

## Legalized Rent-Seeking: Eminent Domain in Kazakhstan

Margaret Hanson

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### Recommended Citation

Hanson, Margaret (2017) "Legalized Rent-Seeking: Eminent Domain in Kazakhstan," *Cornell International Law Journal*: Vol. 50 : Iss. 1 , Article 2.  
Available at: <http://scholarship.law.cornell.edu/cilj/vol50/iss1/2>

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# Legalized Rent-Seeking: Eminent Domain in Kazakhstan

Margaret Hanson†

Kazakhstan ranks consistently low on measures of property rights protection and the rule of law more generally.<sup>1</sup> Echoing these evaluations, existing literature emphasizes the degree to which informal institutions shape property relations in personalist, authoritarian regimes, like Kazakhstan. The expectation is that formal institutions like law and courts fail to restrain or otherwise influence state agents' rent-seeking behavior. In effect, they serve primarily as ornamentation. Regardless, these explanations fail to explain why both citizens and the State regularly turn to these institutions to settle property disputes. This Article focuses on conflicts over eminent domain and finds that in these cases the law provides lower and upper bounds for officials' rent-seeking behavior. Within these limits, law combines with informal practices to determine legal outcomes. Although the law and courts sometimes provide citizens with opportunities for limited redress, they also help facilitate and legitimize officials' use of eminent domain for personal enrichment.

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## Introduction

Do law and courts matter for property rights security in an authoritarian regime like Kazakhstan, and if so, how? There are good reasons to expect it

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† This research was made possible by support from the following: the Social Science Research Council's International Dissertation Research Fellowship, with funds provided by the Andrew W. Mellon Foundation; IREX Title VIII Individual Advanced Research Opportunities program; and the Ohio State University's Office of International Affairs.

1. TERRY MILLER & ANTHONY B. KIM, THE HERITAGE FOUND., INDEX OF ECONOMIC FREEDOM: PROMOTING ECONOMIC OPPORTUNITY AND PROSPERITY 263–64 (2015), [http://www.heritage.org/index/pdf/2015/book/index\\_2015.pdf](http://www.heritage.org/index/pdf/2015/book/index_2015.pdf) [<https://perma.cc/R3AQ-58DW>].

does not. Like many dictatorships, Kazakhstan fares poorly in cross-national evaluations of property rights. In the Heritage Foundation's 2015 Rule of Law index, an index derived from scores for property rights security and corruption, Kazakhstan ranks 140th out of 177 countries.<sup>2</sup> Often, local executive officials, or *akims*, drive that insecurity. As one respondent noted, "They try to steal as much as they can before they leave [their post]."<sup>3</sup> Eminent domain seizures are a prominent and widespread source of this conflict, especially in rapidly-growing urban areas.<sup>4</sup> For instance, a woman faced with losing her land for minimal compensation repeatedly protested, "We're people, too" ("*Biz adammuz*").<sup>5</sup> Others lambasted the "injustice," or "*nespravedlivost*" they endured, railing against a state that "didn't respect its citizens," or "*Gosudarstvo ne uvazhaet grazhdan*."<sup>6</sup> Therefore, at first blush, we see little evidence that law or courts matter for property rights security.

Indeed, law and social science literature widely accept that property rights are generally less secure in authoritarian regimes.<sup>7</sup> We tend to think of this lax security in terms of breaking the rules: dictators develop laws that look good on paper but fail to abide by them. These formal rules exist solely for show.<sup>8</sup> Therefore laws lack meaning, and courts serve as mere rubber stamps for the autocrat's wishes. Dictators are well-known for fabricating criminal cases and developing laws to punish or deter opposition.<sup>9</sup> In civil matters, like property disputes, Hendley argues that courts may serve as relatively neutral arbitrators between private parties, but where cases are political due to the involvement of government officials, citizens will strive to avoid going to court.<sup>10</sup> Should officials take *them* to court, "telephone justice," or "the practice of making an informal command, request, or signal in order to influence formal procedures or decision-making" will trump the law.<sup>11</sup>

2. *Id.*

3. Ethnographic Notes, Neighborhoods/Villages, in S. Kaz. (Feb. 2015) [hereinafter Ethnographic Notes (S. Kaz.)].

4. Author's analysis of data available from the Supreme Court of the Republic of Kazakhstan, <http://www.sud.kz/rus/schedule/supervision/civil> [<https://perma.cc/MN2V-MLS2>] [hereinafter Supreme Court Data].

5. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015).

6. Interview with Landholder 9, in Astana, Kaz. (Oct. 2015); Interview with Landholder 12, in Astana, Kaz. (Dec. 2015).

7. DEMOCRACY, GOVERNANCE, AND GROWTH 156 (Stephen Knack ed., Univ. Mich. Press 2003).

8. Howard, A. E. Dick, *The Essence of Constitutionalism*, in CONSTITUTIONALISM AND HUMAN RIGHTS: AMERICA, POLAND, AND FRANCE 3, 3 (Kenneth W. Thompson & Rett T. Ludwikowski eds., 1991).

9. For a review, see Tamir Moustafa, *Law and Courts in Authoritarian Regimes*, 10 ANN. REV. L. & SOC. SCI. 281, 281–99 (2014), <http://www.annualreviews.org/doi/full/10.1146/annurev-lawsocsci-110413-030532> [<https://perma.cc/S84X-APYZ>].

10. Kathryn Hendley, *The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts*, 45 CORNELL INT'L L.J. 517, 520–21, 523 (2013).

11. Alena Ledeneva, *Telephone Justice in Russia*, 24 POST-SOVIET AFF. 324, 326 (2008), <http://www.tandfonline.com/doi/pdf/10.2747/1060-586X.24.4.324> [<https://perma.cc/PHC9-DMUBJ>].

Such informal institutions certainly matter in Kazakhstan and similar regimes. Yet a myopic focus on informality or avoidance provides little insight into why Kazakhstan has invested heavily in civil courts and complex legal codes, or why citizens purposefully engage state officials in civil courts over property disputes. If law and courts are merely ornaments, why do we see both officials and citizens use them regularly? To address this question, I argue that we need a more nuanced approach. We need to examine how they *interact* with informal institutions, like patron-client relationships. Neither can be studied in isolation because, at their core, property rights hinge on relationships. Although this encompasses both relationships among and between citizens and the state, the latter is especially crucial in non-democracies where officials are not directly accountable to constituents.<sup>12</sup> In these environments, we often equate the rule of law with the degree to which formal property rights are followed and enforced.

A crucial assumption often lurks forgotten in the background of these evaluations—the idea that property laws are fair or impartial to begin with. Consequently, we conflate consistent application of the rules with the impartiality of the rules themselves. In doing so, we can overlook how blatantly biased or intentionally contradictory laws regulate property rights. I argue that these laws deliberately accommodate multiple logics, both legal and informal, which combine in dynamic ways to shape property rights security. Specifically, I find that in Kazakhstan, property and land law provide lower and upper bounds on rent-seeking by local officials. In conflicts between state officials and citizens, courts ensure these bounds are enforced. Thus, law and courts matter, but not necessarily for citizens' greater benefit. Since they *do* matter, however, they sometimes provide citizens with opportunities for limited redress from state officials—not an equal opportunity, but an opportunity nonetheless.

Because property law and the transaction costs involved in implementing these laws vary depending on property type, this Article uses one kind of property, land, to develop this argument in depth. In particular, I focus on eminent domain, a government seizure for state needs, or *gosnuzhd*. Respondents consistently listed expropriation by state officials as their top land rights concern. Based on court records, this fear appears well-founded.<sup>13</sup> Moreover, the issue is highly politicized. Surprisingly, I find that local officials rely on broad legal means when seizing land.<sup>14</sup> Furthermore, this widespread insecurity does not appear to have slowed development: in the capital city, Astana, a booming construction sector accounts for the largest proportion of city's income.<sup>15</sup> The same areas plagued by expropriation have

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12. See Thomas Edward Flores, *The Political Economy of Property Rights Discrimination* 57, 62 (2008) (unpublished Ph.D. dissertation, University of Michigan) (on file with the University of Michigan Library).

13. Supreme Court Data, *supra* note 4.

14. Ethnographic Notes (S. Kaz.), *supra* note 3.

15. *V Astane nabludayetsia rost pokazatelei sotsial'no-ekonomicheskogo razvitiia* [In Astana, the Rise of Social and Economic Development], LITER (Oct. 24, 2016, 11:33 AM), [https://liter.kz/mobile/ru/news/show/24971-v\\_astane\\_nablyudaetsya\\_rost\\_pokazatelei\\_](https://liter.kz/mobile/ru/news/show/24971-v_astane_nablyudaetsya_rost_pokazatelei_)

consequently experienced sustained real estate booms and economic growth.<sup>16</sup> This phenomenon runs counter to widely accepted findings in the social sciences that, without secure property rights, economic development will be stymied. Scholars believed that investors would lack confidence that they would receive a return on their investment, and would not invest in the first place.<sup>17</sup> Yet, we have not seen this occur in Kazakhstan. This suggests one of two things: either, in a complete reversal of prevailing understandings, property rights security does not impact development, or, property security exists, but is not equally distributed among the population. In short, to understand the relationship between property rights, law, and development in Kazakhstan, we need to understand what drives the distribution of security.

The remainder of this Article proceeds as follows. First, I address some key conceptual issues. Then, I review existing literature on law and courts in authoritarian regimes, and the Kazakhstani regime's investment in these formal legal institutions. Next, I turn specifically to land rights in Kazakhstan, and how legislation can shape threats to land rights. Then I use examples from interviews and court cases to demonstrate that law and courts shape behavior through dynamic interaction with informal practices. The last section offers conclusions and possible implications for state-society relations. In addition to analyzing legislation relevant to eminent domain, these findings draw on fourteen months of fieldwork in three regions of Kazakhstan. This fieldwork includes ethnographic observation in civil courts and neighborhoods under seizure (*pod snosom*) and 109 semi-structured interviews with attorneys, officials, landholders, and academic experts.

## I. A Few Definitions

Before turning to how law and courts matter, some conceptual issues need to be addressed. What do we mean by “rule of law” and “property rights security”? At its most broad, “rule of law” refers to just and fair constraints on both state and society; it emphasizes a particular normative outcome: an inherently level playing field.<sup>18</sup> The World Justice Project's four-part

socialno-ekonomicheskogo\_razvitiya [https://perma.cc/E9A3-FJA9]; see ORG. FOR SEC. & COOPERATION IN EUR. [OSCE], KAZAKHSTAN'S IMPLEMENTATION OF ITS OSCE OBLIGATIONS TO OBSERVE THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT 11 (Sept. 25, 2012), <http://www.osce.org/odihr/94158?download=true> [https://perma.cc/SSQ8-YVAVZ].

16. Based on ethnographic work in Esilskii and Almatinskii districts, where expropriation has occurred, and prices as described. See *Rost tsen na zhil'ie v Astane Operezhayet Inflatsiu* [Housing Prices Rise Faster than Inflation in Astana], FORBES KAZ. (Feb. 6, 2014), [http://forbes.kz/process/property/rost\\_tsen\\_na\\_jile\\_v\\_astane\\_operejaet\\_inflyatsiyu/](http://forbes.kz/process/property/rost_tsen_na_jile_v_astane_operejaet_inflyatsiyu/) [https://perma.cc/6S3T-2NFB] [hereinafter *Rost tsen*]; Ethnographic Notes (S. Kaz.), *supra* note 3.

17. See Stephan Haggard et al., *The Rule of Law and Economic Development*, 11 ANN. REV. POL. SCI. 205, 206–21 (2008), <http://www.annualreviews.org/doi/full/10.1146/annurev.polisci.10.081205.100244> [https://perma.cc/MZ9R-YX28].

