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# Law and Disorder: Local Implementation of Mongolia's Land Law

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## ABSTRACT

With the dismantling of herding collectives in Mongolia in 1992, formal regulatory institutions for allocating pasture vanished, and weakened customary institutions were unable effectively to fill the void. Increasing poverty and wealth differentiation in the herding sector, a wave of urban–rural migration, and the lack of formal or strong informal regulation led to a downward spiral of unsustainable grazing practices. In 1994, Mongolia's parliament passed the Land Law, which authorized land possession contracts (leases) over pastoral resources such as campsites and pastures. Implementation of leasing provisions began in 1998. This article examines the implications of the Law's implementation at the local level, based on interviews with herders and officials in all levels of government, and a resurvey of herding households. Amongst many findings, the research shows that poorer herders were largely overlooked in the allocation of campsite leases; that the poor had become more mobile and the wealthy more sedentary; that there had been a sharp decline in trespassing following lease implementation, but that many herders and officials expected pasture leasing to lead to increased conflict over pastures. The Land Law provides broad regulatory latitude and flexibility to local authorities, but the Law's lack of clarity and poor understanding of its provisions by herders and local officials limit its utility. The existing legal framework and local attitudes stand in clear opposition to the implied goal of land registration and titling — an all-embracing land market and the supremacy of private property rights.

## INTRODUCTION

Land titling and registration are considered prerequisites to a functional and fluid land market. Land registration is promoted because it enables governments to collect property and real estate transfer taxes, allows landowners to obtain credit using land as collateral, stimulates investment

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in land improvements that lead to increased productivity and land stewardship and, presumably, promotes economic efficiency by facilitating transfer of land to those who make the best (that is, the most productive) use of it (Dale, 1997; Demsetz, 1967). The creation of private property is usually the objective of land registration and titling. However, titling may also be used to secure the rights of a group of individuals to a defined territory, thus improving the opportunity for successful self-regulation of common property, at least in theory (Bruce, 1996). Recently, land titling schemes in developing countries have come under increasing scrutiny, as have assumptions about the outcomes of land registration (see, for example, Atwood, 1990; Firmin-Sellers and Sellers, 1999; Jansen and Roquas, 1998; Place and Hazell, 1993). This article examines the first phases of implementation of Mongolia's Land Law, which provides for the allocation of land 'use' and 'possession' contracts. The Land Law is justified, in part, by the argument that secure tenure to pastoral resources should lead to improved resource management and decreasing conflict among resource users.

In Mongolia, private property in pastureland has never existed and is unconstitutional. In the past, there existed a complex of distinct but often overlapping or nested tenures to a variety of resources vested in groups of different sizes and social functions, and governed by an array of formal and informal institutions. These pastoral resources included seasonal pastures (winter, spring, summer and autumn), natural and man-made water sources, campsites, animal shelters and corrals, hay-cutting grounds, salt licks, and stock driveways. Prior to Mongolia's communist revolution in 1921, pasture allocation and use were governed in many areas by a combination of formal regulation imposed by ruling nobles (either secular princes or high-ranking lamas in the Tibetan Buddhist church), and informal norms and customs described by herders as 'unwritten law' (Fernandez-Gimenez, 1999). During the last thirty years of socialist government (1960–90), pasture use was regulated by the state, through the mechanism of the *negdel* or collective, although customary patterns of use and tenure informed *negdel* decisions to varying degrees. Since the demise of socialism in Mongolia in 1990, and the difficult emergence of a market economy and democratic political system, pasture use has not been formally controlled. The collectives that once allocated pastures and campsites and directed seasonal movement patterns were dismantled in 1992 and state-owned livestock were privatized. Although some customary forms of social organization quickly re-emerged, notably the traditional residential unit of the herding camp or *khot ail*, institutions to govern pasture use have not re-evolved in most places. In addition, the number of herding households increased dramatically following privatization as economic conditions worsened in towns and cities, and citizens returned to their native districts (*sum*) to claim their share of privatized livestock. After an initial lag of several years, livestock populations also increased steadily, with the national

herd size growing from 24.6 million head in 1989 to over 33 million animals in 1999. As a result, by 1995, once co-ordinated pasture use patterns disintegrated, and grazing patterns were characterized by out-of-season grazing of reserve pastures, concentrations of herds and herding camps near roads, settlements and water points, and decreasing mobility (Fernandez-Gimenez, 2001).

In 1994 the Mongolian Ikh Khural (national legislature) passed the Land Law, which contained provisions for the regulation and management of pastureland, including leasing of campsites and pasture. Leasing of winter and spring campsites began in 1998. This article reports on the implementation of Mongolia's Land Law at the local level, stressing the continuing challenges to providing both security and flexibility to herders in a mobile pastoral society. After first introducing the study communities and methods, we summarize the sections of the Land Law that apply to pasture and other pastoral resources, highlighting key provisions as well as ambiguities that threaten to undermine the law's utility. Next we report on how the Law is being implemented in each *sum* and on current land-use patterns in the two districts of Jinst and Bayan-Ovoo. After describing how herders, local authorities, and other stakeholders interpret the law and its provisions, we summarize our findings and discuss their implications for the sustainability of the steppes and the livelihoods that depend on them.

## STUDY SITES AND METHODS

Mongolia is divided into twenty-one *aimags* or provinces, each of which is sub-divided into *sum* or districts. Jinst and Bayan-Ovoo *Sum* are located in eastern Bayankhongor Aimag. Bayankhongor lies in west central Mongolia and extends from the crest of the Khangai Mountains in the north, to the border with China in the south. The province spans four ecological zones, from alpine tundra at the high mountain elevations, to mountain-steppe pastures in the Khangai, through the expanse of the steppe and the desert-steppe or Gobi, to the true desert at its southern extremes. In 1999, Jinst, covering 5,002 km<sup>2</sup> in the desert-steppe, contained 605 households, of which 584 owned livestock and 503 were listed as 'full-time herders' in government records. Bayan-Ovoo, which spans 3,213 km<sup>2</sup> in the steppe and mountain-steppe environments, was home to 870 households, of which 773 owned livestock and 650 were full-time herders.

In pre-revolutionary times, most herding households in the area now encompassed by Jinst and Bayan-Ovoo (and several other *sum*) migrated over large areas, spending the winters sheltered in protected valleys or outcrops in the low Narin Khar Ridge, or the foothills of Ikh Bogd Mountain in the Gobi Altai mountain range; migrating north along the

Tuin River in spring to graze the lush summer pastures of the Khangai in the mid-summer months. In the fall, they returned to the Gobi, camping on the sweeping steppes and near desert salt marshes, where livestock used naturally occurring mineral licks and fattened on salt-shrubs, wild onions and cured desert grasses. Many households herded livestock owned by the ruling monastery, and their migrations were governed by the Lamiin Gegen, the powerful religious leader of the territory, who dictated seasonal movements through appointed local leaders.

