

POLICY ALTERNATIVES FOR LIVESTOCK DEVELOPMENT IN MONGOLIA (PALD)

A Research and Training Project

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Policy Options Paper No.1

**Options for the Reform of Grazing
Land Tenure in Mongolia**

Research Institute of Animal
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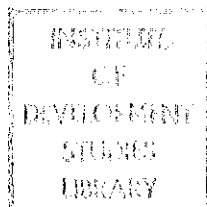
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Options for the Reform of Grazing Land Tenure in Mongolia

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The Policy Options Papers of the Policy Alternatives for Livestock Development in Mongolia Project (PALD) are short papers outlining the results of PALD research which are relevant to the major options facing Mongolian policy makers in the livestock field. They address issues of central concern in livestock sector policy reform. Timely information based on primary field research is important to ensure that new policies are appropriate to the specific conditions of Mongolia.

PALD has been carrying out such research since 1991, before the start of rural privatisation. It is a collaborative research and training project between the Mongolian Research Institutes of Animal Husbandry and Agricultural Economics, and the Institute of Development Studies at the University of Sussex, UK. Other Mongolian research institutes are also closely involved, notably those of Land Policy, and Geography and Geocryology. PALD reports are available in Mongolian from the Research Institute of Animal Husbandry, Zaisan, Ulaanbaatar, and in English from the Institute of Development Studies, University of Sussex, Brighton, UK.

SUMMARY

This paper analyses and makes recommendations about options for grazing land tenure reform in Mongolia. Common grazing land makes up 79 percent of the total land area of Mongolia, and livestock production from it is the mainstay of the rural economy. New tenure arrangements are one of the most important decisions to be made during present economic and social reforms.

Characteristics of grazing land

Livestock production depends mainly on natural pasture, which in turn depends principally on low and variable rainfall. This limits pasture production in any one place. Herding households respond by moving within grazing territories which increase in size as mean rainfall diminishes and variability increases. This means that pastures can rarely be divided between individual households as viable private grazing lots: the areas available to each household would be too small and of varying productivity. Viable pastoral territories must include pastures for all four seasons, and for most years, and so must usually be quite large, although they vary considerably according to local ecological conditions.

Customary pasture land tenure

Mongolian herding communities are generally organised around the management of these viable grazing territories. They include small groups using the same well and adjacent pastures, and larger groups using a single mountain or river valley. Customary grazing rights have evolved as a set of social customs regulating behaviour within and between such groups, including informal mechanisms to allocate pastures to households, to monitor and enforce compliance, and to resolve conflicts. These customary land tenure arrangements within and between neighbourhood groups of different sizes continued to a large degree through the collectivisation period. They work well most of the time but cannot now cope with the pressures of privatisation unless new, formal (ie laid down in written law) systems of land tenure are adopted which support and extend them. This process is under way with the draft Land Law currently being discussed by Parliament.

Objectives of tenure reform

Grazing land tenure reform should be guided by three main objectives: improved economic efficiency, social justice and equity, and environmental sustainability. These objectives are closely interrelated. They may sometimes conflict, but more often support each other.

Problems in grazing land tenure reform

There are several important problems to be faced in designing a new grazing tenure system. There have been recent changes in the geographic distribution of livestock, which have become more concentrated round *sum* centres and, as a result of privatisation, around the four main towns. There has been a substantial increase in the number of herding households as a result of privatisation, economic liberalisation, and urban to rural migration. Such households are usually not well integrated into herding communities and are thus less likely to abide by customary tenure arrangements. Urban animal owners who have their animals herded by rural households (absentee herd-ownership) also create problems.

Overgrazing is seen by some as a serious problem; although there is probably no general overgrazing problem, there are local problems, especially where customary tenure arrangements have been undermined. Finally, the Mongolian state urgently needs to find new sources of revenue, and considers grazing fees as one solution.

Available tenure options

There is a wide variety of options theoretically open for consideration in grazing land tenure reform. In practice, only a small number are likely to be useful. The basic distinction is between state and private ownership. State land can be held by herders either as individual or group leaseholders. Private property may be held individually or by groups as freehold or leasehold. Pastoral private freehold property, such as winter shelters, should usually be subject to restrictions on disposal.

Land legislation

The draft Land Law now before Parliament has several strengths from the point of view of grazing land tenure: it prohibits the privatisation of common grazing land, provides for leasing of common grazing and other state land, limits the transfer of lease rights to other people, provides for compensation on termination of ownership of lease rights, and imposes strong obligations on land users to protect the environment.

It also has some weaknesses: there is too much emphasis on the obligations of land users and not enough on their rights; it gives excessive powers to the state to terminate land rights on unspecified grounds; it does not guarantee land users the right to renew their lease provided they have met all existing obligations and conditions; it does not adequately protect lease rights of members of households other than the named household head; it does not make clear whether informal groups of herders can lease grazing land; it is not clear what will be the state authority responsible for administering the law; there are insufficient safeguards against the transfer of high quality land into private individual ownership; penalties are too low in a period of rapid inflation; and there are insufficient safeguards against the abuse of administrative power over land tenure. These weaknesses should be remedied partly in the final form of the Land Law itself, and partly in a general Land Policy to accompany the law.

Security of tenure and land titling

Tenure security is necessary for productive and sustainable land management. Land titling - the process of registering and certifying existing informal or new rights in land - is often considered necessary to increase tenure security, as well as to increase credit and encourage land markets. However, tenure security can be achieved under Mongolian conditions by a process short of full land titling, and especially by strengthening existing informal tenure rights at the level of herder groups, by registering grazing land title to such groups. Grazing land title is not, under Mongolian conditions, needed as security for credit, and title should not be used as the basis for creation of a market in grazing land, since this would encourage the privatisation and sale of the highest productivity pieces of land, without which the rest of the grazing system cannot be productive or sustainable.

