



# **Land Legislation and the Possibilities for Pastoral Risk Management and Adaptation to Climate Change – The Example of Mongolia**



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## ***Abstract***

This paper addresses the impacts of climate change in Mongolia asking what legal instruments can help to assure the adaptation of pastoralism - being the predominant economic activity and mode of life of the rural population - to the changing conditions.

Leading to more frequent disasters, climate change makes pastoral adaptation necessary and disaster risk management a primary need. The analysis of pastoralism in Mongolia shows that securing the mobility of herders and their access to the relevant natural resources (pasture land, water, salt-licks) is a key feature for the adaptation to climate change and the corresponding risk management.

The traditional access regulation system has largely disappeared due to the political and socio-economic changes during the socialist time of complete state regulation and in the following transition to a market economy with the almost abandonment of any kind of regulation. To date, it has not been replaced by new working institutions. Neither the current situation of de facto open access nor a complete privatization of the pasture land (that would be unconstitutional and is rejected by herders) can ensure the access to the relevant resources for the majority of the pastoral population under the changing conditions. The unregulated and unlimited access - leading to an overly excessive exploitation of resources - aggravates the negative impacts of climate change; the splitting of the pasture in the course of privatization would not any longer allow a flexible access to resources in the event of disaster and therefore undermine the adaptation potential that pastoral practices are providing.

An access regulation based on user groups is preferable. The analysis of the current land legislation (particularly the Law of Mongolia on Land) and of the draft Law on Pasture land shows that they do not meet completely the specific challenges of adaptation of the pastoral economy. Thus, improvements are required to assure an effective implementation of this new pasture management system based on land possessing user groups, as e.g. a reasonable organization, clear determination and abbreviation of contracting procedures for land possession contracts; the avoidance of destructive competitive relationships between user groups and existing structures by an adequate approach of group formation; the elaboration of intra- and inter-group dispute resolution mechanisms; a clear determination and stipulation of the role of the state administration; the development of equitable compensation regulations in the case of land condemnation; as well as capacity-building of the stakeholders and the provision of model possession contracts and model land management plans to facilitate the activities of the groups.

## ***Executive Summary***

Mongolian herding is a proven livelihood system adapted to the local conditions. It has been reliable and successful for a long time. Nowadays around 30 % of Mongolian households make a living directly from livestock breeding. However, pastoralism has always involved risks related to weather and climate variability. During the *zud* – the harsh winter and spring – of 1999/2000 and 2000/2001 Mongolia's herd was reduced by over two million livestock, and subsequent climatic events had similar impacts - drawing the attention to the devastating role that risk plays in the pastoral economy. Thrown into the new system of a market-oriented economy that forced many people who lost their state jobs to try their fortune as - inexperienced - herders, and deprived of the former intensive Soviet assistance, the highly heterogenic pastoralist society was not able to cope with the occurrence of these extreme climatic events.

Climate change is likely to increase the frequency and intensity of climate hazards in such an already extreme climatic region as Mongolia. Located in the northern latitudes, Mongolia is part of the regions where the highest global warming is occurring. The 1.9 °C temperature increase since 1940 has led to short, rapid warming and melting of snow covers occurring during winters. As the ground is then still frozen, the melted water creates ice sheets on the ground surface impeding animals from grazing. Adaptation and disaster risk management options for pastoralists will become more and more crucial. Due to the socio-technical system of pastoral livelihoods, these options are mainly determined by the possibility of accessing natural resources, mainly pasture, water and salt licks.

Besides numerous customary patterns, the access to pasture land is regulated by the land tenure legislation. The real capacity of a legislation to solve problems does of course depend on its implementation and on the quality of governance in a country. However, the existence of an adequate legal framework regulating the access to pasture land is of particular importance in the attempts to allow pastoralists to adapt to increasing risk as a consequence of climate change.

### **The Importance of Access to Vast Areas of Pasture Land**

As pastoralism is a system of animal husbandry often exerted in extreme environments and on marginal soils, there is a need for mobility and flexibility of access to land and other natural resources in order to create options for disaster risk management and adaptation to climate change. At the same time, the ongoing degradation of Mongolian pasture land makes it important to create incentives to prevent pasture from degradation in order to not further increase scarcity of resources. To combat this scarcity, it is important to reactivate remote pastures as well. Thus, the regulation of the access to pasture land is of overriding importance.

### **Options for Access Regulation to Pasture Resources**

The traditional access regulation system in Mongolia has largely disappeared as a consequence of the socialist time of complete state regulation and the following transition to a market economy with the almost abandonment of any kind of regulation and a situation of de facto open access. In the international debate different options are discussed to regulate the

access to pasture resources: The reestablishment of a strong state regulation, privatization and land titling, or a community based management based on herder groups. Privatization of pasture land is unsuitable for a country where around one third of the population relies economically on the flexible access to this resource for their pastoral livelihoods. In addition, it is in contradiction with the current Mongolian constitution and not accepted in the public opinion. A mere state regulation will be impossible to handle for the state due to a lack of financial and personal resources, and the complexity of the issue because of extreme local variation and the geographic extension of the country. The past 18 years have shown that the state alone cannot cope with this issue. Therefore, the option of an access regulation through user groups is preferable.

### **Building User Groups**

User groups can be formed either on kinship or following a territorial approach (Fernandez-Gimenez et al. 2008). The kinship approach allows for an easier communication between the members of the smaller and socially related group, which maintains transaction costs for agreements low. However, they pose the problem that social and spatial boundaries may not be well in accordance with each other because usually, not all herder households on one same territory will be part of the same group. This problem can be avoided with the territorial approach meaning that all inhabitants and resource users of a certain territory should form part of one group. However, it has to be acted with caution in order not to create parallel structures to the existing political structures, especially the structure of the *bag*<sup>1</sup>. This danger could be alleviated by giving groups an economic function, e.g. as producers' cooperative, which distinguishes them from the mere political and not rent-seeking function of the *bag*. State support can be useful in the phase of establishment of these groups, and for inter-*sum* and inter-*aimag* agreements, especially if access to additional pastures will be needed in case of disasters.

### **Key Principles for a Legal Framework for Land Management Based on User Groups**

Law is certainly not per se a representation of a common will and not neutral to the political and economic interests of parts or groups of the population, nor is it always enforced neutrally through independent state institutions (see e.g. Benda-Beckmann 2005, Benda-Beckmann 2009). Besides the official state and international law, there are often traditional and religious legal orders and a wide variety of principles and procedures generated by non-state actors. However, state law is a crucial aspect of governance.

Experiences and lessons learned from other examples of pasture management frameworks as well as from the forestry sector in Mongolia show that an adequate official legal framework is extremely helpful in order to allow for the formation and operation of user groups. It must meet with some key principles.

A concrete procedure for granting tenure rights should be in place, those tenure rights should be exclusive rights for the respective user groups and adequately secured. Furthermore,

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<sup>1</sup> Smallest administrative unit at rural level, including less than thousand individuals, sometimes only 30 to 50 families.

groups should be provided not only with tenure but also with management rights to enable them to carry on the responsibility of sustainable maintenance of the resources allocated to them.

With regard to the organization of the groups themselves, clear criteria for membership status and corresponding rights and duties should be in place as well as working mechanisms for intra-group dispute resolution.

Concerning the external relations of groups, there should be clear provisions for the legal recognition of groups and the formation of land possession contracts, and procedures for resolution of conflicts with other groups or with the land owner – the State – should be provided. In addition, the responsibility of the State for a subordinate coordination through a broad land management plan at *aimag*<sup>2</sup> and national level and the coordination of land allocation to the various groups must be clearly determined. Ultimately, adequate capacity building must take place in order to make all regulations available to the knowledge of the stakeholders and enable them to participate in their implementation.

### **Historical Context of Land Tenure Legislation in Mongolia**

It is important to understand the historical context of land tenure legislation as well as the general current legal frame in order to analyze if the land regulations meet the listed principles and are an adequate tool facilitating the needed access of pastoral user groups.

In Mongolia, individual private ownership of pasture land has never existed. Before the communist revolution in 1921, pasture allocation and use were governed in many areas by a combination of formal regulation imposed by ruling nobles – secular princes or important lamas in the Tibetan Buddhist church - and informal norms and customs.

After the revolution in 1921 the concept of pastoralist lifestyle was included in the socialist concept by the Mongolian People's Revolutionary Party. Although pasture use was regulated by the state through the mechanism of the so called *negdels* - the collectives each of which managed pastoralism in an entire *sum*<sup>3</sup> -, the decisions of the *negdels* were often influenced by customary patterns of use and tenure. Important investments were made in water supply, winter shelters, hay and fodder production and transportation for the pastoral technique of *otor* by which herds are repeatedly moved over distant and lesser-used pastures as a method of intensive feeding. Summarizing the property rights situation of that time, land was owned by the state, use was managed by the collective's leaders, and within the areas allocated to each collective, pastoral household made use of recognized areas of pastures.

With the end of socialism in 1990, pasture use was initially not formally controlled. In 1992, the *negdels* were dismantled, and collective and state-owned livestock and other assets were privatized by issuing share coupons which employees could use to claim a share of the collectives assets. Land, however, remained a public resource in state property. Its use by local pastoralists should have been regulated by local government, but during the first years of

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<sup>2</sup> Province, largest administrative unit (Mongolia consists of 21 *aimags*)

<sup>3</sup> Local government district, including something around thousand households.

this transition period it can be said that- despite the fact that all land was in state ownership - there was rather a situation of de facto open access to the resource.

### **Property Law and Land Legislation in the Current Legal System**

One of the most remarkable results of the transition in Mongolia is the establishment of a new system of law in which the property law is incorporated. The current system of Mongolian law borrows from the Romano-Germanic legal tradition and is therefore divided into private and public law. There are manifold customary norms. They are not considered to be a principal source of official law. However, some evidence of the importance of customary rules can also be found in Mongolian written legislation (Narangerel 2004). There is a prohibition on judicial interpretation in Mongolia (Lindsay et al. 2006). This means that judges are not allowed to fill in indefinite legal concepts. This is common in socialist legal systems, where law is only meant as another means of implementing governments' decisions. It will be difficult to preserve this concept outside the context of a planned economy, because many abstract legal terms are needed in order to be able to cover reality in its complexity and unforeseeable developments. A prohibition of judicial interpretation leads to a need of extreme concretion if a legal provision is to be applied efficiently.

Property law is found primarily in Articles 83 to 152 of the Civil Code. It designates property - synonymously termed as 'objects' - to legal subjects<sup>4</sup> who may be the owners or the possessors of this property. As in many countries' legal systems a distinction is made between movable and immovable property. Land is classified as immovable property as are assets such as buildings that cannot be used for their original purpose when they are separated from the land. The right to ownership of immovable property has to be registered with the State.

The core elements of Mongolia's land legislation are Article 6 of the Constitution, which deals with the possibility of private ownership of land, Charter 12 of the Civil Code, the 2003 Law of Mongolia on Land (LML) and the Law on Allocation of Land to Mongolian Citizens for Ownership (LALMCO).

Land tenure is regulated mainly by the Law of Mongolia on Land (LML) enacted in 1994, which was followed by a revised version in 2003. As the LML contains provisions for leasing of campsites and pasture, it introduced some provisions for the regulation and management of pasture land. Leasing of winter and spring campsites began in 1998, but the local administrations were slow to divide and allocate grazing land. This was partly due to an impreciseness of the law concerning the issuance of certificates of possession over winter and spring campsites. Traditionally the right of a campsite entailed an implied use right for the respective winter and spring pastures in the surroundings within a radius of several kilometers (Sneath 2004). However, with the wording of the law it remains unclear if the certificates of ownership apply to these pastures as well. Most *sum* issued certificates only for winter campsites (Fernandez-Gimenez and Batbuyan 2004), thus for small point locations.

Summer and fall pastures must remain openly accessible, and so must water and mineral licks. The law empowers *sum* and *bag* governors to enforce these provisions and to regulate

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<sup>4</sup> Legal subjects can be individual citizens, but also legal entities such as business entities or organisations.

seasonal movements and stocking rates, but few of them are aware that they have this authority, nor do they have the resources to carry it out (Fernandez-Gimenez and Batbuyan 2004; Fernandez-Gimenez 2006).

With regard to the use and possession of land by groups, the LML regulates the issuance of possession contracts. Land possession is provided for a duration of fifteen to sixty years through a license that may be extended for no longer than forty years at a time, Art. 30.1 LML. These land possession contracts are made with the *sum* land authority. They are thus only possible between a legal subject and the State. The possibility of leasing contracts between two legal subjects, transferring the right to use the land to a third party, or the possibility of sub-tenancy are not mentioned in the LML but are possible according to the Civil Code. The advantage of a land possession agreement compared to a mere use contract consists in the fact that the LML requires the government to compensate land possessors if their land has been given away or repossessed by the government. However, this applies only if the conditions for compensation are spelled out in the respective contract. Due to such ambiguities of the LML, it cannot be seen as sufficient to re-install a system of sustainable pasture use.