Following Mongolia's Revolution in 1921 and the subsequent destruction of monasteries and redistribution of livestock in the 1930s, some herders maintained these traditional patterns of pasture use, while others continued to move, but not quite as far. A smaller group of households began to spend most of the year in the Gobi desert-steppe, migrating in the vicinity of Orog Nuur, a large inland lake, and between other desert riparian areas.

Under the *negdel* system, the scope of migration was severely curtailed, and most herders were confined to the boundaries of their *sum* or even to their sub-district or *bag*. However, the *negdel* enforced seasonal movements and in some *sum* regularly sent groups of herders on long-distance *otor*<sup>1</sup> trips to other districts, and occasionally to other *aimags*. A key feature of pastoral land use in the pre-revolutionary era, the *negdel* period and today, is the practice of setting aside certain areas for use only during the winter and spring seasons. These areas are left ungrazed in summer and fall, so that the standing dried forage is available for animals to eat during the harsh non-growing seasons. In the pre-revolutionary era, the large distances between traditional winter and summer pastures precluded out-of-season grazing, and protection of reserve areas was enforced by customary law as well as formal regulation. In the *negdel* era, out-of-season use of winter and spring pastures was punishable by fines (*Duul Negdel*, 1990). Today, there is insufficient spatial segregation between seasonal pastures to prevent out-of-season grazing of reserves, and effective sanctions by government or community are lacking.

We first studied Jinst and Bayan-Ovoo in 1994–95, conducting intensive case studies in each *sum*, including a survey of a stratified random sample of 102 herding households, over 200 interviews with herders and local officials, and eleven months of participant observation living in herding camps. In April 1999, we re-surveyed 42 households of the original 102, and interviewed herders and local officials at length to determine how livelihoods, land-use patterns and property relations had changed since the first survey

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1. *Otor* is the rapid, often long-distance movement of a portion of a household's herd to distant pastures. *Otor* is undertaken to escape deep snows or drought, to fatten animals in the fall, or to bring them to fresh pasture in early spring.

in 1995.<sup>2</sup> In particular, we focused on herders' and officials' knowledge about and attitudes towards the recently-implemented Land Law, and their responses to several proposed alternatives to conflicts over resources and declining pasture conditions.

## THE 1994 LAW ON LAND

### The Letter of the Law

As well as briefly summarizing the provisions of the 1994 Law on Land, highlighting key ambiguities and potentially problematic provisions for implementation, this section will attempt to convey the apparent intent of the Law so that it may be contrasted with herders' and officials' perceptions of the Law, as well as actual implementation. The Government of Mongolia has recently enacted a new Law on Land, which came into effect in May 2003. The new Law maintains many of the same provisions as the 1994 Law, including, unfortunately, some of the more troubling ambiguities.<sup>3</sup>

The 1994 Law on Land provides for three types of rights in land: land ownership, land possession and land use. 'Land ownership', unlike possession or use, includes the right to sell land. The 1994 Law makes no further provisions for land ownership. 'Land possession' is a right to manage land

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2. The original survey was administered to a random sample of herding households in each *sum*, stratified by wealth group. Four wealth groups were identified based on subjective rankings made by three to four independent herders in each *sum* using established wealth-ranking methods (Grandin, 1988; Mearns et al., 1992). An average rank was calculated for each household, and the population of each sample *bag* was subjectively divided into four quartiles by rank. Ranks were correlated with the size of livestock holdings in the household ( $R^2 = .53$  in Jinst,  $R^2 = .37$  in Bayan-Ovoo), but herders also used other criteria in grouping households, including sources of outside income, social status, ownership of mechanized transport, ownership of high-status possessions, age of the household head and the number and age of children in the household. Due to the small size of the 1999 sample, households were divided into two wealth groups rather than four for analysis. Analyses indicate that few if any households shifted from the 'wealthier' group to the 'poorer' group or vice versa, based on livestock ownership and herding behaviour. However, we had difficulty relocating many of the households that had been in the poorest group in the original sample. Based on the best information we were able to obtain on these households, we interpreted their disappearance from the study *bags* as an indication that many of the poorest households in 1995 were no longer viable herding households in 1999. In several cases, elderly herders had died or moved to towns. Other households had also given up herding and moved to the *aimag* centre, while still others had moved to distant *sums* or *aimags* in search of a better situation in the company of kin from another district. These findings are similar to those documented in pre-revolutionary Mongolia, where the poorest of the poor were not herding households, but were individuals who could not sustain a herd and had no alternative but to perform menial wage labour, hawk trinkets, beg or prostitute themselves on the fringes of settlements.
  3. For an analysis of the 2003 Law on Land, see Mearns (forthcoming).

with some degree of exclusivity, but in the 1994 Law this remained restricted to a small area (0.05 ha for a dwelling with an additional 0.1 ha allowed for cultivation of vegetables, fruit or fodder by citizens living in settled areas). A land possession right may be transferred by inheritance, but not alienated by sale, and includes the right to transfer use to another (with the consent of the legal body that granted possession). 'Land use' is the right to make use of a particular land feature with no right of disposal. In practice, the distinction between use and possession rights is not clear.

The 1994 Law also refers to 'common use land', 'common use', and land that is 'commonly used', but these terms are not defined and may mean different things (Hanstad and Duncan, 2000). We infer that any land owned by the state, not owned or possessed by others, and not reserved for special use, is available for joint use by residents of the jurisdiction in which it is located. The Law further specifies that certain types of land, including water sources in pastures and salt lick areas, shall be available for common use regardless of whether they are allocated for use or possession. This provision protects the rights of all herders to access essential water and mineral resources but, by mandating that these areas remain open to all, the Law potentially undermines initiatives to grant exclusive tenure over large areas to herding associations or groups to manage for their collective use. Article 42 of the Law specifies that land possessed or used by others may be crossed unless fenced or specially posted with warning signs. However, the person using land in this way may have their use terminated if it renders the land unusable for its original purpose (for example, grazing).

According to the 1994 Law, *sum* governments are empowered to control implementation of land legislation, including to 'conduct control over whether land possessors and users are using and protecting the land and its resources efficiently, rationally, and in accordance with land and contract in their territory', to allocate possession and use rights to citizens, and impose land fees on land possessors and users. *Bag* governors and citizen *khurals* (councils) are charged with regulating common use land; making a seasonal schedule for pastures not allocated to others, and allocating hay-making areas; ensuring sanitary conditions on common use lands within the *bag*; and allocating winter and spring campsites not already possessed by others. Chapter 7, Article 51 of the Law deals specifically with pasture, charging *sum* governors with managing land, protecting pasture, and 'regulating its carrying capacity'. This article also states that *sum* and *aimag* governors, 'may take measures for pasture protection such as release of pasture which has been overgrazed and whose carrying capacity has been exceeded, or limit the number of livestock'. Paragraph 3 states: 'Pasture use shall be governed by the general schedule for winter, spring, autumn and summer settlements pursuant to the traditional system. Summer, autumn and reserve pastures shall be allocated to *bag* and *khot ail* and be commonly used'. *Aimag* and *sum* governments may establish pasture (extensive, nomadic) and settled (intensive, sedentary) livestock herding zones within their

jurisdictions, and may negotiate among themselves reciprocal pasture use agreements in the event of climatic disasters.

