

HERDERS' PROPERTY RIGHTS vs. MINING IN MONGOLIA

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Introduction

The total territory of Mongolia is 1,566 million square kilometers. The land cover is systematized according to the classification of the Land Law of which 76.1 percent is used as agricultural and grazing lands, 8.2 percent covered by forests, 1.1 percent covered by water and 0.2 percent is accounted for a category of "lands of cities, villages and other settlements". For more than 2200 years of statehood in Mongolia, land has never been privately owned¹ but utilized commonly by everyone for free of charge. Land is not zoned by geographic factors but classified by the law based on the basic utilization purposes, the change of which during a term of a lease or use contract is not supported.

Livestock production from pasturelands is a mainstay of the Mongolian economy and society. Mongolian livestock husbandry is based on the nomadic life style of herders. For thousands of years they have moved with their livestock according to the seasonal pastoral schedule. Crop farming is not developed; domestic livestock is on the feet year around. The country is divided into 21 provinces - *aimags* (largest territorial and administrative units); of those, 3 are cities with a province status. Provinces are further divided into *soums* and the responsibility for land management lies with the *soum* government though titles are still held by the Parliament. A *soum* consists of *bags*, the smallest formal administrative and territorial unit.

Mining

Mongolia has substantial deposits of copper, molybdenum, gold, uranium, lead, zinc, rare earth elements, ferrous metals, fluor spar, phosphate, precious stones, etc. Several major mining operations were developed before 1989 with the assistance of the Soviet Union and Eastern European countries, and in recent years many private mining enterprises have begun operations in Mongolia. Since 1995 gold production has emerged as one of the most dynamic sectors of

the Mongolian economy, and is the current focus of many international mining companies operating in Mongolia. Gold production has grown ten-fold since 1993, and topped 11.4 metric tons in the year 2000. Mongolia has substantial reserves of coal, and has the potential for significant petroleum exports. Current coal production is approximately 5 million metric tons annually of which almost all are consumed by domestic power plants. The country is estimated to have potential coal reserves of 100 billion metric tons.

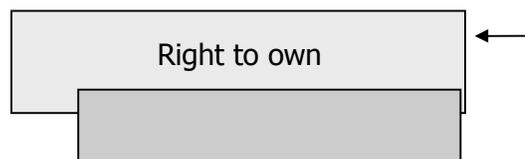
According to the Mineral Resources Authority of Mongolia there about 500 mining license owners (of which about 120 is of gold licenses). According to the Land Office of the Ministry of Nature and Environment some 47 thousand hectares of land are under mining operations and estimated 100,000 ha of land have been degraded by coal and gold mining activities since 1997. Newcomers like miners having authorized mining or logging licenses, destroy pastures and change river streams, and although they pay taxes and license fees to the central and local governments, herdsman get nothing but lose pastures.

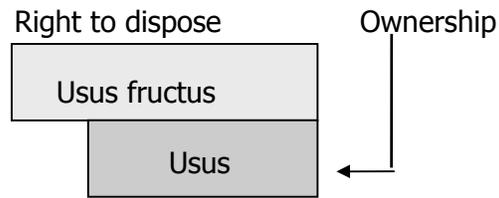
Brief review of land and mining legislation

The legal meaning of land ownership and property rights in Mongolia is different from the accepted concept in the USA. The Mongolian law differentiates "state owned lands" and "state property" from "public lands" and "public property". The property and lands owned by state are subject of the State Great Hural's (Parliament) jurisdiction whereas "public lands" are only a fraction of lands within the category of "lands of cities, villages and other settlements" defined in the Land Law as streets, squares, parks, recreational areas, stadiums, cemeteries, dumpsites and waste processing sites for common public use, and "public property" is defined by the Civil Code as those which belong to non-governmental, voluntary organizations. In this sense, all lands in Mongolia are state owned but not public.