If land is allocated to individuals or groups the question if their tenure right is only a use right or a more secured possession right is of overriding importance. With regard to a potential future legislation specifically regulating the access to pasture land it should therefore be carefully taken into account that only awarding possession rights might provide land holders with the necessary security that makes them willing to invest in the long-term maintenance of the resource.

The Law on Allocation of Land to Mongolian Citizens for Ownership (LALMCO) adopted in June 2002 has the purpose to allocate land to citizens for ownership, Art. 1 LALMCO. According to Art. 4 and 7 LALMCO, the allocation is limited with respect to the purposes the land will be used for and with respect to certain categories of land. The purposes provided by the law are restricted to family needs as well as agricultural and commercial purposes. With regard to the categories of land, grazing land and forests are exemplary mentioned by Art. 6.1.1 LALMCO. Furthermore Art. 6.1.2 LALMCO restricts the scope of the provisions on privatization to - tilled and untilled - agricultural land. Although this formulation seems to be contradictory, it has to be read in synopsis with Art.6 of the Constitution that bans the privatization of pasture land. In addition, Art. 7.1 sets the size of land that should be transferred for free to the particular citizen. These provisions reveal that the land privatization does not cover large areas of pasture land as the main resource of the pastoralist population. Thus, as a result of the controversial privatization debate privatization under the LALMCO is limited to non-pastoral land.

The recent draft of a Law on Pasture land can be a good starting point for a legislation helping to re-install a system of sustainable pasture use. It addresses for example delays in the issuance of possession contracts with a provision that demands the issuance of a possession contract within 5 workdays. However, it does not meet either with all of the key principles mentioned above.



## **Required Improvements**

Therefore, further legislative action is necessary that connects the principles for group forming with those of land allocation in order to create better incentives for pastoralists to form user groups and to take over responsibilities for the management of land. Such initiatives have to take into account especially the need of clear provisions for all procedural steps and a reasonable order of the requested procedure of the land possession contracting. In addition, the provision of model contracts would be beneficial to support potential land managing user groups in the necessary procedures to become active. Making available such model possession contracts, as well as exemplary pasture land management plans would stimulate more effective group formation and operation of existing groups. Furthermore, in order to meet the key principles of tenure security and exclusivity, unintended overlapping land allocation must be avoided. In addition, detailed criteria for the possibility of land condemnation as well as concrete compensation regulations in the case of such condemnation should be determined. To facilitate both, further efforts to develop a working land registry will be necessary, which will also allow for an adequate land valuation as a prerequisite for the calculation of equitable compensation payments.

Concerning the principles with regard to intra-group relations – clear membership criteria and provision of dispute resolution mechanisms – further research is necessary to evaluate whether the consideration of criteria based on the social structure and kinship, or rather of territorial criteria is preferable to determine membership in groups. Either way, overriding importance should be given to clearly determine and stipulate the respective criteria. Model user group charters would be very beneficial at this point. With regard to the dispute resolution mechanisms, for forest user groups third party reviewing of the results has proven beneficial (Lindsay et al. 2006). It would be useful to develop a set of rules that can guide third parties in such reviewing processes.

Similarly, efficient dispute resolution mechanisms for external conflicts must be established; above all ensuring not to create conflicts of interest due to a double role of one same governor being responsible for both, the land allocation and the following conflict resolution – possibly even with the State as the land owner involved as one of the conflicting parties.

To meet the key principle of subordinate coordination, the role of the State in this pasture management system based on user groups has to be regulated. The functions of the State should be to draft broad land management plans at national and regional level, to take care of the inclusion of less capable or less wealthy herders, and to take into account the need of reserve pasture for incidences of disaster. These responsibilities of the State have to be clearly determined, while on the other hand its restriction to this role has to be made clear as well.

Ultimately, not only the legal but also a broader institutional framework for adequate information services and capacity building of stakeholders has to be implemented. A broad reform of the land management system cannot be achieved without the active participation of the persons concerned, the pastoralists.

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## Acronyms and Mongolian Terms

### Mongolian Laws:

LALMCO	Law on Allocation of Land to Mongolian Citizens for Ownership
LML	Law of Mongolia on Land, enacted in 1994 and revised in 2003
MLBZ	Law on Buffer Zones
MLEE	Law on Economic Entities
MLEP	Law on Environmental Protection
MLF	Law on Forests
MLK	Law on Khorshoo
MLM	Law on Mining
MLN	Law on Nokhorlol
MLNGO	Law on Non Governmental Organizations

### Other terms:

ADB	Asian Development Bank
DRM	Disaster Risk Management
GDP	Gross Domestic Product
IMF	International Monetary Fund
IPCC	Intergovernmental Panel on Climate Change
MPRP	Mongolian People's Revolutionary Party - the party already ruling in socialist times

### Mongolian Terms:

<i>aimag</i>	Province, largest administrative unit (Mongolia consists of 21 <i>aimags</i> )
<i>bag</i>	smallest administrative unit at rural level, including less than thousand individuals, sometimes only 30 to 50 families
<i>gazariin ezed</i>	spiritual power of a locality
<i>horoo</i>	smallest administrative unit at urban level
<i>kheseg</i>	pasture user unit
<i>khot ail</i>	herding camp
<i>khural</i>	representative assembly
<i>negdel</i>	former livestock collectives, abolished in 1990
<i>oboo</i>	ritual cairns at high points in the landscape
<i>otor</i>	pastoral technique: long distance moves to lesser-used pastures, to escape drought or <i>zud</i> or to prepare animals for winter
<i>sum</i>	local government district, including something around thousand households
<i>zud</i>	harsh winter and spring, often including frozen snow cover

## I. Introduction

Mongolian herding is a proven livelihood system that has been reliable and successful for a long time, adapted to the local conditions; around 30 % of Mongolian households make a living directly from livestock breeding. However, it has always involved risks related to weather and climate variability. During the *zud* – the harsh winter and spring – of 1999/2000 and 2000/2001 Mongolia's herd was reduced by over two million livestock. Thrown into the new system of a market-oriented economy, which due to the omission of many state jobs brought many people to try their fortune as – inexperienced and poor – herders, leading to an important heterogeneity of the pastoralist society, and deprived of the former intensive Soviet assistance through hay reserves and transportation facilitation for long movements of herds pastoralists were not able to cope with the occurrence of these extreme climatic events.

These events have drawn the attention to the devastating role that risk plays in the pastoral economy.

And – although those *zud* might be the most well-known disasters - it has of course not stopped there. In May 1993 snow storms killed an estimated 100,000 animals, and in June 1995 heavy rain killed 60,000 recently-shorn sheep in a single night (Swift and Baas 2003, p.VI). Long-lasting summer droughts took place in 1999 to 2002. Such events impoverish large numbers of herding households.

Climate change - although it may lead to improvements in some regions of the world - is likely to increase the frequency and intensity of climate hazards in such an already extreme climatic region as Mongolia. Located in the northern latitudes, Mongolia is part of the regions where the highest global warming is occurring. The 1.9C temperature increase since 1940 has led to short, rapid warming and melting of snow cover occurring in winter. As the ground is then still frozen, the melted water creates ice sheets on the ground surface, impeding animals from both grazing and using snow as a substitute to water.

Adaptation and disaster risk management options for pastoralists will become more and more crucial. Due to the socio-technical system of pastoral livelihoods, these options are mainly determined by the possibility of accessing natural resources, mainly pasture, water and salt licks.

Besides numerous customary patterns, the access to pasture land is regulated by the land tenure legislation. The real capacity of legislation to solve problems does of course depend on its implementation and on the quality of governance in a country. However, the existence of an adequate legal framework regulating the access to pasture land is of particular importance in the attempts to allow pastoralists to adapt to increasing risk as a consequence of climate change.

This paper will describe the development of pastoralism, property rights and land tenure legislation in Mongolia. Potential solutions to the issues of land degradation - with the consequence of shortages of usable land - and vulnerability to extreme events will be brought into relation to possibilities that can be offered by land related legislation. Good starting points as well as weak points of the Mongolian land legislation will be analyzed and other factors impeding the use of existing possibilities will be emphasized, leading to the presentation of more widely applicable lessons and ways ahead.

## **II. Context**

### **1. Pastoralism**

The specific social and economic situation of Mongolia is strongly characterized by the persisting importance of pastoralism for the livelihood of a big part of the population and for the economy of the country as a whole.

The term of pastoralism refers to a way of life in which people produce livestock (and their products) under extensive use of native grazing and browsing resources mainly for subsistence purposes (Hundie 2008, p.1).

Pastoralism in this traditional sense of livestock production can be found in almost all developing countries in Africa, Asia, Latin America as well as in drylands in Australia (Blench 2001, pp.8). It is practiced on 25 % of the global land area, and provides 10 % of the world's meat production (Nori et al. 2008, p.5).

The two most important features of pastoralism are dependence on livestock and mobility.

With regard to the feature of dependence on livestock, it has to be considered, that arid and semi-arid lands are generally marginal for intensive cultivation of crops. Therefore, often livestock production appears to be the only viable option for consumption and for generating income in such areas.

The feature of mobility is mainly due to the fact that arid and semi-arid lands are characterized by water scarcity and low soil fertility combined with an unpredictability of the frequency and intensity of rainfall. As water and grazing resources are scattered over wide areas of land and their abundance is seasonally variable, extensive movements of people and livestock are necessary to use these resources efficiently. Mobility saves labor costs because taking the animals to grazing places consumes less labor than bringing fodder and water to the animals. In addition, moving the herd helps to reduce the vulnerability to disease outbreaks that might occur in some places (Niamir-Fuller 1999, p.103).

In Mongolia, pastoralists are not marginalized in the proper sense of the word. The households making a living directly from mobile livestock breeding – so called transhumance - constitute around 30 % of the population. Mobile animal husbandry is a main factor of the economy, contributing to around 35 % of the country's GDP. The sector of animal husbandry employs 47.9 per cent of the total population, produces 34.6 percent of agricultural gross production, and accounts for 30 percent of the country's export.

However, pastoralists need access to large pasture areas for their livelihood. The recent political and structural changes – particularly transformation and privatization processes and the recent land legislation - have had an important influence on pastoralists' access possibilities.

The total number of livestock is 37.4 million [2008]. Mongolian native breeds of animals are characterized by an excellent adaptation to the harsh environmental conditions. Nevertheless, about 2.4% of the population dies each year because of severe weather conditions (Batima

and Nandintsetseg 2007,p.4). The national herd is even reduced by a considerably higher percentage in years with extreme climatic events like the *zud* of 1999/2000 and 2000/2001 when the herd was reduced by over two million livestock.

### **a) Pastoral Resources**

Pastoral resources include pastures, water sources, campsites, animal shelters, hay cutting grounds, salt licks and stock driveways. Under Mongolian conditions, a division of pastures into spring-, summer-, autumn- and winter-pastures as well as ensuring that they are grazed only in those seasons - a so called system of “time-partitioning” (Mearns 2004, p.139) – is necessary for sustainable pasture management. As due to the natural variability in precipitation and forage growth local patterns of resource use can vary widely from one year to another, spatial boundaries tend to be permeable and dynamic (Mearns 2004, p.139).

### **b) Pastoralism and Farming**

In most countries where pastoralism appears, the political elite represents an agricultural majority and pastoralists are a minority occupying marginal land.

This is not the case in Mongolia. Climate conditions do not favor farming as the kind of land use predominant in many other countries.

Compared to the 127.307 million hectares of pasture land – around 81 % of all land in Mongolia (Narangerel 2004,p.177) - the 1.986 million ha of hay fields and about 0.877 million ha of crop or farm lands or former farm lands occupied by agricultural constructions and facilities (UNEP 2002, pp.15) represent a relative small percentage.

This makes the overriding importance of pastoralism in Mongolia obvious.

During the transition period the importance of farming has decreased. In some cases it was tried to continue to operate former collective farms, retaining former *sum* governors - who were also the directors of collectives during the collective era - as managers of newly formed companies and co-operatives. The National Association of Mongolian Agricultural Co-operators was founded as successor of the Supreme Council of Collectives (Mearns 2004, p.142). On the other hand, many big former state or collective farms were abandoned as a consequence of the loss of coordination and support services of the state. Several such ruins of former state or collective farms can be observed when traveling through rural Mongolia.

