



Legal Arrangements and Pasture-related Socio-ecological Challenges in Kyrgyzstan

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Problem Statement

It has to be stated from the beginning that grasslands in Kyrgyzstan have a crucial economic importance from the macroeconomic national level down to the level of local households as supplier of natural animal fodder, as well as crucial ecological meanings such as for water and nutrient cycling, filtration, and soil formation. In spite of the vast expanse of pasture lands and the reduction of livestock numbers in the 1990s, the scope and diversity of pasture-related socio-ecological challenges have increased remarkably, and have come to endanger the continued provision of these services (Wilson 1997: 62–63; Undeland 2005: 22). Degradation leads to a growing shortage of grassland, and pasture-related conflicts jeopardize the country's social integrity. Based on these facts, this presentation has two objectives. The first is to shed light on the importance of legal institutions for the emergence of pasture-related social and ecological problems. Second, it advocates for a participatory approach to the creation of institutional regulations regarding the management and utilization of natural resources. Including the local population in the pasture utilization-related institution-building process can make a decisive contribution to a sustainable development of the country's society by balancing different interests.

Research Question

The hypothesis to be explored is that formal institutions, especially top-down-initiated legal rules, are decisively contributing to the formation of socio-ecological pasture-related challenges. I argue that it is misleading and insufficient to explain these problems through neo-Malthusian arguments of population growth and an unavoidable increase of resource degradation. The causes are much more complex. Rather, the problems can be understood as resulting from struggles between interest-driven actors with differing levels of power, the interplay of economic necessities, structural legal uncertainties, and



the related lack of reliable planning opportunities. The central question, in this context, is how legal arrangements are stimulating the processes of socioeconomic stratification and disintegration of the society as well as those of pasture degradation. Based on findings obtained during field studies in the walnut-fruit forest region in Kyrgyzstan's southwest, I advocate for the integration of the principles of sustainable development for the society in economic, social, and ecological terms. Resource management responsibilities, access, and utilization rights need to be matched to the specifics of local contexts and legitimized through participatory approaches.

Methodological Approach

The line of argumentation and evidence of the presentation is based on insights gained during field studies between 2007 and 2013, in which I applied different research methods, including secondary and archival research, interviews, and observations. Pasture-related legal sources were reviewed with critical consideration of changes that were made to the most central contents and passages regarding ownership, management responsibilities, and allocation practices. Expert interviews were conducted for two reasons. First, I wanted to explore the research object, i.e., to learn about the basic characteristics, relations, and dimensions of pasture-related socio-ecological challenges. Second, I explored people's assessments and explanations of the transformations, meanings, and effects of codified regulations. Additionally, observations of pasture utilization as well as and guided interviews with pasture users and other and actors were conducted. The guidelines included questions regarding individual entitlements, perceptions and assessments of the legislation in general and its effectiveness and implications *in situ*, as well as individual usage practices. The aim was to compare the legal provisions with the reality on the ground.

Study Area

The research area is located on the northern edge of the Fergana Basin on the south-facing slopes of the Tian Shan's Fergana Range within the district of Bazar Korgon. Mountain pastures at elevations between 1800 and 3500 m form a vegetation zone



above extensive walnut-fruit forests that are a peculiarity in the otherwise sparsely wooded country. Over 50,000 people live within the forests and their surroundings. Their living depends considerably on local land and forest resources (Schmidt 2005: 93, 99–101; Schmidt & Doerre 2011: 2; Dörre & Borchardt 2012: 314–316). Another unique characteristic of the study region is the existence of different legal land categories that are important for the management and the allocation of grassland areas. Pastures are located on communal lands, and on areas of the so-called “forest fund” as well as the “national land reserve”.

Results

Kyrgyzstan’s pasture legislation

After the dissolution of the USSR, all natural resource relations required new legislation. For pastures, a number of attempts were made to clarify the general legal guidelines for management, allocation, and utilization. The central, and so far valid, instruction adopted from the socialist era, is that contrary to the privatized arable land of former collective farms, pastures lasted exclusive state property (ZKRK 1991 art. 2; ZKKR 1999 art. 4 par. 2; ZKKR 2003 art. 4 par. 2; ZOP 2009 art. 3 par. 1). Regardless of this clear arrangement, discontinuities, ambiguities, and complicity are characteristic of Kyrgyzstan’s pasture legislation (Dörre 2012: 133): According to the Land Codes and the Regulation “On Pasture Lease and Use” (PPPAIP 2002), which was valid until 2009, local authorities were responsible for managing pastures located close to settlements. *Rayon* (district) and *oblast’* (province) authorities were responsible for grasslands located in an “average” and “far” distance from settlements, respectively. Here, individual leases obtained via auctions were the legal norm (ZKKR 1999: art. 4.2, 13, 15, 17; PPPAIP 2002: par. 10, 15). The State Agency on Environment Protection and Forestry and local national forest enterprises (*leskhozy*) were responsible for pastures of the forest fund (PPPAIP 2002: par. 4, 7, 10, 15, 39). Participation of the local users in management and allocation procedures was not envisaged. These regulations failed in practice.