18. See A.B.A. DIVISION FOR PUBLIC EDUCATION, WHAT IS THE RULE OF LAW? 6 (2016), <https://www.americanbar.org/content/dam/aba/migrated/publiced/features/Part1DialogueROL.authcheckdam.pdf> [https://perma.cc/DEE6-2NBZ]; JUAN CARLOS BOTERO ET AL., WORLD JUSTICE PROJECT, WJP RULE OF LAW INDEX 9 (2016),

definition provides a good example of this approach:

1. The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable, and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.<sup>19</sup>

Despite this theoretical framework, political scientists and legal scholars often conceptualize rule of law more narrowly, by focusing on the degree to which laws are actively applied, including to state officials or agents.<sup>20</sup> In other words, it matters not so much *what kinds* of rules exist, but rather that those rules are adequately and equitably enforced *as they are written*; formal, “parchment” institutions<sup>21</sup> should consistently trump their informal counterparts. This view is often inherent in work that advocates greater attention to informal institutions.<sup>22</sup> Scholars of authoritarianism have drawn on this concept in studies of “rule by law,” in which consistent application of laws stifles opposition.<sup>23</sup> Although the model is based on consistency, the scholars tend to focus on criminal laws designed to target acts of resistance to the regime or its policies.<sup>24</sup> Disputes between officials and non-politically involved citizens, especially in more mundane areas of law such as contracts, property rights, and taxes, have largely escaped notice.

The above two approaches appear relatively clear-cut in their distinctions, but that clarity begins to fade when we examine rule of law in the specific context of property rights security. The emphasis has been on adequate enforcement of formal law, but equated with the broader definition of rule of law—seemingly forgetting that many regimes have an inherent interest in maintaining an uneven playing field for property-holders, especially vis-a-vis the state. It is, for example, no accident that many of the

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[http://worldjusticeproject.org/sites/default/files/media/wjp\\_rule\\_of\\_law\\_index\\_2016.pdf](http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf) [<https://perma.cc/7CCX-K6XT>].

19. See BOTERO ET AL., *supra* note 18.

20. For further discussion, see Brian Tamanaha, *A Concise Guide to the Rule of Law*, in RELOCATING THE RULE OF LAW 3, 5–6 (Gianluigi Palombella & Neil Walker eds., 2009); J. Ohnesorge, *The Rule of Law*, 3 ANN. REV. L. SOC. SCI. 100, 109–10 (2007); see also John M. Carey, *Parchment, Equilibria, and Institutions*, 33 COMP. POL. STUD. 735, 738–39 (2000).

21. See Carey, *supra* note 20, at 736.

22. See, e.g., Gretchen Helmke & Steven Levitsky, *Informal Institutions and Comparative Politics: A Research Agenda*, PERSPECTIVE POL. 725, 725 (2004).

23. See RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES 14 (Tom Ginsburg & Tamir Moustafa eds., 2008) [hereinafter RULE BY LAW].

24. See, e.g., JOTHIE RAJAH, AUTHORITARIAN RULE OF LAW: LEGISLATION, DISCOURSE AND LEGITIMACY IN SINGAPORE 13 (2012).

world's most repressive states, including Turkmenistan, Eritrea, and North Korea, heavily circumscribe private property rights.<sup>25</sup> Doing so allows the regime enormous latitude in shaping broader social and economic relations. Thus, when scholars define property rights *insecurity* as “illegal interference with any part of the PR [property rights] bundle by governmental or private actors,”<sup>26</sup> they risk overlooking how regimes can embed insecurity within the law itself. The underlying assumption that they will not stems from economics and our understanding that secure property rights facilitate economic growth. Since all regimes strive for economic growth, why would any codify insecurity? It is not necessarily in regimes' interests to facilitate economic growth for all. Instead, they have every reason to direct it toward supporters.<sup>27</sup> Lawson-Remer adds to this, finding that it fundamentally matters whose property rights are secure as violations of ethnic minorities' property rights do not appear to stymie economic development.<sup>28</sup> Legalizing property rights insecurity effectively links the strength of property owners' rights to their informal ties with the regime.

At issue here is the kind of property rights insecurity that can be termed “legal insecurity.” Legal insecurity, as used here, refers to violations of the legal framework created by property rights law. This is a very useful, concise characterization of what is implied in most work on property rights security. As another example, Stuart Banner argues that to make sense of this, it must be made clear that in both contemporary law and economics,

property is an abstraction. It refers not to things, material or otherwise, but to rights or relationships among people with respect to things. Moreover, the abstraction we call property is not monolithic. As suggested by the choice of terms above, it consists of a number of disparate legal rights, a ‘bundle’ of them: the right to possess, the right to use, the right to exclude, the right to transfer, and so on.<sup>29</sup>

These legal rights guide who may use and retain benefits (or losses) from a particular good, and how such use occurs, and thus create conditions of excludability.<sup>30</sup> This is the emphasis in Harold Demsetz's seminal work on property rights.<sup>31</sup> He states that property rights “specify how persons may be

25. HERITAGE FOUND., 2016 INDEX OF ECONOMIC FREEDOM, <http://www.heritage.org/index/explore> [<https://perma.cc/6SN2-ZN2W>] (last visited Nov. 12, 2016).

26. Stanislav Markus, *Secure Property as a Bottom-up Process: Firms, Stakeholders, and Predators in Weak States*, 64 WORLD POL. 242, 243 (2012).

27. See Flores, *supra* note 12, at 8.

28. See Terra Lawson-Remer, *Property Insecurity*, 38 BROOK. J. INT'L L. 145, 146–47 (2012).

29. STUART BANNER, *AMERICAN PROPERTY: A HISTORY OF HOW, WHY, AND WHAT WE OWN* 45 (2011).

30. JESSICA ALLINA-PISANO, *THE POST POTEMKIN VILLAGE: THE POLITICS AND PROPERTY RIGHTS IN THE BLACK EARTH* 175 (2008).

31. His most well-known article on the topic, Harold Demsetz, *Toward a Theory of Property Rights*, 57 AMER. ECON. REV. 347, 347 (1967), has been cited 8,003 times according to Google Scholar. See Citations of Article, GOOGLE SCHOLAR, <https://scholar.google.com/> [<https://perma.cc/A5XC-TCD9>] (search article field for “Toward a Theory of Property Rights”; then follow “cited by” link) (last visited Mar. 15, 2017). See generally Harold Demsetz, *Toward a Theory of Property Rights*, 57 AMER. ECON. REV. 347, 347–59 (1967).

benefited and harmed” and provide “guiding incentives to achieve a greater internalization of externalities.”<sup>32</sup> Thus, this conception of property rights security refers to the idea that in a given society, the laws specifying these relationships matter concretely for determining how externalities are proportioned; insecurity emerges when these laws are broken—hence the term, “legal insecurity.”

Though crucial, legal security is only half the story. Shifts in the *allocation* of property rights can also reduce security, in what can be called “allocation insecurity.” Technically, these are perfectly legal because the state itself defines legality through formal rules and legislation. These changes in allocation can be sweeping, as when a new land code is introduced or a country redistributes land on a broad scale, but they can also occur within the context of existing legislation, at the micro level—that of individuals or firms.<sup>33</sup> An often myopic focus on private property rights has contributed to such changes frequently escaping notice in political economy literature. Lease or use rights to land are a key example.<sup>34</sup> States cannot only define and enforce land rights, but also act as landlords, granting temporary use rights to land—i.e., establishing land tenure rights.<sup>35</sup> During the lease period, lessees may enjoy legal security: their rights as specified by existing law are respected and enforced by the state. But if lessees are not confident of conditions surrounding *continuation* of those rights, they still face considerable uncertainty. Similarly, the right of eminent domain if widely exercised, can generate insecurity, that is again, technically legal. Both this “allocation insecurity” along with legal insecurity shorten time horizons and increase the risk associated with investment. In other words, they often have a similar impact on economic development as does property rights insecurity.

This distinction is critical when evaluating state strength and rule of law in non-democracies, and helps highlight the role that civil law plays in authoritarian governance. Regimes have an inherent interest in securing property for supporters rather than making it equally accessible for everyone; because property rights are defined by the sovereign, this can be perfectly “legal.” In Kazakhstan, this has meant that appointed local executives enjoy broad formal legal authority over the allocation of land rights.<sup>36</sup> The resulting

32. See Demsetz, *supra* note 31, at 347–48.

33. For example, in Kazakhstan, this authority falls to the district (*raionu*) executive, or *akimat*. ZEMEL'NUI KODEKS RESPUBLIKI KAZAKHSTAN [ZK RK] [Land Code of the Republic of Kazakhstan] (2003) (2017) (Kaz.), translated at [http://online.zakon.kz/Document/?doc\\_id=1040583](http://online.zakon.kz/Document/?doc_id=1040583) [https://perma.cc/2PY8-5JLM] [hereinafter Land Code of the Republic of Kazakhstan]. More broadly, see *State Ownership of Land*, ECONOMY WATCH (Apr. 21, 2010), <http://www.economywatch.com/agrarian/structure/state-ownership-land.html> [https://perma.cc/8L8R-W9FS] (last visited Jan. 4, 2017).

34. Phillip Keefer, *A Review of the Political Economy of Governance: From Property Rights to Voice* 15 (World Bank Policy Research, Working Paper No. 3315, 2004).

35. STEPHEN HODGSON, DEVELOPMENT LAW SERVICE, FOOD & AGRIC. ORG. OF U.N., LAND AND WATER—THE RIGHTS INTERFACE 10 (2004), <http://www.fao.org/3/a-y5692e.pdf> [https://perma.cc/DJ49-6BDM].

36. This includes the authority to determine whether land can be transferred from one category of use to another (i.e., from agricultural to residential). See Land Code of the Republic of Kazakhstan, *supra* note 33, art. 2. To set zoning, see *id.* art. 8(5); to sell land



allocation insecurity is largely absent from existing literature on property rights security, which emphasizes legal insecurity. I find that local officials in Kazakhstan prefer to operate within the law when engaging in expropriation, because doing so allows them to legitimate their actions to constituents and superiors. I argue that in doing so, law establishes guidelines for rent-seeking. As long as officials remain within the law's bounds, the courts, which are faithful agents of the executive, will support them—in effect, institutionalizing rent-seeking. Which legal interpretation governs in any given circumstance depends on additional, informal factors, such as personal connections, but law still sets the terms. Backed by informal, patron-client relationships, law therefore influences whose rights are threatened and the manner in which they are threatened.

## II. Why Law Shouldn't Matter

That law and courts influence officials' behaviors runs counter to how we tend to think of their role in authoritarian regimes. Autocracies depend on the informal, subjective application of power to survive. In personalist dictatorships, their rule generally rests on a vertically-organized patronage network and does not stem from any clear, procedural means of selection, such as fair elections. Without electoral accountability, state officials are thought to have few reasons to avoid blatantly violating citizens' legal rights, including their property rights.<sup>37</sup> For secure property rights to exist, the state must be restrained from predatory behavior that targets constituents. North and Weingast argue that “the development of free markets must be accompanied by some credible restrictions on the state's ability to manipulate economic rules to the advantage of itself and its constituents.”<sup>38</sup> They find that, in Great Britain, it was the existence of a “credible threat” to the state—the successful dethroning of two kings—that led the British monarchy to tie its own hands and stop “future irresponsible behavior” regarding property.<sup>39</sup> This required a direct threat enforced by new institutions that facilitated monitoring (i.e., regular meetings of Parliament) to ensure that the Crown was restrained.<sup>40</sup> Authoritarian regimes, especially personalist ones, lack “hand-tying” institutions equivalent to Britain's Parliament.

Kazakhstan certainly falls into this category of personalist, unrestrained authoritarian regimes. Over the past twenty-five years, President Nursultan Nazarbayev has steadily consolidated his rule over a power vertical.<sup>41</sup>

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under state ownership, see *id.* art. 9(3); and to seize land for state needs, see *id.* arts. 8, 9. This list is not comprehensive.

37. See James D. Fearon, *Electoral Accountability and the Control of Politicians: Selecting Good Types versus Sanctioning Poor Performances*, in *DEMOCRACY, ACCOUNTABILITY, AND REPRESENTATION* 55, 56 (Adam Przeworski et al. eds., 1999).

38. Douglass C. North & Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 *J. ECON. HIST.* 803, 808 (1989).

39. *Id.* at 816.

40. *Id.* at 804, 816.