The country adopted the international civil law system in 1930-40s. The Mongolian legal concept of property rights operates with Roman law categories of property rights and specifies:

- a right to own (*umchleh erh*) - right to use one's property within the limits of law;
- a right to dispose (*zahiran zarzuulah erh*) - right to change form and substance of the property (*abusus*), eliminate or transfer it to others all or some of the property rights;
- *usus fructus* (*ezemshih erh*) - right to possess and use a property belonging to someone else or to rent it to others and capture benefits from it, but not to sell or change its quality;
- usus* (*ashiglah erh*) - right to use a property belonging to someone else.





Therefore, the land-related provisions of the Constitution, Civil Code and Land Law are based on these concepts. Exactly corresponding with concepts of *usus fructus* and *usus*, the Land Law specifies only 2 types of land contracts - "land possession contract" (contractor may use the land by himself or sub-lease his land to others) and "land use contract" (contractor or sub-contractor is actually possessing a plot of land but may use it only by himself and can not transfer to others). Citizens of Mongolia, business units (including mining companies which have a primary registration in Mongolia) and governmental and non-governmental, non-profit organizations are provided with *usus fructus* and eligible to make a land lease contract. Citizens of Mongolia, Mongolian business units (including Mongolian joint ventures with foreign capital), organizations, foreign legal entities (businesses and organizations), diplomatic and consular offices may complete a land use contract corresponding with *usus*.

The new Constitution of Mongolia enacted in January, 1992, among many new social features entitled a private land institution for the first time in Mongolian history. The Constitution states that the land and subsoil and other natural resources shall be the property of the State, except the land given to the citizens of Mongolia for private ownership. The State may give for private ownership plots of land, except pastures and areas under public common utilization and special state needs, only to the citizens of Mongolia. Citizens are banned from transferring their private lands to foreign citizens by way of selling, bartering, donating or pledging or by way of transfer to others for use without permission from competent state authorities. The State retains the right to hold landowners responsible in connection with the manner in which the land is used, to exchange or take it over with compensation for the special state needs, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection, or national security. Article 16 of the Constitution declares the right of citizens to fair acquisition, possession and inheritance of movable and immovable property and prohibits illegal confiscation and requisitioning. If the State and its bodies expropriate private property on a basis of special state needs, they shall do so with due process, compensation and payment.

Under the Land Law effective since 1994 and renewed in June 2002, Mongolian citizens, business entities and organizations may be granted the right to lease state-owned land for up to 60 years with the possibility of extensions for 40 years each. Not all types of land are

covered by this, however. For instance, forest lands or some of the State special needs lands may not be individually possessed. The Law allows lease of land by foreign citizens (up to 5 years with possible extensions) and legal entities (up to 60 years). The revised in July 2002 Land law strongly pronounces a market approach to the land utilization in Mongolia and repealed the land use privileges for current users and household leasers that were guaranteed by the previous Land Law. Furthermore, the Law proposes easier grounds for taking and transferring a plot to another contractor who would provide an evidence of potential higher revenues for the state budget provided that the general utilization purpose of the plot would not be changed.

Fees for lease of land are established according to the Law on Land Fees, first time enacted in 1997, and estimated from a value of land determined by the Cabinet based on the land's utilization purpose. The law does not provide exact figures for land fees but formulas and ratios to fix them. Prior to the market transition started in early 1990s, all lands and business entities were state-owned so the latter ones did not pay land use fees. The 1997 Law on Land Fees introduced a new feature – land utilization fees – into the land management institution of the country but made unconditional exemption from the land fees for herding households. If land management and contracting issues are regulated mainly by the Land Law, property rights are stated detailed articles of the Civil Code revised in early 2002. The Code recognises such rights as common use, which needs no authorization, possession (*usus fructus*) - tenured, life-time, inheritable, divided and undivided group, use (*usus*) - contracted, servitude, tenured and for indefinite term, etc.

Several laws partly regulate the utilization of lands of a specific category classified in the Land Law. For example, the Law on the State Special Protected Areas and the Law on Buffer Zone of State Special Protected Areas classify protected areas and determine their management procedures and duties; the Law on Roads provides some conditions for lease and maintenance of land for road construction, and so on.