Proposed types of grazing land tenure

This paper proposes a flexible range of tenure solutions for different resources in the grazing system. Taken together, these options make possible both the strengthening of customary grazing rights where appropriate, and increases in land resource productivity that are consistent with rural development in a market economy.

Agricultural buildings and point resources, including winter shelters and small wells, should in general be held as private individual freehold property or state individual leasehold; in both cases, although the property would be heritable or transferable within families, it should not be saleable.

Small-scale resources, such as land around winter shelters, intermediate capacity wells, and arable and hay fields opened and cultivated by individual households, should in general be held on individual leasehold from the state. In some areas, winter-spring pastures are also sufficiently distinct to justify individual state leases.

Large-scale resources, such as summer and autumn pastures, large capacity wells and boreholes, and arable and hay land opened and cultivated by groups (such as former brigades, negdels and state farms, companies and other economic entities), should be held as group leasehold from the state. Where identifiable community groups such as well or valley groups exist at the appropriate level, they should be the leaseholder, constituted for this purpose as *horshoo* cooperatives. Where such customary groups do not exist, it may be necessary to encourage the creation of new economic entities at *bag* level to act as grazing land leaseholders. The only purpose of creating such entities is to give them legal protection as leaseholders; in no way does this represent the 'collectivisation' of economic production.

Table 1 in the main text summarises the proposed changes in tenure system for each of the main pastoral resources.

Within all these new leasehold tenure systems, groups should be encouraged to make agreements on reciprocal access with neighbouring groups in exceptionally bad years, when the resources within the leased area are insufficient, or in cases where grazing resources are habitually shared by two or more leaseholder groups.

The draft Land Law can accommodate the proposed changes with minor modifications as specified in the main text. The law should provide only a broad legal framework for such a tenure system. A new Land Policy is also needed to give detailed guidance on how the proposed new grazing land tenure arrangements should be implemented.

Group leases

The main innovation proposed in this paper is for group leases for key grazing resources such as summer and autumn pastures. Where possible, such groups should be based on existing customary neighbourhood groups which already manage such resources. Most such leases should be issued on a rolling (ie regularly renewable well before expiry) basis for 30 to 40 years, subject to a satisfactory review of the performance of the leaseholder in keeping the conditions of the lease.

Lease rights should be heritable within the household, but not saleable or otherwise transferable; in the event of expiry or termination, compensation should be paid for investments made.

Grazing land fees

The objectives of grazing land fees as currently planned in Mongolia are to formalise property rights in land, to encourage land users to manage land in a conserving manner, and to raise government revenue.

Grazing fees will contribute towards the first objective if they are assessed on the territories leased by groups as a whole, and raised and paid by the group leaseholder. To achieve the second objective, in relation to land on which livestock concentration needs to be discouraged, the livestock head tax portion of the fee should be graduated, with tax per animal increasing as herd size increases. Taxes on grazing land should be substantially greater on land close to *sum* centres and on the best land than on less good land.

Revenue from grazing fees should contribute towards the cost of administering the system of land management and protection. If more substantial fees are raised, a significant proportion should be paid into a local (*bag* or *sum*) fund for livestock development, including especially a new emergency fodder fund to protect herders in emergencies. Grazing fees should not be seen as an important additional source of government income.

1 INTRODUCTION

This paper analyses options for grazing land tenure reform in Mongolia. Rural land tenure is a key issue in the economic and social transition now under way. During the period of the collectivised economy, land was owned by the state and decisions about the allocation and use of grazing land were made by the *negdels*. After the dissolution of the collectives and the emergence of many types of livestock production, as well as the new need to consider the most economic uses of land, grazing land tenure reform has become urgent.

A distinction must be made between different types of land in Mongolia, as specified in the draft Land Law:

- common land, including pasture land;
- land for ownership or lease by economic entities and citizens, including urban and peri-urban land plots for construction and other forms of development, and arable cropland and land reserved as hay-making land;
- land for state special needs and state reserve land, including border reserve areas, national parks and forest reserves, and pasture reserves for use during emergencies.

By far the most important category of land overall is common grazing land on which pastoral livestock production - the mainstay of the rural economy - depends: this amounts to 79 percent of total land area. The principal concern of this paper is with common grazing land. But pasture tenure cannot be considered in isolation from other essential pastoral resources such as wells, hay fields and winter shelters. The term 'grazing land' as used in this paper includes not only pasture, but all these resources which are inseparable from it.

The draft Land Law is due to be presented to the State *Ikh Khural* during its 1993 autumn session. This paper analyses the results of PALD research relevant to the draft Land Law, and to other policies which may be adopted in the near future.

This paper is concerned with grazing land tenure, that is to say with the specific question of how and under what circumstances land is to be owned, leased or otherwise used for livestock production. There is also the broader issue of land policy, which covers all the questions relating to use and control of land, including for example environmentally-permitted or recommended types of land use, or the responsibilities of different organisations. Some remarks about broader land policy are also made in this paper.