41. See *Corruption Perceptions Index*, TRANSPARENCY INT'L (2014),

Nazarbayev has led the country since it emerged as an independent country in 1991, and under his leadership, opposition has been systematically marginalized through restrictive electoral laws and criminal prosecution.<sup>42</sup> In short, the label “rule by law” certainly applies to Kazakhstan,<sup>43</sup> and the results are predictable. Nazarbayev received well over 90% of the popular vote in the last two presidential elections, and his ruling Nur Otan party dominates national and local legislatures.<sup>44</sup> The president appoints the powerful regional governors and they in turn appoint the district executives, or *akims*, who enjoy the power of eminent domain.<sup>45</sup> Executive control over Kazakhstan’s judicial system is even stronger, with the president directly appointing all judges, even in district courts.<sup>46</sup> These factors have contributed to Kazakhstan’s stable ranking as “Not Free” by Freedom House since independence.<sup>47</sup>

Kazakhstan lacks the checks on state authority thought to create secure property rights. At the same time, approaches like those discussed above, which emphasize strategic interaction between rulers and their constituents, draw directly from Olson’s account of “roving” versus “stationary” bandits.<sup>48</sup> Olson argues that, in contrast to roving bandits, stationary bandits—who “monopolize and rationalize theft in the form of taxes”—will limit their predation to ensure subjects have an incentive to engage in future production, thus improving their “take” over the long haul.<sup>49</sup> In short, the decision to stay put leads autocrats to limit their extraction in the present so that they can take more over the long term. A secure and stable autocrat like Nazarbayev arguably approaches this ideal, and suggests some rationale for property rights protection in the Kazakhstani context.

Though appropriate on a more general level, there are two primary issues with applying Olson’s theory to the Kazakhstani case. First, in countries where autocrats derive most of their income from natural resources—as is the case in Kazakhstan, where oil revenues comprise close to 40% of GDP<sup>50</sup>—the impetus to become a “good” stationary bandit is limited. Instead, what really matters is satisfying the narrow selectorate, or group of supporters who

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<https://www.transparency.org/cpi2014/results> [<https://perma.cc/G2LB-EVGM>]; *Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2016/kazakhstan> [<https://perma.cc/QGK8-YAXJ>] (last visited Nov. 11, 2016).

42. See *Corruption Perceptions Index*, *supra* note 41.

43. RULE BY LAW, *supra* note 23.

44. See *Corruption Perceptions Index*, *supra* note 41; *Kazakhstan*, FREEDOM HOUSE, *supra* note 41.

45. See КОНСТИТУЦИЯ РЕСПУБЛИКИ РЕСПУБЛИКИ КАЗАХСТАН [KONST. RK] [CONSTITUTION] art. 87 (1995) (Kaz.).

46. *Id.* art. 82.

47. *Kazakhstan*, FREEDOM HOUSE, *supra* note 41.

48. See Mancur Olson, *Dictatorship, Democracy, and Development*, 87 AM. POL. SCI. REV. 567, 567–69 (1993).

49. *Id.*

50. See *Kazakhstan*, NAT. RESOURCE GOVERNANCE INST., <http://www.resourcegovernance.org/countries/eurasia/kazakhstan/overview> [<https://perma.cc/NCR2-5YYA>] (last visited Nov. 5, 2016).

ensure the autocrat's continued rule<sup>51</sup>; this only stands to exacerbate the issue of a lack of credible restrictions. Second, the theory accounts only for an autocrat's actions, and says little about those of his subordinates; one of the key tasks that any dictator faces is controlling his agents. That said, Olson's argument regarding "roving bandits" translates relatively neatly to local politics. Citizens regularly complain that appointed local executives seek only to maximize their personal wealth; one cited a discussion with a minor official's housecleaner, who had described a home filled with "gold, fancy china, everything—that should be ours, it's our [citizens'] money."<sup>52</sup> These officials are beholden only to those central or regional officials who appoint them. Where central officials frequently shuffle their underlings to ensure loyalty to the autocrat, as is common in Kazakhstan,<sup>53</sup> limited time horizons and a lack of ties to local populations increase incentives for "banditry." Indeed, a growing body of literature shows that most state threats to property come not from the autocrat, but rather from local officials.<sup>54</sup>

Therefore, we should not expect that local officials have much motivation to obey the law or refrain from stealing as much property as possible during their tenure. What really matters is their loyalty to their political patron. This line of reasoning has troubling implications for the country's overall economic development. Political science, economic, and legal scholars widely agree that without a state that upholds private property rights, incentives to innovate and invest are undermined, as individuals or firms cannot be sure they will retain any payoffs that come from taking that risk.<sup>55</sup> Douglass North forcefully advanced the importance of property rights in reducing transaction costs, which in turn facilitates growth,<sup>56</sup> and subsequent studies have provided support for this thesis.<sup>57</sup> Avinash Dixit goes so far as to argue that states' ability to provide secure property rights "underpins the whole Smithian process whereby individuals specialize in different tasks and then transact with one another to achieve the full economic potential of the society."<sup>58</sup> Thus, making secure property rights both an essential component of economic governance and a core function of the

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51. See Bruce Bueno De Mesquita et al., *Political Institutions, Policy Choice and the Survival of Leaders*, 32 BRIT. J. POL. SCI. 559, 561 (2002).

52. Interview with Landholder 12, in Astana, Kaz. (Dec. 2015).

53. Kadyrjan Smagulov, *Personnel Shifts in Kazakhstan: Traditional Rotation or a New Political Course?*, 14 CENT. ASIA & CAUCASUS 138, 138 (2013), <http://cyberleninka.ru/article/n/personnel-shifts-in-kazakhstan-traditional-rotation-or-a-new-political-course> [<https://perma.cc/S6FX-FKLX>].

54. Markus, *supra* note 26; JORDAN GANS-MORSE, VIOLENCE, LAW, AND PROPERTY RIGHTS: INSTITUTIONAL DEMAND IN POST-SOVIET RUSSIA (forthcoming) (manuscript at 3).

55. Haggard et al., *supra* note 17.

56. See DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 11–16 (1990).

57. See generally Stephen Knack & Philip Keefer, *Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures*, 7 ECON. & POL. 207, 207–24 (1995); Daron Acemoglu et al., *Institutions as a Fundamental Cause of Long-Run Growth* (Working Paper No. 10481, 2005).

58. Avinash Dixit, *Governance Institutions and Economic Activity*, 99 AMER. ECON. REV. 5, 6 (2009).

modern state.

The reasoning outlined above implies three outcomes for Kazakhstan. First, property rights should be inherently insecure, because the regime is both a personalist dictatorship and dependent on oil revenue. Second, because what *really* matters are informal loyalties, the regime has no reason to invest more than superficially in developing civil laws and courts to deal with property disputes. Therefore, insecurity should stem from “breaking” or failing to enforce property laws that serve as window-dressing for an international audience keen to promote democracy and rule of law. Finally, we should see negative economic fallout in the form of low investment in the property under threat. These economic consequences should be tied to the specific property that is insecure: if land rights are insecure, land investments will plummet.

I find that property rights to land in Kazakhstan reflect the first of these outcomes, but defy the others. Qualitative evidence points to widespread insecurity surrounding land rights, but the *form* that insecurity takes tends to be legal within existing statutes.<sup>59</sup> Moreover, contrary to expectations that laws and courts would be primarily ornamental, both citizens and regime officials extensively invest in and use legal codes, laws, and the judicial system. For example, numerous cases are heard in courts each day, and citizens and officials alike attend hearings and draw on relevant legislation in their arguments.<sup>60</sup> Finally, we have not seen the tepid real estate market that we would expect under conditions of insecurity.<sup>61</sup>

### III. Institutional and Other Investments

This section examines issues of investment—in laws, in courts, and in land in urban areas. In other words, it establishes that these institutions *do* matter for the regime and for citizens; subsequent discussion focuses on *how* they matter. This Article shows that the regime has invested in laws and courts for dispute resolution and that citizens are willing to use the laws and courts for this purpose—even when disputes involve state officials. In addition, rising land prices suggest *some* property rights security exists. By investment, I refer to spending limited or scarce resources on creating, maintaining, expanding, or utilizing these institutions; essentially, the term denotes their consistent, active use. This Article focuses on three regions of Kazakhstan which, according to official evaluations, have seen the most

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59. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015, Nov.–Dec. 2016).

60. Supreme Court Data, *supra* note 4; see OMBUDSMAN REPUBLIC KAZ., 2008 ACTIVITY REPORT 34 (2009); see also Serik Sabekov, *V tekuschem godu sudebnoj sisteme RK vydelat 40 mlrd. Tenge—K. Mami* [This Year Kazakhstan Judicial System has Beaten 40 Billion Tenge], KAZINFORM (July 18, 2014), <http://inform.kz/rus/article/2679035> [<https://perma.cc/F43X-DCHK>].

61. *Rost tsen*, *supra* note 16; see Analytical Service kn.kz, *Analitchesij obzor rynka zemel'nykh uchastkov Astanyza IV kvartal 2014* [Analytical Review of the Market of Land in Astana for the IV Quarter 2014], FORBES KAZ. (Feb. 19, 2015), [http://forbes.kz/process/property/zemlya\\_v\\_astane\\_podeshevela\\_za\\_god\\_na\\_8](http://forbes.kz/process/property/zemlya_v_astane_podeshevela_za_god_na_8) [<https://perma.cc/GAD8-QTER>].

conflict over land rights: the capital, Astana; the “commercial capital,” Almaty; and Shymkent, the densely populated “Southern capital.”<sup>62</sup>

This Article begins with the difficult task of assessing Kazakhstan’s investment in law. Quantifying exactly how much money and effort has been dedicated to developing, implementing, and enforcing laws in general—as opposed to property laws, specifically—poses substantial methodological challenges and is not the central aim of this Article. Instead, budget information, court statistics, and qualitative evidence regarding investments together paint a clear picture of formal institutions that have received substantial backing from Kazakhstan’s central government and which are regularly (and voluntarily) utilized by citizens. These investments call into question the idea that law’s utility is limited to ornamentation.

One such measure is government spending: in 2014, the budget for courts reportedly totaled forty billion tenge, or about \$200 million.<sup>63</sup> Several hundred million more tenge were dedicated to centrally mandated initiatives designed to boost record keeping, provision of information, and legal services.<sup>64</sup> Because of Kazakhstan’s oft-cited corruption, claims that “100% of the budget was fulfilled/carried out”<sup>65</sup> should not be taken purely at face value, nonetheless, informal discussions with major international organizations suggest that there has been real support for initiatives like these at high levels of the Ministry of Justice.<sup>66</sup> Doubtlessly, some proportion of these funds will end up lining officials’ pockets, but many programs have generated visible products.<sup>67</sup> A key example is the degree to which court schedules, decisions, statutes, and other legal information are available online and are regularly updated and maintained.<sup>68</sup>

Spending alone does not guarantee that these efforts are anything more than particularly expensive, elaborate “window-dressing,” but there are additional reasons to believe that these initiatives are taking effect. First, they extend to a level of complexity and depth that suggests they serve another

62. GENERAL’NOJ PROKURATURY RESPUBLIKI KAZAKHSTAN [GENERAL PROSECUTOR OF THE REPUBLIC OF KAZAKHSTAN], DEPARTAMENT PO PREDSTAVITEL’S TVU INTERESOV GOSUDARSTVA V SUDAKH [REPRESENTATIVE OF THE STATE DEPARTMENT IN COURTS], ANALIZ TEKUSCHEJ SITUATSII [ANALYSIS OF CURRENT SITUATION] (2013), [http://online.zakon.kz/document/?doc\\_id=31347775](http://online.zakon.kz/document/?doc_id=31347775) [https://perma.cc/43MT-2QW7].

63. See Sabekov, *supra* note 60.

64. See *Razdel Grazhdanskij Budzhet* [Section Civil Budget], MINISTERSTVO JUSTICII RESPUBLIKI KAZAKHSTAN [THE MINISTRY OF JUSTICE OF THE REPUBLIC OF KAZAKHSTAN], (Mar. 26, 2015), <http://www.adilet.gov.kz/ru/node/94262> [https://perma.cc/874Q-CB4W] (last updated May 17, 2016) [hereinafter *Section Civil Budget*].

65. *Id.*

66. Personal Correspondence, International Organization, in Astana, Kaz. (July 2015).

67. See Supreme Court Data, *supra* 4. Another example is the Supreme Court’s application, Sud.kz, which is available in the app store. See *Section Civil Budget*, *supra* note 64.