In summary, the 1994 Law on Land provides broad authority to *sum* and *bag* governors to regulate pastoral land use and allocate land. As will be shown, local interpretations of the Law vary considerably from the apparent letter of the Law. The 1994 Law also contains serious ambiguities in its failure to define 'common use' and to distinguish sufficiently between 'possession' and 'use'. The provisions that state that water resources and salt licks must be used in common could easily undermine tenure security to pastures on which these resources are located. Finally, the Law appears to prohibit allocation of summer and fall pastures under use or possession (allowing only for common use), which may limit options for co-management by precluding allocation to herding associations of territories that include all four seasonal pastures.

### Local Implementation of the Land Law

Apart from submitting the required annual Land Use Report, the local governments of Jinst and Bayan-Ovoo engaged in no land-use planning or management activities, nor did they attempt to regulate seasonal movement, pasture use or livestock numbers in any way, despite the common perception by officials that local carrying capacities had been exceeded. As the section on stakeholder perceptions (below) will show, interpretations of the Law by local officials and herders largely explain the lack of implementation of planning and management provisions at the local level.

Land leasing — that is, the granting of possession and use contracts over land — has been implemented to a limited extent. Campsites have been allocated, but pasture has not. By spring 1999, allocation of possession contracts for residential and commercial plots in *sum* and *aimag* centres had been completed. The allocation of possession contracts over winter and spring campsites was in progress. Campsites are a key resource, since good winter and spring campsites command the most protected areas with the earliest spring forage and a base of accumulated dung for animal bedding grounds that helps to insulate against the cold. There were no plans to allocate possession contracts over pasture to individuals or groups of herders. According to Bayankhongor *aimag* officials, possession contracts for campsites were issued to individual households in Gobi *sums* and to *khot ail* in most Khangai Mountain *sums*. In the latter case, each group was to choose one individual as the primary lease-holder, but the names of other joint owners were to be listed on the contract. In Bayan-Ovoo *Sum*, where at least one of the *bags* is in the Khangai, contracts were issued to individual households rather than *khot ail*.

The criteria used in allocating possession contracts varied slightly from *sum* to *sum*. In Bayan-Ovoo *Sum*, contracts were issued over 0.05 ha plots

containing campsites and animal bedding grounds based on: length and continuity of past use of the campsite; customary hereditary rights to the campsite (that is, parents camped there in the past); use of the campsite during the *negdel* (collective) period; and development of a new campsite or bedding ground on unoccupied ground or on a site abandoned for several years. In *Jinst Sum*, sixty-year contracts over 0.07 ha plots were granted using the following criteria: the fact that the herder was 'born' at the campsite; inheritance from parents; and use during the *negdel* period. If more than one household shared the campsite, the household with the longest residence received the certificate. In both *Jinst* and *Bayan-Ovoo*, where contracts were issued to one household per campsite, there were many more households than campsites. In *Jinst*, only 300 of 503 herding households were issued possession contracts, leaving 200 households without secure tenure. The situation was similar in *Bayan-Ovoo*. In both *sums*, households that were not allocated campsites were advised to claim an abandoned campsite, develop a new campsite on a previously unused site, or to 'stay with relatives' or negotiate with other contract-holders for campsite access. According to *Jinst Sum* officials, most of the 200 households without a contract are poor, owning few livestock, or are recently married couples (new households).

#### CURRENT LIVELIHOODS AND LAND-USE PATTERNS

Our household survey largely confirmed the national trend of increasing wealth differentiation among herding households. Average herd size among wealthy households increased from 60 *bod* in 1995 to 80 *bod* in 1999, with extreme variation among households (20–472 *bod*, standard error 19.5). The *bod* is the traditional Mongolian livestock unit, equivalent to one bovine or horse, seven sheep, ten goats or 0.75 camels. Average livestock holdings among poor households did not significantly change between 1995 and 1999 (from 29.2 *bod* in 1995 to 29.6 *bod* in 1999) and varied little among households (standard error 3.9). While the poor remain poor, failing to keep pace with inflation, and middle-income herders struggle to maintain their livelihoods, a few herders are becoming extremely rich in comparison.

Several changes in herding practices and patterns of pasture use in *Jinst* and *Bayan-Ovoo* have emerged in the past several years, which may be explained, in part, by local implementation of the Land Law. Overall mobility, measured by the average number of moves made over the past two years, the average distances moved, and the number of different campsites used, has changed little since 1995, although the total distance moved did increase over two years. However, mobility among the poorer households has increased, while the wealthier households have become less mobile (see Table 1). These results contrast with our earlier survey findings, in which the poor were found to be less mobile and to lack access to



Table 1. Changes in Mobility 1995–1999 in Jinst and Bayan-Ovoo Sums

	Poorer (n = 17)		Wealthier (n = 24)	
	1995	1999	1995	1999
Ave. number of moves per year <sup>a</sup>	3.2 (0.4) <sup>b</sup>	4.3 (0.3)	3.7 (0.3)	3.5 (0.3)
Ave. distance moved per year (km)	8.4 (2.2)	10.3 (2.0)	13.1 (1.8)	12.0 (1.6)
Total distance moved in previous 24 months (km) <sup>a</sup>	52.6 (14.0)	95.6 (17.9)	94.5 (10.7)	90.2 (13.7)
Number of different camps used in previous 24 months <sup>a</sup>	3.5 (0.5)	4.8 (0.4)	4.6 (0.4)	3.7 (0.3)

*Notes:*

<sup>a</sup>Data analysed using repeated measures ANOVA. Significant year\*wealth interactions occurred for these practices.

<sup>b</sup>Least squares mean (LS Standard Error)

transportation for nomadic moves. The frequency with which households make *otor* moves has increased slightly among the wealthier households, and remained constant among the poorer households.

We suspect that the explanation for these unexpected changes in mobility patterns lies in changing institutions of access to pastoral resources. We hypothesize that as campsites are formally allocated through possession contracts, often to wealthier households, poorer households must move more often and greater distances to access winter and spring campsites and shelters. Conversely, as wealthier households obtain secure rights over campsites, they are less likely to use alternative sites and more likely to remain close by to protect the surrounding pasture from trespassers. This hypothesis is supported by our finding that more than half of the poorer households reported camping at another household's campsite in the past five years, while only 8 per cent (two of twenty-four) of wealthier households did so (see Table 2).