2 BASIC CONSIDERATIONS FOR GRAZING LAND TENURE UNDER MONGOLIAN CONDITIONS

2.1 Environmental variability and risk

Pastoral livestock production depends on direct grazing or fodder conservation arising from the growth of natural pasture, which in turn depends primarily on rainfall. Rainfall in Mongolia is low and variable in distribution, between seasons, between years, and between places, often on a very local scale. Although variability of rainfall and the production which depends on it is greatest in the Gobi, it also characterises steppe and forest/mountain steppe areas. Variability in pasture production is a primary risk for livestock production, and herders respond by moving their base camp and animals as necessary. The drier it is, the larger the area over which they need freedom of movement. There are other environmental risks as well, including heavy snowfall, steppe grass fires and predators. The relative importance of these risks varies from region to region.

This degree of environmental variability, and the need for mobility, means that pastures cannot in most places be divided up among herders as individuals. The areas available to individual households would be too small. The only exceptions are in some cases pastures close to winter and spring shelters, which may be customarily owned by and inherited within individual families, some intensive sheep enterprises in the forest steppe, and in some cases intensive peri-urban dairy operations. Viable pastoral territories must include pastures suitable for all seasons and most years, and so must usually be quite large. Their size is determined by variable pasture production and other risks in different ecological zones. Within each area, pasture production is usually greater than a single family can use. Although individual families often have family grazing areas (*nutag*) they habitually use, sometimes for generations, these tend to overlap to form the annual grazing territories of whole communities; such territories tend in general to be quite large. Grazing land use therefore needs to be coordinated and managed in most cases at the level of groups of herders, rather than of individual households. The general term *neg nutginhan* ('people of one place') is often used to describe these groups.

2.2 Local community territories

The boundaries of these communities of herders and their grazing territory usually coincide. However, the size of viable grazing territories, and the appropriate level of social community corresponding to them, vary considerably from region to region according to ecological conditions. For example, in parts of Arkhangai *aimag* the appropriate community approximately coincides with a small river valley (approximately 200 sq. km.), and is known as *neg jalgynhan* ('one valley group'). In Dornogobi, grazing land use tends to be coordinated within small communities who use the same wells (*neg usniihan*), but they also need to share a larger territory - approximately the size of the *bag* (eg. 3,500 sq. km.) - with other communities. Grazing land use rights in Mongolia have evolved as a set of social customs that herders agree upon within their local community group (see box 1).

Box 1: Informal customs to coordinate the use of common grazing land

- the territorial boundaries and membership of community groups are more or less known and recognised by all members of the local herding community;
- informal customs of grazing land use are more or less respected by most members of the local community: for example, agreed dates for moving to the next seasonal pasture area, respect for a family's customary rights over particular winter and spring pastures, respect for the general rights of neighbours to obtain enough forage and water for their animals;
- ways exist to monitor pasture use within the community: for example, since herders often camp relatively close to their neighbours it is not difficult to detect those who are not following local customs of grazing land use;
- ways may exist to resolve conflicts over grazing land: for example, in some places a committee of locally-respected herders may intercede on behalf of the community;
- the community may bring social pressure on those who do not follow the rules; in extreme cases it may punish those who consistently abuse informal customs of grazing land use, for example by imposing a fine or temporary restrictions on animal management; in some places, such customary measures are supported by the *bag* administration, so formal and informal mechanisms are already in harmony.

The territory of each herding community includes land of varying quality and productivity, which provides pasture suitable for each season of the year. In addition, at least in steppe and forest/mountain steppe areas, the community territory usually includes high-quality land reserved as hay meadows. Even in the Gobi, certain areas are reserved for hay-making and other types of fodder conservation. There may be other patches of high-quality resources too, such as groves of saxaul trees, used as emergency feed for goats or other animals when pasture is very scarce, as well as browse for camels. Many herding communities have evolved a set of customs (like those in box 1) to protect these high-quality resources. These are known as informal or customary land tenure arrangements. In some cases, following privatisation, *horshoo* cooperatives or companies have been formed by such customary groups to promote their members' interests.

If, in an exceptional year, a group territory does not include enough high-quality feed, the group may make an arrangement with a group in a different district to allow it to use pasture in the territory of the second group when necessary. These arrangements often become regular and reciprocal, so that each group can plan to make emergency moves when it needs to. Under the collectives, negotiations were made between the *negdel* or *sum* chief representing herder communities in different districts to allow for such emergency moves, but they were normally based on existing customary arrangements. In some cases complex customary arrangements existed to allow two groups to share the same resource.

When they operate successfully, such customs limit the use of better resources at times when pasture is not scarce, so that there is enough feed available when it is really

needed (eg. during a *dzud*). The same risks affect all herders, whether rich or poor, which is why it is in everyone's interest to observe the local customs of pasture use. Social customs do not work well all of the time, but they do work well enough most of the time to reduce the environmental risks facing all members of the community.

The overall sustainability of grazing within each community territory depends on access to high-quality feed resources as well as to general pasture. If the better pastures and hay meadows are closed to a large number of local herders - for example, if they become the private property of a single herder who allows only his friends and close relatives to use them - the other members of the community will be forced to overgraze the remaining pastures. This is one reason why, on environmental grounds, the privatisation of grazing land does not make sense, and could be expected to accelerate land degradation.

2.3 Grazing land tenure in law and in practice

A distinction is made in this paper between rights of land ownership or possession as laid down in law (formal tenure rights) and land tenure customs that have evolved within herding communities (informal tenure rights). Informal tenure rights are like those listed in box 1. The view that grazing land in Mongolia is or has been subject to 'open access' (ie. governed by no property regime at all) is incorrect. At least since 1924, grazing land in Mongolia has been state property in law, and common property (ie. use rights are given by membership in the local community, and are shared with other herders in the community) in practice.