Due to the lack of resources, many management organizations were unable to execute their duties. Informal resource allocations and competing and ecologically harmful



utilization practices became widespread. Against this background, the new law “On pastures” (ZOP 2009), which had been initiated and promoted by powerful external donors like the World Bank, was established. This normative framework banned pasture auctions and leasing. Instead of the administrations of the district and provincial levels being responsible for the management and the allocation of pastures located on communal land and land reserve territory, irrespective of their distance from settlements, local pasture user committees and authorities became responsible for them. However, the regulation is not applicable on forest fund pastures, where the State agency and the *leskhoz* remain responsible (ZOP 2009: art. 1, 4, 15). Therefore, different legal regulations exist in the study area, which influence the pasture management and allocation regimes (Dörre & Borchardt 2012: 316). Therefore, the region is suitable to examine the effectiveness of Kyrgyzstan’s legal pasture regulations.

An example of socio-ecological challenges in the walnut-fruit forest region: Rivalries over access and utilization on the pasture Kara Art

Regardless of ecological problems on the pasture, induced to a degree by maladjusted utilization practices, an inter-local conflict over access and utilization forms unfolded on the forest fund pasture *Kara Art*. Though not directly utilizable for forestry purposes, the summer pasture was allocated in Soviet times to a collective farm (*kolkhoz*) based in the lowlands of the district. Subsequently, *Kara Art* was managed through this enterprise (KIRGIZGIPROZEM 1983a; GAOZh 1997). After 1991, the situation changed remarkably. After the withdrawal of the *kolkhoz*, inhabitants of the nearby settlements of Zhai Terek and Arslanbob partially took possession of the territory in search of new income opportunities: Whereas the Zhai Terekis were sufficiently provided with arable land, there existed a pressing need for pastures. On the other hand, in Arslanbob, a shortage of farmland was observable. As the area should serve both demands, a competition between cultivation and animal husbandry, locally unknown before, started. Legally, according to the ZKKR, the *rayon* administration became responsible for pasture management and allocation of usage rights. However, from the very beginning, the authority was incapable of fulfilling its duties. Therefore, *Kara Art*, as a part of the forest fund, was reallocated to the local state-owned *leskhoz* (GOP 1997). Although the *rayon*



administration was designated by the Forestry code to allocate forest fund pastures like *Kara Art* (LKKR 1999 art. 19, 20), its influence relating to this matter became marginal. In contrast, within the State-owned forestry structures, individual actors such as managers and rangers became powerful gatekeepers controlling pasture access and started to exploit their positions for individual purposes. Informal allocation practices and maladjusted uses increased. Although the central role of the district administration in the allocation of forest pastures located in an “average” distance from settlements, as intended by the legal norms, the *leskhozy* revealed as the crucial stakeholders within the area of management and allocation of forest fund pastures. In this respect, the laws and regulations proved to be just ‘paper tigers.’

Pasture access based on temporal leasing contracts, as put forward by the ZKKR and PPPAID, was an exception, according to respondents during the field research. According to the management of the forest enterprise, slightly more than 60 pasture users were registered in *Kara Art* in 2007. According to my own observations, at least 80 users were present. Only few of them had a leasing contract and a ‘forest ticket’ (*lesnoi bilet*), both of which were necessary at that time for the use of forest fund pastures. The documents contain information on the leasing duration, the size, location, and demarcation of the plot, along with indicating the agreed usage form. Another 16 users were able to provide at least a *lesnoi bilet*. All other users utilized the pasture on the basis of informal agreements with the underpaid forestry staff. These unofficial or *ad hoc* fees did not correspond to the official sums established by the rayon administration. This can be seen as an evidence that the forest enterprise did not integrate the public authorities into processes of resource allocation. The rationale of this strategy of the forestry staff is that they can define the amount of the fees they charge without being controlled by a third party. Additionally, the income they gain can be retained without needing to divide it with anyone else. In many cases, the forestry staff enabled prohibited pasture practices such as farming, and ecologically harmful activities such as overstocking, goat keeping, and the cutting of living trees by not intervening.

As a result, a remarkable situation arose in which it became lucrative for the employees of the forest enterprise to allow certain harmful practices, not in spite of, but because of their legal ban. This is an important cause, if not the central one, for the emergence



of socio-ecological pasture-related challenges in the walnut-fruit forest region. It accrues from the interaction of the economic needs of the users and forestry staff, the unreliability of the legislation and enforcement authorities, as well as the weakness of the public administration. The dilemma is obvious. On the one hand, informal agreements are expressions of creative handlings of impractical legal requirements and allocation procedures. Otherwise, such agreements hinder the management and control of pasture utilization. Such informal agreements allow those actors who are able to pay for the service to access the resource. Hence, they enforce the socio-economic stratification of the local communities. This practice also leads to tenure insecurity where it is not possible to sue for a land plot acquired informally. Finally, ecologically harmful usages were promoted. In summary, it can be stated that the informal agreements in the given example are fostering resource-related social conflicts between the local population, as well as ecological damages of the pasture (Dörre 2009: 122–124; Dörre 2012: 137–140).