Herders in both groups reported a sharp decline in the frequency of trespass on their own campsites (from 32 per cent in 1995, to just 7 per cent in 1999), a pattern that also may be related to the formal allocation of campsites. The frequency of trespass on reserve pastures has also declined overall (58 per cent in 1995, to 35 per cent in 1999), as has the rate of out-of-season grazing by customary users (from 55 per cent in 1995 to 28 per cent in 1999). Wealthier herders report higher rates of pasture trespass than poorer herders. This may reflect the fact that wealthy herders perceive that they have rights over pasture. In contrast the poor, lacking possession contracts over campsites, also feel that they lack informal rights to pasture and hence do not perceive that their rights are violated when others graze the pasture they use. More than half of the poorer households reported that they did not reserve winter, spring or emergency pasture, while only a quarter of wealthier households did not set aside any reserves. Again, this seems to indicate that poorer households, with no secure rights, do not have

Table 2. Changes in Pasture Use Patterns, 1995–1999 in Jinst and Bayan-Ovoo Sums

	Percentage of Poorer Households (n = 17)		Percentage of Wealthier Households (n = 24)		P(X <sup>2</sup> ) <sup>a</sup>		
	1995	1999	1995	1999	Year	Wealth	Year*Wealth
Reserve winter or spring pasture <sup>b</sup>	76	47	100	75	0.0047	0.0062	
Grazed own reserve pastures out of season	38	29	67	29	0.0477	0.2189	0.2414
Others grazed reserve pasture out of season	53	18	63	46	0.0290	0.1066	0.4083
Own campsite used by others	18	12	42	4	0.0268	0.9550	0.1159
Used another person's campsite	41	53	38	8	0.1976	0.0149	0.0313

Notes:

<sup>a</sup>Data analysed using nominal logistic regression.

<sup>b</sup>The full model including the interaction term produced unstable coefficients.

sufficient influence over the pasture they use to reserve it for winter. In fact, because they lack secure rights to campsites, they may not know in advance where they will be able to spend the winter, making it impossible to set aside pasture for winter and spring use.<sup>4</sup>

Overall, these patterns tell a somewhat contradictory story about the changes occurring in Jinst and Bayan-Ovoo. Trespassing has apparently declined and mobility among the poor has increased, both positive changes in the abstract. However, due to their much larger average livestock holdings, the decline in mobility among wealthier herders portends a negative ecological impact that outweighs any benefit of increased mobility among poorer households. Further, the allocation of campsite leases primarily to wealthy households, and the resulting decline in tenure security to both campsites and pastures for poor households, may threaten sustainable livelihoods for the poor as well as the potential for co-ordinated self-regulation of pasture use within local herding communities.

## STAKEHOLDER PERCEPTIONS OF ECOLOGICAL CONDITIONS AND PASTURE MANAGEMENT PROBLEMS

### *Herders*

Increasingly, herders in Jinst and Bayan-Ovoo *Sum* acknowledge negative changes in the environment, and the role that human activities play in causing these changes. These attitudes are markedly different from those documented in 1994–95, when most herders perceived grazing-induced changes either as temporary, reversible, and no cause for concern, or as an inevitable process of earthly ageing, which they were powerless to influence (Fernandez-Gimenez, 2000). Although the latter perception is still apparent, especially among older herders, many herders now perceive the main causes of declining pasture conditions to be increasing numbers of animals and the decline in mobility — particularly the trend for households to camp in one place for all four seasons and graze the surrounding pasture year-round without an opportunity for the area to rest. The following quotes and excerpts from interviews with herders in Jinst and Bayan-Ovoo are representative of the attitudes we encountered in April 1999.

The number of animals has increased a lot, the pasture has been used repeatedly, so the yield has been diminishing, the carrying capacity has declined and is seriously insufficient. It was all right when the *sum* had about 70,000 animals, but now it has over 100,000, therefore the

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4. Another notable change in herding practices is a sharp decline in the reported prevalence of absentee herding or herd placement. In 1995, 48 per cent of all sampled households herded livestock belonging to someone outside of their *khot ail*, while in 1999, only 14 per cent of households reported herding absentee-owned stock. The proportion of wealthy and poor households with absentee animals remained constant.

pasture has been used repeatedly. This happens because some herdsmen do not have the means of transportation and their animals are fed from the same place where they stay in all four seasons, thus the pasture is degraded. No pasture is reserved out. This is the situation. In the past, when there was the collective, herdsmen moved a lot, even far away to Arkhangai *aimag* by truck. After the 1990s land started to deteriorate, pasture has been used a lot and pasture condition has worsened. (Lhagvasuren, Bayan-Ovoo *Sum*)

It is not correct for people to stay in one place for four seasons. The pasture is getting worse because of overgrazing, staying for all four seasons. Also in some places there is some desertification — sand. I think it is because of staying in one place. This problem of staying in one place for all four seasons is something the administration must regulate or organize.

Q: Who should organize this?

A: The *sum* governor (*zasag darga*). I don't know. The *bag khural* or *bag darga*? Last year the *bag darga* called one meeting and nothing else. He collects the taxes and nothing else. (Chuluun, Jinst *Sum*)

Many older herders continue to believe that declining productivity is a natural process of earthly ageing (see also Fernandez-Gimenez, 2000). For example in the words of one old woman, 'When I was young there was lots of grass. But now maybe the earth is dying. The sand is covering the grass and the grass doesn't come out' (Jambaa, Jinst *Sum*). An older herder in Jinst *Sum* summed up the changes in social relations and the environment in this dialogue. Like the woman in the preceding quote, he also views pasture degradation, in part, as an inevitable process of ageing:

Q: In the monastery days, were there conflicts over pasture?

A: At that time, people didn't argue with each other. They were friendly with each other. In the old days people had great knowledge of the land. They knew each other well. At that time pasture was very good, the grass grew very high and thick, but now the land is degraded.

Q: Why does the grass grow badly now?

A: In ancient times, the land was young, now it is dying. Old men say that this is the time the earth will collapse.

Q: Really. When will this happen?

A: I don't know, but it will. All things become old. Now our land has a drought and we haven't any rain. Now sand covers all of the land. All these things are signs of collapse. (Namjil, Jinst *Sum*)

As these quotes indicate, herders increasingly perceive that localized overstocking and especially lack of mobility are major causes of the declines in pasture condition and yield. Another prevalent theme is the need for some regulation, and the lack of government support and intervention in pasture management.

### *Local Officials*

Local officials include *bag* governors (*darga*), who preside over the smallest administrative subdistricts of 50–250 households, and *sum* governors and staff responsible for roughly 1,000 households. Local officials vary in their

perceptions of current ecological conditions and their causes. Pasture management problems cited by local officials included: overstocking; border conflicts with neighbouring *sum*, including poorly demarcated *sum* boundaries; lack of adequate water resources, especially in summer; lack of access to transportation for herders; a shortage of winter and spring campsites; people from outside the *sum* grazing in *sum* territory; infestations of steppe mice; and increases in poisonous plants. Some local officials insist that carrying capacity has not been exceeded, but rather that the shortage of water points or campsites is forcing herders to concentrate in certain areas, overusing them.