Systems of regulating access to grazing land have existed for much longer than this. Chinggis Khan's son, Ogedei, who reigned from 1228 to 1241, probably elaborated the first pasture land tenure system in Mongolia (as well as developing irrigated pastures in the Gobi), based on customary law codified in the Great Yassa under Chinggis Khan.

Under imperial Manchu law (17th-19th centuries), land use in Mongolia was closely regulated within a rigidly hierarchical system. Some land was privately owned by feudal lords (*noyon*) or monasteries whose serfs cared for their herds; other land was open to ordinary herders as serfs of the imperial state. Within those territories however, everyday questions of who was allowed access to what land, and when, were decided informally according to customs that had evolved within local communities.

Under the 1924 Constitution of the Mongolian Peoples' Republic, all land became state property in law. From the 1960s the collectives began to play a role in deciding who should use which winter shelters, and gave guidance on the approximate dates individual camps should move. In spite of this, informal customs regarding grazing land use and management continued to play an important role throughout the period of collectivised production.

Until the draft Land Law is approved, all land remains state owned. The new 1992 Constitution of Mongolia recognises 'all forms of public and private property' (Article 5, clause 2), and the state reserves the right of 'eminent domain' over all land. The Constitution allows for private land ownership but specifically excludes pasture land

from this provision (Article 6, clause 3). The draft Land Law will provide for the transfer into private ownership of certain categories of land, such as arable land, and urban and peri-urban land for development. Designated pasture land will remain in state hands, under the control of the relevant local (*aimag* and *sum*) authorities, as 'common' land. This means it will be state-owned in law, and will continue to be common land in practice.

One important difference between formal and informal tenure systems is the heterogeneity and separability of rights to different resources in the latter. Under customary tenure systems, different resources (such as wells or high quality resource patches) are often subject to different rights, with different rights holders; this is unlike most formal land tenure systems where all such rights are usually grouped together in a single right to land which includes all the renewable resources within the specified area. In some circumstances in Mongolian grazing land tenure reform it will be important to safeguard the separability of rights in order to maintain ecological flexibility in land use.

All previous systems of grazing tenure have had both strengths and weaknesses, and customary land tenure has always involved conflicts. In most cases, rich herders have been able to use better pastures than poor herders, in part because they had better transport and so were able to move camp more easily.

At present, customary and formal grazing rights coexist, at times in harmony, but at times in conflict. One purpose of grazing land reform will be to clarify responsibilities for grazing land management, by clearly establishing who are the responsible people (*nutagchin*) and institutions, both on the side of the users and of the administration at *sum* and *bag* level. One effect of this will be to reduce conflicts over land.

2.4 Objectives of grazing land tenure reform

Grazing land tenure reform needs to be guided by three main objectives, which are also criteria by which proposed reforms can be judged: these are improved economic efficiency, greater social justice or equity, and environmental sustainability.

Economic efficiency means using grazing land resources in ways which optimise productivity in the context of a particular set of production goals and economic constraints. Social equity means providing a fair distribution of the benefits of production, creating effective measures against poverty, and providing safety nets for those who fail economically. Environmental sustainability means not allowing present uses to reduce future productivity of the resource.

These three objectives are closely interrelated since under Mongolian conditions all three depend in large degree on individual participation in community-level action to regulate access to and control of resources, and to provide distributive and safety net mechanisms. The three objectives may on occasion clash with each other, but under Mongolian conditions such conflicts will occur less often than is sometimes supposed.

The objectives of environmental sustainability and economic efficiency can best be met by providing, among other things, enough security of tenure to herders that they can make decisions about use secure in the knowledge that other herders or the state cannot arbitrarily deprive them of the benefits of investments or conservative management. If pasture users are obliged to protect the environment, they must be assured that others will not come in and exploit the resources they have protected. Social justice and equity means ensuring that the costs and benefits of such actions are fairly shared within and between groups, which is also a condition for effective collective action.

2.5 Other considerations

Several other considerations are important to ensure that land tenure reform takes account of the specific conditions facing Mongolia today:

Need to minimise disruption. The transition to the market economy is bringing about momentous changes in institutions throughout the country. This makes the conditions of livestock production unpredictable for herders. In order to ensure an adequate supply of food to towns, of raw materials to industry, and of agricultural commodities for export, it is important that the changes taking place in rural areas disrupt as little as possible those aspects of land management that continue to work well;

Need for cost-effective government. Under the market economy, the functions of local or central government must be carried out as cheaply as possible. Mongolia has a large territory with low population density. This adds to the cost and difficulty of carrying out many government functions. The task of resource assessment and monitoring, for example, can only be carried out by the state, but will be very expensive under Mongolian conditions. As another example, the costs of administering a land lease system will be very large, if it attempts to register the grazing land normally used by every individual herding household;

Need for policies to be 'self-policing'. One way of ensuring cost-effective government is to hand over as many decisions as possible to local communities. In this way it is possible to 'internalise' many of the costs of monitoring and enforcement of land policies.