### **c) Pastoralism in the Transition**

Up to now in the course of the transition process since 1990, various problems have emerged in Mongolia; some of them with dramatic consequences. They demonstrate the problems which may arise from neglecting the particularities of pastoralism. For example, in the course of the transition, but also due to migration and population growth, there is an increasing impact on the resource of land, showing itself mainly in problems of degradation. The limited availability of fertile land and limited access to water cause a lot of political and social tensions. Furthermore, the dismantling of the collectives and privatization of their assets - except land - has affected the pastoral sector in an intense manner. Livestock privatization provided tremendous incentives for increasing the livestock number. Transhumant livelihoods have

expanded dramatically since the break-up of the state farms and livestock collectives. The post socialist market-oriented reforms have somehow dismantled an integrated pastoral system and created an “atomized” pastoral sector of subsistence-oriented households of pastoral producers (Sneath 2004, p.179). As economic conditions worsened in the cities, and due to the ongoing privatization of livestock, many Mongolians returned to their native districts to claim their share of privatized livestock. These were often formerly non-herding state employees who were made redundant in the course of the economic liberalization. As they had little herding experience and little social capital among herders, they preferred to stay close to settlements where market-access and social services were better available, and tended to remain sedentary for much of the year (Mearns 2004, p.140).

As a consequence, the number of herding households increased dramatically, as did the heterogeneity of herders. The percentage of herders of the total working population doubled in the first half of the 1990s, increasing from 17 % to around 35 % (Mearns 2004, p.140). By 1998, the number of workers directly reliant on pastoralism for their livelihood accounted even for 50 % of the working population (Sneath 2004, p.162, referring to NSO 1999, pp.95, 45). After an initial lag of some years, livestock populations began also to increase. Until 1998, the national herd size increased to nearly 32 million head (Sneath 2004, p.162, referring to Ministry of Agriculture and Industry of Mongolia 1998, p.2) - an increase by over 20 % if compared to 24.6 million animals in 1989 (Fernandez-Gimenez 2001, p.49). Overstocking, overgrazing, and distortion of traditional grazing technologies have started to destroy ecological balances.

At the same time, services to the livestock sector, including winter support through hay reserves, support for long distance movements through transport facilitation, veterinary services and social security safety nets have deteriorated. This shifted many risks from the public sector to herders. Mobility of pastoralists decreased and large-scale systems of extensive land use collapsed. As the significant livestock losses in the harsh winters of 1999/2000 and 2000/2001 have demonstrated, the result is a pastoral sector poorly adapted to the Mongolian environment.

Risk management strategies which were operational before 1990 have completely collapsed under the changed conditions of the market-oriented economy (Swift and Baas 2003, p.VI).

Although some customary forms of social organization re-emerged quickly - like the traditional residential unit of the so called *khot ail* - the herding camp -, institutions to efficiently govern pasture use have not re-evolved in most places (Fernandez-Gimenez and Batbuyan 2004, p.142).

Livestock is very unequally distributed. Wealthy and successful pastoralists represent a very small minority. In 1998 only 2 percent of the herding households owned more than 500 livestock, whereas 60 percent of the households owned fewer than 100 animals, 37 percent fewer than 50, and about 12 percent - amounting to 32,000 households - even fewer than ten (Sneath 2004, pp.179, referring to NSO 1999, p.96). More than two thirds of the herding

households owned fewer than 150 animals - although 150 is considered to be the herd size needed to make a sustainable livelihood in pastoralism (Sneath 2004, p.178).

Combined with the near absence of public support this led to the situation that once well coordinated pasture use patterns did not work well any more, resulting in out-of-season grazing of reserve pastures, concentrations of herds near roads, settlements and water points and decreasing mobility - especially of poor herders (Fernandez-Gimenez 2001, pp.49). Although in the early 1990s it had appeared that the *khot ails* might have the potential to be a basis for building up informal grazing associations and to perform an important function in regulating access to seasonal pastures (Mearns 2004, p.140), this potential was not realized as a result of other driving forces like the above mentioned growing heterogeneity of herders.

The decline in mobility has to be considered to be one of the principal threats for the sustainability of pastoral livestock production (Mearns 2004, p.141; Niamir-Fuller 1999, pp.103). This can also be observed in a comparison - for example of satellite imagery - of Mongolia to the neighboring Inner Mongolia Autonomous Region of China where pastoral mobility has decreased more severely than in Mongolia and where a generally poorer vegetation condition can be clearly detected (Sneath 1998, p.1147).

This calls for resilient institutional forms to enable resource users to coordinate their actions, renegotiate arrangements concerning access rights on an ongoing basis, and to foster them with credible sanction possibilities (Mearns 2004, p.139).

## **2. Climate Change in Mongolia**

If trends in greenhouse gas emissions will not fundamentally change, global temperatures will rise by between 1.4° and 5.8°C until 2100 (IPCC 2007). Climate change on a global scale seems to be characterized by an increased variability of weather, especially of precipitation. This brings about medium- and long-term effects that are difficult to predict and will vary from one region to another – as will the impact on different people. Most climate change models predict an increase of extreme events associated with increased irregularity and decreased predictability, leading to major effects such as declining water balances due to changing rainfall patterns, biodiversity shifts in both space and time, changes in wind patterns, an increasing frequency of droughts and recurrent events such as heat waves (Nori et al. 2008, p.6).

With its severe, continental climate Mongolia has extreme climatic conditions. They are characterized by extremely cold long winters - with average temperatures in January dropping to -30°C and Ulaanbaatar having the lowest average temperature of any capital in the world - and low precipitation in the southern regions, some of the Gobi regions not receiving any precipitation at all in most years. Annual mean precipitation is 200-220mm. About 85% of total precipitation falls from April to September. The country is semi-arid to arid.

The annual average air temperature is 0.7°C, with +8.5°C in the warmest regions of the Gobi and south Altai deserts, and -7.8°C in the coldest region of the Darkhad depression.

Mongolia has reason to be concerned about climate change. Remoteness of rural population with low developed infrastructure along with frequent climatic hazards is a serious complex



development issue that increases the differences between urban and rural, rich and poor and can threaten the sustainability of an entire country (START et al. 2004).

Rangeland ecosystems and pastoral systems are complex, with numerous interactions among the biotic components of the system and with human society. Any adverse impact of a changing climate on pasture availability would threaten forage yield, livestock productivity, and, ultimately, local and national food production capacity (NAPCC, 2000).

Studies of observed changes are very short compared to the time scale of global climate change, and they may not be able to provide clear answers to what will happen and what should be done. However, the results can help point to the emerging issues and needs of herders in the face of ongoing climate change.

Mongolia is located in the northern latitudes where the highest global warming is occurring. Temperature has increased by 1.90C since 1940. This has led to an increased melting of high mountain glaciers, and to permafrost degrading intensively in mountainous areas of Mongolia. The occurrence of natural disasters like extreme hot and cold weather, drought, *zud*, flood and sand storms in Mongolia has increased. Ground water table is decreasing in arid regions, and degradation and desertification of the land due to shortage of water and precipitation have been intensifying. Heat wave duration has increased by 8-18 days, depending on geography.

From 1999 to 2002, Mongolia experienced four subsequent years of drought. Traditionally, animals build up the necessary weight, strength, and fat reserves during summer to enable them to cope with the harsh winter and spring. Water and forage are the most important resources for livestock, so the most direct impact on pastoralists' livelihoods is the drying up of water sources and declining of forage resources for livestock. A decline in these resources' availability greatly affects livestock conditions, milk production, and ultimately herders' livelihood security. Harsh and long-lasting summer drought is the main factor which causes *zud* to occur during the winter. Summer droughts of 1999- 2002 caused the most severe *zud* in recorded history in the winters of these years (Batima et al. 2005). At first glance, it seems that herders could benefit from mild winters caused by increased winter temperature, shortened cold wave duration, and less snow. However, some unexpected and unfavorable phenomena; e.g., sudden rapid warming in winter, unusually high snowfall, surge snow and wind storms, etc. have taken place in the last decade. Short, rapid (2-5 days) warming in winter leads to melting snow cover. Melted water does not infiltrate but creates ice sheet on the ground surface since the ground is still frozen. Such cases create difficulties in grazing of animals on pastures, limiting their ability to get food. The changes in annual precipitation have a very localized character.

The parameters of snow cover formation, snow cover clear-up date, and snow depth and density differ as well geographically.

Obviously, temperature increases vary both in time and in space. The warming has been most pronounced in winter, with mean temperature increase of 3.610C.

Warming is more pronounced in the high mountainous areas and their valleys, and less in the Gobi desert. This shows again the importance of accessibility of various areas for pastoralists. Due to the geographical variability, in the western mountain areas with more defined valleys

fully inclusive pasture user groups might work well; while in the Gobi with much higher variability such systems appear as much less attractive, and semi-nomadic systems - with all their difficulties to define boundaries – prevail and movements are much more extended. Thus the patterns of movements are not the same in different systems. For example the winter movement in the Gobi is done to low lying areas, while in the western mountains, those movements are done to higher areas due to frozen river beds.

### **3. Pastoral Adaptation and Disaster Risk Management**

According to the IPCC, adaptation is an 'adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities' (McCarthy et al. 2001).

A distinction is generally made between autonomous or spontaneous adaptation and planned adaptation. Evidence for autonomous adaptations to climate change or variability has been reported widely (e.g. Mortimore and Adams 2001; Orlove 2005). However, such adaptation may not be sufficient to adapt to the currently predicted rates of climate change, making it necessary to plan adaptation that goes beyond the scope of the autonomous one (Locatelli et al. 2008,pp.58). According to the current stage of research in many regions climate change will result in more frequent and extensive disasters. Increasing climate variability points out the urgency for disaster risk management activities, in order to reduce vulnerability, as a part of adaptation to climate change. Risk management must include disaster risk reduction, risk transfer as well as an effective humanitarian response system. An already existing instrument for the implementation of a disaster risk reduction component as part of the adaptation framework is the Hyogo Framework for Action 2005-2015: Building the resilience of Nations and Communities to Disasters, agreed at the World Conference on Disaster Reduction in January 2005 in Kobe, Japan, and adopted by the UN General Assembly the same year. It specifically identifies the need to “promote the integration of risk reduction associated with existing climate variability and future climate change into strategies for the reduction of disaster risk and adaptation to climate change...”.

Adaptation and disaster risk reduction activities of course need a different shape for different regions and livelihood systems.

There are signs of longer term changes in Mongolian pastures, very likely to do with climate change, making an existing environment drier and existing variability more severe. There are two complementary issues. On one hand, pastoralists can be seen as the ‘canaries in the coal mine’ who will be the first to lose their livelihoods with ongoing climate change if grasslands and water points dry out (Nori et al. 2008, p.1). On the other hand pastoralists – as their livelihood strategies enable them to respond to scarce and variable natural environments and to cope with difficult agro-ecological conditions - are the best prepared and equipped to adapt to climate change. The greater the variability in climatic conditions is the greater are the benefits obtained from mobile strategies (Swallow and McCarthy 1999, pp.2). Pastoral resource management is more and more acknowledged as sustainable, under increasing

climatic variability even as one of the most sustainable resource management systems in most arid and semi-arid lands (Nori et al. 2008, p.3).

An answer to climate change could even be the extension of pastoralism due to more and more territories where it can show comparative advantages. Climate change may offer a new framework with which to approach pastoralism, taking into account its capacities to produce in an environmentally sustainable manner on marginal land with unpredictable conditions.

However, these advantages can only be realized if pastoralists find the necessary preconditions to carry out their risk management strategies.

Conceptualizing pastoral risk management, four phases can be distinguished: Risk reduction, risk mitigation, emergency preparedness and response and recovery (Swift and Baas 2003, p.8). They are sequential and of course closely interconnected. This paper will cover long term activities to reduce vulnerability - which make up risk reduction - in the first place. The medium term set of activities designed to prepare herders and the herding economy for stress periods such as drought and *zud*, and for sudden shocks, is designated as risk mitigation. The third and fourth phase are the preparing for emergency set of activities - activated by disaster warning or the disaster itself - and response and recovery after the shock - in order to reduce the increased vulnerability to new shocks as well.

For pastoral risk management and their possibilities to respond to the effects of climate change it is of cardinal importance that the access to key pastoral resources is enhanced and secured. Ensuring that pastoral communities have access to different ecozones at different times is crucial. Making pastoralists unable to access critical resources in different territories leads to an increased vulnerability due to limitations imposed on coping and development strategies (Nori et al. 2008, p.3).

The fundamental issue is therefore how to manage pasture use rights in a variable and patchy resource environment.

In 2000 Mongolia has developed its National Action Program on Climate Change (NAPCC). It includes adaptation measures in the pastoral sector like education of herdsman on sensitive issues of climate change, technology and information transfer, research and coordination of information from research, inventories and monitoring. In addition, improvement of the forecasting and warning systems for drought and *zud* is essential to help in preparing to meet potential dangers. However, land and land-based resources like water being the most important resources for pastoralists the key component of an adaptation strategy in Mongolia consisting in an appropriate pastoral development and rangeland management are aspects of land access and tenure.