One official, who had earlier noted that the pasture in Bayan-Ovoo *Sum* was 'turning to sand', also asserted that these changes were 'natural', and not the result of human activity ('not degradation'). 'If the rainfall is enough we have enough pasture in our *sum*'. Another Bayan-Ovoo official first said that he had not observed any overgrazing, then qualified this to say that there were places that were being grazed year-round (and overused), and later concluded the interview by saying:

In my opinion the space in Bayan-Ovoo is not enough for the current herds of over 100,000 animals and also the uncounted animals from other *sums* that graze here. Herdsmen want to be near the centre of the *aimag* and the market. According to the Land Law, herdsmen can go anywhere. If there were a *khoshuun*, it would be easier to regulate. In one year 1,200 households came from other *sum* and the *aimag* centre and all have their own livestock. This is the main reason for overgrazing. (Baasanbat, Bayan-Ovoo)

A *bag darga* in Bayan-Ovoo *Sum* made similar comments: 'There is not enough pasture for the animals in the *bag*. On paper there are 25,000 animals, but in actuality there are probably 35,000. 15,000 would be suitable for the amount of pasture available' (Boldsaikhan, Bayan-Ovoo).

### *Aimag Officials*

According to the head livestock official in Bayankhongor *Aimag*, the carrying capacity of the *aimag*'s pastures has been exceeded: 'In my opinion, there is enough pasture in Bayankhongor *Aimag* for 1.3 million goats. No more than 1.3 million. Officially, the carrying capacity is 1.6 million, but now there is a total of 2.5 million head. If they continue to increase, there will be a bad impact' (Janzan, Bayankhongor *Aimag* Centre).

This official also perceived a decline in mobility among herders, primarily due to lack of access to transportation, as well as difficulties for old people in moving. He attributed the disorganization of current pasture use patterns in part to a loss of traditional customs based on mutual respect, as well as the lack of strong regulatory authority (such as existed in the *negdel*), and on an increasing lack of respect for authority and unwillingness to take direction from others on the part of herders.

*Aimag* officials with the Land Management Agency (the agency under the Ministry for Nature and Environment responsible for local implementation of the Land Law) say there is no research on the carrying capacity of

Bayankhongor *Aimags* that is based on forage production. However, it is clear to them that some *sum* have insufficient pasture or campsites and herders are crossing borders into neighbouring *sum* to access these resources. Officially, herders are required to pay for the use of pasture in *sum* where they are not residents, but we heard of no instances where fees were collected.

### *Ministry Officials*

Most ministry officials have little knowledge of specific conditions in different areas, but acknowledge that there is little research on the carrying capacity of pastures based on actual forage measurements. Some officials of the Ministry for Nature and Environment (MNE) blame mining for loss of pastureland while officials from the Ministry of Agriculture and Industry (MAI) cited the creation and expansion of protected areas as a reason for diminishing pasture resources.

## STAKEHOLDER PERCEPTIONS OF THE LAND LAW

### *Herders*

Herders' knowledge of the Land Law and the status of implementation in their communities varies. Those who have possession contracts are aware of the campsite leasing provisions, but those who do not are often unaware of their existence. Some herders had no interest in obtaining a formal lease. Others felt it was a good thing, as it would provide an incentive for people to take better care of their campsites.

Herders continue universally to oppose privatization of pasture in any form, and perceive possession contracts over pasture as a form of privatization. The following excerpt from an interview with a well-off herder who has a possession contract over his campsite illustrates the typical attitude.

Q: Say for example, I have 1,000 sheep. I bring my sheep to your campsite. If we had a law, wouldn't it be easier to protect your pasture?

A: No, it is impossible. Mongolians have been herding our animals for hundreds of years with common use and living peacefully as neighbours according to the old saying '*Khayaa bagtakhar booj, khazar bagtakhar iddeg*' [occupy the land to the edges of your home and eat as much as the bridle allows]. What you are talking about is a huge task, a task that will be ineffective. We don't need it. There has already been one person murdered in a fight over a campsite.

Q: Here?

A: No, not here. I just heard about it last year.

Q: Where?

A.: Ah, two families had a quarrel, and it became a situation of revenge. This land ownership is the worst possible thing for livestock husbandry. Cropland can be privatized and protected, OK. Livestock husbandry certainly must not be settled. The climatic conditions are extremely difficult and changeable here. Therefore, pasture must be shared among herders and used in

common, for sure — it must be left as it is and has been for hundreds of years. (Bor, Bayan-Ovoo *Sum*)

In Bor's view, privatization and the creation of private property in land, and not the lack of property rights, cause conflicts. Other herders had similar views on the consequences of pasture privatization, as the following quotes illustrate.

If they do it [lease pasture], there will be a lot of conflicts between households. I don't agree with this. If pasture is individually owned, people will just graze in one place and afterwards the pasture will not be useable. (Chuluun, Jinst *Sum*)

I am against any kind of ownership [of pasture], by individuals or groups of households. It's difficult if I [need to] move...in dry years to fresh grass. Somebody will kick me out. (Danzan, Jinst *Sum*)

When pushed to decide which pastures would be most suitable for formal tenure, another herder commented: 'The most harsh is the winter and spring. Autumn and summer are OK everywhere. People can stay anywhere in autumn and summer. The winter and spring are hardest. If there is no alternative to privatization, the best seasons are winter and spring. However, it is wrong. This will cause disputes over land and real problems' (Lhagvasuren, Bayan-Ovoo).

The old and well-respected herder in the following excerpt was not displeased with the allocation of campsites, but remained highly sceptical about pasture allocation through possession contracts. Like many herders, he perceived that possession contracts over pasture would limit his access to key resources such as salt licks. His words illustrate once again the perception that constraints on transportation and lack of government regulation and support are responsible for unsustainable grazing practices.

People said that areas would be divided and allocated according to where people already were. People will own their shelters but pasture will not be allocated. If the pasture is allocated to people it wouldn't be a good thing. For example, I need to pasture cattle on a salt marsh place [to provide livestock with essential minerals]. If someone owned it, I couldn't go there. So how can I give salt to my cattle? People want to migrate to the nice places like the cool Khangai, places with water, and salt marshes, so that the cattle will fatten. If you prohibited it, how would you increase your herds? Also last year people were saying that we would get our campsite. For example, this is Baramsai's campsite and none could settle here but me. Also people were saying that if the government allocated campsites, they would take money from us. I don't have money for this.