Among the laws regulating the management of specific natural resources, renewed in 1995, the Forest Code has made significant progress toward ensuring greater access to natural resources for local residents. It recognizes community rights over forests and delegates the Government's right to possess these natural resources to *soum* communities (Article 3 of the Forest Code). Grant of rights is made by the provision of the law itself with no specific condition or time limit, and no further formal contract between the Government and local communities is required. Though the rights over forest *lands* have not been transferred to local communities, this provision creates a legal ground for sustaining a community-based

management of forest resources and, furthermore, empowers local communities against new comers (e.g., mining and non-local logging industries). The reason why only forest resources were provided with such special treatment is that forest lands are generally not used for grazing, and boundaries of forested area communities are better defined than of herding communities.

The Law on Land Subsoil is another important source of regulations on management of natural resources such as water and minerals, and licensing of related activities. The law follows the Constitution, declaring subsoil to be state property. Subsoil can be utilized on the basis of a "use contract" only, i.e., can not be leased under a "possession contract".

Extraction and utilization of minerals are regulated by the Mining Code revised in 1997². This Code (along with the Foreign Investment Law) created a very liberal investment climate for the mining sector. The laws do not require technology transfer and "screening" process for foreign investment that is typical in many other countries and does not impose "performance requirements" as a condition for investment³. The law is very protective of foreign investment, and grants legal guarantees to foreign investors from expropriation of property, allows repatriation of profits other financial assets, and guarantees property rights. The Code imposes strict requirements for transparent processing of exploration and mining license applications and provides several articles on environmental protection obligations for exploration and mining license holders. To ensure the discharge of the responsibilities with respect to environmental protection, a mining or exploration license holder shall deposit an amount equal to 50% of its environmental protection budget for a particular year in a special bank account established by the Governor of a relevant *soum*. This deposit shall be refunded to the license holder upon full implementation of the environmental protection plan. If a mining license holder fails to fully implement the measures provided for in the environmental protection plan, the Governor of the relevant *soum* shall use this deposit to enable the license holder to complete these measures, and if the deposit is not enough to cover the costs of environmental protection and rehabilitation activities, the license holder shall provide the required additional funds.

The Law on Cabinet nominates the Ministry of Nature and Environment to be in charge of all land issues in Mongolia and the Ministry of Infrastructure - for the mining industry. Compared with other ministries and agencies of the Mongolian Government, the role of the Ministry of Nature and Environment is prioritized: because it is in charge of such universal objects as land, nature and its resources, the Ministry exercises the power to promulgate regulations, decisions and rules related to certain aspects of environmental protection

mandatory for compliance by all citizens, businesses and organizations in the entire country (article 15 of the General Law on Environmental Protection).

Environmental Impact Assessment Law is another source that enforces conservation obligations for various projects including mining.

The General Law on Environmental Protection sets duties of a current owner, leasee or user to protect the environment and conditions of their land and its resources. However, the laws regulating the management of a particular natural resource such as the Forest Code, Water Law, as well as such laws like Construction Code, which regulate certain activities on a plot of land, simply refer to the land laws and statutes requiring users to have due contracts made in accordance with those laws. Such referral to the provisions of the major land laws avoids overlapping and bureaucratic obstacles for potential contractors. The case of the Mining Code appears different: according to the Land Law plots of lands with minerals can be contracted under a "possession" or "use" contract, but the Mining Code does not provide any provision regarding land contacts for mining activities nor it refers to the Land Law or other land statutes with regard to the mining land contracts.

The Administrative Code and Criminal Code give dispositions for violations of the land utilization norms, sanctions for this (confiscation of tools used for the violation, monetary fine, imprisonment) and requirements for restoration of land damages.

Besides laws enacted by the Parliament, there are other sources of land and mining related norms approved by the Cabinet and the relevant Ministries. Decisions of local organs of the state do not constitute a source of law in general and in mining sector in particular. However, in certain cases normative land-related decisions of local governments can be applied for compliance uniformly throughout a certain territorial unit.

