of marketing their products:

1. If entrepreneurs grow seeds, fodder grass or pedigree cattle, they can sell them to other agricultural entrepreneurs;

2. They can sell their products to processors;
3. They market their products to the commercial network;
4. They can sell their products directly to the consumers.

In order to sell the outputs of their farms, the agricultural entrepreneurs have to know the market demand; and the perspective purchasers have to know the farmer's offer. The more information about the markets people have, the more chances of a bargain they have.

In theory, the dealers are supposed to help the agricultural entrepreneurs to widen their access to the markets due to the dealer's better knowledge of a market.

Because the agricultural producers do not know much about market demand, they do not know what is better to grow or where to market. In practice, in Tajikistan the direct dealers and the intermediary dealers, taking advantage of agricultural entrepreneurs' unawareness, have become monopolists of the markets. They buy products from agricultural producers at a very low price and sell the same products at a much higher price in the markets. As a result, the farmers, after bringing their products to the markets, are forced to sell them to dealers at a very low price and therefore, cannot make much profit. The consumers, on the other hand, are forced to buy agricultural products at a high price. The existing situation explains the price growth in the markets of Tajikistan. It is known that in the developed countries there are special marketing information agencies which support and protect agricultural producers. The establishing of such agencies or state organizations could help to improve market relationships. The authors think that the following measures should be taken for realization of the farmers' rights of access to the markets:

1. To create competition in the agricultural markets;
2. To provide the opportunities for farmers to sell their crops directly in the markets;
3. To develop an information system of markets for sellers and buyers.
4. To develop marketing services;
5. To make business relationships between the farmers and the dealers clear, fair and transparent;
6. To reduce administrative obstacles in agricultural trade.

Recommendation:

To adopt the new state laws on the agricultural productive cooperatives and the procurement cooperatives in order to provide rural women's access to the markets.

4.6 Inheritance of land tenure rights.

The land use and land tenure rights are regulated by different laws and other legislative documents, such as: the Civil Code, the Land Leasing Law, the Land Law (Code), the Land Reform Code, the Law on Property, the Law on State Property, the Law on Local Land and the Law on Dekhan Farms. The primary right of land use is the life-long inheritable tenure. Article 10 of the Law on Dekhan Farms sets forth life-long inheritable tenure. The procedures of implementation of life-long inheritable tenure are regulated by Article 1141 of Chapter 3 of the Civil Code of RT. The tenant may not pledge or mortgage the land, the Land Law permits transfers of the private dekhan plots only through inheritance. As defined in Article 12 of the Land Code, the land tenure rights must be re-registered in the heirs name on inheritance. The person entitled to life-long inheritable tenure can transfer this right to family members. According to Article 1166, spouses, children and parents can inherit the right to life-long inheritable land tenure.

Conclusion:

The right to life-long inheritable tenure guaranteed by the state is gender-sensitive in Tajik legislation, but realization of this right is hindered by an insufficient land registration system, which should be amended to clarify and simplify the procedures of re-registration of inherited land tenure rights.

Recommendation:

To determine measures for security of rural women's rights to life-long inheritable land tenure.

b) Food security.

The issue of food security provision is determined in the separate chapter of the State Programme of Economic Development of the Republic of Tajikistan in the period till 2015.

Currently, agriculture in Tajikistan generates more than 40 percent of the national income and employs over half the work force. However, Tajikistan's food supply is far from adequate. As a result of independence from the USSR, the recent civil war and a general economic depression, Tajikistan's internal food production has declined and the country has not been able to import enough food to make up the difference. Lately the food security situation of rural populations has markedly deteriorated due to rising fuel costs, which have in turn, lead to higher transportation and food costs across the country. However, since the country's total wheat supply falls short of the 1 to 1.3 million tons needed annually, Tajikistan faces a food deficit

in spite of foreign assistance. International food aid is precarious and the increase in internally produced wheat in the past few years is partly due to the sowing of hill lands, which have yet to prove their long-term agricultural and economic viability. Continued drought in the spring and summer, as well as a locust invasion, further stretched the capacities of rural households to successfully cope with their increasing food insecurity and resulted in higher labour migration rates. This resulted in an increase in permanent women-headed households, which are traditionally more vulnerable to even minimal socio-economic shocks. A series of economic and environmental shocks over the last two years, compounded by the current energy crisis, have left rural populations with few remaining coping strategies for mitigating their increased level of food insecurity.

Due to the difficult economic situation, a lot of rural women had to either serve smaller portions or reduce the amount of meals for the members of their families. According to surveys, in 1999 rural families had in average 2.5 meals a day: 2.2 in the poorest families, 2.8 in the richest ones. Between 1997 and 1999 the percentage of families having one meal a day increased from 10% to 13%. More than half of the questioned families had not eaten meat during the week up to the day they were questioned.

At present the majority of the population of Tajikistan does not have enough food supplies. Food problems can lead to such serious negative results as: famine, diseases, epidemics, reduction of life expectancy and others.