68. Supreme Court Data, *supra* 4; see SoyuzPravoInform, *Organy oficial’nogo opublikovanija* [Bodies of Official Publication], ZAKONODATEL’S TVO KAZAKHSTANA [LEGISLATION OF KAZAKHSTAN], <http://kz.spininform.ru/organi.html> [https://perma.cc/QZY4-AZG8] (last visited Feb. 7, 2017).

purpose; second (and more critically), they are actually utilized, and what's more, they are *utilized consistently*.<sup>69</sup> The former encompasses not only funds spent, but also time, manpower, and expertise. Kazakhstan's Land Code alone spans over a hundred pages and has been updated numerous times since its introduction in 2003.<sup>70</sup> Moreover, the Code's introduction was highly controversial<sup>71</sup>: in a highly unusual occurrence for authoritarian Kazakhstan, Parliament dissolved due to intense disagreement over certain provisions of the Code.<sup>72</sup> Other laws involving property, such as the controversial 2011 Law on State Property (*Zakon o Gos Imushestve*),<sup>73</sup> provide extensive guidelines regarding how property should be appraised, registered, and the like. Before introducing these laws, working groups that include officials from affected ministries, key stakeholders (such as leaders of professional associations and leading academics), along with the president's administration spend substantial time and effort to develop the laws.<sup>74</sup> This level of detail and attention to revision makes little sense if laws do not matter for governance. Why bother with hundreds upon hundreds of pages of detailed documentation and the manpower required to create them—or even risk your political career to oppose laws in the case of the Land Code—if they are empty and meaningless?

Interviews with attorneys and those involved in court cases further suggest that we should hesitate before discounting legislation on property rights. They have become an occasional focal point not only for opposition from deputies, but also among citizens and professionals. Landholders (especially those who had been involved in litigation) repeatedly complained about specific provisions in the Law on State Property, and that law has generated vocal opposition among prominent members of Kazakhstan's legal and appraisal professional associations.<sup>75</sup> A recent article in an Almaty law journal on the topic (Almaty has, by far, the largest attorney's association in the country), called for courts "to be more independent in considering

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69. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015, Nov. 2016); see Land Code of the Republic of Kazakhstan, *supra* note 33; see also O gosudarstvennom immushestve (s izmeneniyami i dopolneniyami po sostoyaniyu na 04.12.2015 r.) [ZK RK] [Law of the Republic of Kazakhstan on State Property (with changes and amendments as of Apr. 9, 2016)], Mar. 1, 2011, No. 413-IV (Kaz.), *translated at* [http://online.zakon.kz/Document/?doc\\_id=30947363&doc\\_id2=30947363#sub\\_id=1001853411&sub\\_id2=670000&sel\\_link=1001853411](http://online.zakon.kz/Document/?doc_id=30947363&doc_id2=30947363#sub_id=1001853411&sub_id2=670000&sel_link=1001853411) [<https://perma.cc/7D49-HWQH>] [hereinafter Law on State Property].

70. See Land Code of the Republic of Kazakhstan, *supra* note 33.

71. Interview with Expert 9, in Astana, Kaz. (June 2015); see Marat Yermukhanov, *Cabinet Reshuffle in Kazakhstan Diffuses Political Crisis*, CEN. ASIA-CAUCASUS ANALYST (June 18, 2003), <http://www.cacianalyst.org/publications/field-reports/item/8141-field-reports-caci-analyst-2003-6-18-art-8141.html> [<https://perma.cc/RXY7-DVER>].

72. Interview with Organization 9, in Astana, Kaz. (June 2015)

73. See Law on State Property, *supra* note 69.

74. Interview with Academic 10, in Astana, Kaz. (Dec. 2015); Interview with Appraiser 7, in Almaty, Kaz. (Dec. 2015); Interview with Attorney 25, in Almaty, Kaz. (Dec. 2015).

75. Interviews with Appraisers 1–5, in Astana, Kaz. (May–June 2015); Interview with Appraiser 7, in Almaty, Kaz. (Oct. 2015).

petitions of lawyers to apply to the Constitutional Council of the Republic of Kazakhstan in recognizing certain legal norms [as] unconstitutional.”<sup>76</sup> If laws are designed to be low-cost decoration, it seems puzzling that the regime would choose to retain ones that have generated such widespread and vocal dissatisfaction.

An even bigger cue as to civil law and courts’ import for property rights can be summed up by court schedules. Civil court dockets show that civil courts at all levels—from district courts to the Supreme Court (*Verkhovnuī Sud*)—regularly hear disputes over property, particularly land disputes.<sup>77</sup> Based on these schedules, the proportion of land-related disputes among citizens and state officials approaches 10% of total civil court caseloads in some districts.<sup>78</sup> These district-level data likely *underestimate* the true frequency. Visits to those courts demonstrated that courts were not always vigilant when it came to entering cases into the online scheduling system; at times, a relatively empty court docket in the system revealed in actuality a packed courtroom waiting area and several cases not listed on the schedule.<sup>79</sup> In the Astana City Court, land and housing/property disputes are so common that for two days of the week, two judges focus specifically on these cases.<sup>80</sup> Multiple visits confirmed that the majority of these cases are between citizens and state officials, and are usually attended by both parties.<sup>81</sup> In short, both the state and citizens regularly use the formal institutions tasked with addressing legal conflicts over land rights.

At the same time, attorneys tend to characterize these cases in the same way that the literature suggests these cases should occur in Kazakhstan: land-related cases against the government are *proigraushīie*, or losing cases.<sup>82</sup> Hopelessness combined with high usage suggests that at a systemic level, we do indeed see insecure property rights; seizures are common, as are other varieties of land disputes with public officials, and citizens rarely find themselves with a clear victory over state actors.<sup>83</sup> Attorneys consistently cite this threat from officials as their clients’ greatest worry related to land rights.<sup>84</sup>

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76. See Zhajlauov Batyrxan Ryskalievich, *K voprosu o protivorechii nekotorykh norm dejstvuiushego zakonodatel'stva Konstitutsii Respubliki Kazakhstan i mezhdunarodnym obiazatel'stvam Kazakhstana* [To a Question About the Contradiction of Some of the Current Legislation of the Constitution of the Republic of Kazakhstan and Kazakhstan's International Commitments], 3–4 (45–46) ADVOKATY ALMATY 47, 47–52 (2015) (Kaz).

77. Author's collected data from Supreme Court of the Republic of Kazakhstan (2013–2015).

78. *Id.*

79. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015).

80. *Id.*

81. *Id.*

82. See, e.g., Interview 2 with Attorney 23, in Astana, Kaz. (Dec. 2015).

83. Supreme Court Data, *supra* note 4; see OMBUDSMAN OF REP. OF KAZ., 2008 ACTIVITY REPORT 24 (Org. Sec. Cooperation Eur. Ctr. in Astana trans., 2008), [http://www.eoi.at/d/EOI%20-%20Jahresberichte/Kasachstan/itog\\_2008.doc](http://www.eoi.at/d/EOI%20-%20Jahresberichte/Kasachstan/itog_2008.doc) [<https://perma.cc/C4AP-QUMF>].

84. Interviews with Attorneys 1–32, in Astana, Almaty, and Shymkent, Kaz. (Sept. 2014–Dec. 2015).

This widespread perception that land rights are insecure suggests that we should not see a willingness to invest in land, especially in the areas where seizure is common. Yet, in the same neighborhoods that have been subject to large-scale seizure, we see enormous growth and development.<sup>85</sup> Huge housing and commercial developments have sprung up each year, and construction cranes are ubiquitous throughout Astana, Almaty, and Shymkent.<sup>86</sup> Often, lands seized for state needs are needed only partially for public use, and the local executive government resells the remaining, so-called “leftover,” lands. Crucially, *citizens are buying these lands*.<sup>87</sup> In other words, the omnipresent threat of seizure has not curbed demand. Land prices in these areas have also trended upwards over the past decade (chronologically, they correlate not with reported spikes in seizures, but rather with larger global and regional economic crises in 2008 and 2015–2016, respectively).<sup>88</sup>

In other words, it seems that *some* have enough confidence in the security of their land rights to invest—while others suffer from pervasive insecurity. Why do some people or firms have enough confidence to sink enormous sums into land? Writing about China, Oi finds that universally secure, private property rights are not essential for investment and development; what is needed “are secure property rights for some organized unit and sufficient incentives for that unit to pursue growth.”<sup>89</sup> How can we characterize this heterogeneous security—what “units” in Kazakhstan experience insecurity? Which enjoy security, and why? In short, returning to the motivating question of this paper, what role do law and courts play in shaping these outcomes—*how* do they matter for property rights security?

#### IV. Land, Law, and Local Officials

Though post-Soviet Kazakhstan embodies an environment where one should not expect the law or courts to offer property rights security, regime investment and citizen engagement suggest otherwise. At the same time, the

85. Ethnographic Notes, in Astana, Almaty, and Shymkent, Kaz. (Nov. 2015, Nov.–Dec. 2016). *See generally* NATIONS IN TRANSIT, KAZAKHSTAN 18 (2008), <https://freedomhouse.org/report/nations-transit/2008/kazakhstan> [<https://perma.cc/M9UW-JCHA>].

86. Ethnographic Notes, in Astana, Almaty, and Shymkent, Kaz. (Nov. 2015, Nov.–Dec. 2016); *see, e.g.*, Matthew Yeomans, *Dispatch from Kazakhstan*, SLATE (July 19, 2004), [http://www.slate.com/articles/news\\_and\\_politics/dispatches/2004/07/dispatch\\_from\\_kazakhstan.html](http://www.slate.com/articles/news_and_politics/dispatches/2004/07/dispatch_from_kazakhstan.html) [<https://perma.cc/F775-44N7>].

87. Interview with Attorney 2, in Astana, Kaz. (Oct. 2014); Interviews with Attorneys 10, 11, in Shymkent, Kaz. (Apr. 2015); *see* Yigal Chazan, *Kazakh President Rattled by Land Privatisation Protests*, INTELLINEWS (May 4, 2016), <http://www.intellinews.com/alaco-dispatches-kazakh-president-rattled-by-land-privatisation-protests-96561/> [<https://perma.cc/2TAB-DRY7>].

88. *See generally* *Zemlja v Astane Stoit v Srednem \$8340 za Sotku [Land is Astana is an Average of \$8340 per sq.m.]*, FORBES KAZ. (Feb. 19, 2015), [http://forbes.kz/process/property/zemlya\\_v\\_astane\\_podeshevela\\_za\\_god\\_na\\_8](http://forbes.kz/process/property/zemlya_v_astane_podeshevela_za_god_na_8) [<https://perma.cc/2ADY-8V3U>].

89. *See* Jean C. Oi, *Fiscal Reform and the Economic Foundations of Local State Corporatism in China*, 45 WORLD POL. 99, 100 (1992) (emphasis in original).



most commonly mentioned threat to land rights—seizure for eminent domain—stems from state actors. Specifically, Kazakhstan’s Land Code grants the local executive government, or *akimat*, extensive authority over land rights, including the right of eminent domain.<sup>90</sup> These officials are widely accused of using that power for their own enrichment.<sup>91</sup> Without electoral or other direct accountability to citizens, this has predictably resulted in a situation where “everything associated with land is complicated.”<sup>92</sup>

## V. Characterizing Land Rights

Although private ownership of land exists in Kazakhstan, the state is, according to the Land Code, the ultimate owner.<sup>93</sup> Land rights can take several different forms. First is the distinction among categories of land use: agricultural; housing or settlements; industry, transport, communications, defense and other non-agricultural purposes; protected areas (parks, etc.); forest; water resources; and reserve (land fund).<sup>94</sup> Lands designated for *dachas* (summer cottages) and individual/family gardens fall within the first category.<sup>95</sup> Land that it is not used in accordance with its designated use can be seized by district or city officials.<sup>96</sup> While it is possible to transfer the category of use—for example, from agricultural to individual dwelling—this process requires consent from the district or city *akimat*.<sup>97</sup> Interviewees cited the process as difficult, with only about 20% of requests approved.<sup>98</sup> Second, land can fall under either public or private ownership.<sup>99</sup> Restrictions on land use remain regardless of ownership status, and land that is not used in accordance with its categorization may still be seized for illegal use.<sup>100</sup> Land that is state-owned can be transferred into private ownership if lessees receive permission from the city or district *akimat* and pay the cadastral value.<sup>101</sup>

In rural areas, land is primarily held in long-term leases from the state that last forty-nine years.<sup>102</sup> These rights are inheritable but not alienable, and existing lessees have the first right of renewal when the term expires.<sup>103</sup> In

90. Land Code of the Republic of Kazakhstan, *supra* note 33, arts. 8, 89.

91. Ethnographic Notes, Esilskii Neighborhood, in Astana, Kaz. (Sept. 2015); Ethnographic Notes, Almatinskii Neighborhood, in Astana, Kaz. (Oct.–Nov. 2015); *see, e.g.,* Catherine Putz, *Massive Kazakh Corruption Case Targets 21 Former Officials*, DIPLOMAT (Sept. 10, 2015), <http://thediplomat.com/2015/09/massive-kazakh-corruption-case-targets-21-former-officials/> [<https://perma.cc/N79V-RAEN>].