Now, the most difficult problem is transport. If you provide the people with transportation, they will follow you. People lack transport, that's why when they moved to the good pasture they didn't take a lot of luggage. They just took a little *ger*, without furniture. For example, this *ger* in which we are sitting required almost ten camels, or one truck, for the load. A little *ger* requires only one camel or one or two yaks for the load. When I migrate to the new pasture, I'll lead an animal drawing a cart and drive the livestock. After privatization we are moving like this. Also, we check the pasture ourselves. The *bag* governor never comes and gives instructions about the pasture. They only get a salary, they don't do anything for the people. Before, during socialism, the *bag* governor always paid attention to us. He asked 'Where are you moving?' 'What are you lacking?' also he would ask 'Why do you stay only in one place?' 'Would you like to change pastures?' 'What do you need?' Nowadays, all of this

attention has disappeared. [In the old days] this *sum's* administration paid attention to us and supported us in many ways. The whole country has changed to a market economy. We got some livestock. Besides this, all social care has disappeared. (Baramsai, Bayan-Ovoo)

An interview with another Bayan-Ovoo herder, who moved to the countryside after privatization following a career as an agent for the *negdel*, again emphasized the problems with possession contracts over pasture and herders' fear of being excluded from resources or further limited in their range of movements. This herder had no interest in a campsite possession contract, and described negotiations among herders for campsite access.

The pasture growth is irregular from year to year due to the climate, so fixed places for seasons [are difficult]. This place was OK last year, [but if use areas are fixed] there is no alternative to returning to the same place this year. Therefore, land privatization and pasture scheduling are totally wrong. . . . For this particular land of our *sum* with sparse grass, this is not possible. It is OK with me here in the Khangai on our campsite. But in the steppe to the south it is impossible. Down in the Gobi, there is nothing. They have to come here, no alternative. We have to move from the Khangai. In some years this happens. Thus, privatization and scheduling are impossible taking into consideration that the grass grows differently every year.

Well, they [possession contracts over campsites] are not so important. In each campsite a household was given a certificate to indicate that the campsite is theirs. This was decided at a citizens' meeting. It was something in the legislation. If there were a heavy snowfall in my area, or if another family wants to move to my place when it is better here, I cannot deny it. But we need to negotiate well. Land possession will bring disputes, and problems for the administration. The contracts have been issued. We did not get one. They did not give it to us and we did not ask for it. Q: [Asked for clarification on negotiating over campsites.]

A: I stay here in winter, because this area does not keep heavy snows and gets less snow. Then people come and say they would like to stay next to me. I would not say no. They come and stay here. Some families from the Khangai came and stayed here. In return, if summer is not good around my place, I move to them. They receive me. It is better for both this way.

Generally, a one person, one piece of land system of tenure is wrong. In places like ours, in an [extensive] pasture livestock production system, this will not lead to a good result. Maybe it is possible for the land in the east with lots of cultivated fields. For our steppe here with frequent droughts, it is not possible. In the early 1990s, two years after I moved to the countryside, there was a drought and I moved south for the winter. That turned out all right. If I had stayed here, then all my animals would have died. (Lhagvasuren, Bayan-Ovoo)

This strong ethic of reciprocal access — a moral economy of the steppes — combined with the perceived necessity for freedom of movement, were stressed by many herders. On the one hand, as Bor explains, 'It's difficult to say no to other people, because we have known each other'. By the same token, it is difficult to be refused by others, as he anticipates would occur under pasture possession.

### *Local Officials*

Herders' perceptions of passivity and ignorance on the part of local officials were echoed by local officials' own descriptions of their management authority. In contrast to what the Law appears to authorize, local officials believed that they did NOT have the authority to: 1) instruct herders generally or



specifically when and where to move; 2) designate reserve areas or temporarily rest overused areas within their territories; 3) allocate pasture to individuals or groups for possession or use; or 4) regulate the number of livestock.

When asked how he would solve current problems of overuse and concentration around water sources a Bayan-Ovoo *bag darga* responded,

I have no means. There is no law, pasture and land have not been privatized, so anyone can go on any pasture. Herders from the first *bag* and second *bag* come to the third *bag* in summer to this pasture and they eat all the grass. It is very difficult to organize. I have told the herders from other *bags* not to come here because it is difficult to preserve our winter and spring camps. In one case there was high competition for pasture near the border of the *sum* where herders [from two *sums*] lived next to each other and each claimed it was in their territory. Sometimes herders take a neighbour's animals to another area — send them away. According to the map the winter camp belongs to both *sums*. I don't know what to do. . . . Livestock are the main source of income, so I can't order people to reduce the number of livestock. I have no right [legally] to exclude people. (Boldsai Khan, Bayan-Ovoo)

The *sum* governor in Bayan-Ovoo held similar beliefs: 'There is no law that we can tell someone else to move here or there. . . . The *bag* governor can control seasonal pasture, but not the *sum* governor. The *bag* governor can tell herders to move out of a winter area, but he can't tell them where to move' (Yondonlodoi, Bayan-Ovoo). The governor distinguished between ownership and possession or use rights, and articulated the logic for providing a possession contract. 'It isn't privatization, just possession — use rights. The aim of this possession is just to make herders think that this place is theirs so they will take care of it. . . . Because it's common pasture, herders don't save or protect it'.

In Jinst *Sum*, the *darga* of the *Sum Khural* likewise said that the government had no authority to force people to move: 'The local government must work within the law and if there is no law we can't do any regulation' (Bataa, Jinst *Sum*). When asked about plans to lease pasture, local officials invariably believed this to be practically impossible or illegal:

Pasture is common use land. Everyone can have livestock everywhere. Everyone has the right. (Tegshbayar, Jinst)

I am against the ownership of pasture. People talk about there is not enough pasture, but it is connected with the water supply. If there were enough water, there would be enough pasture. In the past, there was a lot of water research done here.

Nowadays, there are a lot of *sum* and they each have their own little area. That's why herders' movements are limited within the *sum* border. Traditionally, we moved far up north in the summer and south in the fall. But now movement is within the *sum*. Now there are discussions about combining three *sum*: Bayanlig, Bogd and Jinst. . . . [This area] was one *khoshuum*. In my opinion, this is the only way to expand the territory for the herders. The local *sum* administrations have already made the decision to join and have submitted their paperwork to the *aimag* centre.

Q: In a *khoshuum*, would the government organize movement or the herders themselves?

A: The herders themselves.

Q: What if there were problems with people staying in one place all year?

A: It is compulsory to move, but we can't say to someone, move out of here. Now many households have moved North, near the *aimag* centre. (Nyamkhuu, Jinst *Sum Darga*)

Thus, although some local officials distinguish between ownership and possession or use more clearly than herders, they — like herders — perceive significant problems with implementation of possession contracts over pasture. Like herders, they also value access to a variety of resources and some are actively seeking to expand the territory available to their *sum*'s herding population by advocating the formation of *khoshuun*-like territories. Local governments, in contrast to the letter of the Law, and the apparent wishes of some herders, do not perceive that they have regulatory authority to direct seasonal movements, limit livestock numbers, or designate areas for rest.

### *Aimag Officials*

*Aimag* officials of the Land Management Agency (LMA) have no plans to proceed with allocating possession contracts over winter and spring pasture. They perceive that dividing pasture and allocating it to groups of herders would be 'nearly impossible', due to current pasture shortages and the infeasibility of fencing or otherwise excluding outsiders from leased pastures. Although they acknowledge a problem with out-of-season grazing of winter and spring pastures, they see 'no way to solve this problem because by law these pastures are common use lands'. According to LMA officials, the main problems are conflicts over campsites. There are no big problems with herders sharing pasture.