In this bleak situation, private farming stands out as an area of hope for increased food production and employment. There are some other resources in Tajikistan to improve food security in the country, but agricultural authorities and managers should start taking urgent measures for effective solution of food security problems. The following measures can be taken:

- to use the achievements of modern technologies in agriculture to increase crop yield and cattle productivity;
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- to prevent losses in the process of harvesting, transportation and storage of agricultural products;
- to carry out more efficient provision of imported food by elimination of artificially made obstacles on the ways of transportation of products to the final destination of consumption or by alteration of existing interstate routes of transportation of food into the country.

Although Tajikistan relies heavily on its agricultural sector, its arable land mass is minimal. Due to its mountainous topography, Tajikistan has only about 800,000 hectares of arable land, but increasing crop yield on existing arable land, as well as

use of currently under-exploited less fertile land for orchards and vineyards could prevent the threat of food crisis.

The dekhani farms produce much of Tajikistan's food supply and employ a significant part of the labour force. The State Statistical Committee estimates that in 1996 dekhani farms produced 38 percent of Tajikistan's wheat, 67 percent of its vegetables, and more than 70 percent of the country's milk and meat. The majority of dekhani farms' plots are planted with wheat, as it is less costly to grow than cotton and much easier to consume or sell after harvest. The other main crops are rice and corn.

Conclusion:

In addition to state support of the development of national food security there is a necessity to legislatively secure the mechanisms of access to food security. Involvement of women into the processes of provision of food security can enhance the gender policy of the country.

Recommendations:

- *to create a transparent system of importing of food;*
- *to establish tax rebate and customs privileges for importing the main kinds of food;*
- *to monitor the costs of national and world markets, especially those which affect internal costs of food;*
- *to develop the infrastructure of food markets and to provide access to them for all agricultural producers;*
- *to design and adopt a state programme on Food security in RT;*
- *to separate the state bodies responsible for designing the food quality standards from the state bodies responsible for their implementation;*
- *to strengthen the control of quality of food in the markets;*
- *to develop the regulations concerned with importing and using genetically-modified food.*

Rights to economic development

Entrepreneurship

The Land Code of RT makes provision for 'the equal development of all forms of economic activity in Tajikistan'. Article 12 of the Constitution of RT guarantees the citizens the freedom of economic and entrepreneurial activities, equality and legal protection of all forms of property.

The land use legislation, concerning dekhan farms and entrepreneurship, provides the following rights to citizens of RT:

- the right to establish a dekhan farm;
- the right to independent choice of enterprise activities;
- the right to access bank loans, mortgages and other forms of financial credit;
- the right to open a bank account free of charge;
- the right to advancement and retraining;
- the right to conclude contracts and to administer property;
- the right to inviolability of economic entity;
- the right to economic development.

A number of the laws and legislative acts, such as the Law on Dekhan Farms, the Law on State Protection and Support of Entrepreneurship in RT #46, of 10 May 2002, the Labour Code and the Civil Code, regulate entrepreneurial activities.

According to Articles 5 and 6 of the Law on Dekhan Farms, the dekhan farms along with the legal entities are provided with rights to conclude contracts, to independently choose the types of enterprise activities, to obtain bank loans, mortgages and other forms of financial credit.

A dekhan farm is an independent business based on personal labour of an individual or members of their family. The Law on Dekhan Farms defines the following forms of dekhan farms:

- a) Individual: Single individual or single family produces and markets independently.

b) Family: Two or more related families produce and market jointly. They appoint the head of the dekhan farm, who becomes the official holder of the farm.

c) Collective: Two or more unrelated families produce and market jointly. They appoint the head, who becomes the official holder of the farm.

The right to inviolability of the economic entity, which provides the opportunity to farmers to administrate their production and marketing, guaranteed by the Law on Dekhan Farms and the Law on State Protection and Support of Entrepreneurship in RT, is the most important right supporting the development of the dekhan farms in RT. These laws prevent interference by government authorities and civil servants into enterprise work.

Article 258 of the Criminal Code of RT identifies penalties and fines for non-legitimate refusal to register the rights of entrepreneurs or commercial organizations, refusal to allocate the licence for commercial work, illegal limitation of the rights of entrepreneurs or commercial organizations, or illegal interference into enterprise work. Article 453 of the Civil Code sets forth that 'citizens and legal entities are free in making agreements and entering contracts; it is forbidden to force the entering of contracts'.

Even though the dekhan farmers are entrepreneurs according to the Law on Dekhan Farms, the status of the farmers as entrepreneurs is not identified by the Civil Code of RT.

Recommendation:

to eliminate conflicts and ambiguities in the body of legislation by securing the right to entrepreneurship for agricultural workers in all legislative acts and regulations.

CREDIT

Articles 5 and 6 of the Law on Dekhan Farms set forth that dekhan farmers can obtain bank loans, mortgages and other forms of financial credit. Article 21 of that law determines that farmers can obtain loans and financial credit from any bank and regulates the procedures of repayment. Article 26 sets forth the opportunity for farmers to obtain preferential credit from the commercial banks.