92. Interview with Expert 5, in Almaty, Kaz. (Apr. 2015).

93. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 3.

94. *Id.* art. 1.

95. *Id.*

96. *Id.* arts. 43, 170.

97. *Id.* art. 49(1–6).

98. Interview with Attorney 5, in Astana, Kaz. (Mar. 2015).

99. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 3.

100. Interview with Official 2, in Shymkent, Kaz. (Feb. 2015).

101. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 3.

102. *Id.* art. 35(2); Interview with Academic 7, in Almaty, Kaz. (Oct. 2014).

103. Land Code of the Republic of Kazakhstan, *supra* note 33, arts. 36(3), 40(1–3).

the 1990s, land that belonged to former collective farms was originally distributed as shares; many of these were bought and consolidated by former farm directors, whose ownership today tends to be held in the form of limited-liability firms (“TOO”).<sup>104</sup> Those who retained their shares later had to convert them into certificates for particular plots.<sup>105</sup> Plot assignment was decided at plenary sessions of the former collective farm; though conflict did occur at the local level during redistribution, redistribution was largely completed by the early 2000s.<sup>106</sup> Though land rights-holders may purchase their land (transfer it to private ownership), this practice is relatively rare. Few rural residents have the money or the motivation to do so because lease payments are low and limited to yearly payments of the land tax.<sup>107</sup> The land tax is comprised of just 1% of the value of the land.<sup>108</sup> This provides little incentive to shift to private ownership, except outside of expanding cities, where land values continue to rise.<sup>109</sup> Thus, most land remains in long-term leases from the state. In contrast, in cities, private ownership is far more common.<sup>110</sup> Urban residents received titles to apartments or land where they already resided, and as a result, rights to household plots within city limits are usually private.<sup>111</sup> Many of these plots are designated for *dacha*, or garden, use, not full-time residence; but as cities have expanded, residents have built more permanent residences on them.<sup>112</sup> At the same time, urban district *akimats* still own some land, and have the right to seize additional plots for state needs.<sup>113</sup>

Kazakh law stipulates that all land rights—private or otherwise (e.g., long-term leases)—must be registered with the Ministry of Justice.<sup>114</sup> Without registration, no state agency recognizes an individual’s or firm’s land rights.<sup>115</sup> Formal rights to land begin only from the moment of registration.<sup>116</sup> Thus, anyone who has any legal basis to land has a strong incentive to register it, and many do; especially in urban and rural areas, respondents could

104. Interview with Organization 4, in Almaty, Kaz. (Oct. 2014).

105. *Id.*; Interviews with Experts 1 and 3, in Almaty, Kaz. (Oct. 2014, Jan. 2015).

106. Interview 1 with Official 2, in Shymkent, Kaz. (Oct. 2014); Interview with Farmer 3, in Shymkent, Kaz. (Feb. 2015).

107. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 10(1–3); Interview 1 with Official 2, in Shymkent, Kaz. (Oct. 2014).

108. Interview 1 with Official 2, in Shymkent, Kaz. (Oct. 2014); Interview with Organization 4, in Almaty, Kaz. (Oct. 2014); Interview with Farmer 1, in Almaty, Kaz. (Jan. 2015).

109. Interview with Organization 4, in Almaty, Kaz. (Oct. 2014).

110. Interviews with Academics 6 and 7, in Almaty, Kaz. (Oct. 2015).

111. *Id.*; see JOHN C. DALY, CENTRAL ASIA-CAUCASUS INSTITUTE & SILK ROAD STUDIES PROGRAM, KAZAKHSTAN’S EMERGING MIDDLE CLASS 1, 32 (2008).

112. Interview with Attorney 8, in Astana, Kaz. (Apr. 2015).

113. See generally Botakoz Dykanbayeva, *Kazakhstan Real Estate 2016*, ICLG (May 2, 2016), <http://www.iclg.co.uk/practice-areas/real-estate/real-estate-2016/kazakhstan> [<https://perma.cc/NJZ8-2M9B>].

114. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 43.

115. *Id.*

116. *Id.*

generally produce an *akt na zemlu* (land act/certificate).<sup>117</sup> In newly settled peri-urban areas, respondents were more likely to lack these documents, and did not pursue *legalizatsiia*, or legal registration of land, until they were preparing to sell it (registration is required for a sale to be valid and for rights to transfer).<sup>118</sup> In addition to residents in these “suburban” settlements, those who obtained land through inheritance sometimes did not register their land. They tended to provide other documents, such as proof of inheritance, when asked how they asserted their claim to a land plot.<sup>119</sup> In such cases, landholders cited the time required to complete the registration process as the greatest barrier to formalizing their land rights.<sup>120</sup> Attorneys and some companies register property for landholders, and on average, indicate that registration required 1–2 months to complete.<sup>121</sup> For individuals not familiar with the process, it takes an additional 2–4 months.<sup>122</sup> When asked why, respondents tended to cite the number of documents required, fees, and the need to visit multiple government offices as the reasons for the long delay.<sup>123</sup> Only in one region did respondents regularly cite the need to pay bribes to accomplish any of the above functions.<sup>124</sup> Indeed, an attorney who specialized in helping clients with property registration stated that she chose this area of practice because it was relatively straightforward and free from corruption.<sup>125</sup>

Even where people have not registered their land, they generally have a formal, state-recognized documentary basis for their ownership or use claim.<sup>126</sup> In other words, property rights require formal, state-law backed means. Rights to property are derived from formal, legal documentation, and both citizens and the state acknowledge this state of affairs.<sup>127</sup> Moreover, courts recognize legally-proscribed documents in disputes, even against state officials: in one court case over seizure for state needs, officials failed to pay compensation to a woman whose rights to a garage stemmed from inheritance (for which she had a valid, notarized certificate).<sup>128</sup> Under law, she had a limited period in which to register the property even after notice of seizure,

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117. Ethnographic Notes, Village, in Almatinskii Oblast', Kaz. (Feb. 2015); Ethnographic Notes, Neighborhoods/Villages, in Astana, Kaz. (Nov. 2015).

118. Ethnographic Notes, Village, in Almatinskii Oblast', Kaz. (Feb. 2015); Ethnographic Notes, Neighborhoods/Villages, in Astana, Kaz. (Nov. 2015).

119. Ethnographic Notes, Neighborhoods/Villages, in Astana, Kaz. (Nov. 2015).

120. *E.g.*, Interviews with Landholders 7 and 8, in Astana, Kaz. (Nov. 2015).

121. Attorney Interviews, all field sites; Attorney Interview 23.1, in Astana, Kaz. (Oct. 2015).

122. Attorney Interviews, all field sites.

123. *Id.*

124. Interview with Attorney 3, in Shymkent, Kaz. (Feb. 2015).

125. Interview 1 with Attorney 23, in Astana, Kaz. (Oct. 2015).

126. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 32; Author's Survey Data, in Astana & bordering districts (July–Aug. 2016); Interviews with Landowners, in Almaty, Astana, and Shymkent, Kaz.

127. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 43; Ethnographic Notes, Courts, in Astana, Kaz. (Oct.–Nov. 2015).

128. Ethnographic Notes, Courts, in Astana, Kaz. (Oct.–Nov. 2015).

and she signed an agreement with the *akimat*'s agent to do so. After that point, she was to receive compensation, but she never did.<sup>129</sup> In court, officials tried to argue that because the property had not been registered, they owed her nothing; the judge upheld the woman's claim.<sup>130</sup>

Of course, that does not mean that these formal rights to property operate free from informal influence. Most direct formal authority for administering land rights rests with the local *akimat*, including the authority to grant new leases, approve lease extensions and renewals, approve land sales, seize land for state needs, and transfer land from one category of use to another.<sup>131</sup> Only private land sales do not require an *akim*'s approval; essentially, he or she acts as the single channel for an extensive range of decisions related to land rights. In each district there is a land committee, responsible for reviewing applications and providing recommendations to the *akim*.<sup>132</sup> These local-level land committees are also those responsible for surveying and establishing boundaries to land.<sup>133</sup> Surprisingly, committee members are appointed separately from their counterparts at the next-higher level of government (*oblast*, for rural districts, and *city*, for urban districts) in the Department of Land Relations, and operate under the local *akim*'s supervision.<sup>134</sup>

Though this Article has referred throughout to "local officials," clarifying the relationship among various levels of local government is critical for understanding land rights security. Kazakhstan is a centralized state, with a vertical structure of authority.<sup>135</sup> There are four levels of executive authority: national (presidential); provincial (*oblast*/cities of republican significance, such as Almaty and Astana); district (*raion*/cities of provincial significance, *orgoroda oblast'nogo naznacheniia*); and rural (*sel'skii okrug*).<sup>136</sup> The president appoints provincial heads (*akims*), who then appoint the next level of executives (also called *akims*), and so on.<sup>137</sup> These appointees are not beholden to citizens, but rather to the next rung up in the vertical hierarchy. Provincial authorities make decisions about land rights related to "mass-scale projects," like the granting of land rights for mineral

129. *Id.*

130. Ethnographic Notes, Courts, in Astana, Kaz. (Oct. 2015).

131. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 17.

132. *Id.* art. 9; DIREKTSIYA "ZEMEL'NOGO KADASTRA I TEKHNICHESKOGO OBSLEDOVANIYA NEDVIZHIMOSTI" [DIRECTION "LAND CADASTRE AND TECHNICAL SURVEY OF REAL ESTATE"], <http://www.kazlands.kz/> [<https://perma.cc/2LNT-G3GS>] (last visited Dec. 14, 2016).

133. Interview with Attorney 12, in Shymkent, Kaz. (Apr. 2015).

134. Interview with Official 2, in Shymkent, Kaz. (Feb. 2015).

135. A. Abikenov, *Pravovye osnovy vybornosti akimov v Respublik Kazahstan* [Legal Basis for Election of Akims of Kazakhstan], ARICLEKZ (2009), <http://articlekz.com/article/6858> [<https://perma.cc/A7GR-3SZF>] (last visited Feb. 5, 2017).

136. KONSTITUTSIYA RESPUBLIKI KAZAKHSTAN [KONST. RK] [CONSTITUTION] (1995) (Kaz.); Yucel Ogurlu, *An Essay on Main Provisions of the Constitution of Republic of Kazakhstan on Organization of State and Administration* 1 AÜEHFD, C.V.S. 121, 123, 125 (2001).

137. KONSTITUTSIYA RESPUBLIKI KAZAKHSTAN [KONST. RK] [CONSTITUTION] art. 87 (1995) (Kaz.); Ogurlu, *supra* note 136, at 123.

exploration),<sup>138</sup> but again, most official transactions involving land occur at the district level.<sup>139</sup> Rural *akims* have similar authority to district *akims* within the narrow geographic bounds of their districts, but can only recommend seizure for misuse or state needs.<sup>140</sup> District authorities must provide approval.<sup>141</sup> Moreover, any reassignment of land rights at this level must be registered with district authorities.<sup>142</sup> One respondent went so far as to highlight this specifically: the rural *akim* had to pay the district *akim* to look the other way when he took unused land and re-registered it in family members' names.<sup>143</sup> Interestingly, this link does not necessarily extend further upwards in the power vertical. Land is incorporated into the national registration system at the district level.<sup>144</sup> That registration effectively compartmentalizes land rights at the lowest two levels of government. Within this "black box," higher-level executives have limited direct information or involvement.