3 WHAT ARE THE PROBLEMS?

3.1 Changing distribution of livestock

Changes in the distribution of livestock have been taking place since the 1930s, especially during the period of collectivisation from the 1960s. These happened either as a result of better services and rural development in general, or as a result of attempts by the state to increase control over land use. These changes have had both positive and negative effects for the quality of pasture management and use. For example:

- the total area of pasture to which any one group of herders officially had access became more restricted with the introduction of *sum* (district) boundaries rather than the *khushuu*, the previous territories of the feudal lords;
- the collectives played an important role in allocating winter and spring shelters, sometimes to people who were not the customary owners, and in deciding when and where herding *suur* should move; provision of transport for camp moves by the collectives removed much of the competitive advantage previously enjoyed by rich households, and resulted in greater equity;
- new areas of pasture were opened up by the sinking of new pump wells, but over time the wells also encouraged the concentration of animals in particular places; changes in livestock distribution were also caused by greater concentrations of herders along river valleys, and close to marketing facilities for example;
- the increased provision of services (health, education) and availability of consumer goods in *sum* centres led to a relative decline in the mobility of herding camps; (the present decline in services has removed part of the reason for this, but herders now have reduced mobility because of lack of transport);
- the regular provision of winter/spring animal feed supplements led to a gradual shift in the regional distribution of livestock. In some places it has allowed larger numbers of animals to be kept in areas short of livestock feed (eg. the Gobi); in others it distributed livestock more widely than before; the recent decline in fodder provision in the Gobi has prompted a shift back to camels and goats;
- people were encouraged to move to the Gobi *aimags*: for example bonuses were paid to members of collectives in the Gobi, assistance was given to establish a household, such as an allowance for the purchase of a *ger*, and a higher number of private animals was permitted.

Taken together, these changes increased the concentration of animals near *sum* centres, and in some areas of the Gobi in which grazing lands are more fragile and susceptible to degradation. In some cases this has led to excessive grazing pressure on

pastures close to *sum* centres. Informal means of coordinating the use of grazing land have not always been able to adjust to these changes.

In some places, pastures have been undergrazed, because they are remote or have no water. Following privatisation, many of the new pump wells have broken down due to lack of maintenance and repair; the areas they served are now often undergrazed.

Over the period of privatisation, further changes in the distribution of livestock have taken place. The overall change in the size of the national herd over the period 1990-92 has been negligible, showing a slight net decline of -0.6 percent. However, data from the December 1992 livestock count reveal significant changes in the regional distribution of livestock over this period.

Some of these changes have serious implications for grazing land management and policy. The most significant is the large increase in animals owned in the four main towns, as urban families acquired animals through the privatisation of state and collective herds. These municipalities show increases in livestock numbers of between 33 percent (Darkhan) and 92 percent (Ulaanbaatar). This potentially threatens the sustainability of grazing on peri-urban pasture land, which includes some of the areas most at risk of degradation.

3.2 Net urban to rural migration

There were also large increases in total numbers of herding households by *aimag* and municipality during 1992. On average, the total number of herding households across the country increased by 25 percent. The increase in herding households in Ulaanbaatar is in proportion to the increase in total livestock in the municipality. Tuv *aimag* also showed a substantially larger than average increase of 46 percent. This includes at least four types of household:

- families leaving the city for the countryside in response to rising urban unemployment and economic uncertainty, who acquired animals through the privatisation of state and collective herds. These are 'newcomers' to herding, or urban to rural migrants;
- herders resident in towns, who take their animals out to graze each day in the surrounding countryside;
- absentee herders who leave their animals with herding friends or relatives but who remain living in towns;
- new households formed by the division of existing herding households, in order to gain more animals in total under privatisation, as well as more ration card goods.

National data are not available to show the relative proportions of these different categories of household. However, PALD field data from Arkhangai and Dornogobi

suggest that the first category (newcomers) are the most significant; they were about 20 percent of total households in the communities surveyed.

This increase in herding households underlines the extent to which extensive livestock herding is considered to be a secure and productive economic opportunity. But it poses potential problems for sustainable land management within existing herding communities. The newcomers are usually less experienced herders, and less aware of the importance of local customs to coordinate use of grazing land. For example, they are more likely to stay at their winter pasture sites than to move to new pastures during the spring, autumn and summer.

Newcomers also tend to move irregularly because they do not yet have winter shelters and established herding relationships within groups. They are often less integrated into rural communities, and are therefore less likely to take into account the benefits of cooperation with other herders in other ways, such as shared herding, helping to move camp, looking for lost animals, or making hay. Experienced herders of long standing in the community are more likely to cooperate with their neighbours over the use of grazing land, because they know that there are additional benefits to cooperation. The new herding households' primary loyalties are likely to remain towards the towns, rather than to the rural community.

3.3 Absentee herd-ownership

In the Mongolian pastoral economy in the past, it has not been unusual for one herder to herd animals belonging to other herders, for example on long distance *otor* migrations. However there is now a new phenomenon of absentee herd ownership.

During privatisation, many people living in towns were able to acquire animals. These people include former officials, technical and support staff of the collectives living in *sum* centres, and other salaried professionals. Many continue to live in town, but leave their animals with friends or relatives in the countryside. The payment for looking after other people's animals is usually the free use of dairy products from those animals, perhaps a share of newborn animals. Sometimes this is a truly cooperative relationship between town and countryside. The owner may provide transport or cash loans; he may act as an intermediary for marketing, or lodge the herders' children when they go to school. Absentee herd ownership is not a problem where there are only a few animals being looked after.

However, the size of herds belonging to absentee owners is increasing. This could become a serious problem, as experience in other countries shows. Under such conditions, there is a tendency for livestock to become a form of capital investment for richer people. Their herds may be looked after on a commercial, contract basis by herders with relatively few animals of their own. This affects the way the herd is managed. One result is that 'contract herders' have different interests in the use of pasture from locally resident herd owners. They are likely to be less concerned with the sustainability of pasture use in future, and less likely to observe local customs concerning pasture use. Absentee herd owners often want their animals to be kept close to them, adding to the concentration of animals around the towns.