An example of such a decision in rural areas where grazing is extensively practiced may be temporary decisions of the local *Hural* or Governor, authorized by the Land Law and associated with release of grazing pressure or allocation of pastures and winter quarters of herding households.

Current problems in mining land practices

At present the mining sector in local areas does not serve as a basis for sustainable community and economic development by itself, but becomes a valuable component of a diversified livelihood economy. Mining companies offer positive features to the local communities and provinces in general: they provide substantial regular or seasonal employment, diversified incomes of rural people, contributes in reducing rural-to-urban

migration, and the incomes and savings generated in the sector can contribute to local development. For example, winters of 2000 and 2001 were exceptionally harsh in Mongolia and hundreds of herding families lost their main source of income – herds. Later many of these rural families found jobs at local mines: only in Bayanhongor province, where almost 50 percent of herding households lost their livestock, some 1800 working places were created for former herders⁴. Besides, mining generates “substantial local purchasing power and lead to a demand for locally sourced inputs (food, equipment, tools, housing) when they are available, or encourage their production”⁵. In addition, mining investment often brings along with it new and advanced technology, as well as professional and technical skills development opportunities for local people. This results in a more skilled, educated labor force and sometimes in improved infrastructure. Investors often renovate and improve local buildings and sometimes make infrastructure improvements that benefit everyone in the local community. *Erel* company’s mining division improved the road between its *Ult* mining site and the Uyanga *soum* center in Uvurhangai province. *Erel*’s decision to do this was ostensibly based on increasing performance and profits, but one secondary outcome was that local people and businesses not affiliated with *Erel* spent less time and money transporting people and goods on this route⁶.

Mining with its regulated activities like licensing, a land contract and taxes, is an element of a modern, sedentary social arrangement that is applied on to a completely different “pastoralist” social setting which was not aware of the intangible property and where regulation of use of natural resources was done by common management.

During winter and spring a herding *family* is settled at an established site provided with shelters for animals and store-buildings and grazes its domestic animals on surrounding pastures. Summer and autumn are the seasons with the most social life, so herdsmen create nomadic camps, *hot ails*. The size of a *hot ail* is related to natural conditions (varies in plains, mountainous, forested areas or deserts; 2-8 families on average), to kinship ties and to specific demands of livestock breeding. Camps do not stay together throughout the year but often split out and re-join for various seasons and years, i.e. such groupings are informal and fragile social units. Members of a hot ail commonly use the same well and adjacent pastures. Several camps may consider themselves to belong to a larger group, *neg goliynhon*, *neg nutgiynhan*, *saahalt*, co-using a river valley or mountain range. And the customary grazing rights have evolved as “a set of social customs allocating pastures to households and regulating behaviour within and between smaller and larger groups”⁷. There are no legal regulations about customary grazing practices. A herder's rights over the land are not exclusive, “anyone may graze livestock on common land and everyone is free to graze as many animals as they wish”⁸. Herder’s grazing

rights are recognized by the community members, e.g. by hot ail, neg goliynhon, on "a basis of continuous use, family tradition, membership in the community, kin or friendship with already established user, or informal agreement with the latter" ⁹. The traditional grazing practices regulate individual possession and use of winter/spring shelters and adjacent pastures; allocation of summer and autumn pastures to families and hot ails; common use of wells and pastures during seasonal moves and climatic calamities; resolution of conflicts. No one is expected to graze at random on the land which is not his habitual pasture or to occupy someone's winter shelter. If this occurs, an oral agreement between the habitual user and stranger will be made.