Discussion of Results

Kyrgyzstan's pasture-related legislation consists of norms that are characterized as top-down-initiated, external interventions which have caused several unintended effects at the local level. The failure of these codified regulations seems to be caused by the attempt to formulate a generally valid and highly differentiated legal frame that neglects the characteristics of the country, which is distinguished by radical social transitions and at the same time is equipped with diverse, local-specific settings. The legislation rests upon certain untenable presumptions such as the existence of efficient institutions, authorities, and market mechanisms. It seems to be more useful to reduce the national regulations down to the necessary frame conditions and to enable local actors to find their own solutions that serve the respective socio-economic and ecological situations. These specific local and regional resource management, allocation, and usage regulations should be legitimized through the participation of local people within the processes of decision-making and institution building. Such attempts can make a decisive contribution to the integrated and sustainable development of Kyrgyzstan's society in economic, social, and ecological matters by balancing initially opposing interests. The newest



pasture law follows this approach by allocating pastures and delegating legal resource responsibilities to local communities. To achieve the desired goal of an integrated and sustainable development of the society, this strategy has to be accompanied by capacity-building measures and by financial support to empower the responsible local organizations and actors to fulfil their duties.

References

- Dörre, A. (2012): Legal Arrangements and Pasture-Related Socio-ecological Challenges in Kyrgyzstan. In: Kreuzmann, H. (ed.): Pastoral practices in High Asia. Agency of 'development' effected by modernisation, resettlement and transformation (= Advances in Asian Human-Environmental Research). Dordrecht/ Heidelberg/ New York/ London. Springer. pp. 127–144
- Dörre, A. & P. Borchardt (2012): Changing systems, changing effects: Pasture utilization in the course of the post-Soviet transition. Case studies from Southwestern Kyrgyzstan. In: Mountain Research and Development 32(3). pp. 313–323
- GAOZh Gosudarstvennyi Arkhiv Oblasti Zhalalabad (State Archive of the Zhalalabad Oblast') (1997): Istoricheskaya spravka na kolkhoz im. Engel'sa Bazar-Kurganskogo raiona Sovetskogo sel'soveta. Fond 434, opis' 1 (Historical information on the collective farm Engels of the Bazar Korgon Rayon, settlement council Sovetsk. Stock 434, inventory 1)
- GOP Granicy otgonykh pastbishch (Borders of remote pastures). Postanovlenie N 236 B [GOP] 2.7.1997. Glava raionnoi administracii Bazar Korgon (Decree no. 236 B. 2.7.1997. Head of the rayon administration Bazar Korgon)
- KIRGIZGIPROZEM Kirgizskii Gosudarstvennyi Proektnyi Institut po Zemleustroistvu Kirgizskoi Socialisticheskoi Respubliki (Kyrgyz State Design Institute for Land Management of the Kyrgyz Socialist Soviet Republic) (1983a): Karta Bazar-Kurganskogo Rayona Oshskoi oblasti Kirgizskoi SSR (Map of the Bazar Korgon Rayon of the Osh Oblast' of the Kyrgyz Socialist Soviet Republic). Scale 1: 50,000
- LKKR Lesnoi kodeks Kyrgyzskoi Respubliki (Forestry code of the Kyrgyz Republic) N 66. 8 iyul'ya 1999 goda



- PPPAIP Polozhenie “O poryadke predostavleniya v arendu i ispol’zovaniya pastbishch” (Regulation “On Pasture Lease and Use”) N 360. 4.6.2002 goda
- Schmidt, M.(2005): Utilisation and management changes in South Kyrgyzstan’s mountain forests. In: Journal of Mountain Science 22(2). pp. 91–104
- Schmidt, M. & A. Doerre (2011): Changing meanings of Kyrgyzstan’s nut forests from colonial to post-Soviet times. In: Area 43(3). pp. 288–296
- Undeland, A. (2005): Kyrgyz Livestock Study: Pasture Management and Use. Washington, DC: International Bank for Reconstruction and Development
- Wilson, T. (1997): Livestock, pastures, and the environment in the Kyrgyz Republic, Central Asia. In: Mountain Research and Development 17(1). pp. 57–68
- ZOP Zakon Kyrgyzskoi Respubliki “O pastbishchakh” (Law of the Kyrgyz Republic “On pastures”) N 30. 26 yanvarya 2009 goda
- ZKKR Zemel’nyi kodeks Kyrgyzskoi respubliki (Land code of the Kyrgyz Republic) N 123. 9 iyul’ 2003 goda
- ZKKR Zemel’nyi kodeks Kyrgyzskoi respubliki (Land code of the Kyrgyz Republic) N 45. 2 iyun’ 1999 goda
- ZKRR Zemel’nyi kodeks Respubliki Kyrgyzstan (Land code of the Kyrgyz Republic) N 574-XII. 19 aprel’ 1991