Absentee herd ownership leads to many types of conflict between the owner of the animals and the herder, and between the herder and his community. These include disputes over use of inputs (should such animals be able to use fodder prepared by the community, who pays for dipping?), dissatisfaction over the terms of the contract, and disputes over the responsibility for animal deaths. In general, neighbours are unhappy when a *khot ail* member herds many animals for an absentee owner, because of such conflicts. Absentee herd ownership can become a way for townspeople to become important users of pasture leased to rural herders. In view of these potential problems, it may be that the terms of pasture leases should contain provisions limiting access to absentee owned herds.

It is not yet clear how much of a problem absentee herd ownership has become in Mongolia, since the privatisation of animals has taken place very recently. Over time, however, if livestock ownership becomes concentrated into the hands of fewer private absentee owners - which it will if there are not alternative forms of investment for richer people - the danger for pasture land tenure and for social equity will become more acute.

3.4 Environmental degradation

Compared to some other pastoral countries, there is little pasture degradation in Mongolia. In most parts of the country, there is sufficient pasture for animals, and there has not been the sort of grazing pressure that might damage future pasture quality. The perceptions of most experienced herders confirm this. Social customs of the kind summarised in box 1, and the practice of the pastoral collectives, have effectively limited the use of high-quality pastures, and protected them over a long period of time. This acts like a safety valve to prevent overgrazing on other pastures. Experts in range ecology believe that in the long run, the production of pasture forage over much of Mongolia is determined by the local precipitation pattern rather than by the number of animals grazing on them. Heavy grazing pressure may mean there is less pasture available for animals to feed on in the short term, but in the long term it will not affect the future production of pasture forage, since this will recover when there is sufficient and timely precipitation.

However, this does not mean that overgrazing may not become a problem in some places in the near future. Already the changes in livestock distribution described above have increased the concentration of animals in certain places, especially near *sum* centres and the municipalities. This is particularly a problem in places where social customs have been unable effectively to control the use of pasture, either because the speed of change following privatisation, or the increase in the number of animals in the locality, has been too great. In some cases, vegetation covering the ground surface has been removed, exposing the soil to erosion by wind and surface runoff following storms. Vehicles driven over unsurfaced tracks are also a problem in this respect. Some people think that rodent damage to pasture is also a serious problem in some places. Competition for available forage between wild and domestic herbivores may be highly significant in some areas and deserves closer monitoring.

3.5 Need to raise government revenue

A final problem is that the Mongolian state urgently needs to find new sources of revenue to pay for livestock development. Various forms of taxation have begun since the Taxation Law was passed, including income tax from herders on their animals. But it is difficult to tax directly the companies and cooperatives that have replaced the collectives. Taxation is not the specific concern of this paper. However, the question will arise, how will the costs of implementing the policy options outlined in this paper be met? In the case of grazing fees, for example, raising revenue for local (*bag*, *sum* and *aimag*) authorities is an explicit objective, in addition to their primary stated objective of encouraging conservative land use practices. In the case of land leasing, however, for reasons discussed below, it is unlikely that even the costs of administering the system, including resource assessment and monitoring, could be met from a charge on the lease. Nevertheless, the principle that grazing fee and land lease revenues should contribute towards the cost of administering the land management system is a good one.

If revenue is to be raised through fees and taxes of this sort, there is an argument for directing it into a local, probably *sum* level, fund for livestock development, and especially into building up a renewed SEFF-type operation to meet emergency fodder needs.

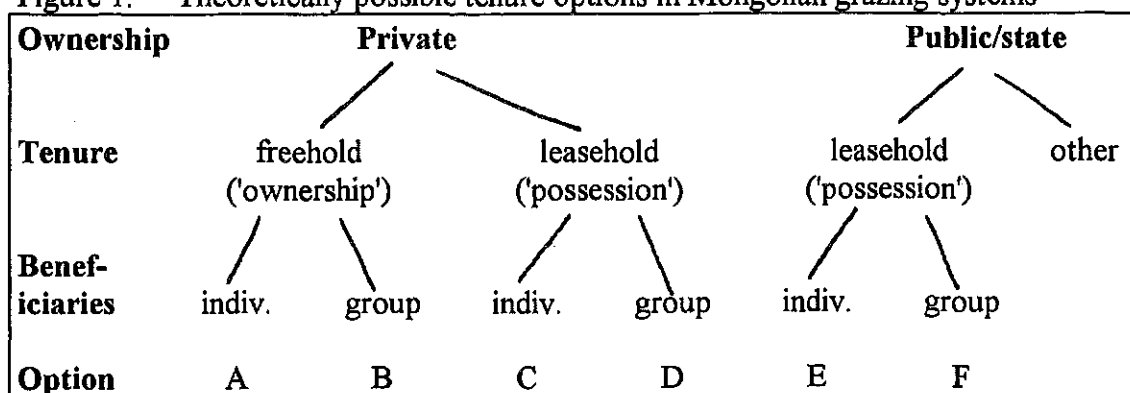
4 NEW POLICIES ON GRAZING LAND TENURE

This section summarises the main grazing land tenure options available, the legal framework, specific options for implementing the Land Law such as land leasing, and economic policy instruments such as grazing fees. Land leasing implies some kind of land titling. Achieving the objectives of land tenure reform will also require a broader set of policies and economic incentives to create a favourable environment for sustainable livestock production. Some of these will be the concern of the Land Policy document due to be prepared after the Land Law enters into force. Others, however, relate to other issues and incentives including livestock and livestock product prices, the creation of an efficient transport and marketing infrastructure, and the provision of social services. These are not the concern of this paper, but it is important to recognise that policies taken in isolation, such as land policy reform alone, will not achieve the broad objectives set out above.