The subsequent two chapters will focus on the requirements for this adaptation of pastoral livelihoods in Mongolia and link them to legislative aspects.

### **III. Land Legislation and Natural Resource Management**

Law is certainly not per se a representation of a common will and not neutral to the political and economic interests of parts or groups of the population, nor is it always enforced neutrally through independent state institutions. Law is not neutral and legal systems often encode power asymmetries (Benda-Beckmann 2005, p.1).

However, law is a crucial aspect of governance. It constitutes positions of authority of governance agents and organizes and legitimizes governance activities. Like for the issue of governance at large, the concept of law is not exclusively connected to the state. It allows for a plurality of co-existing legal orders – generated and used by different actors – with different sources of legitimacy. Besides the official law of the state and international law, there are often traditional and religious legal orders and a wide variety of principles and procedures generated by non-state actors (Benda-Beckmann 2009, pp.3).

Well implemented or strengthened legislation can address long-term climate change impacts by identifying lines of responsibility, mandating inter-sectoral cooperation and making provisions for budgets at all levels of government.

Disaster risk reduction includes many legal aspects. One is the risk transfer. Having an appropriate legislative framework for disaster management is a prerequisite for the establishment of effective disaster risk transfer mechanisms such as emerging insurance schemes.

Furthermore, for pastoralist households the issues of access to natural resources - especially land - and land tenure are of particular interest. This concerns all kind of land related legislation. These aspects will be the focus of this analysis.

## IV. Land Tenure Legislation in Mongolia

It is important to understand the historical context of land tenure legislation as well as the general current legal system in order to analyze if the Mongolian land regulations are an adequate tool facilitating the needed access of pastoralists to resources.

### 1. Historical Development of Land Tenure in Mongolia

In Mongolia, individual private ownership of pasture land has never existed. In the past, there was a variety of different but often overlapping or nested tenures to this resource. It was vested in groups of different sizes and social functions, and governed by different formal and informal institutions (Fernandez-Gimenez and Batbuyan 2004, p.142).

Before the communist revolution in 1921, pasture allocation and use were governed in many areas by a combination of formal regulation imposed by ruling nobles – secular princes or important lamas in the Tibetan Buddhist church - and informal norms and customs described by herders as “unwritten law” (Fernandez-Gimenez 1999, pp.316). The property regime for land was complex. The ultimate authority over the use of land was held by the Manchu emperor, but lords and their officials regulated the right to use within the unit they ruled, the so called *hoshuu* (Sneath 2004, p.167). Within the *hoshuu*, the herders were assigned to smaller units called *sum* and subunits called *bag*<sup>5</sup>.

After the revolution in 1921 the concept of pastoralist lifestyle was included in the socialist concept by the Mongolian People's Revolutionary Party. The Constitution of 1960 said that “the People's Republic of Mongolia is the socialist country of workers, cooperative people (nomads, farmers), intellectual workers and at its base is the alliance of the working class and cooperative people”. Although from 1960 to 1990 during the last thirty years of socialist government pasture use was regulated by the state through the mechanism of the so called *negdels* - the collectives each of which managed pastoralism in an entire *sum* -, the decisions of the *negdels* were often influenced by customary patterns of use and tenure (Fernandez-Gimenez and Batbuyan 2004, p.142). Important investments were made in water supply, winter shelters, hay and fodder production and transportation for making nomadic moves. When necessary, collective managers employed the pastoral technique of *otor*, by which herds are repeatedly moved over distant and lesser-used pastures as a method of intensive feeding (Sneath 2004, p.163). Pastoralists completed their longest annual movements by collective trucks, and hay was delivered to help feed the livestock during winter and early spring (Sneath 2004, pp.163, 164). Summarizing the property rights situation of that time, land was owned by the state, use was managed by the collective's leaders, and within the areas allocated to each collective, pastoral household made use of recognized areas of pastures.

With the end of socialism in 1990, pasture use was initially not formally controlled. In 1991, a huge program was launched to privatize collective and state enterprises (ADB 1992, p.86-88;

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<sup>5</sup> The denomination of the subdivisions as *sum* and *bag* is still in use today as administrative categories.

Sneath 2004, p.162). In rural districts the reforms included the dismantling of the *negdels* in 1992, and collective and state-owned livestock and other assets were privatized by issuing share coupons which employees could use to claim a share of the collectives assets (Sneath 2004, pp.162, 164). Land, however, remained a public resource in state property, used by local pastoralists and regulated - although only theoretically - by local government. In fact there was a “virtual abdication of public administration” (Mearns 2004, p.139). In this time it can be said - despite the fact that all land was in state ownership - that there was de facto open access to the resource.

## 2. The Modern System of Mongolian Law

### a) Outlines of the System

One of the most remarkable results of the transition in Mongolia is the establishment of a new system of law in which the property law is incorporated. This modern legal system borrows from the Romano-Germanic legal tradition and is therefore divided into private and public law. Within this framework, there are more sub-branches of law similar to those of other countries with Romano-Germanic legal tradition, such as constitutional, administrative, criminal, civil, and international law. Mongolia’s civil law system is loosely based on the German one.

Supreme source of written law in the nested set of rules is the Constitution.

The main sources of law are the statutes. Furthermore, there are so-called legal acts, which in the broad sense of the word can take any form including parliamentary resolutions, presidential decrees, cabinet ministry resolutions, and ministry rules and orders (Narangerel 2004, p.44). The Constitution declares that legal acts may be issued by the governors of all administrative units from *aimags* to *bags* or *horoos*<sup>6</sup> (called ordinances), as long as they are conform to the laws of the nation.

There are manifold customary norms. This is due to the fact that Mongolia has a nomadic civilization and certain special objects used in daily life, which leads to the necessity to follow customary norms bequeathed from ancient times when solving some cases and disputes. These customary norms are not considered to be a principal source of official law. However, some evidence of the importance of customary rules can also be found in Mongolian written legislation (Narangerel 2004, p.45).

The court system is based on the continental legal system<sup>7</sup>, partly as practiced in Russia and partly following the German model (Narangerel 2004, p.45).

There is a prohibition on judicial interpretation in Mongolia (Lindsay et al. 2006, p.25). This means that judges are not allowed to fill in indefinite legal concepts. This is common in socialist legal systems, where law is only meant as another means of implementing governments’ decisions. It will be difficult to preserve this concept outside the context of a

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<sup>6</sup> Mongolia is administratively divided into the capital city of Ulaanbaatar and 21 *aimags*, which are divided into (altogether) 331 *sums*, those being divided again into rural *bags* and urban *horoos*.

<sup>7</sup> In contrast to the anglophone common law, where courts decisions have precedential value.

planned economy, because many abstract legal terms are needed in order to be able to cover reality in its complexity and unforeseeable developments. A prohibition of judicial interpretation leads to a need of extreme concretion if a legal provision is to be applied efficiently – a factor that should be kept in mind when drafting new legislation.

## **b) Property Law within the Legal System**

One special branch in the nested system of rules is property law.

During the transition towards the modern legal system, Mongolian property law also underwent fundamental changes in the post-socialist era. In Private law, according to the Civil Code of Mongolia, an asset that is subject to somebody's possession is considered to be property. Property law is found primarily in Articles 83 to 152 of the Civil Code and organized similar to German property law. It designates property - synonymously termed as 'objects' - to legal subjects<sup>8</sup> who may be the owners or the possessors of this property. A distinction is made between movable and immovable property. Land is classified as immovable property as are assets such as buildings that cannot be used for their original purpose when they are separated from the land. The other assets are classified as movable property. The right to ownership of immovable property has to be registered with the State. The term 'private' ownership was revived in Art.6 of the Constitution and incorporated into Private law. It includes all four possible bundles of rights with regards to an asset: use, management, exclusion of others and alienation.

## **c) Environmental Protection**

Besides property law the environmental legislation could gain importance for pastoralism within the legal system of Mongolia.

The environmental legal tradition of Mongolia reflects its nomadic history and is based on religious principles (Narangerel 2004, p.171, referring to Amarhuu 2004, pp.62-80). Modern mobile herder groups continue to be dependent on the grass and water resources that nourish their herds, and they continue to respect the teachings of their religious history.

The transition to a market economy has required Mongolia to transform its approach to environmental regulation and to create a legal basis for the protection and rehabilitation of the environment and natural resources, to conserve the natural heritage while at the same time responding to the demands of a newly formed market economy (Narangerel 2004, pp.179). Article 16.1.2 of the 1992 Constitution guarantees the right of citizens to live in a healthy and safe environment and to be protected against environmental pollution and ecological imbalance.

Recently a so-called Ecological Law has achieved recognition as a branch of Mongolian legal science (Narangerel 2004, p.171).

Under the growing influence of Western notions of environmental management (Mearns 2004, p.142), twenty-five environmental laws were passed by the Parliament, including the

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<sup>8</sup> Legal subjects can be individual citizens, but also legal entities such as business entities or organisations.

Law on the Environmental Protection of Mongolia which serves as an umbrella law for all environmental and natural resource laws. In addition, Mongolia has signed the Convention on Biological Diversity and nine other international environmental conventions since 1994.

The Law on Specially Protected Areas of Mongolia became effective on 1 April 1995.

One of its main purposes is the regulation of the “use and procurement of land” for state protection (Narangerel 2004, p.184).

About 13 % of the whole country's territory is covered by Strictly Protected Areas, encompassing 20.5 million ha of land (UNEP 2002, p.66). A longer term concept is to put one third of the surface under protection as Natural Parks. However, up to now the parks are often no more than “paper-parks” (statement of a staff member of the GTZ Land Management Project in August 2007), meaning they theoretically exist but their rules are often not respected and enforced in practice.

Protected areas serve for climate change mitigation. However, their extension can also have an important impact on access rights of pastoralists, complicating access and therefore adaptation and disaster risk management potentials. Nevertheless, if well managed, the existence of protected areas can also facilitate disaster risk management e.g. through reserve pastures in the buffer zones of protected areas.

Further investigation would be necessary regarding the question to what extent the legislation and respective administrative measures for environmental protection are efficiently executed. Examples for reforms facilitating a practical feasibility of decentralized natural resource management include the closer specification of property and resource-access rights as well as credible rule-enforcement mechanisms (Mearns 2004, p.134).

### **3. The Recent Land Legislation of Mongolia**

The political changes within the transition period, the development of the modern legal system and the increasing challenges with regard to pastoralism form the background of the recent land legislation in Mongolia. The core elements of this legislation are Article 6 of the Constitution, which deals with the possibility of private ownership of land, Charter 12 of the Civil Code, the 2003 Law of Mongolia on Land (LML) and the Law on Allocation of Land to Mongolian Citizens for Ownership (LALMCO).

In the following, persisting traditional conceptions, the development of the new legislation and the privatization debate will be described. The debate about private ownership of land, which preceded and accompanied the land legislation, became one of the most controversial political issues during the transition period.

Some pivotal regulations of the crucial statutes will be analyzed with regard to the role that land legislation plays for access to pasture land and therewith for the adaptation options of pastoralists to climate change.

#### **a) Remaining Traditional Conceptions**

To understand the general opposition of herders against privatization of pasture land it is useful to observe their traditional understanding of the relation between men and land. The



concept of the *gazariin ezed* plays an important role for the description of the authority on land on a spiritual basis. *Gazariin ezed* – “rulers of the land” were - and still are today - considered to be in control of the weather and environmental conditions of each locality and must be propitiated in annual ceremonies at ritual cairns - so called *oboo* - at high points in the landscape. These ceremonies reflect the notion that “humans do not hold land as they do other mundane possessions, but must enter into relations with the spiritual powers of the locality to ensure favourable conditions” (Sneath 2004, p.168). Various ceremonies are practiced at the numerous *oboo* in order to honour the various *gazariin ezed*. For example the pastoralists (and urban people with pastoralist origin) are used to sacrifice beverage for one of them at Mongolian New Year; the cranium or other parts of the skeleton of aged winning horses are laid down at the *oboo*, and car drivers stop at the relevant hills or mountains to make small sacrifices. One component of this concept, *gazar*, generally is used to translate the term “land” into Mongolian language. The other component, *ezen*, (the singular form of *ezed*), corresponds to owner, master or ruler. Thus, the concept of *gazariin ezed* describes something like mastership or rule on land. However, one should be aware that both components of the concept do not completely correspond to the terms used for the translation and that consequently, the concept as a whole cannot be translated precisely by any Western notion. As to *ezen*, the mentioned spectrum of corresponding terms in translation indicates how far this Mongolian notion deviates from the western terminology. The notion connects competences described in Western terms as property rights with functions or positions concerning responsibility, control and rule (without splitting up a private and a public level). This implies that “ownership” and “owner” are poor translations for the role that actors play in the network of prerogatives and liabilities surrounding land use. Rather the concept of *ezen* comprises also social and environmental obligations, meaning “one with control of and responsibility for the resource” (Sneath 2004, p.168).