### *Ministry Officials*

Some MNE officials believe in promoting a more settled style of livestock husbandry in Mongolia, characterized by increased investment in small-scale cultivation of vegetables, fodder crops and hay production. As the lead agency in implementing the Land Law, and the proposed cadastral survey and land registration programme, MNE officials tend to espouse an ideology that individual responsibility for pastureland tenure through the vehicle of possession and use contracts is necessary to encourage herders to take better care of their pastures. MNE officials see the main purpose of a cadastral survey and land registration, with respect to pastureland, as 'defending herders' rights to use the land', and encouraging them to 'use the land properly'. They generally believe that pastureland is the most complex and difficult to address in a cadastral survey and land registration programme, and that land use monitoring and planning are not well developed in Mongolia.

According to MNE officials, under both the 1994 Land Law and the proposed revisions, local *sum* and *bag* governments have the authority to make decisions about pasture use and allocation in their territories, including limiting livestock numbers, setting aside reserve areas, and resting over-used pastures. Most believe that the 1994 law does not allow for possession contracts over pasture. Some say that summer and fall lands would remain available for common use, while others stated that there would be no

distinction between seasonal pastures and all would be available for possession. According to one official, the proposed amendments would also allow for sub-leasing of pasture by holders of a possession contract. The MAI tends to act as an advocate for the interests of herders and livestock production and appears more conservative with respect to opening land markets than the MNE.

### *Foreign Experts*

Economists and policy analysts view the primary goal of land titling as the creation of a functioning land market and a mechanism for the government to collect land fee payments (and increase its tax base). In the context of pastureland, a secondary objective is to grant individuals or groups secure title to facilitate improved management and investment, and potentially the use of land as collateral for loans. Although aware that the constitution prohibits the privatization of pastureland, some consultants nonetheless assume that privatization of all land in Mongolia will ultimately occur in some form. For example, a 1997 technical assistance report on 'Strengthening Land Use Policies in Mongolia' by consultants contracted by the Asian Development Bank stated:

It is stressed at the outset that the land in Mongolia should be considered as a totality. It is not easy to appreciate this at the moment with the emphasis being on 'possession' of crop farmland by economic entities, and without the institutions to carry out cadastral survey and register the possessory and usufruct rights of the new private farmers. However, in the longer term Mongolia must accept that the land market crosses all land types. (GISL, 1997: 21)<sup>5</sup>

Environmentalists and conservation biologists are primarily concerned with the protection of biological diversity and prevention of desertification and other forms of land degradation. The focus of these groups has tended to be the assessment of current ecological conditions, calculation of pasture carrying capacity as the basis for regulating herd size, establishment of environmental monitoring programmes, and expansion and improved management of protected areas (Danida, 1996; Flamm, 1998; Ministry of Nature and Environment, 1996).

Consultants concerned with the welfare of herders and the health of the pastoral economy generally perceive close links between poverty and environmental degradation (or conversely, ecological health and socio-economic sustainability). They tend to be focused on the development of land policy that will facilitate rational and ecologically appropriate land use by herders, attending to traditional forms of organization and patterns of movement. While some livestock production experts initially advocate some form of

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5. Ultimately, the cadastral survey and land project approved in December 1999 excluded pasture land (Robin Mearns, personal communication, September 2000).

pasture privatization, they are usually quickly enlightened after discussions with herders. As one recent arrival working on veterinary services and genetic improvement in cashmere goats put it, 'When we brought up land tenure, they laughed in our faces'. A number of projects in this category as well as some in the environmental category have recommended the establishment of pilot co-management projects to 'test' the pasture leasing provisions of the Land Law and assess the capacity of herding communities for self-governance and self-regulation to overcome current unsustainable trends in grazing patterns (Agriteam-Canada, 1997; Buzzard, 1998; Danida, 1992, 1996).

### Solutions to Current Land Use Problems

Two major approaches to current land use problems have been advanced. The first is the expansion of territories to approximate the size of pre-revolutionary *khoshuun*. The second is the formation, on a trial basis, of pasture co-management regimes within the parameters of existing law. At all levels within the *aimag*, from herders to *aimag* officials, the idea of reuniting *sum* into larger *khoshuun*-like administrative territories is popular, but it is especially popular among herders and *sum* authorities. There is some support for this idea among Mongolian researchers as well. Scholars at the Institute of Geography have been advancing the concept of ecologically suitable territories (Batbuyan, 1996; Bazargur et al., 1993) for a number of years, arguing that administrative-territorial areas must take into account the resources required by herders during the entire annual production cycle, and should be based on, among other things, herders' traditional use patterns.

The following extract from an interview with a herder from Bayan-Ovoo *Sum* is representative of herders' views on reunification.

Q: You're saying that pasture is degraded. Can you think of any way to regulate pasture use?

A: First and most important, if it were possible, I don't know, if the administrative unit of organization could change to resemble the organization of the past. This is because Bayan-khongor *Aimag* had a few *khoshuun* in the past. It could be divided into four *khoshuun* and on one hand economize, and on the other increase the size of pasture territories for moving around. . . . From the point of view of easing the pasture overload, it is better to expand the pasture and keep away part of the animals for a while. Our *sum* has too many animals for the pasture, therefore the administrative territory had better be expanded. . . . For our *sum*, it was Bangiin *Khoshuun* in the past. Bangiin *Khoshuun* covered Edrenetsogt, Bayan-Ovoo and all the territory to the Tsagaan River in the south of Baatsagan. In this territory there are three *sum* now. So, better to unite the *sum*. I think the past organization was right. This is good for population's genes [i.e. reducing intermarriage among local, related, families], good for pasture availability in the Khangai and the Gobi, and good for animals to be strengthened. This was good organization as far as I can see. (Lhagvasuren, Bayan-Ovoo)

Local officials echoed this view as reflected in the comment by the *Khural Darga* of Jinst *Sum*: 'The main thing is to join into a *khoshuun* and give herders the freedom to move over a large area' (Bataa, Jinst).

The *Khural Darga* of Bayan-Ovoo Sum was also in favour of *khoshuun*. In addition, he felt that the only solution to the current situation would be the revival of customary institutions: 'In my opinion the current change means regulation of pastures according to the old unwritten pasture law. The tendency is to go back to the traditional pasture livestock breeding ways. ... If we try to revive the old traditions, we should also revive old pasture use, and begin to revive the custom of respecting each others' pasture' (Dashbazar, Bayan-Ovoo).

Re-creating *khoshuun* may be a necessary, but not sufficient, measure to solve the current pasture use challenges. The expansion of territory to encompass all four seasonal pastures will not necessarily ensure that herders will rotate among seasonal pastures in a co-ordinated fashion, nor does it address the possibility that all the constituent *sum* are currently overstocked. If they are all overstocked, expanding the boundaries will not provide any additional pasture and may add to chaos and conflicts. The expansion of territories combined with regulation and some form of in-kind support for transportation, may begin to address the problem.