This suggests principal-agent problems if we ignore courts' role in enforcing property rights. Where individuals or companies feel their rights have been violated, they can pursue a case in court; this likely helps explain why the official mentioned above took empty land. The sheer number of land-related civil cases suggests that we should not dismiss the courts' role in these disputes. By official calculations, courts ruled on 1,198 cases between 2012–2013,<sup>145</sup> and attorneys cited on average about 10% of their caseloads as pertaining to land-related disputes.<sup>146</sup> Unlike the system of local government, all judges are directly accountable to the executive; the president personally appoints all judges, who are (informally even more than formally) under the close supervision of the chairman (*predsedatel'*) of the court.<sup>147</sup> That chairman further ensures that his or her court's rulings comply closely with national policy (so, the executive's wishes).<sup>148</sup> Thus, while the structure of courts echoes that of executive government, with district, *oblast*/special-status city, and national levels, courts serve as a far more reliable and loyal agent. These experts acknowledge that the capture of local judges by district or provincial officials does occur, but assert that this phenomenon has

138. Interview with Attorney 6, in Astana, Kaz. (Mar. 2015).

139. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 19.

140. Interview with Official 2.2, in Shymkent, Kaz. (Feb. 2015).

141. *Id.*

142. Ethnographic Notes, Neighborhoods/Villages, S. Kaz. (Feb. 2015).

143. *Id.*

144. Interview with Attorney 12, in Shymkent, Kaz. (Apr. 2015).

145. SPRAVKA O SOBLUDENII ZAKONODATEL'STVA I SUDEBNO-PROKURORSKOJ PRAKTIKE PO VOPROSAM IZ'YATIYA ZEMEL'NYKH UCHASTKOV DLYA GOSUDARSTVENNYKH NUZHHD ZA 2012–2013 GODA [EVALUATION OF THE OBSERVANCE OF LAW AND JUDICIAL-PROSECUTORIAL PRACTICE IN QUESTIONS OF SEIZURE OF LAND PLOTS FOR STATE NEEDS FROM 2012–2013], at 2 (Mar. 12, 2014) [hereinafter SPRAVKA].

146. Attorney Interviews 1–32, all sites and dates.

147. Interview with Academic 8, in Almaty, Kaz. (June 2015); Interview with Attorney 16, in Almaty, Kaz. (June 2015).

148. Interview with Academic 8, in Almaty, Kaz. (June 2015); Interview with Attorney 16, in Almaty, Kaz. (June 2015).

declined significantly now that judges are paid directly from the republican budget.<sup>149</sup> Moreover, the relatively open appeals system means that higher courts “check” the degree to which lower courts’ decisions align with executive demands.<sup>150</sup> Land disputes are first heard in the district court where the land under dispute is located (or, for cases between legal entities, in special inter-district economic courts), but if either party is unhappy with that court’s decision, they can (and often do) pursue the case through the appellate courts and up to the Supreme Court in the capital, Astana.<sup>151</sup> Knowing that their decisions are likely to be checked by higher-level courts has made lower courts hesitant to make rulings that challenge or contradict top-level practice. Local officials may exert informal influence over cases, but they are unlikely to do so in a way that challenges or conflicts with central policy.

Indeed, during court sessions, judges sometimes took the *akimat* to task through rulings or for unprofessional conduct. In one case, the judge asked “How *exactly* do they work in the *akimat*?!” and chastised their attorney for failure to provide basic documents; in another, he threatened to open an administrative case against the department for their conduct.<sup>152</sup> At the same time, both interviews and court observation suggested a regular pattern in legal rulings surrounding land disputes, especially those concerning seizure for state needs. These reflected the 2011 Law on State Property, as well as a reported order from central government “not to drain the state budget” by providing too much compensation to owners of seized land.<sup>153</sup> This law was drafted on direct order of the President in response to excessive payments for land seized during the construction of a portion of the Europe-China highway.<sup>154</sup> While data on compensation offered over time is not available, attorneys were consistent in characterizing previous compensation as fair.<sup>155</sup> Yet following the law’s introduction, the amount offered ceased to reflect market prices; falling exchange rates vis-a-vis the dollar compounded this issue.<sup>156</sup> Courts may serve powerful local officials’ interests, but only appear to do so when those do not contradict top-down mandates. Furthermore, their structure means courts serve as a largely self-monitoring institution. In other words, judges appear to act as reliable agents of the central regime.

What, then, comprises existing top-level mandates concerning land rights? And what accounts for the heterogeneity of property rights insecurity related to land? In order to address these questions, we need to understand exactly what shape the threats to land rights commonly take.

149. Interview with Academic 8, in Almaty, Kaz. (June 2015); Interview with Attorney 16, in Almaty, Kaz. (June 2015).

150. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015).

151. *Id.*

152. Ethnographic Notes, Courts, in Astana, Kaz. (Oct. 2015).

153. Interview with Appraiser 7, in Almaty, Kaz. (Dec. 2015).

154. *Id.*

155. *See, e.g.*, Interview with Attorney 23, in Astana, Kaz. (Oct. 2015).

156. Ethnographic Notes, Courts, in Astana, Kaz. (Oct. and Nov. 2015).

## VI. Threats to Land Rights

Property rights insecurity related to land takes several different forms in Kazakhstan. Predictably, news reports suggest that it is concentrated in areas where land values are high: around rapidly expanding cities, and in areas where population density and agricultural value of land are high.<sup>157</sup> Among the former are Almaty, Kazakhstan's "commercial capital," and the actual capital, Astana.<sup>158</sup> Attorneys consistently cited six primary threats to land rights: (1) seizure for state needs; (2) seizure of land that has not been used according to the specified lease terms; (3) double-issue of land rights or other errors in assigning land rights; (4) refusal to renew or prolong lease rights; (5) issues with requests to change the categorization of land; and (6) seizure of neighbors' or other individuals' land.<sup>159</sup> The first four boil down to conflict with the district/city *akim*, and this characterization is reflected in court dockets.<sup>160</sup> Most common are cases concerning seizure for state needs, and are between district *akimats*/land committees, and individuals/companies.<sup>161</sup>

Interestingly, all four threats involving local officials are best characterized as allocation insecurity. In other words, they occur under conditions allowed by existing legislation. Even cases of outright seizure operated with legal pretense; officials did not simply appear and demand that individuals vacate the premises, but instead were careful to cite either state needs or failure to use land in accordance with its designation.<sup>162</sup> Legal insecurity—insecurity stemming from violations of the law—related to land appears far more limited, and where it does occur, overlaps with allocation insecurity. For example, officials may fail to provide compensation for land seized under legal grounds for state needs.<sup>163</sup> While seizure by neighbors or other citizens falls under the category of legal insecurity, it was rarely mentioned in interviews. Yet this varied between North and South: in the North, respondents either mentioned legal insecurity last, or failed to mention it at all; in the South, where population pressures on land are higher and agricultural land is more valuable, it was far more common.<sup>164</sup>

Nonetheless, all those interviewed cited seizure by local *akims* as one of the most prevalent concerns surrounding land rights; the number one in the North, and among the top three in the South.<sup>165</sup> Allocation insecurity remained at the top of the list when they were asked to consider these

157. See Svetlana Glushkova, *Astana: Gorod ili Gorozhan?* [*Astana: City for the Citizens?*], RADIO AZATYK (2016), <http://rus.azattyq.org/a/azattyqlive-astana-gorod-infrastruktura/28105325.html> [<https://perma.cc/T8LV-UKAT>] (last visited Dec. 14, 2016).

158. *Id.*

159. Attorney Interviews 1–32, all field sites (2014–2015).

160. Supreme Court Data, *supra* note 4.

161. *Id.*

162. Ethnographic Notes, in Astana, Almatiskii, and Esilskii Districts, Kaz. (Sept.–Nov. 2015).

163. Interview with Attorney 14, in Shymkent, Kaz. (Apr. 2015).

164. Interviews with Landholders 2–3, in Shymkent, Kaz. (Feb. 2015); Interviews with Landholders 4–8, in Astana, Kaz. (Sept.–Nov. 2015).

165. Interviews with Attorneys 1–32, all field sites (2014–2015).

concerns in the past five and ten years.<sup>166</sup> The difference lay in its prevalence. In Astana, disputes over seizure were so common in the late 1990s and early 2000s—shortly after the capital was relocated there from Almaty—that one long-practicing attorney worked solely on such cases for several years.<sup>167</sup> Today, only about 15–20% of his cases are related to land.<sup>168</sup> Again, however, the kinds of insecurity that his clients face have not changed.<sup>169</sup> Attorneys in Almaty and Shymkent, as well as those who began practicing law more recently in Astana heavily stressed allocation insecurity, especially seizure for state needs.<sup>170</sup> Conversations with landholders echoed attorneys' evaluations: in the few remaining single-housing neighborhoods in Astana's city center, those homeowners whose homes were not already in the process of being seized were extremely cognizant that they were likely to be threatened soon. Many interviewed were in the midst of court cases over seizure.<sup>171</sup> In the South, this issue is exacerbated, and extends to rural areas due to higher population pressures.<sup>172</sup> Indeed, the failure to mention it first in the South may be due to greater political sensitivity surrounding government seizures there; one respondent called it a “very bitter issue” and noted that “people here are scared.”<sup>173</sup>

This qualitative data shows that most insecurity comes in technically legal forms; “complications” occur under the umbrella of the law, especially for state needs (eminent domain). Legally, these seizures require “exceptional circumstances,” including construction of roads, engineering-communications networks, and objects needed for state programs designed to serve the public good, such as schools.<sup>174</sup> While these requirements may appear strict, eminent domain laws allow for seizure of an entire plot for, say, expansion or construction of a roadway.<sup>175</sup> Often this construction does not occupy the full physical plot, and the *akim*'s office then finds itself the owner of very valuable real estate bordering the roadway—land that it then has the authority to sell.<sup>176</sup> When landholders asked to relocate their homes to accommodate the roadway (but not to relinquish the entire plot), these claims

166. *Id.*

167. Interview with Attorney 8, in Astana, Kaz. (Apr. 2015).

168. *Id.*

169. *Id.*

170. Interviews with Attorneys 16, 25–31, in Almaty, Kaz. (June 2015, Dec. 2015); Interviews with Attorneys 9–12, 14, in Shymkent, Kaz. (Apr. 2015); Interviews with Attorneys 4–5, 23–24, in Astana, Kaz. (Apr.–Dec. 2015); see RFE/RL's Kazakh Service, *Kazakh Journalists, Activists Detained and Websites Blocked*, RADIOFREEEUROPE/RADIOLIBERTY (May 21, 2016), <http://www.rferl.org/a/kazakhstan-protests/27748591.html> [<https://perma.cc/RKG3-ZE8V>] (describing protests over changes to the land code and accompanying land seizures).

171. Ethnographic Notes, in Astana, Almatinskii District, Kaz. (Oct. 2015).

172. Interview with Attorney 10, in Shymkent, Kaz. (Apr. 2015).

173. Interview with Attorney 12, in Shymkent, Kaz. (Apr. 2015).

174. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 84(1).

175. Interview with Attorney 10 and 11, in Shymkent, Kaz. (Apr. 2015).

176. *Id.*



were denied.<sup>177</sup> Similarly, large swaths of land have been seized for state needs for the construction of a kindergarten, but the proposed school occupies only a small part of the property under seizure; the remainder will be developed into apartment complexes.<sup>178</sup> Technically, seizures such as these satisfy legal requirements, and under Kazakhstan's code-law system, judges must decide the legal basis for such cases within the relatively broad terms defined by the law—and directives that come from above.<sup>179</sup>

The latter refers us back to the 2011 Law on State Property, which governs compensation in cases of seizure for state needs.<sup>180</sup> Specifically, the law stipulates that the compensation offered should be equivalent to the sale price listed on the last agreement of sale or purchase agreement.<sup>181</sup> However, this is in conflict with Kazakhstan's Land Code and Constitution. While the former specifies compensation equal to the prevailing market price, the latter calls for "equivalent compensation."<sup>182</sup> In Kazakhstan's legal hierarchy, both the Constitution and Land Code rank higher than any individual law,<sup>183</sup> and on the question of compensation, the Law on State Property contradicts both. Nevertheless, the Law on State Property continues to remain in force. As a result, there is an effective legal plurality, and judges appear to pick and choose which law to use when calculating compensation.<sup>184</sup> When asked what explained the apparent lack of consistency in how compensation is determined, attorneys generally responded with a grimace. As mentioned earlier, although the Law on State Property contradicts others, it remains on the books and provides judges a legal tool for managing state reimbursement for property seized.