These indigenous notions of land remained important as the centrally planned economy was built. The social order which framed them was transformed but somehow retained in order to integrate pastoralists successfully (Sneath 2004, p.169).

The other component of *gazariin ezed* too, expresses a specific way of thinking linked to the pastoralist way of life. *Gazar* - though used to be translated as “land” - has a somehow different meaning, as it also can mean a place or an office. Therefore it does not describe precisely the specific subject matter the Western concept of ownership on land refers to. Rather, it refers to a larger framework of potential matters of use or control. However, there is no general term of land at all (as specific object of ownership) because the other Mongolian terms describing land usually classify it by its use<sup>9</sup>, with the consequence that land use is emphasized, rather than a common substance that can be owned (Sneath 2004, pp.169, 170).

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<sup>9</sup> Like *bilcher* for grazing land; *hadlan* for hay making fields; and *zuslan*, *namarjaa*, *övöljöö* and *havarjaa* for summer, autumn, winter and spring pastures (Sneath 2004, pp.169, 170).

## **b) Right to Possession and Right to Use under the LML**

### **(1) Structure of the LML**

A first important intent to solve the various problems connected with the access to pasture land and the property rights on land was realized by the Law on Land enacted in 1994, which was followed by a revised version in 2003<sup>10</sup>. According to Article 10 LML, land is subdivided into six categories according to its purpose: land of agricultural designation, including pasture; land of urban settlements; land under roads and other infrastructure; forest land; land of the water fund; and land of special needs, like e.g. hayfields for government fodder reserves or land for foreign diplomatic missions.

As the LML contains provisions for leasing of campsites and pasture, it introduced some provisions for the regulation and management of pasture land. However, the provisions of this law dealing with regulation, management and monitoring of pasture land seem not to be really successful. Leasing of winter and spring campsites began in 1998 (Fernandez-Gimenez and Batbuyan 2004, p.143), but the local administrations were slow to divide and allocate grazing land. This was partly due to an impreciseness of the law concerning the issuance of certificates of possession over winter and spring campsites. Traditionally the right of a campsite entailed an implied use right for the respective winter and spring pastures in the surroundings within a radius of several kilometers (Sneath 2004, p.166). However, with the wording of the law it remains unclear if the certificates of ownership apply to these pastures as well. Most *sum* issued certificates only for winter campsites (Fernandez-Gimenez and Batbuyan 2004, p.8), thus for small point locations.

Summer and fall pastures must remain openly accessible, and so must water and mineral licks. The law empowers *sum* and *bag*<sup>11</sup> governors to enforce these provisions and to regulate seasonal movements and stocking rates, but few of them are aware that they have this authority, nor do they have the resources to carry it out (Fernandez-Gimenez 2006, p.33; Fernandez-Gimenez and Batbuyan 2004).

Consequently, due to this misinformation and the ambiguities of the law, it cannot be seen as sufficient to re-install a system of sustainable pasture use.

### **(2) Right to Possession and Right to Use**

The LML – in accordance with the Civil Code - defines two types of land tenure rights: the right to use and the right of possession. This distinction plays a role for the character of allocation of land rights and therewith for the degree of security of access to resources.

The land *possession* is defined by Article 3.1.3 LML: “Land possession means to be in legitimate control of land within the framework allowed by law and in accordance with the

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<sup>10</sup> The primary motivation for revising the law was to make possible a - limited - land market for urban and peri-urban land, household plots (including herders' winter camps), vegetable gardens, hayfields and arable land, amounting to a total of around 2 % of Mongolia's land area. The basic provision concerning pasture land - that it shall be property of the state and protected from private ownership - remained unchanged (Mearns 2004, p.144).

<sup>11</sup> The smallest administrative unit, covering only up to 1000 people.

terms and conditions specified in respective contracts”. It includes the right of physical occupancy, abstract possession by means of documents and registration of rights, exclusion of other persons from the land and processes for claiming protection of the rights in courts (Narangerel 2004, p.172). The right of possession can be inherited. Land possession is provided for a duration of fifteen to sixty years through a license that may be extended for no longer than forty years at a time, Art. 30.1 LML, and only if the land user has complied with the requirements established by law and by the underlying leasing contract. These land possession contracts are made with the *sum* or district land authority, so they are only possible between a legal subject and the State. The possibility of leasing contracts between two legal subjects, transferring the right to use the land to a third party, or the possibility of sub-tenancy are not mentioned in the LML but are possible according to the Civil Code.

These land use agreements between the state and legal subjects are used as one of the most important implementation tools of Mongolia's land use planning, and therefore do have an unusual importance for the regulation of private activities and also for environmental impact associated therewith (Narangerel 2004, p.172). Residential lots have to size less than 0.5 hectares. The size limits for land used for crop production and grazing are to be determined by the local *hurals* (Narangerel 2004, p.173).

The advantage of a land possession agreement compared to a mere use contract consists in the fact that the LML requires the government to compensate land possessors if their land has been given away or repossessed by the government (Narangerel 2004, p.174). However, this applies only if the conditions for compensation are spelled out in the respective contract. If terms of the land possession contract or of the LML are violated seriously, or if it has been determined that a given land use is contrary to human health or environmental protection the respective contract expires automatically (Narangerel 2004, p.174).

A right to *use* on the other hand originates mainly from a transfer of rights of possession or it means the right to use land that is owned by the state in a very precisely-defined way (Narangerel 2004, p.174). It includes the right to take fruits produced on the land as well as to exploit subsurface resources and retaining the profit from their sale or use, to change the natural character of the land surface, to build on the land and to make improvements to its landscape (Narangerel 2004, p.174). The legal subject willing to use the land has to enter into a land use contract either with the owner - until today normally the State represented by the respective land authority of the *sum* or district - or with the possessor. Unlike the possessor, the user does not have the right to transfer use rights to a third party. Foreigners can get a land use agreement for five years at a time. For Mongolians, there is no time limit for use contracts. Nevertheless, the government is not required to compensate the user if the land is repossessed prior to the expiration of the contract (Narangerel 2004, p.175).

If land is allocated to individuals or groups the question if their tenure right is only a use right or a more secured possession right is of overriding importance to them. With regard to a potential future legislation specifically regulating the access to pasture land it should therefore be carefully taken into account that only awarding possession rights might provide land

holders with the necessary security that makes them willing to invest in the long-term maintenance of the land.

### **c) Privatization Debate**

Privatization of pasture land would lead to a private property regime. Advocates of these regimes emphasize on the incentive that is provided to owners to maintain their own plot of land. Opponents say that it is unsuitable for pastoral societies because of their use of large and shifting areas of land. The topic was strongly discussed in the course of the development of the LML. Although many international donors – on which Mongolia's GDP is depending on a high degree – pushed towards privatization, Mongolian parliamentarians strongly opposed it, so that only use and leasing of land was included into the LML. For its renewal in 2003, proponents of a differentiated solution were predominant, so that pasture land remains state property, but urban and farming land can be privatized according to the LALMCO.

### **(1) Controversial Opinions on Privatization in Mongolia**

The debate about private ownership of land, which preceded and accompanied the land legislation, became one of the most controversial political issues during the transition period.

One opinion is that a solution for the regulation of access and sustainable use of pasture land could be based on land registration and titling, as well as the development of a land market, and that therefore a privatization of land of all types would be necessary (Fernandez-Gimenez 2006, p.35 with further references). Namely the Asian Development Bank and other advisors to the Mongolian government considered it anomalous that land remained a state owned resource in the privatization process of the other assets of the collectives - registration and titling of land was thought to be a necessary precondition for an effective land market, which was assumed necessary for realizing productive potential (Sneath 2004, p.164). In 1994, the Asian Development Bank complained that “there is no private ownership of land. As a consequence, land tenure insecurity causes disincentives to invest in land improvements” and also advocated that the new land legislation should allow the private ownership of land “to provide positive incentives to herders, farmers and others to maximize production and to protect land from damage or degradation” (ADB 1994, p.33). Similar proposals for pasture privatization are emerging time and again.

However, Article 6 of the 1992 Constitution does explicitly exempt pasture land from privatization. This constitutional provision is backed by large parts of the political public in Mongolia. Many Mongolian parliamentarians in the early 1990s, particularly members of the Mongolian People's Revolutionary Party (MPRP) - considered conservative in the context of the post-socialist political arena - were unhappy with the notion of privatizing land and repeatedly delayed the new land legislation (Sneath 2004, pp.164, 165). In order to get the bill through the parliament, the clauses concerning outright private ownership on land were dropped in November 1994, and only maintained the legislation allowing the state to lease campsites and pastures to individuals (Sneath 2004, p.165). So the topic was highly controversial from the beginning. After winning the elections in 1996, the Mongolian

Democratic Union began in 1998 to implement the land-allocation provisions of the 1994 Law on Land. Still, the topic remained controversial. Fears were expressed that the best pasture land would be acquired by the rich to the detriment of poorer herders in the way that the government might pursue this legislation only to please the Asian Development Bank in return for large loans. One parliamentarian even declared that land privatization could result in “civil war” (Sneath 2004, p.165, referring to an article (of A. Delgermaa) in The UB Post June 1999, No. 22 (159), p.2). Even if that might have been exaggerated, there were clearly fears that privatizing land would precipitate disputes over land claims.

Among the population, especially among many pastoralists there is a feeling of unease regarding the notion of privately owned pasture land. Although pastoralists had also become concerned with protecting their use-rights to pastures no more managed by the collectives as before, the idea that land could be bought up and owned outright by individuals, particularly by outsiders, remained unpopular (Sneath 2004, p.165).

## **(2) Pasture Land exempt from Privatization under the LALMCO**

In the course of this discussion, the Law on Allocation of Land to Mongolian Citizens for Ownership (LALMCO) was developed. It was adopted in June 2002 and became effective on 1 May 2003. Even if the right to private land ownership was already established by the 1992 Constitution, and the 1994 LML stated already that “land ownership by citizens of Mongolia shall be regulated by the appropriate law”, the specification by a concrete law thus is relatively new.

The law has the purpose to allocate land to citizens-families for ownership, and to govern related relations arisen out of such allocation, Art. 1 LALMCO. By its fundamental provisions, first, the transfer of land is limited to citizens of Mongolia; and secondly, - contrary to what the name of the law indicates -the receiving parties were defined as the citizens-families instead of the individual citizens (Art. 3.1.2 LALMCO). The latter was very disputed and became one of the most controversial issues concerning the law during the last time. Eventually, the law was revised with regard to this policy choice. The new wording which was enacted shortly before the parliamentary election in June 2008 replaces the transfer to “citizens-families” by the transfer to “citizens”, i.e. individual persons.

According to Art. 4 and 7 LALMCO, the allocation of land to citizens for ownership is limited with respect to the purposes the land will be used for and with respect to certain categories of land. The purposes provided by the law are restricted to family needs as well as agricultural and commercial purposes. With regard to the categories of land, grazing land and forests are exemplary mentioned by Art. 6.1.1 LALMCO with regard to family needs and commercial purposes. Furthermore Art. 6.1.2 LALMCO restricts the scope of the provisions on privatization to - tilled and untilled - agricultural land. Although this formulation seems to be contradictory, it has to be read in synopsis with Art.6 of the Constitution that bans the privatization of pasture land. In addition, Art. 7.1 sets the size of land that should be transferred for free to the particular families or citizens. These provisions reveal that the land privatization does not cover large areas of pasture land as the main resource of the pastoralist

population. Thus, as a result of the controversial privatization debate privatization under the Law on Allocation of Land to Mongolian Citizens for Ownership (LALMCO) is limited to non-pastoral land.

However, many pastoralists seem to be concerned that they could become affected indirectly. Some of the provisions of this statute seem to be quite vague. For example, this applies to the terms defining the purposes of the allocated land, Art.4 LALMCO, as well as to the definitions of the relevant agricultural land, Art. 6.1.2 and Art. 5.1.6 LALMCO. Therefore, the concern seems to be understandable that the scope could be de facto extended and that some indirect effects, like hindered access possibilities to certain pasture or water resources due to land fragmentation and fencing, may touch pastoralism in the course of the implementation and application of the law - besides the major concern that these provisions could serve as a model for a corresponding legislation with regard to pasture land.

In the course of the first land privatization activities - the implementation of the LALMCO - as provided by the Constitution pasture land has been exempt from the privatization process. Thus, the current status quo is that pasture land cannot be privatized. However, the issue of allocation of tenure rights over pasture land might not be resolved irrevocably on two counts: Firstly with regard to the lastingness of the exemption of pasture land from privatization; secondly because it was only negatively decided about the question of privatization, but no positive clarification concerning alternatives have been made. Therefore, different options how to organize the allocation of tenure rights on and the access to pasture land have to be discussed in order to find an adequate solution for the way ahead.