4.1 Available tenure options

There is a large variety of options theoretically available for grazing land tenure reform in Mongolia. The basic distinction laid down in the Constitution and the draft Land Law is between state and private ownership. State owned land can be held by citizens and entities under several tenurial forms, but the main one of interest in pastoral areas is leasehold (referred to as 'possession' in the draft Land Law), which may be held by an individual or by a group. Private property may be held as freehold ('ownership' in the draft Land Law), or leasehold, with property of each of these tenure types held individually or collectively by groups. These theoretically possible options are shown diagrammatically in figure 1.

Figure 1. Theoretically possible tenure options in Mongolian grazing systems



Several points should be made about this schema. First, private individual freehold (option A) is not permitted for pasture by the Constitution, although it is permitted and will presumably be important for winter shelters and other physical structures such as corrals and houses built in winter or summer pastures, and perhaps also for small wells and watering facilities such as troughs in some cases. Second, private group freehold

(option B) is also theoretically possible in the case of certain more intensive operations such as dairy fattening farms. This option may become more significant in future.

Third, the option of private leasehold property (options C and D) is permitted in general under the new draft Land Law, subject to the permission of the appropriate state authority. This would allow those other than the owner to use arable land or point resources such as small wells for short periods under contract with the owner. It does not apply to pasture. Fourth, private individual freehold tenure (option A) can be granted either without restriction, or with restrictions such as covenants limiting the owner's rights to exploit, dispose of or otherwise manage his property. Certain restrictions on environmental grounds are made in the draft Land Law, for example. Leaseholds (options C, D, E and F) usually have conditions attached to the lease itself, and these can be changed when the lease is renewed.

Fifth, the separability of resources means that different tenure systems can apply to different types of resource which coexist in the same area: for example, there is no conceptual problem in combining private freehold individually owned winter shelters (or in some cases wells) (option A), with public leased common pasture land (option F). Seasonal constraints may make it desirable for different tenure types to apply to different categories of resources, so that households operate within one tenure system in one place in one season, and a different system in a different place in other seasons. Sixth, the existence of shared pastoral resources, such as grazing areas used alternately by different groups, means that there should perhaps be special lease agreements covering such shared use.

Last, it is assumed that leases will be issued in the first instance on the basis of existing uses. In time, however, it will be necessary to make possible changes in land use on certain categories of land (such as arable land, for example, or peri-urban land), since there is no guarantee that the existing use is or will remain the best (or highest value) use of that land. A possible means to achieve this, where the sale of lease rights is prohibited, is to sub-lease temporarily to individuals or to groups for certain uses, subject to the approval of the state land management authority. The draft Land Law wisely restricts the extent to which the transfer of pasture land to different types of use is permitted, as discussed below, but in the case of relatively more intensive land uses, the possibility of transfer between uses is important.

In practice, given these considerations, the most important tenure options for grazing land reform in Mongolia from this variety of theoretically possible options are likely to be private individual freehold (option A) and public leasehold (options E and F). Inter-*aimag* and inter-*sum* grazing reserves will continue to be held as public land (under the 'other' category), as will land belonging to state organisations. Grazing reserves for use during emergencies are extremely important and should be maintained in public ownership for this purpose or, for smaller scale reserves, maintained by contract agreements between companies or corporate groups of herders.

4.2 Land legislation

Much work has already been done in reforming the laws relevant to land: they include the Constitution, the draft Land Law, and amendments to the Civil Code. The general draft Land Law of Mongolia relates to all categories of land. Its objective is to regulate the ownership, possession, use and protection of Mongolia's land resources.

The Law has several major strengths. The most important are that:

It prohibits the privatisation of common grazing land. This is anyway prohibited in the Constitution (Article 6, clause 3). This paper has set out the main reasons why the privatisation (ie. transfer into the hands of individual citizens) of grazing land is not possible; and why, if privatisation of pasture land were attempted, it would lead to disruption of pastoral livestock production on a major scale, and could be expected to accelerate land degradation;

It provides for leases of common grazing land and other state-owned land of 'up to 60 years' (Article 10, clause 1); the Civil Code specifies a lower limit of leases as 15 years. These provisions allow sufficiently long periods for security of tenure. Other conditions also have to be met for real security of tenure however. These are discussed below;

It specifically prohibits the transfer of possession rights by leaseholders to others (Article 11, clause 2). Possession rights automatically cease on the death or disappearance of the possessor or the dissolution or bankruptcy of the possessing entity (Article 12, clause 1). In principle this should prevent the subdivision of common grazing areas into parcels that are too small to be used sustainably by the local community. But this can also be a weakness, as discussed below;

It provides for compensation in the event of termination of land ownership or possession rights. This helps to provide security to land users to carry out land improvements or otherwise invest in land. However, this right is stronger for land owners than land possessors, since the right to compensation for owners is protected in the Constitution. For possessors it is only stated in the draft Land Law, which could potentially be superseded by later legislation;

It is strong in terms of the obligations it imposes on land users to protect the environment. However, it might be useful to add a more explicit commitment to protect wild animals on leased land. It should also be recognised that regulations alone will not achieve the desired environmental objectives; economic incentives are equally important.

A number of weaknesses remain in the revised land legislation, however, including:

In general, there is too much emphasis on the obligations of land users, and too little emphasis on their rights. As discussed in section 2.5 of this paper, the need for cost-effective government is one reason why land policies should as far as possible be self-enforcing. The Land Law should give land users enough rights (security of tenure) so that they feel it is in their interest to meet their obligations. This is better than land

users feeling that they have so few rights (little security of tenure) that they will try to evade being caught by the local authority for failing to meet their obligations.