It should be admitted that herders in Mongolia are not considered historically marginalized or indigenous peoples who still live outside the mainstream society. The share of pastoral livestock breeding in the country's economy and its output are much larger than in many other countries in the world, and the prevalence of the nomadic culture still remains the greatest factor influencing the social life of Mongolia. Pastoral rangelands have always been used free of charge for grazing purposes by anyone including herders. However, none of the provisions of the land laws and regulations recognizes the traditional land rights of herders - the most common and continuous users of land in Mongolia. Over the past decade of the economic transition, the government has been wisely prioritizing development of the livestock production as a basis of the Mongolian economy, so it supports herders by grazing fee exemption, very low income tax counted by a head of sheep and aid in health insurance. But lack of formalization of property rights or their formal recognition by the Government made explicit in the law or a policy document makes this social group most vulnerable in terms of losing their lands to non-herding practices¹⁰. Any question of compensation for land taking or further development of the land is contingent on having a legal document which would show their land rights. Such recognition is rare in domestic laws of other countries, but effective resource management at the local level is impossible without it. Until nation-states grant legitimacy and protection of [traditional] regimes, they will not advance.¹¹

The problem here is that the central government policy on development of mining and local herding communities interests may not always accord. In such occasion, local herders' voice would play a modest role because their rights over land are not stated in anywhere, while, reversibly, the government's ownership rights are explicitly declared in the law. That is why the provision of the Forest Code, discussed above, sanctioning the forest possession rights of local residents, makes an exceptional precedent to protect rights of the local residents over natural resources.

The deficiency of formal recognition of traditional land rights of pastoralists in the law is not intentional. It is rationalized by a historical approach inherited in the public mind that land always been, and perhaps will be, for all and for free. Yet, the decision makers should question such approach against its pertinence in the current global development trends. Another reason of the lack of formal recognition of herders' land rights is that despite the country's current democratic institutions and decision making the traditional Asian notion of a strong state¹² still remains embedded in the social mentality of people. The long historical tradition of state ownership of land, powerful military states in the country's history, and the recent socialist state with a total state control over the social wealth left a significant print in the cultural memory of the public making it tolerant to the state preeminence in the land related decision making and, perhaps, comfortable of being released of additional responsibilities.

In absence of formal legal regulations some *soum* governments realizing the important of formalizing these traditional land management practices started providing some kind of certificates for herders, especially in relation with herding households' winter shelters and surrounding pastures that are in a more or less individualized use regime. Some *soums* are said to attempt to achieve a total certification coverage of herders, so make the certification compulsory and charge certification fees payable to the local budget. Because of a local, spontaneous character of this certification initiative there is lack of systematized information on its extend, purpose and intended effects. Many questions remain unclear: are local governments eligible to provide such certificates? Can these certificates be accepted as legally competent documents? What do these papers claim: declaration of land rights or documentation of the actual allocation of plots?

The existing taxation and land legislation built up such conditions that make local governments, both of a province and *soum*, to be interested in mining activities on their territories. According the tax and land laws the land lease payments are local fees and payable to the local, mainly *soum*, budget. The Provision 1 of Article 10 of the Law on Land Fees requires lease fees from most of lands to be paid to *soum* and district budgets. Amendments to the Mining Code approved in December 2001 made the mining royalties payable not only to the local budget but partially to the state central budget. Anyway, a *soum* government remains the main beneficiary of mining land lease fees and mining royalties. Locally collected money then is used for financing of a *soum* public school and public hospital and local development projects if any, though *soums* may have variations on use of these funds corresponding with the specifics of a particular *soum*. Depending on the amount of locally collected funds *soums* receive more or less of subsidies from the central budget. Locally collected money have appropriations defined

by the law, thus, they may not be utilized for a purpose other than the prescribed at a discretion of local government. Similarly, they cannot be used for compensation to herders in return for taking their pastures for mining or other purpose.

There is an emerging consensus that there should be some kind of compensation for the herders who give up their rangeland for private mining but the question is who should be compensated? For short in funds "compensators" allocating the available small monies becomes a critical question. Users of a particular spring, summer or autumn pasture may vary greatly including several permanent users grazing their stock commonly or in turns, and passer-bys. The issue of compensation for taking winter/spring pastures and winter shelters seem more obvious.