## V. Options for Pasture Land

In the theoretical discussion of access regulation to land-based natural resources four types of property rights regimes are basically distinguished: private property, common property, state property, and open access (Bromley 1991, pp.2, 23).

Mongolian land has already experienced several of those regimes.

In the case of open access there is no regulation at all. It was the case right after the transition - and partly still now - in Mongolia. Although all land is in state ownership, there is an important lack of access regulation - leading to Hardins - wrongly named - "Tragedy of the commons"-phenomena of overuse and pasture degradation<sup>12</sup>.

Several proposals have been made to solve the problem of unsustainable pasture use (Fernandez-Gimenez 2006, pp.33), to secure access and prevent pastures from overuse (which leads to degradation and pasture shortages as a consequence).

They correspond with the three other types of property rights regimes.

### 1. State Property and Administration

The state is often considered to be the actor best overlooking the whole complex situation into a country, and who could best provide for a reasonable and fair administration of land.

Mongolian pasture land amounts to 127.307 million hectares. Although currently the state is the owner of all pasture land, it is not exerting its administrative duties to regulate the use of all this land. Therefore currently there is a situation of de facto open access.

To obtain the property rights regime of state property the rudimental state administration of land would have to be further developed, away from its current status of de facto open access towards a real administration that is regulating the access to land more in-depth and on a permanent basis.

There are proposals of reunification of *sum* into larger territories - similar to the former *khoshuun*. By this means, a new division could be created in order for each administrative unit to have suitable pastures for each season's grazing. The land should remain state property, and seasonal movements should be managed by the *sum* governors as local officials just like at present, but these officials should be made aware of their duty and provided with more resources in order to be able to fulfill this task.

However, in areas with landscape scale overstocking problems, unsustainable grazing patterns could not be solved by this approach. Furthermore, as rights distributed in this way do not provide a benefit stream for the local officials themselves or at least any kind of advantage for local administration, local governors will possibly still lack incentive. Such a situation will thus not create strong incentives for either the local state officials or for the users, meaning the pastoralists, to establish and maintain a system of sustainable use of pasture land.

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<sup>12</sup> Garrett Hardin described a situation of open access, but called the situation and the behaviour of actors the tragedy of the "commons" (Hardin 1968).

Thus there are a few arguments for not commending state property as the most adequate solution for the regulation of access to pasture land.

## **2. Privatization**

As already thematized describing the development process of the LML land privatization has been a very controversial topic in Mongolia. It remains controversial, as some want to expand privatization to pasture lands, but most people do not want to.

From the legal point of view the Constitution anyway does not allow the privatization of pasture lands (Art. 6).

Considering contextual factors, there are also reasons speaking against an expansion of privatization. With regard to the socio-economic conditions of pastoralism, especially the aspect of the need for mobility and use of different pastures, access to vast and different areas of land is of much more important for pastoralists than the ownership of a certain determined plot.

Thus good cause is counting against the privatization of pasture land as a solution for the current problems.

## **3. Common Property based on Herder Groups**

Another proposal is the implementation of a variety of co-management schemes in which groups of herders would be granted exclusive rights over pasture areas, so that they could develop rules to regulate use within their boundaries (Fernandez-Gimenez 2002, pp.49; Fernandez-Gimenez 2006, p.35 with further references). This would correspond to common property regimes. Although it may be difficult to introduce, such an approach would allow for the most differentiated solution.

Mongolian herders' concept focusing on the use of land could lead them to not recognize the idea of a permanent and exclusive allocation of land to individuals or groups. The traditional understanding prevents herder communities from legally denying 'outsiders' or non-members of their communities from gaining access to local pasture, or from insisting that such access be granted only following explicit negotiation (Mearns 2004, p.141).

However, the right to use a resource is linked to the factual maintenance to it as well, which can justify the claim on it. This emphasizes the importance of good management and maintenance activities by herder groups in order to have their legal rights on the paper respected by non-member herder households.

It has to be analyzed how it could work out best – taking into consideration that there is already some experiences and lessons learned from participatory projects in the forestry sector (where with the MLF some procedural issues are already more concretized).

Pastoralism and forestry are interconnected anyway. The interdependence of different ecosystems creates opportunities for resource extraction across different and complementary



ecological niches (Nori et al. 2008, p.7). Therefore the legal development in the forestry sector is very relevant for the pastoral sector as well.

However, with regard to forestry groups there are still many open questions as well. As forest user groups are to some extent comparable to pastoral land user groups, the considerations of this paper can be of importance to the further development of locally managed forest use as well. Reports from the forestry sector emphasize the need of important changes in both law and practice if community-based initiatives are to succeed in the long run and on a wide scale (Lindsay et al. 2006, pp.1, 4).

As an example, community groups may possess forest land according to the law, but they are still not provided with clearly defined rights in order to be an active and integral part of forest management. This could undermine incentives for participation in the long run, as unless people see tangible and significant benefits to their livelihoods, participation will be hard to sustain. In addition, there is still a lack of real tenure security, the law not clearly preventing overlapping rights from being granted over a contracted forest area. In addition, the MLF does not firmly establish clear criteria and procedures for contract termination and the issue of compensation. These problems do appear with the LML as well. Drafts for an explicit law on pasture land (described later in this paper) do try more carefully to avoid such overlapping and to regulate termination and compensation issues in an adequate way.

For the further development it is recommendable to take into account some important guidelines and principles and to further design and elaborate the legal framework.

## VI. Forming Herder Groups and Legal Requirements

### 1. Forming groups

The general idea is to organize the management of access to land in a common property regime by identifying or forming groups of herders or herding households which are using certain areas of land together. Land would be allocated to them so that they could regulate the access to pastures and other relevant resources by themselves, realizing a community based land management.

The tradition of herders to perform in – smaller or bigger - groups for many operations of their pastoral activities anyway should facilitate the establishment of such ‘land administrating groups’.

There are two main approaches to define “communities” or herders that can form part of one same group, a social grouping model and a territorially-based model (Fernandez-Gimenez et al. 2008, pp.36). Following the social grouping model herder groups are organized primarily on the basis of a combination of kinship and shared use of key resources such as winter and spring pastures and wells. Encompassing on average from 8 to 20 households these groups are usually quite small. According to the territorial approach entire *sum* or *bag* are divided into territorial units or *khesig* encompassing 40 to 100 households. Ideally this takes place in a participatory process engaging *bag* and *sum* leaders, herders, and where applicable project staff of donor organizations. Initially the idea was that herders whose winter camps and pastures lay within a designated territory – thus members of a certain *kheseg* – were forced to become members of the respective user group, but it was quickly realized that this was not feasible. Membership is therefore voluntary, however, the goal remains complete participation.

Both approaches bring advantages and disadvantages. With the social grouping model communication might be easier and transaction costs lower because it builds on existing social relationships. On the other hand, groups that are formed according to this approach have a higher potential to be dominated by wealthier or more able herders who are effective organizers and can by these means capture resources or benefits at the detriment of poorer or less able herders. Another weakness of this model is that the group member households will often be spatially mixed with non-member households. Following the territorial approach, a better match between social and spatial boundaries will be facilitated as membership is defined by locality of residence and resource use – although not all members of a *kheseg* might be willing to become members of the respective user group as described above.

Summarizing it can be said that the smaller the number of members of a user group, the lower the transaction costs for communication and of reaching agreements among group members. However, a small number of members often implies a small territory as well, which may limit mobility and flexibility. This can be an important disadvantage especially if natural disasters occur. The territorially-defined approach implies a larger territorial extent which allows for

more flexibility. However, the larger number of member households increases transaction costs associated with communication as well as eventual monitoring and enforcement costs.

## **2. Legal framework and required improvements**

An adequate legal framework is necessary, dovetailing the principles for group forming with those of land allocation.

Concerning the legal form of a user group different forms are imaginable, from cooperatives – rent-seeking producers` cooperatives or cooperatives just for land administration purposes - to Non-Governmental Organizations (NGOs). Related statutes are the Law on Khorshoo (MLK), the Law on Nokhorlol (MLN), the Law on NGO (MLNGO), the Law on Buffer Zones (MLBZ), the Law on Forests (MLF) and the Law on Economic Entities (MLEE).

Through the MLK and the MLN local citizens have the opportunity to form simplified business entities. The application of the MLBZ is limited to buffer zones of Protected Areas, enabling increased local participation in management of resources and enforcement of environmental laws. The MLNGO was originally meant to create a framework for local participation in conservation activities. The MLN, MLK, MLF and MLEE all provide for different entities to lease land for terms of 15-60 years through land possession contracts – like the LML.

### **a) Experiences from the Forestry Sector**

For the development of the above-mentioned principles for group formation and land allocation it can be partly resorted to experiences from the forestry sector. The legal analysis carried out under a FAO project concerning participatory forestry (Lindsay et al. 2006) shows that in the forestry sector important changes in both law and practice will be needed if community-based initiatives are to succeed. As these demands may mainly apply for the grassland sector as well, some examples of required changes will be given.

One point why the current legal forms available for group formation are not entirely well-suited to community-based natural resource management is the broad membership criterion of the MLK as well as of the MLN, which does allow membership in the organization to outsiders of the community. This could be a vehicle by which non-members of a community may acquire interests to the detriment of community members.

Another point is that provisions for an easy understandable, participatory and usable process of group formation as well as for the development of management plans by the groups are missing.

Finally it is pointed out, that due to a lack of access to information and the absence of a specified and guaranteed process for obtaining information and attending meetings in order to participate in government decisions, laws directed at participation often remain theoretical ideas.

## **b) Principles of a Legal Framework for Community-based Pastoral Land Management**

Considering the example of the forestry sector, some principles will be elaborated with regard to pastoralist specifics. They will be summarized to 10 key principles that will be presented below.

### **(1) Tenure Rights**

The legal framework needs to contain provisions for granting or recognizing the rights of community-based organizations to manage resources.

The possibility of leasing contracts of pasture land does already exist under the LML (Art. 3 and 30), with the lessees either being individuals or groups. As described above (III 2. b i)) the LML recognizes the possibility of natural and legal persons to acquire possession rights over land for periods of 15 to 60 years. Thus the law allows for leasing contracts of groups. However, very little use is made of this possibility.

For forest land, the MLF specifically creates a contracting procedure, clarified by Government Resolution 125. Such a specification is lacking for other land. This might be one of the most important obstacles for individuals and groups to really make use of the possibility of possession of land. Considerable clarifications are expected from a specific Law on Pasture land, drafts of which are being currently elaborated (further explanations below).

### **(2) Tenure Security**

Furthermore, tenure security is very important in order to enhance management incentives. The LML – following the tradition of Russian land use regulation – provides for the confiscation of land for violation of the provisions of the law committing possessors of land to prevent land degradation. This is a quite draconian approach, as land users usually – although of course not always - may tend anyway to have long-term interests in using the land and therefore in maintaining it in good conditions. By comparison, developed market economies take a much less draconian approach by fixing fines for the violation of certain obligations with regard to the environment arising from land tenure in their environmental legislation. The power to confiscate is an open door for abuse and should therefore – if considered at all – be restricted to the most serious offenses which should be specified well in advance, and should be accompanied by clearly defined condemnation proceedings.

Furthermore it is very important for tenure security to have legal clarity with regard to all issues. Gaps create confusion and obstacles that laws elaborating further detail can avoid. The same applies to the language in which clauses are formulated. It must always be clear whether a provision is discretionary, directory or mandatory. This is of even major importance because of Mongolia's prohibition on judicial interpretation. Judges are not allowed to interpret law but only to apply it. Therefore broad worded provisions are very difficult to enforce.

In this regard it is questionable whether this restriction of judges' competences has a future. The risk that disputes will not be resolved because a special case was not anticipated or that a provision is hollow because it was inadequately defined by lawmakers is very high if judges are not allowed to interpret law but only to apply it.

In addition, the rights of user groups need to be of sufficient duration. The LML allows the possession of land for 15 to 60 years, with the possibility of extension of 40 years. However, up to now typical contract terms are 15 years. From forestry sector experiences it has been educated that it would be worth considering a minimum length 40 or more years. Such a long term commitment could be preceded by a short “trial” period during which the user group has to demonstrate good practice (Lindsay et al. 2006, pp.18). Actually considerations of perpetual rights that would not terminate except upon the happening of events or violations specified in advance have emerged. Long-term considerations are of course of special importance for forestry as a per se long-term activity. However, long-term contracts would procure tenure security to user groups in the pastoralist sector as well. As for the idea of a permanent perpetuation, it has to be taken into account that state officials still need some flexibility to intervene in the event of disasters in order to meet their statutory task. Another aspect is the danger of a perpetuation of existing wealth distribution that lies within the concept of user group formation in general, but would be enforced if the initial rights of a group would basically permanently perpetuated. In addition it is difficult to predict if every pastoralist will still be one in 40 years. Especially for “newcomers” after the transition to a market economy and for the poorest households this is very doubtful. Therefore the introduction of the possibility of an endless perpetuation of user groups’ rights cannot be recommended in the current situation.