Remaining within the formal legal framework in this way helps lower the risk associated with seizures. Kazakhstan's central government has made curbing corruption a prominent priority, a push that has led to the arrest of several district and regional executives.<sup>185</sup> At the same time, the regime relies on a complex web of patron-client relationships for its continued rule—and the rents derived from being a *chinovnik* (official) in this system help

177. Interview 1 with Attorney 23, in Astana, Kaz. (Oct. 2015).

178. Ethnographic Notes, Esilskii District, in Astana, Kaz. (Sept. 2015).

179. Interview with Attorney 25, in Almaty, Kaz. (Dec. 2015); see Land Code of the Republic of Kazakhstan, *supra* note 33, art. 84 (showing the broad nature of the Kazakh land code).

180. Law on State Property, *supra* note 69.

181. *Id.*

182. See KONSTITUTSIIA RESPUBLIKI KAZAKHSTAN [KONST. RK] [CONSTITUTION] art. 26 § 3 (1995) (Kaz.); see also Land Code of the Republic of Kazakhstan, *supra* note 33.

183. See KONSTITUTSIIA RESPUBLIKI KAZAKHSTAN [KONST. RK] [CONSTITUTION] art. 26 § 3 (1995) (Kaz.); see also Land Code of the Republic of Kazakhstan, *supra* note 33.

184. Ethnographic Notes, Courts, in Astana, Kaz. (Oct.–Dec. 2015).

185. See, e.g., Zaderzhan eshe Odin Zamestitel' Akima Kostanaya [*Detained Another Deputy Akim of Kostanai*], NUR.KZ (Aug. 4, 2015), <http://www.nur.kz/839878-zaderzhan-eshche-odin-zamestitel-akima-k.html> [<https://perma.cc/H792-4DWY>]; Nazarbäev Rasskazal Kazakhstantsam, Kak Pobedit' Korruptsiu [*Nazarbayev said Kazakhstan People How to Tackle Corruption*], NUR.KZ (Dec. 13, 2015), <http://www.nur.kz/985704-nazarbaev-rasskazal-kazakhstancam-ka.html> [<https://perma.cc/VK4T-76VF>].

underpin local officials' loyalty.<sup>186</sup> Laws are promulgated at the highest levels of Kazakhstan's government, which justifies officials' ability to seize or conduct other forms of allocation insecurity in legal terms, because of the lower risks associated with their activities. Moreover, "staying legal" is low-cost; compensation for lands seized for state needs (even if those needs are local) comes from the central state budget.<sup>187</sup> As a result, not only does the law provide officials a way to justify their actions to superiors and to citizens, it also costs them nothing—and the profits to be made from selling, say, "new" commercial road-side property can be enormous. In Astana, for example, the average price for a single *sotok*, or 1/100 of a hectare, was \$8,340 at the close of 2014.<sup>188</sup>

Thus, in economic terms, transaction costs associated with seizure and retaining land are limited when officials remain within legal bounds. In this regard, local officials do not see their own budgets drained by compensation, and if they keep compensation within the limits communicated by centrally imposed law, the risk that seizures pose to these officials remains low. By acting as middlemen who seize land and pass it to developers, who themselves are rumored to be intimately tied to the regime,<sup>189</sup> local officials stand to make a great deal of money for themselves. Staying within the law keeps their transaction costs low. They do not pay to bring lawsuits in civil court,<sup>190</sup> and as long as they can provide evidence that their seizure satisfies basic tenets of the law, courts—which, given their direct accountability to the executive, are already predisposed to support the state—are unlikely to rule against them.<sup>191</sup> The greatest transaction cost besides risk to their position (which again, is mitigated by choosing legal means) is simply time and effort. If the property is valuable enough, even time spent defending against successive legal challenges will be insufficient to deter seizure, because the outcome is most likely to be higher payment for land rather than returning it to the original owner/lessee.

That said, local officials seek to lower even those costs. One way of doing so is to take into account who they target for seizures. Costs tend to be especially low involving poor or otherwise vulnerable individuals, who are less likely to have the time and financial means to pursue cases to their conclusion. And even though Kazakhstan allows for a universal right of appeal in civil cases,<sup>192</sup> officials do not need to pay to appeal court rulings, whereas citizens do.<sup>193</sup> The fee to appeal is based on the total value of the

186. See generally HENRY HALE, *PATRONAL POLITICS: EURASIAN REGIME DYNAMICS IN COMPARATIVE PERSPECTIVE* (2015).

187. Interview with Official 3, in Astana, Kaz. (Dec. 2015).

188. Yeomans, *supra* note 86.

189. Interview with Political Geographer (June 2015).

190. Interview with Attorney 16, in Almaty, Kaz. (June 2015).

191. Interview with Attorney 25, in Almaty, Kaz. (Dec. 2015).

192. *Grazhdanskii Protsessual'nyi Kodeks Respubliki Kazakhstan [GPK RK] [Code of Civil Procedure of the Republic of Kazakhstan]* art. 332 (1999), as amended 2015, [http://online.zakon.kz/Document/?doc\\_id=1013921](http://online.zakon.kz/Document/?doc_id=1013921) [<https://perma.cc/Z4XC-JMNZ>].

193. Interview with Attorney 24, in Astana, Kaz. (Dec. 2015).

disputed property, which for particularly well-located properties, can result in a substantial sum.<sup>194</sup> Many individual landholders interviewed inherited their property or purchased it before huge increases in land value. This is especially true in Astana, where the transfer of the capital there has led to an enormous upswing in land values. Nevertheless, such individuals tend to be comprised of lower-income, working families, or pensioners who are hard-pressed to pay fees for an attorney. They are also less likely to have personal ties with someone in the *akimat* or courts who can advocate informally on their behalf. They are, in other words, easy targets. It is therefore not surprising that land insecurity appears greater for these already-vulnerable individuals.<sup>195</sup>

The conditions attached to different land categorizations further lower the cost for officials. As cities have expanded, permanent dwellings have often been built on land designated for “*dachas* (summer cottage) or garden use.”<sup>196</sup> Permanent residence on such land is outside the legal use of land in that designation,<sup>197</sup> and as outlined previously, transferring land to another categorization poses significant political and economic hurdles. If officials seize land belonging to individuals who own or lease *dacha*/garden land, they then pay a much lower price.<sup>198</sup> Not only is the market price lower, but also the building’s value is miscalculated as the price will only reflect the value of its material composition (i.e., lumber, cement).<sup>199</sup> This land can then be resold or re-leased after its designation has been changed—authority which conveniently also lies with the *akimat*.<sup>200</sup>

One recent case in Astana involved several poor families who had their homes and land seized by the state. Although they pressed their case as far as the Supreme Court, they ultimately lost.<sup>201</sup> Official correspondence cited the fact that they were (contrary to the law) illegally residing full-time on land designated for another purpose.<sup>202</sup> Land designated for *dachas* and gardening cannot be used for permanent habitation, which makes it much cheaper.<sup>203</sup> Many individuals relocating to major cities bought this land because it was the only affordable option and turned it into their year-round homes,<sup>204</sup> but in doing so, they broke the law, and thus became vulnerable to seizure for improper use in addition to state needs. In this case, reporters found that (contrary to the cited reasons for the seizure) new developments had sprung

194. *Id.*

195. Ethnographic Notes, Courts, in Astana, Kaz. (Oct.–Nov. 2015).

196. *Id.* (emphasis added).

197. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 3; Akimat of the City of Astana, *Department of Internal Policy of the City of Astana*, Letter K-387-3T (Aug. 11, 2014) (on file with author).

198. Ethnographic Notes, Courts, in Astana, Kaz. (Oct.–Nov. 2015).

199. Interview with Attorney 6, in Astana, Kaz. (Mar. 2015).

200. Land Code of the Republic of Kazakhstan, *supra* note 33, art. 3.

201. Akimat of the City of Astana, *supra* note 197.

202. *Id.*

203. Interview with Appraiser 2, in Astana, Kaz. (May 2015).

204. Interview with Journalist (Sept. 25, 2015).

up in that location instead.<sup>205</sup> They cited informal pressure from the capital's *akim* to rule against the dispossessed landowners; that personal influence interacted with the formal authority vested in that office (for transferring categorization of land, initiating seizures) to create severe land insecurity for poor families.<sup>206</sup> Even though the ultimate reason for seizure had been falsified, the families *had* been residing illegally, and those officials responsible for enforcing occupancy laws belonged to the *akimat* administration, which initiated the seizure for state needs in the first place.<sup>207</sup> Threatening land security among vulnerable populations like these is, consequently, low-cost but high-gain for local officials.

Though these threats emerge and are settled at the local level, they are informed by centrally imposed laws and courts. Courts strive to protect the central budget, but where that prerogative does not conflict with local officials' actions, local officials' rights are prioritized over citizens' rights to a point. As addressed in the next section, there also exists a lower bound on officials' actions that courts consistently enforce. Thus, threats to property rights emerge from interactions between informal power structures and formal rules at differing levels of official state authority. Formal legislation creates guidelines and "tools" for local officials that balance their rent-seeking with the need to prevent these practices from draining the central budget. This results in vulnerable, low-resource individuals being targeted for expropriation. In particular, central mandates to limit compensation paid for seizures have shifted the burden of this insecurity from the central budget to individual citizens. Corruption has become "legal" and acceptable for the regime, but at the cost of further marginalization of already-vulnerable segments of the population.

## VII. How Law Matters

This section returns directly to the driving question of the paper: how do law and courts matter for property rights security? We see this most clearly when it comes to the issue of compensation for state expropriation of private property. The introduction of the law on state property shows that this rent-seeking must occur in a way that does not run counter to central authorities' interests, namely, their interest in not draining the central budget. That law introduced a clear mandate—backed by the president's informal authority as key patron—for how land-related rent-seeking should *not* occur.<sup>208</sup> Multiple sources involved in its creation stated that the law was developed in response to local *akims*' collaboration with *otsenschiki* (land appraisers) to inflate prices for land seized for state needs, specifically, the construction of a major, international transit corridor crossing Kazakhstan's southern regions.<sup>209</sup> Land

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205. *Id.*

206. *Id.*

207. Akimat of the City of Astana, *supra* note 197.

208. Interview with Appraiser 7, in Almaty, Kaz. (Dec. 2015); Interviews with Attorneys 9 and 13, in Shymkent, Kaz. (Apr. 2015).

209. Interview with Appraiser 7, in Almaty, Kaz. (Dec. 2015); Interviews with

appraisal at market value takes into account numerous factors and legally, can rest on three different accepted methodologies.<sup>210</sup> The combination of multiple methodologies—a relatively low level of professional training among many appraisers, errors, and room for subjective judgment—means that appraisals may differ significantly for the same land plot.<sup>211</sup> If local officials collaborate with or pressure appraisers, those values take on a particularly subjective and suspect hue. A report on the appraisals conducted for the transportation project found that most exhibit gross errors, with instances of low-value land being appraised at \$6,000 per *sotok* (1/100 hectare).<sup>212</sup> Funds for the transportation project came directly from the central budget. When the money for the highway vanished and there was little to show for it beyond empty steppe, authorities demanded an investigation and quickly introduced the “Law of Frightened Bureaucrats.”<sup>213</sup>

Because Kazakhstan does not use common law (and has abolished its Constitutional Court), judges can pick and choose statutes that provide officials with favorable terms while still remaining within the law. In court, attorneys and individuals often raise the argument that land appraisers’ calculation of compensation under point 2, article 67 of the Law on State Property violates Article 26 of the Constitution, which guarantees “equivalent compensation” in cases of expropriation for public use.<sup>214</sup> A judge advised against using this legal tactic in a case where neighbors with identical property received significantly different compensation. The Supreme Court had previously issued guidance that compensation was to be calculated in accordance with the Law on State Property, and “it was better to take the money and leave.”<sup>215</sup> The attorney had raised the example of a nearly identical land plot located in the same neighborhood as the one in question:

Attorney for landholder: They appraised it well, yes? 135,000,000 tenge.