Some suggest a possibility of compensating herders for taking their land rights from the funds allocated by mining companies to the *soum* governments as a pledge for planned environmental restoration measures. However, neither local government nor the Ministry for Nature and Environment would agree with this. Appropriation for these funds is prescribed by the law as for environmental conservation and change of it at the regional level would be a violation of the law. Besides, the logic of local governments is that since they have no formal authority over land (which currently is a subject of the central government's jurisdiction), and since the center rationalizes the land use strategies and allotment including mining projects, it is more appropriate if the issue of compensation for herders is addressed by the central government.

In addition, in some years mining companies bring complaints against some local authorities regarding the improper use of the funds for environmental protection measures deposited in the local *soum* account for other purposes. Sense of emergency associated with repair of a public school in anticipation of approaching harsh winter or paying off pensions for locals, and preference of the present over the future win through environmental concerns. This situation raises mutual claims between the Ministry of Nature and Environment and the Ministry for Infrastructure when the former ministry attempts to enforce the environmental restoration requirements but the latter agency accuses the Ministry of Nature and Environment in not being able to work with the local conservation staff and ensure a proper application of the reserved funds.

The Mining Code does not attempt to address this land conflict: it has no any provisions on land contracts and related procedures and does not even refer to the Land Law (see last para. page 6) when specifying the obligations of mining companies and the mandates of *soum*. The provisions of the Code on land issue, environmental protection and authorities of a local

government do not elaborate on the stage when a land contract should be made, requirements and procedures and, more importantly, if a local government is authorized to refuse to lease the land to a mining company. Similarly, the Code requires a company to have its environmental protection plan approved by the local government but does not mention if the local government is eligible to reject the plan. It can be only implied that procedures and requirements for a mining land lease contract are similar to those ones generally specified in the Land Law. Further study would find out if the requirements for a mining land contract should be any different than other types of land contracts.

Conclusions

The Mongolian traditional land management system is very complex. Over the past century Mongolian society has undergone several major transformations, each one of which would bring significant changes in our way of life and thinking. The land tenure system, although having been adapting to and transforming along with those economic and social changes and co-existing with the formal institutes of land administration, still remains the main mechanism of land management. The traditional land tenure system of herders is the best guarantee of optimal land and water resource exploitation¹³ and best suited for the Mongolian terrestrial and climatic conditions. The conflict emerges on the edge of interaction between traditional land practices and contemporary, institutionalized mechanisms of a modern sedentary society. This is a part of a more general social conflict that have been taking place the modern (or already postmodern) world over the past century¹⁴: in Mongolia for instance, these are mobile and extensive herders with their flexible survival and resource management strategies on one side, and the complexes like mining with the laws governing it, tax requirements, licenses and land contracts, on the other. Herders are increasingly being drawn into the national and international systems based on monetary economy, static institutions and individualized land utilization. Khazanov¹⁵ articulates that global pastoralists have “only a marginal and inferior economic and social position”. This is not true for Mongolia where a social prestige connected with herding is still quite high and importance of their production in the economic development of the country rises no doubts¹⁶.

Generally, the Roman legal principles, which are accepted in the country’s legal system, recognized inherited rights and rights provided by the law equally. Traditional land rights of Mongolian herders are inherited ones though not individualized. Further research on the legal aspects of the problem, comparative study of relevant regulations, laws and international and domestic cases are needed to bring up credible recommendations considering the important

place of both mining and livestock husbandry in the country's economy and balancing the developmental goals and protection of herding communities.

However, an attempt to address the issue of formalization of grazing rights of herders and compensation for them for giving up their rangeland rights must be made with a certain precaution. The obvious benefit of the compensation, even below the return to herders from grazing the area, is that it will have a strong psychological impact on local herding communities¹⁷. Formalization of traditional land tenure will prevent future alienation of pastures by rational choices of other groups that are better equipped with the legal means. Disadvantage of such formal arrangements is in their potential to confine mobility of herding households or communities¹⁸. Besides, for some an offer of compensation from prosperous mining companies may sound like a promise of easy money. The widely reported cases with African nomadic groups that eventually lost their livelihoods after selling off their newly distributed land titles¹⁹ should be taken into careful consideration.