If condemnation of the land by the State is taking place, an adequate compensation is necessary. It would be recommendable that the possessing group receives another adequate land of comparable value, or – e.g. if comparable land in exchange is not available - should be paid the fair market value of the land at the time of condemnation. However, both ways might not be practicable as up to now there is no working land valuation system in Mongolia. Although attempts are made with the LALMCO, Mongolia's private real estate market is still not sufficiently developed to generate significant information about the value of – especially rural - land.

Another approach for a compensation standard is to – besides reallocating new land to the damaged party of highest possible similarity in value compared to the lost land - seek to in addition put them in the position they would have been in had the termination not occurred for all damages which are not directly related to the land (Lindsay et al.2006, p.23). However, this is only possible if there are such damages which are entirely unrelated to property market value, like the value of immovable fixtures, the detach-reattach costs of movable fixtures, or business interruption damages like lost profits and all costs associated with relocating.

### **(3) Exclusivity**

Related to the precedent statement the importance of the exclusivity of user group rights has to be emphasized.

Land possession under the LML is not ownership but a long tenancy or leasehold. In such a legal arrangement there are necessarily at least two parties involved – the owner (in Mongolia usually the State) and the possessor. It is important to clearly define the relationship between

these two parties, including provisions whether the owner is permitted to enter the land, under what conditions, for what purposes, and with what kind of notification.

Furthermore, the tenure security of a user group depends on the recognition of their rights in other land allocation procedures. The procedures contained in the Law on Mining (MLM) are indicative of the problem (Lindsay et al. 2006, p.20). As all other natural resources, minerals are the property of the State, § 5 MLM. Decision-making authority to grant exploration and mining rights on all land other than State special needs land and Protected Areas rests exclusively with the Office of Geological and Mining Cadastre, § 6 II MLM. Procedurally, the Office only checks for overlap with those two kinds of land and wit existing or pending mining licenses, § 14 II MLM. Other land possession contracts are not taken into consideration. This leads to overlapping land allocation and much conflict.

From the forestry sector it is proposed to grant a right of “quiet enjoyment” (Lindsay et al. 2006, p.20), which means the right to occupy the land without interference from third parties (including the land owner), to the land possessor in order to clearly define the relationship between land owner and possessor. This idea could be transferred to the grassland sector without modification.

To avoid overlapping land allocation, a central registry where the status of land possession concessions could be verified would be very useful. However, to follow up on this idea, overriding priority should be given to the fast further development of cadastre image, a working cadastre map being a precondition for such a registration system.

#### **(4) Management Rights**

Thirdly, the legal framework has to provide an appropriate mechanism for local groups to take management decisions about their resources. From the forestry sector it is reported that even in some new laws the extent to which government holds on to the decision-making function is striking, and that both forest user groups and forestry officials would benefit if the law spelled out in more detail some basic management principles, established a transparent and participatory process that should be followed in formulating a management plan, including the delineation of the area to be covered by the contract, established the criteria that government is to use in reviewing and approving management plans, specified the ways in which plans can be modified and adjusted, and defined the legal significance of plans. The promulgation of a management plan template would also be considered useful. The LML does not provide specific regulations for the development and significance of land management plans. Drafts for the Law on Pasture land try to be more specific, providing at least regulations concerning the delineation of the area of land to be covered by the contract. Particularly for the pastoral sector with its mobility issue more specific regulations concerning management plans and especially the provision of exemplary model plans would be of great value.

#### **(5) Group Membership**

A clear definition of the criteria and the process for group membership has to be stated. This can be done either by a general regulation, or through the possibility for user groups to define

their own rules for membership. From the forestry sector, the importance of user group formation not being a vehicle by which “outsider”, meaning non-members of the local community, acquire interests in a local forest to the detriment of local people is reported. Furthermore it is highlighted that the group formation should not provide opportunities for a few community members to exclude others who are legitimately interested in participating and sharing in the benefits (Lindsay et al. 2006, pp.12). From the grassland sector it is reported, that many herders have an unnecessarily rigid view of boundaries of user groups, fearing for example that relatives from other districts would be prevented from moving into their area to live with them, and showing little understanding of the possibility for herding groups or communities to devise their own rules for membership which could of course contain provisions for admitting new members (Fernandez-Gimenez et al. 2008, p.36).

As shown above, in Mongolia the definition of “community” is especially complex, since communities or parts of them move, separate and merge according to seasonal movements. If the social grouping model is chosen, the criterion of membership will probably be kinship. However, other close social relation could be taken as a criterion as well. In addition, relatives might live far away of each other for part of the year or even for phases of life. Therefore clear criteria, preconditions and procedures for entering and exiting a group must be defined. With the territorial approach as well at a first glance with territorial residence or resource use there is relatively easy criterion for membership. However, the issue of voluntariness of membership must be taken into account.

## **(6) Intra-Group Conflicts**

Rights need to be enforceable and enforced, and responsibilities and sanctions have to be clearly defined. This applies to both internal disputes and conflicts between different groups or between a group and a third party.

With regard to internal responsibilities, those are in general laid down in the organizational charter. The legal framework requires such a charter to reflect the categories of rules identified by partnership or association laws, describing the nature of the association, the relationship of members to each other and to the association, property rights of the members, winding up of association affairs, and dissolution. Generally missing are indications with regard to the standards behind each of the listed rules (Lindsay et al. 2006,p.26), as well as some more detail which would be desirable because of the considerable complexity of relationships in any organizational structure. It would be recommendable to develop a default of standard organizational charter rules or bylaws, which could then be adjusted to the specific needs of the respective organization. Alternatively at least a more detailed list of issues and internal relationships that need to be defined for an adequate internal organization of a group could be created.

Concerning internal conflicts, either the law or the statute that a group can give itself should establish clear dispute resolution mechanisms and enforcement procedures.

Both the MLN and the MLK are silent on the issue (Lindsay et al.2006, p.24). However, this does mean as well that nothing in the law would prevent groups from establishing specific internal management rules and enforcement procedures in the framework of their

organizational charter or bylaws, and be declared binding upon its members. Anyhow, the complete lack of guidance in the MLN and MLK related to the issue represents a noteworthy obstacle for the introduction of such provisions, and could lead to the establishment of very differing standards as well, which could negatively impact management, or to conflicts bylaws inadvertently being created in a way that they are in contradiction with other laws. In addition to legal provisions simplifying the establishment of provisions for dispute resolution mechanisms, internal dispute resolution may be improved by the introduction of a dispute resolution body whose rights within the organization would include the authority to resolve disputes internally pursuant to agreed upon rules.

With regard to the enforcement of such rules, it is important to say that rules which are formulated vaguely and without adequate accuracy will be unenforceable. Furthermore, it is recommendable not to attribute unlimited discretionary power to any body of an organization with regard to the enforcement of its rules. From the forestry sector it is reported that certain forms of penalty, like confiscation of property of a defaulting member, should be restricted, and that more equity within the group can be achieved if there is a clear right to request a review of the results of internal dispute resolving decisions by a court (Lindsay et al. 2006, p.24). It is also emphasized that it would be useful to develop a set of rules that could guide such third parties when reviewing the internal dispute resolution results.

## **(7) External Conflicts**

With regard to disputes between groups and outsiders – including the State – it can be said that Mongolian law is strong on enforcement and weak on dispute resolution. In the forestry sector Government Resolution 125 states that forest user groups have the right to “stop illegal logging and non-timber forest product ... poaching” and that individuals who cause damage are required to repair such damage at their expense. It also states that “relevant authorities” are required to take “necessary measures”. Such provisions are absent for the grassland sector. However, there are enforcement provisions in Mongolia's contract law. As user groups will normally have a contract over their land, they fall in the category of contract law. However, dispute resolution up to now is the exclusive domain of the Ministry of Justice and local governors who are not adequately equipped to handle all those legal issues of growing complexity. In addition, in dispute resolution by the State, primary importance has to be given to not create conflict of interest by having the same governor responsible for the resolution of conflicting land use disputes who has previously allocated or denied the uses (Lindsay et al. 2006, p.29). It would make sense to have private dispute resolution and enforcement mechanisms. To date, information about such mechanisms or their regulation lacking. There is the hope that the implementation of an administrative court system will improve the situation, providing a degree of security against arbitrary government action. The draft Law on Pasture land does not propose anything new here, stating in Article 28.1 that governor and state inspector shall impose administrative sanctions.

Sanctions are written down in national legislation mainly in the Criminal Code, but e.g. in the Law on Environmental Protection (MLEP) and the MLF as well. Although these laws are typically clear, some suggestions are made for improvement like inflation-indexing and the



elimination of distinctions based on the violator's status as an individual, economic entity, organization or public official (Lindsay et al. 2006, p.26).

### **(8) Procedural Provisions**

There must be regulations reducing the length of time necessary for forming a legal entity. From the forestry sector it is reported that it takes too much time to register an entity. The draft Law on Pasture land directly targets this timing problem by guaranteeing registration within five days.

Furthermore, the legal requirements must have a reasoned and logical order in time. In the forestry sector, the issue of organizational documents including the boundaries of the exact area of activity being needed in order to obtain legal recognition of some types of forestry groups has been emerging. However, a still unregistered forest group will not be granted a possession contract yet. Therefore it probably cannot specify the exact area of its activities in advance. It should therefore be possible to form user groups with the purpose of managing land resources without having to specify the exact area in advance.

### **(9) Subordinate Coordination**

In a herder group based pasture management system it has to be made sure that poor, marginalized or "newcomer" herders are included into the new management system. There is also a need for comprehensive land management plans at *aimag* and national level in order to reserve areas of land for hay reserves and as emergency pasture in the incidence of disasters. Furthermore, the communication between different *sum* and *aimag* has to be ensured. This is not attainable without some subordinate strategic planning and coordination. Here the State has to get involved. As described above, due to the vast territory of Mongolia and not strongly enough developed infrastructure, the State is unable to implement the management of the pasture resources alone. Rather, local herders do know much better the needs of the population in their respective specific area. However, the State through its officials has a coordinating and assisting role to play. This is still not regulated in much detail. Further effort should be put in clearly defining the tasks but also constraints of the State, and to legally stipulate them.

### **(10) Capacity-building**

Ultimately, an institutional but not exactly legal requirement must be named: It is necessary to invest in capacity-building of all stakeholders in order to enable them to better understand and use the law. To be of general approval and observation, a law has to be public in the sense that it has to be available to the knowledge of the citizen. Participation is an important means to obtain such a public knowledge.

Involvement of groups requires better public access to Government information (Lindsay et al. 2006, p.32). This access should not be inadequately constrained by exaggerated legal controls, e.g. because of too high weighting of national security concepts. In Mongolia laws generally recognize the need of informed public participation. The respective rights to seek and receive information are anchored in Article 16 of the Constitution. Only information that is classified as state secrets is exempt from these rights. However, no procedural mechanisms

are defined, so that rights often do not become reality. In addition, the secret status of maps at scales greater than 1:200,000 (Item 34 Law on State Secrets) seriously constraints the access to information and the possibilities to use such information for land management (Lindsay et al. 2006, p.32). Article 8 I and II LML requires administrative units to maintain maps no greater than 1:25,000. In light of the increasing overlap of land use concessions and consequential conflicts, access should be permitted to all already existing information.

Up to now there are no participation requirements for the drafting of a law or for resource decisions, except one reference to an open meeting requirement in § 5 II 4 MLEP.

From the forestry sector there is the recommendation of Mongolia accessing the Aarhus Convention (Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters), that has been signed by around 40 (primarily European and Central Asian) countries and represents an international recognition of the importance of freedom of access to environmental information (Lindsay et al. 2006, p.32). Article 3 of this Convention requires member states to institute whatever legislative, regulatory or other measures are needed to ensure access to environmental information, and Article 6 addresses informational needs relevant to participation in decision making.

In addition, the drafting of detailed implementation guidelines of laws would be a very useful instrument to enhance capacity of stakeholders. Unfortunately, the development of such models and guidelines seems not to be on the horizon. It is recommendable to think about more efforts with regard to this issue.

### **c) Starting Points in the Current Draft for a Law on Pasture Land**

It remains to be seen if some provisions for the organization of herder groups – as NGOs or in any other form –, and for the inter- *sum* or inter-*aimag* negotiation of access rights to pastures in cases of emergency will be found into a pasture law, some draft versions of which having been developed over the last years.