The second approach, advocated primarily by foreign experts, is the creation of co-management regimes for pasture use (Agriteam-Canada, 1997; Buzzard, 1998; Danida, 1992, 1996). This approach relies on the assumption that the Land Law allows exclusive allocation of pasture to an organized group of herders, which would jointly lease the pasture and manage its use within the group. Co-management could take a variety of forms, including group tenure over a large area that encompasses all four seasonal pastures, water, salt licks and other essential resources. Nested tenure regimes could co-exist within a larger co-management regime. For example, it would not preclude more exclusive tenure over campsites, as currently exists. In this case, the members of the group might include all the households in a *bag* or *sum*.

Another option is to grant joint tenure to smaller groups of herders over smaller areas, for example a shared winter pasture area. As we have seen earlier, however, herders and local officials are highly sceptical, if not outright opposed, to such approaches. The most palatable approach to formal tenure was allocation of a large area to a large group, provided that co-management institutions allow for flexibility between years and seasons. Most herders felt that such an arrangement might be feasible, particularly if a governing co-management committee had strong representation by herders as well as local government.

If co-management is attempted on a pilot basis, significant challenges remain in developing rules to determine group membership in a culture where a powerful moral economy operates, based on reciprocal relationships with outsiders. Even if social and spatial boundaries can be established, the crafting of written or unwritten rules for pasture use presents major hurdles. Control over the timing and spatial distribution of livestock is the first avenue for regulation, and this approach most closely parallels

customary institutions (Fernandez-Gimenez, 1999). Once spatial boundaries are fixed, however, mechanisms to control livestock numbers (stocking rates) will have to be developed. As our interviews reveal, there is a strong antipathy towards regulation of herd numbers, by officials as well as herders, even though the existing law allows for it. The regulation of seasonal movements by herders alone, by local government alone, or by a co-management committee consisting of both herders and local government, seems to be the solution of first resort to current unsustainable grazing patterns. Due to the challenges of collective action among herders on their own, and the lack of capacity for rule-making, monitoring and enforcement at the local government level, a co-management approach seems most likely to succeed. Regulation of movement could occur within a formal tenure framework or without it. This is an approach that herders find more acceptable than allocation of small-scale pasture resources. It does not, however, address material constraints to mobility.

## CONCLUSIONS AND IMPLICATIONS

This article has traced the continuing development of property relations and pastoral land-use patterns in two Mongolian communities by examining the implementation of Mongolia's 1994 Land Law at the local level. By using a survey together with interviews, we gleaned data on herders' behaviour as well as their beliefs. Perceptions and behaviour did not always coincide, nor did the letter of the Law and local interpretations, revealing the complexity of choices facing law-makers, those who implement the Law, and those who must abide by it.

We found that in Jinst and Bayan-Ovoo, the poor are staying poor and that there is increasing variation among herding households, due largely to the accumulation of great wealth by a few. Many herders perceive that transportation constraints seriously limit mobility, thereby causing increasing degradation. This perception is supported by our earlier findings (Fernandez-Gimenez, 2001). However, the 1999 survey showed that poor households were more mobile in 1999 than they had been in 1995. This increase in the mobility of poorer households is likely to be related to lack of access and secure tenure to campsites (and hence to surrounding pasture), due to allocation of possession contracts over campsites predominantly to wealthier households. This mobility could be considered involuntary, in contrast to voluntary mobility (or settlement) undertaken by wealthier households. By the same token, the increasingly sedentary behaviour of the wealthy appears to be related to the fact that they now possess official rights to campsites, creating incentives to use the same camp repeatedly and to protect improvements and pastures by staying in the area.

The survey suggests that formal tenure over campsites may have decreased the incidence of trespass, and presumably of conflicts over

campsites. An alternative explanation is that new herders in 1995 were better incorporated into communities in 1999 and have found their own campsites, decreasing trespassing events. Despite the apparent decline in trespassing, herders believe that possession contracts over pasture are more likely to increase conflicts than to reduce them. Overall, herders and local government officials remain strongly committed to a mobile form of pastoralism, and to the moral economy of reciprocal relations that underlies the nomadic way of life. In virtually all interviews, herders valued access to a broad range of resources over security of tenure for specific resources. Interviews with herders cited in a September 2003 newspaper article suggest that these views remain prevalent among herders with the implementation of the 2002 Land Law (Lloyd, 2003). Yet many herders also yearned for greater co-ordination of pasture use and some direction and assistance from local government. Both herders and local officials believed that territorial expansion and the dissolution of boundaries between *sum* was the best solution to existing pasture use problems. These views contrast starkly to the prevailing wisdom on the rationale for land registration and titling, and call into question the viability of a land registration programme for pastureland in Mongolia.

In conclusion, two aspects of the Land Law and its implementation are of particular relevance to the sustainability of pastoral livelihoods on the Mongolian commons. The first is the pattern of allocating formal tenure to campsites to only a subset of households in each *sum*, and of favouring wealthier households in those allocations. Poorer households may own only a few livestock, and therefore seem to be of little consequence to pasture use. However, excluding these households from allocation processes will only accelerate the downward trajectory of many herders into poverty, and may undermine future efforts to bring order and co-ordination to pasture use. Alternatively, this pattern may signal a move towards a pre-revolutionary form of social organization, in which poor households exchanged their labour for the protection and resource access provided by wealthy *khot ail* leaders.

The second is the lack of clarity in the Law as to the meaning of 'common use', and its relation to 'land use' and 'land possession'. We are concerned about the consequences of making all mineral licks and natural water sources 'common use' lands, even if they occur on lands for which possession or use contracts have been granted to specific groups or individuals. Such provisions may make it difficult to implement rangeland co-management schemes that aim to provide secure tenure over large areas of land to groups of herders constituted as grazing associations so that they can manage use among their membership. As written, the Law would seem to make it impossible for a group to have exclusive rights to any area that includes mineral licks or natural water sources. These resources are open access by law, making it difficult or impossible to control the use of pasture around them. Somehow, provisions must be made to ensure access for all to these key resources, while protecting the interests of herders who have

exclusive use rights to surrounding pastures. The Law is also unclear as to whether summer and autumn pastures may be allocated under exclusive possession or use contracts — even to groups for their joint use. Inability to manage in a co-ordinated fashion the entire suite of seasonal pastures used by a given group of herders would undermine prospects for co-management.

The fierce attachment to a mobile way of life and to the ethics of access and reciprocity which this implies are great strengths of the Mongolian pastoral economy. This commitment to nomadism is reflected in the 1994 Land Law and the Mongolian Constitution. The existing legal framework and local attitudes stand in clear opposition to the implied goal of land registration and titling — an all-embracing market in land and the supremacy of private property rights. However, the current legislation and local attempts at implementation may also hinder efforts to solve current pasture use problems through development of co-management institutions that could, if carefully crafted, bring order to the steppes while ensuring sustainability of land and livelihoods.

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