Some ways of such formalization are contemplated below though none of them is suggested due to the need for further subject-matter analysis:

- *General recognition in the law*: a general statement (declarative provision) in the Land Law on the herders' traditional rights would mean the Government's acknowledgment of their justification to the rangelands that they had been habitually using for centuries.
- *Agreements with local communities*: The Civil Code and Land Law do recognize group leases, however they are still extremely rare in practice, especially with regard to grazing in rural areas. A difficult question limiting this promotion concerns the leasees: what is a rural community to which the land would be leased? The moving lifestyle of herders and seasonal character of grazing make it difficult to determine exact boundaries of a local community and membership in it. There are three approximate possibilities for leasees as members of a group to make an agreement: 1) *hot ail*, 2) *neg nutgiynhan*, and 3) *bag* members. It was described earlier that the first two informal groups are very fragile and formed seasonally only or not formed at all for a certain season, while a *bag* has delimited land boundaries and an elected leader – *bag* Governor.
- *Distribution of papers (certificates)*: as it was mentioned earlier, the issue of certificates should be legitimized by the law to get a formal mandate and achieve a uniformity throughout the country.
- *Land contracts*: Individual or collective land contracts may be made only as a part of general modernization of land relations in Mongolia and of introduction of market incentives in the current land utilization practices.

It is essential to repeat that in the current situation of land relations the formalization of herders' land rights by no means should be equal to individualization of the land rights on grazing lands. Individualization would endanger the current collective tenure and restrict herders' movement with respect to frequency and distance and make herders more sedentary. Restriction of herders' movement not only increases the pressure on pastures, but also leads to change of lifestyles, composition of herds, etc. In fact, "any law stipulating individual control would mean, in practice, a revolution: monopolizing grazing rights for control by a section of herders. If new title-holders were to defend their pastures effectively, it would stimulate agitation or even fighting in the steppe"²⁰. If individual or group land contracts or certification of individual or group uses are to be made practical, this should happen on later stages only as a part of a comprehensive modernization of land relations in Mongolia.

Herders do not form voluntary associations or professional unions to advocate on their behalf. That is why the government agencies in charge for the issues discussed, namely the Ministry for Nature and Environment (land), Ministry of Infrastructure (mining) and Ministry of Agriculture should take the responsibility to initiate a proposal and have it discussed by the Cabinet and by the Parliament.

A greater involvement of local communities in environmental impact assessments for mining activities should be ensured by practical means and by means of the law. Generally, amendments to the Mining Code are required as well as to other relevant statutes.

The state policy on rural development should reflect a very essential objective which is to sustain the traditional social organization in Mongolia. On the edge of the 21st century and during the ongoing basic social and economic changes to the market and globalization, the most affected social group will be herders. That is why their rights over pastures recognized in formal documents will be protected from alienation, uncertainties and fraud.

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¹ In July 2002, the Parliament of Mongolia has adopted fundamental new Law on Land Ownership by Mongolian Citizens that endorsed a private land ownership in urban areas and of some lands for cultivating. This law shall get into force in January 2003.

² The text of the 1997 Mining Code of Mongolia can be found at http://www.mram.mn/M_Legis.htm

³ "Mongolia: 1999 Investment Climate Statement," <http://www.tradeport.org/ts/countries/mongolia/mrr/mark0032.html>. May 2001.

⁴ **Employment Office of the Ministry of Labour and Social Security, 2002, *Quarterly Report on Employment*, # 1, Ulaanbaatar (in Mongolian)**

⁵ **International Labour Organization, 1999**, *Social and Labour Issues in Small and Medium Scale Mines*, Report for discussion at the Tripartite Meeting on Social and Labour Issues in Small-scale Mines, Geneva,

⁶ **Mercy Corp**, *Foreign Investment - An Opportunity to Stimulate Rural Economic Development in Gobi Business News*, issue #9 December, 2000-January, 2001
<http://www.gbn.mn/english9/umnu.htm>

⁷ **PALD 1993**. *Options for the Reform of Grazing Land Tenure in Mongolia*. Ulaanbaatar.