The Law on State Protection and Support of Entrepreneurs provides support to business activities of entrepreneurs through creating of favourable environments, including preferential crediting.

The Law on Micro-credit Financial Organizations determines the right of micro-financial organizations, which are not banks, to allot loans and credits on a contractual basis.

A special measure aimed at providing rural women with credits is the State programme 'Main Directions for a State policy to ensure equal rights and equal opportunities for men and women of the Republic of Tajikistan for the period 2001-2010, which plans to support the business activities of women, including rural women, through preferential crediting to enhance the economic independence of women and provide sensible employment.

The biggest part of the population does not trust banks. The majority of commercial banks are small banks with a weak system of governing, and they usually allot short-term credit. Short-term credit is not useful for farmers because they get their profit at the end of the agricultural cycle; they need medium and long-term credit.

Recommendations:

- 1. To develop the mechanisms of different types of banks for allocation of loans and financial credit to dekhkan farms;*
- 2. To provide medium-term and long-term credit for agricultural entrepreneurs, and in particular for rural women entrepreneurs.*

Mortgages

At present the mechanisms of access to credit for farmers using the certificate of land tenure as guarantee are being developed. Such a means of obtaining credit is called a mortgage. The legislative base regulating mortgage relations consists of the Civil Code of RT, the Law on Mortgage, which is being developed, and other normative acts. The existing legislation regulating mortgage relations in Tajikistan is not gender-sensitive. According to the existing legislation, the citizens have to present a guarantee to obtain a mortgage, which can be, among others, the right to property or the right to land tenure.

Due to the fact that farmer's property, for example a house, can be a guarantee for obtaining a mortgage, women-farmers often cannot obtain a mortgage because in rural areas, according to customs and traditions, men are the owners of the property. Besides, in many cases women are not registered in their husbands' property; or they do not have official marriage certificates because they had not officially registered their marriage and are married only according the Muslim ritual 'nikokh.' Therefore, due to not having any official registration of the property, rural women do not have access to mortgages.

Our experience shows that rural women often cannot use their certificates of land tenure as a guarantee for obtaining mortgages either. According to Article 17 of the

Land Code of RT, the right to life-long inheritable land tenure is confirmed by the land tenure certificate. Article 13 of the Law on Dekhan Farms sets forth that the certificate of land tenure is allotted to the head of a dekhan farm and the right begins the moment the certificate is issued. According to statistical data at present only 13.4% of the total number of the registered dekhan farms are women-headed, the other 86.6% of dekhan farms are headed by men; and in many cases, even though the dekhan farms are assigned to women, the real governors of the farms are men.

Conclusion:

The project of the law on mortgages does not contradict the gender policy of RT. The adoption of the law on mortgages will be a progressive step in provision mortgages to farmers, but it should define opportunities and special measures aimed at providing mortgages for rural women.

Recommendations:

To adopt additional normative legislative acts or to modify the developing Law of RT on Mortgages in order to make better provision of access for rural women to privileged mortgages.

5. CONCLUSION AND RECOMMENDATIONS:

Although the Constitution and the legislation of RT stipulate gender equality, in practice, rural women often face challenges in exercising their rights. The analysis of the land legislation shows that there are traditional and new gender problems in the sphere of land relations. The existing land legislation of the Republic of Tajikistan addresses the provision of rights and freedoms of the citizens of RT in the sphere of land relations, but it is not gender-sensitive. The Land Code, the Law on Dekhan Farms and other documents are aimed at creating new management systems and the development of dekhan farms and introduction of more progressive types of farming; however, while addressing these issues, the gender position has not been taken into account. While gender equality is one of the main questions, it is clear that resources allocated to specific action on gender issues are negligible compared to those allocated for other issues. Gender is still treated in a formalistic and limited way.

Rural women will feel that they are really protected by the law if they know that the existing legislation provides the answers to the following questions:

- What can help me to work the land properly?
- What can help me to grow a crop properly?

- What can help me to sell products and gain profit?
- How profitable will my enterprise be?
- Will I be protected in case of crop-failure or natural disaster?
- Where can I get financial support for development of my farm enterprise?
- What can prevent me from going into debt?
- How will my health be protected?
- Can I be sure that my land share will be inherited by my daughter?
- How will I manage both working the land and doing my house work?
- Who will help me to protect my dekhani farm and my property?
- What kind of life will I have after retirement?
- Where can I apply to get the necessary information to enjoy my rights?

The legislation must provide the answers to all these questions and ensure the opportunities for women to become confident managers and heads of their enterprises.

To conclude, we can say that the main reason of rural women's unwillingness to establish dekhani farms is insufficient existing land legislation and in particular, the lack of normative acts providing land tenure rights to women. Further steps are required to strengthen national mechanisms to promote gender equality and equal rights opportunities.