Attorney for akimat: Well, that’s the expert’s appraisal.

Attorney for landholder: I heard that they have a sister in the akimat.

Attorney for akimat: Maybe the plot is somehow different? It’s not on [Street Name]?

Attorney for landholder: No, it’s exactly there.<sup>216</sup>

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Attorneys 9 and 13, in Shymkent, Kaz. (Apr. 2015).

210. Standardt Otsenki, Otsenka Stoimosti Nedvizhimogo Imuschestva [Standard Assessment, Evaluation Value of Real Property] (2013), <http://kazprice.com/standart-otsenki-otsenka-stoimosti-nedvizhimogo-imushchestva> [<https://perma.cc/5UL3-JZHY>].

211. Interviews with Appraisers 1–5, in Astana, Kaz. (May 2015).

212. SPRAVKA, *supra* note 145.

213. V. Pokusov, *V srede otsenschikov etot dokument nazyvaut zakonom ispugannykh chinovnikov*, [Among Appraisers, This Document is Called the Law of Frightened Bureaucrats], INTERFAX (2015), [https://www.interfax.kz/?lang=rus&int\\_id=quotings\\_of\\_the\\_day&news\\_id=5215](https://www.interfax.kz/?lang=rus&int_id=quotings_of_the_day&news_id=5215) [<https://perma.cc/2GQZ-JX88>].

214. See Law on State Property, *supra* note 69; Ryskalievich, *supra* note 76.

215. Ethnographic Notes, Courts, in Astana, Kaz. (Dec. 2015).

216. *Id.*

Neighbors of the landholder refuted the claim that the neighboring plots were “different enough” to warrant vastly different appraisals.<sup>217</sup> A physical inspection of the neighborhood provided no obvious reason to doubt the neighbors. The land plots under seizure appeared largely identical in location, home size, and other key factors.<sup>218</sup> Yet, the neighbor reportedly received the equivalent of close to \$500,000 in compensation, while the individual in the courtroom that day received less than a quarter of that amount (26,000,000 tenge).<sup>219</sup> This difference stemmed from distinct ways that legal and informal logics were combined. In the latter case, the landowner’s lack of informal connections meant that the judge followed the least-favorable legal interpretation, thereby protecting the interests of local officials and the central government. In the former, informal links to the local government led to the application of the more favorable laws governing compensation.

The above example suggests that barring some informal, personal connection that can be translated into “telephone justice” (or, perhaps, the ability to bribe the judge), individuals will always lose in court battles against local officials who violate their property rights. Certainly, only in highly exceptional cases will they manage to keep their property, and they are unlikely to receive a fair market value for their land. This results in acute property insecurity, because most who lack connections or wealth already exist in a precarious financial position and without land and housing, they become further marginalized. Most times, the sums offered are insufficient to buy anything remotely equivalent in an urban area. High land prices and rents in the city mean that families are forced to either move into far smaller dwellings—from an entire house into single-room dwellings, often without any bathroom or kitchen appliances (and no funds left to purchase those)—or to villages far removed from their current jobs and schools.<sup>220</sup> As one landholder decried in court, “[t]his isn’t equivalent housing (as specified in the Constitution and Land Code)—we’re going from better to worse conditions. We’ll be on the street.”<sup>221</sup> All this suggests that local officials always win. This, however, does not mean that law sets no bounds on how they do so.

Judges consistently emphasize the need—once a ruling is made—for the *akimat* to immediately release funds to those individuals whose land have been seized.<sup>222</sup> Attorneys confirmed that in cases between state officials and citizens, court decisions were reliably and quickly enforced: “it goes [and they’re fulfilled] sufficiently well if they’re state cases—if they’re private, sometimes it’s difficult (*slozhnui*).”<sup>223</sup> Moreover, in court cases where local officials had failed to compensate landholders at all, such as the seizure of the

217. *Id.*

218. Author’s Observation and Field Notes (Dec. 2015).

219. Ethnographic Notes, Courts, in Astana, Kaz. (Dec. 2015).

220. Interview 1 with Attorney 23, in Astana, Kaz. (Oct. 2015); Interviews with Landholders 4–6 and 9, in Astana, Kaz. (Sept.–Oct. 2015).

221. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015).

222. Ethnographic Notes, Courts, in Astana, Kaz. (Nov.–Dec. 2015).

223. Interview with Attorney 24, in Astana, Kaz. (Dec. 2015).

garage and property in Astana discussed at the beginning of this paper, judges did rule against the *akimat*.<sup>224</sup> In the aforementioned case, the judge chastised the *akimat*'s representative and threatened to have the prosecutor bring an administrative suit for failure to follow the law and provide compensation.<sup>225</sup> These cases were fewer than the disputes over the amount of compensation offered, but again, courts stressed payment (granted, not the payment that any of the landholders sought) for the land within the period specified by the law.<sup>226</sup> In a few cases, the judge marginally increased the amount of compensation provided, but did not stray far from the compensation offered by the *akimat*: "the difference [in what the landholders requested] was nearly KZT 20,000,000 tenge (about U.S. \$70,000 at then-current exchange rates) different from that which the state evaluated—I can't offer them that much more than what was originally offered."<sup>227</sup>

In other words, this minimal, legally-stipulated compensation constitutes a bound for local officials. Should they seek to circumvent it and avoid paying any compensation to landholders, they risk censure by courts. In fact, the very need to speak of circumvention indicates that the law affects their behavior. At the same time, the bounds set by central authorities on compensation provide local officials with strong incentives to target vulnerable individuals. Poorer, less-connected landholders are less likely to have informal networks that could change their or judges' calculus for compensation. Therefore, these landholders represent more attractive targets for seizure and rent-seeking. Rent-seeking in these instances is low cost, because it involves minimal payment and lower likelihood of formal, time-consuming challenges in court, or of potentially problematic issues involving informal ties. Those officials who fail to meet the minimum conditions for centrally-permitted rent-seeking—or who overstep their bounds in the other direction, by pocketing too much from the central budget or by taking from those with strong informal networks—increase their personal risk in what is otherwise a low-risk, legal rent-seeking enterprise.

### VIII. Legal Pluralism

Legal pluralism in property law, like the continued coexistence of the Law on State Property and Land Code examined in this Article and the "room for maneuvering" built into laws on appraisal and seizure, provide intentional space for multiple logics. In doing so, it usually propagates insecurity, but allows space for more secure property rights for some. Where individuals can draw on personal ties to buttress their property claims, more favorable legal statutes suddenly become paramount; where they cannot, officials and courts uphold the rights of the state and its agents to the detriment of ordinary citizens. This dynamic logic in the application of law more broadly reflects the politics which underlie social relations in Kazakhstan. Hale refers to this

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224. Ethnographic Notes, Courts, in Astana, Kaz. (Oct.–Nov. 2015).

225. *Id.*

226. Ethnographic Notes, Courts, in Astana, Kaz. (Nov.–Dec. 2015).

227. Ethnographic Notes, Courts, in Astana, Kaz. (Nov. 2015).

as patronalism, which “refers to a social equilibrium in which individuals organize their political and economic pursuits primarily around the personalized exchange of concrete rewards and punishments.”<sup>228</sup> As a consequence of these politics, property relations do not involve a single, linear reasoning, but rather shift depending on underlying informal conditions. This is not the same as claims that formal legislation does not matter; if that were the case, we would see a much more diverse range of outcomes. Instead, law and informal logic combine in patterned yet dynamic ways to shape how threats to property occur, and to whom. By the same virtue, they shape whose property is secure; those landowners with close personal ties to local officials enjoy the upper bounds of what the law has to offer—not only through compensation, but even by receiving protection against seizure itself.

Perhaps the most obvious evidence of this phenomenon is the continued existence of the small Chubary Raion, a neighborhood in the heart of Astana’s “new” city (as opposed to the older, colonial and Soviet era center). The neighborhood features numerous large, expensive residences, which also happen to be where many very high-ranking officials, including the current head of the presidential administration, live.<sup>229</sup> A new roadway has been planned that would require destroying a number of these homes, but there “were not [sufficient] financial resources” for the project to move forward in 2012.<sup>230</sup> To date, no land has been seized, and no roadway built. By contrast, just a few kilometers away in the neighborhood discussed above, a similar road expansion project has already begun.<sup>231</sup> The market rate there is—despite also being quite high—not an issue. There, most residents lack the informal ties needed to ensure the most favorable legal configuration.

## Conclusions

Do law and courts—contrary to most expectations regarding authoritarian regimes—matter for property rights security in Kazakhstan? In short, yes; however, they do not necessarily do so in a way that upholds broader conceptions of rule of law. Law matters because it communicates the central governments’ bounds for local officials. Land-related legislation concentrates enormous authority in *akims*. In doing so, it protects their ability to seek rents and reward their own networks, while legitimating those actions

228. HALE, *supra* note 186, at 20.

229. Personal Correspondence, in Astana, Kaz. (May, 2011); Natalie R. Koch, *The City and the Steppe: Territory, Technologies of Government, and Kazakhstan’s New Capital* 146 (May 16, 2012) (unpublished Ph.D. dissertation, University of Colorado), [http://nataliekoch.com/docs/Koch\\_2012\\_Dissertation.pdf](http://nataliekoch.com/docs/Koch_2012_Dissertation.pdf) [<https://perma.cc/J6KN-KYBE>].

230. A. Usupova, Chastichnyj snos mikrorajona “Chubary” v Astane obojdetsa primerno v 20 millionov dollarov [Partial Demolition of the Neighborhood “Chubary” Cost About \$20 Million in Astana], *TENGRI NEWS* (Apr. 3, 2012, 4:25 PM), [http://tengrinews.kz/kazakhstan\\_news/chastichnyiy-snos-mikrorayona-chubaryi-astane-oboydetsya-211405](http://tengrinews.kz/kazakhstan_news/chastichnyiy-snos-mikrorayona-chubaryi-astane-oboydetsya-211405) [<https://perma.cc/TZS9-SG7F>].

231. Interview 1 with Attorney 23, in Astana, Kaz. (Oct. 2015); Interviews with Landholders 4–6 and 9, in Astana, Kaz. (Sept.–Oct. 2015).



in terms of fulfilling public needs, such as improved infrastructure or educational facilities; it is difficult to garner broad public resistance to building schools or roads needed for rapidly-expanding urban areas. Local officials' continued ability to line their own pockets using regime-sanctioned actions helps sustain the vertical pyramid of patron-client relations on which Kazakhstani politics (and those in many authoritarian regimes) are based. As Hale notes, these behaviors are "not simply a tumor on the body politic, something that can be isolated and excised. Instead, they are more like the body's lifeblood."<sup>232</sup>

At the same time, law guides how this "institutionalized rent-seeking" may occur by setting effective upper and lower bounds for acceptable behavior. Rather than insecurity derived from violations of the law (legal insecurity), it is embedded within the law itself (allocation insecurity). Courts, as faithful agents of the executive, ensure that local officials remain within the boundaries set by law. In doing so, there are multiple logics at play: a legal logic, which rests on a hierarchy of laws; and an informal logic predicated on personal connections to state officials and, to a lesser extent, on wealth (the two are often linked and thus difficult to separate). Each logic constitutes a strategic resource, and how individuals combine them determines whether they get the upper or lower bounds of the law—but law still forms bounds.

In short, laws governing land rights in Kazakhstan reflect the informal principles which underlie the regime, but in a dynamic, interactive relationship, those laws also influence informal activities like local officials' rent-seeking. Law shapes how threats to property occur by providing a signal from central to local officials charged with the day-to-day interpretation of property rights about the kinds of behavior that will be tolerated. Judges are agents who act to ensure that rent-seeking occurs within the bounds of the law. They do so not only by adjudicating between these legal and informal logics, but also by providing an opportunity for limited redress to individual citizens whose property has been threatened in ways that violate the lowest limits of the law. Consequently, we see minimal rights for most, and far stronger, more robust property rights security for a select few. This implies economic growth that further exacerbates inequality, and in a rapidly-developing country, a modernization project that benefits some while excluding most.

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232. HALE, *supra* note 186, at 19.