⁸ **Purevsuren Sh.**, 2001. *The Current Situation of the Mongolian Economy and Agriculture*, A Country Report by MOSFA, Ulaanbaatar.

⁹ **Szynkiewicz Slawoj**, 1995. *Mongolia's Nomads Build a New Society Again: Social Structure and Obligations on the Eve of the Private Economy*; in *Nomadic People*, # 33

¹⁰ In the present Mongolian governmental system, most civil servants (including myself) and policy makers are people who came from the urban population and are likely to see pastoralists through the historically or culturally conditioned stereotypes of non-herders. None of rural representatives at the state legislature is a herder. Herders' messengers have a modest voice in the internal arrangement of power in the Parliament compared with those elected from cities and supported by industries and businesses. Even though, in my opinion, the present government is well-disposed toward herders, the pastoral parts of the Mongolian society are incorporated by the state administration organized by the sedentary state model. Self-sufficient way of life, reduced degree of economic integration with urbanized centers through consumption, privatization of the state owned cooperatives and underrepresentation in the state structure made the herding population almost free from embeddedness with any governmental institution.

¹¹ **Lynch O.J., Talbott K.**, 1995. *Balancing Acts: Community-Based Forest Management and National Law in Asia and the Pacific*, WRI, p 27.

¹² A Western notion of a "strong state" differs from the traditional East Asian meaning. The Western view is of a centralized state with little public participation (outside that which is government-sanctioned) and strong central government that is believed to stabilize a society and guarantee investment, while the traditional East Asian concept of a "strong state" always recognized close associations between the "state", "national pride" and "ethnic and cultural identity" and presumed the public loyalty.

See for example, **Kangas Roger D.**, 1997, *The Sacrifices of Strong States in Perspectives On Central Asia*, Volume II, Number 7, Center for Political and Strategic Studies.

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¹³ **Mearns, Robin** 1993, *Territoriality And Land Tenure Among Mongolian Pastoralists: Variation, Continuity And Change*, in *Nomadic People*, 33

¹⁴ For example, Cousins defines such conflict in pastoralism in African countries as "chronic conflict" as opposing to "acute conflict". See **Cousins Ben**, 1996. *Conflict Management For Multiple Resource Users In Pastoralist And Agro-Pastoralist Contexts*, Paper prepared for Third International Technical Consultation on Pastoral Development, Brussels.

¹⁵ **Khazanov Anatoly M.** 1998, *Pastoralists in the Contemporary World: The Problem of Survival in Ginat Joseph, Khazanov Anatoly M.* Ed. 1998, *Changing Nomads in a Changing World*, Sussex Academic Press

¹⁶ **Szynkiewicz Slawoj** 1998, *Contemporary Mongol Concepts of Being Pastoralist: Institutional Continuity, Change and Substitutes*, **Ginat Joseph, Khazanov Anatoly M.** Ed. 1998, *Changing Nomads in a Changing World*, Sussex Academic Press

¹⁷ This was a one of the lessons learned out of *Livestock and Pasture Development Project in the Eastern Region of Morocco*, See IFAD, http://www.ifad.org/lrkm/region/pn/ma_260.htm .

¹⁸ This process, called sedentarization, has been forced in early 20th century by formal division of the country into administrative and territorial units and routine registration of their residents (for an election constituency, citizens IDs, school districts, etc.) which led to herders' movement within one larger territorial unit

¹⁹ See for example, **International Rural Development Currents**, *Land Question in Sub-Saharan Africa*, Volume 15, December 1997, Swedish University of Agricultural Sciences
<http://www-ibyr.adm.slu.se/Currents/IRDCurr15.PDF>

²⁰ Ibid, ¹⁴ **Szynkiewicz Slawoj**, page 208