Up to now, the use and protection of pasture land is regulated in Article 6 of the Constitution which bans its privatization, and in Article 52 LML (“Pasture land, its rational use and protection”), which states that “*sum* and district governors ... shall initiate land management activities ... and take measures on protecting pasture land and on regulating its capacity” (paragraph 52.1), that “summer, autumn settlements and rangelands shall be allocated to *bags* and *khot ails* and shall be used collectively” and that “herdsmen can use some part of winter and spring pasture in groups, with the approval of the governor of the *sum*, taking into consideration land use traditions, rational land use and conservation requirements” (paragraph 52.2). Paragraph 52.7 states that “citizens of Mongolia may jointly possess land under winter and spring settlements through their *khot ail* communities”, and paragraphs 52.8 and 52.9 provide for some regulations regarding inter-*sum* and inter-*aimag* interaction in the event of a need of movements to other territories due to natural disasters or other emergencies, but not in a very detailed way.

A first draft of a Law on Pasture land meant to redefine and complement some issues of Article 52 LML has been given to the media in summer 2007. In an introduction to the draft

law in its version from February 2007, the draft law working group states that it is within the scope of the law to strengthen the “self-sufficiency of citizens and local administrations by decreasing the centralization of the pasture land licensing system” (Brief introduction to the draft law on pasture land, 09.02.2007). It was printed in a big newspaper with the appeal to send comments to a certain email-address. It is questionable if such an approach can really enhance participation of the concerned, as herder households in remote areas normally do not have access to internet. However, this draft was rejected anyway after the parliamentary elections in June 2008.

The last draft version from March 2008 will probably be discussed soon in the Great Khuraal. The purpose of this Law on Pasture land is stated in Art. 1: “to define the legislative basis for and regulate relations of possession, utilization, and protection/conservation of pasture land” (all unofficial translation), in combination with the other land legislation, mainly the Constitution, the LML, the Mongolian Civil Code and the Mongolian Law on Land Fees. Within the “Legal Definitions” in Article 3, paragraph 3.1.5. states that “the term `herder community` (*nuhurlul*) shall mean the volunteer organization of herder families ... with purpose of possession, utilization, protection, rehabilitation and improvement of pasture land”. Article 13.1 of the draft law states that “pasture land possession rights shall be given to herder communities”. A somehow misleading or confusing formulation can be found in Article 18 that regulates the rights and obligations of pasture land possessors, because paragraph 18.2.3 sounds as if possessors had the obligation to fence the pasture (“18.2 Pasture land possessors shall have the following obligations: ... 18.2.3. ... fence ... pasture”). A similar mistakable formulation appears in Article 28 regulating the liability for violations of legislation on pasture land: “28.1.1. if livestock has trespassed fenced and protected pasture land ... responsible persons shall compensate damage incurred, and are subject to a fine equal to two to five times of the minimum wages” - this sounds as if only the trespass of fenced pasture land was subject to liability, the trespass of unfenced pasture land remaining without consequences.

Article 20 of the draft law allows the transfer and pledge of pasture land possession certificates. Chapter four (Articles 23 and the following) states mainly that for pasture land of permanent use but without issued possession rights, local administrations shall develop and implement pasture management plans taking into account the need for rehabilitation and improvement of pasture land, the need not to abandon pasture lands in remote peripheral areas, and to establish wells and water points.

Some regulations concerning the contracting procedure can be found in Articles 15 and 17. Concerning special details of pasture land possession rights like the duration, the draft Law on Pasture land in its Article 14.3 does refer to Article 30 of the LML as well.

Unfortunately up to now no plans for a further clarification or even model contracts can be observed.

#### **d) Further Required Improvements**

Some further improvements are recommendable to enhance the process of user group formation and to facilitate the functioning of the existing ones.

First of all, to accelerate the process from legal provisions to accepted and working rules and regulations, implementation guidelines of laws would be extremely useful.

To stimulate more and more effective group formation, clear provisions for all procedural steps in the contracting procedure to obtain land possession rights should be made available, as well as model contracts, proposing for example how to clearly define the relationship between land owner and land possessor (the contracting parties), e.g. by granting a right of “quiet enjoyment” to the possessor. In addition, a creation of new obstacles should be avoided. Therefore it is important to maintain a logical order of procedural steps. As an example, a still unregistered group will not be granted a possession contract yet. It should therefore be possible to form user groups without specifying the exact area of activities in advance (in the forestry sector the mistake was made to include the demand of documentation of the exact area of activities as a prerequisite for formal recognition as a user group), as the group will not be able to declare with sufficient certainty the exact area of land that it will be using afterwards. The importance of the possibility to follow the requested procedure should be carefully taken into account in the further drafting process and legislative procedure for the new Law on Pasture land, in order not to unintentionally introduce new obstacles. A measure that would bring important improvement would be the development of a working and efficient central land registry to avoid overlaps in land allocation. Choosing the concrete approach for group formation, careful attention must be paid to not accidentally create competing competencies with already existing structures. Especially a destructive competitive relationship between herder groups based on the territorial model and *bag* should be avoided. Therefore the respective responsibilities – pasture land use management and potentially economic objectives for herder groups and political competency for the *bag* – should be clearly defined and preferably determined by law.

As for the improvement of the work of already existing herder groups, the further elaboration of dispute resolution procedures would be very beneficial. If intra-group dispute resolution procedures are already in place, the development of a set of rules that can guide third parties when reviewing the results of these processes would facilitate their work.

With regard to inter-group disputes or disputes between a group and e.g. the State, it would be beneficial to have external dispute resolution mechanisms in place, as to avoid conflicts of interest if the same governor who has allocated the land to the groups afterwards is responsible for the resolution of disputes over this same land. To encourage groups to undertake land management activities for the land under their responsibility, models of management plans that have proven suitable should be made available. A measure that would enhance the tenure security of land possessing groups would be the development of clear compensation regulations in the case of land condemnation – although the above mentioned

development of a working land registry would be a precondition for the necessary land valuation.

The role of the State in a herder group based pasture management system has to be clearly defined. It has to be made sure that poor, marginalized or “newcomer” herders are included in the new management system of the pasture resource, that comprehensive land management plans are available at *aimag* and national level in order to reserve areas of land for hay reserves and as emergency pasture in the incidence of disasters, and the communication between *sum* and *aimag* has to be ensured. Here the State has a coordinating and assisting role to play, which should be regulated much more in detail.

In the end, the process of forming groups that do manage the land resources allocated to them in a responsible and efficient way can only advance if adequate capacity-building is taking place. A broad reform of the land management system cannot be achieved without the active participation of the persons concerned, the pastoralists.

## VII. Conclusions

As pastoralism is a system of animal husbandry often exerted in extreme environments and on marginal soils, there is a need for mobility and flexibility of access to land in order to create options for disaster risk management and adaptation to climate change. At the same time, the ongoing degradation of Mongolian pasture land makes it important to create incentives to prevent pasture from degradation in order to not further increase scarcity of resources. To combat this scarcity, it is important to reactivate remote pastures as well. Thus, the regulation of the access to pasture land is of overriding importance.

The traditional access regulation system in Mongolia has largely disappeared as a consequence of the socialist time of complete state regulation and the following transition to a market economy with the almost abandonment of any kind of regulation and a situation of de facto open access. Different options are discussed to regulate the access: The reestablishment of a strong state regulation, privatization and land titling, or a community based management based on herder groups. Privatisation of pasture land is unsuitable for a country where around one third of the population relies economically on the flexible access to this resource for their pastoral livelihoods. In addition, it is unconstitutional and not accepted in the public opinion. A mere state regulation will be impossible to handle for the state due to a lack of financial and personal resources, and the complexity of the issue because of extreme local variation and the geographic extension of the country. The past 18 years have shown that the state alone cannot cope with this issue. Therefore, the option of an access regulation through user groups is preferable.

The groups can be formed either on kinship or following a territorial approach. The kinship approach allows for an easier communication between the members of the smaller and socially related group, which maintains transaction costs for agreements low. However, they pose the problem that social and spatial boundaries may not be well in accordance with each other because usually, not all herder households on one same territory will be part of the same group. This problem can be avoided with the territorial approach meaning that all inhabitants and resource users of a certain territory should form part of one group. However, it has to be acted with caution in order not to create parallel structures to the existing political structures, especially the structure of the *bag*. This danger could be alleviated by giving groups an economic function, e.g. as producers' cooperative, which distinguishes them from the mere political and not rent-seeking function of the *bag*. State support can be useful in the phase of establishment of these groups, and for inter-*sum* and inter-*aimag* agreements, especially if access to additional pastures will be needed in case of disasters.

An adequate legal framework that allows for the formation and operation of the groups must be in place. It must meet with some key principles. A concrete procedure for granting tenure rights should be in place, those tenure rights should be exclusive rights for the respective user groups and adequately secured. Furthermore, groups should be provided not only with tenure

but also with management rights to enable them to carry on the responsibility of sustainable maintenance of the resources allocated to them.

With regard to the organization of the groups themselves, clear criteria for membership status and corresponding rights and duties should be in place as well as working mechanisms for intra-group dispute resolution.

Concerning the external relations of groups, there should be clear provisions for the legal recognition of groups and the formation of land possession contracts, and procedures for resolution of conflicts with other groups or with the land owner – the State – should be provided. In addition, the responsibility of the State for a subordinate coordination through a broad land management plan at *aimag* and national level and the coordination of land allocation to the various groups must be clearly determined. Ultimately, adequate capacity building must take place in order to make all regulations available to the knowledge of the stakeholders and enable them to participate in their implementation.

In the current system of Mongolian law, land tenure is regulated mainly by the Law of Mongolia on Land. It provides the right of use and possession of land by groups, and also the issuance of possession contracts. The analysis of the current legislation shows that it is not sufficient. The recent draft of a Law on Pasture land is a good starting point. For example, the delays in the issuance of possession contracts has already been addressed in the draft of the Law on Pasture land with a provision that demands the issuance of the possession contract within 5 workdays. However, it does not meet with all of the key principles as well. Therefore, further legislative actions that connect the principles for group forming with those of land allocation in order to create better incentives for pastoralists to form herder groups and to take over responsibilities for the management of land are necessary. They have to take into account especially the need of clear provisions for all procedural steps and a reasonable order of the requested procedure of the land possession contracting. In addition, the provision of model contracts is missing, which poses an obstacle for potential land managing herder groups to become active. Making available such model possession contracts, as well as exemplary pasture land management plans would stimulate more effective group formation and operation of existing groups. Furthermore, in order to meet the key principles of tenure security and exclusivity, overlapping land allocation must be avoided. In addition, detailed criteria for the possibility of land condemnation as well as concrete compensation regulations in the case of such condemnation should be determined. To facilitate both, further efforts to develop a working land registry will be necessary, which will also allow for an adequate land valuation as a prerequisite for the calculation of equitable compensation payments.

Concerning the principles with regard to intra-group relations – clear membership criteria and provision of dispute resolution mechanisms – further research is necessary to evaluate whether the consideration of criteria based on the social structure and kinship, or rather of territorial criteria is preferable to determine membership in groups. Either way, overriding importance should be given to clearly determine and stipulate the respective criteria. Model user group charters would be very beneficial at this point. With regard to the dispute resolution mechanisms, third party reviewing of the results has proven beneficial. It would be useful to develop a set of rules that can guide third parties in such reviewing processes.

Similarly, efficient dispute resolution mechanisms for external conflicts must be established; above all ensuring not to create conflicts of interest due to a double role of one same governor being responsible for both, the land allocation and the following conflict resolution – possibly even with the State as the land owner involved as one of the conflicting parties - concerning the allocated land.

To meet the key principle of subordinate coordination, the role of the State in this pasture management system based on user groups has to be regulated. The functions of the State are to draft broad land management plans at national and regional level, to take care of the inclusion of less capable or less wealthy herders, and to take into account the need of reserve pasture for incidences of disaster. These responsibilities of the State have to be clearly determined, while on the other hand its restriction to this role has to be made clear as well.

Ultimately, not only the legal but also a broader institutional framework for adequate information services and capacity building of stakeholders has to be implemented.

Without question, the formation of herder groups and the development of a user group based pasture land management system do not only enhance the adaptation potential of pastoralists, but also generally avoids further land degradation and consequential scarcity of pasture resources. This shows that adaptation to climate change is often accompanied by general development.

Although most of the proposed improvements of the legal framework, especially the creation of an adequate institutional framework for capacity building and participation, are rather long-term activities, there is no time to lose because climate is changing and degradation is increasing. Adaptation and land management are very pressing issues for a positive development and accumulation of wealth of pastoralists in Mongolia.



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