The state has excessive powers to terminate land rights on unspecific grounds. The Law states that 'land may be expropriated by the state for common use and state special needs' (Article 6, clause 1), but does not specify what these are other than those 'determined by the Great Khural' (Article 9). It is recommended that the grounds for termination of land rights be more clearly specified in Article 9 of the draft Land Law; these might include for example national security, overriding national economic interest, or causing severe ecological damage;

The Law does not automatically guarantee the right of land users to renew their possession rights (lease), provided all the existing obligations and conditions under the lease have been complied with. This is most important for providing enough security to land users that they feel it is in their interest to maintain land quality. It is recommended that this provision be addressed in the terms of the leases for common grazing land;

The Law does not adequately protect the possession rights of members of households other than the named household head. Under the Law, possession rights automatically cease on the death or disappearance of the possessor. In the case of herding households, either individually or as members of a group, the 'possessor' is not defined, but can be assumed to refer to the household head. The possession rights of other members of the household may therefore be presumed to cease on the death or disappearance of the person registered as the household head. There is an important question of equity here, concerning the rights especially of widows and children. It is recommended that, in the event of death or disappearance of the household head named in the lease as the 'possessor', possession rights should be inherited by the new head of household (eg. widow in the case of the death of her husband). Although the Civil Code does provide for such inheritance of possession rights by the next of kin within the immediate family, this issue needs to be clarified in the Land Law to prevent any misinterpretation;

It is not clear whether 'entities and citizens' who may lease common grazing land can include informal groups of herders. For reasons set out in this paper, it is recommended that grazing land should continue to be possessed by groups of herders at the appropriate level, depending on local ecological conditions. Two questions then arise: what land-holding (corporate) group needs to be recognised by the local authority, and what it needs to do to become incorporated (formally recognised); and how should its rights and obligations be certified;

It is not clear what is to be the 'state competent authority' responsible for administering general land policy, land management and resource assessment and monitoring procedures as specified in the Law. This makes it difficult to judge how far the relevant authority is likely to be able to carry out its duties. A general land policy needs to be drafted ready for discussion immediately after discussion of the draft Land Law, since *aimag* authorities are expected to begin implementing schemes grazing fees as soon as the Law is ratified. It is recommended that the 'competent state authority' for land matters be defined as soon as possible in this general land policy;

There are insufficient safeguards against the possibility that high-quality land (eg. hay-making land) could be removed from common use and transferred into individual ownership. Officials of the relevant local authority could be 'persuaded' to reclassify particular areas as land suitable for private ownership. It would be difficult and costly for higher authorities to monitor this situation closely, especially when dealing with quite small areas of land;

The section on penalties for violations of the Law is weak in that it specifies the level of fines for particular violations. These sums of money are rapidly becoming very small owing to inflation. They are unlikely to be much of a disincentive to land possessors to violate the terms of their lease. Some land possessors may even plan to violate the terms of their lease and pay the fine as a regular 'charge' for doing so. It is recommended that the level of fines specified in the draft Land Law be reviewed;

There are insufficient safeguards against the abuse of power by administrative employees responsible for punishing violations of land legislation. It is easy for such abuses of power to go undetected. Even if local people inform the authorities if they suspect abuses are taking place, it is more effective and cheaper for the authorities to strengthen land users' rights in order to encourage them to meet their obligations.

The Law states that 'the Government of Mongolia may devise a general policy on land, including the control of the state over the possession, use and protection of land' (Article 5, clause 2). The weaknesses in the Law set out above could be addressed in part by means of such a policy. The specific content of that policy should include the precise specification of the policy instruments discussed below: land titling in general, group land leases for common grazing in particular, and grazing land fees.

4.3 Security of tenure and land titling

Tenure security is necessary for productive and sustainable land management. Land users will not invest their labour or capital in land unless they are convinced they alone will reap the benefits of that investment over a relatively long period. This is true both for private land ownership and for land held in common.

Land titling is the process of legal registration and certification of land ownership or possession rights. It either involves the registration of existing informal rights, or registration accompanied by a redefinition of rights. Land titling is often suggested as a way of improving tenure security over grazing land. There are arguments for and against this under Mongolian conditions however. In particular, the process of land titling, and the administrative system required to back it up, are very expensive and time-consuming for local and central government authorities.

The absence of legal title does not necessarily mean that tenure is insecure. Under certain conditions, customary tenure arrangements can provide security of tenure without being legally defined. Nor does legal title necessarily provide tenure security, if rights are not clearly defined, or if the state lacks the authority or the means to enforce the newly established rights.

Under Mongolian conditions, enough security of tenure to provide incentives to herders to manage their land in an economically efficient and ecologically sustainable manner can be achieved by partial titling, or the allocation of renewable pasture leases to legally constituted groups. The objective of social equality will also be promoted by ensuring that all herders, regardless of wealth or social position, can be guaranteed access to grazing land as part of an organised group.

The other objectives of land titling - to increase demand for credit by using land as collateral, and to foster a market in land - are not appropriate to Mongolian pastoral conditions. The draft Land Law wisely prohibits the mortgaging of land as collateral, and Mongolian banks consider livestock to be adequate collateral for small loans, especially to groups. And the development of a market in pasture land would, at this stage in the economic transition, be undesirable. If such a market were allowed to develop, land of highest productivity would be first to be sold. The variability of pasture means that herders need access to high-quality grazing land, hay meadows or browse trees as a way of coping with ecological hazards at particular times. The early privatisation of this higher quality land, so that it was no longer available to other herders, would threaten the sustainability of the grazing system as a whole.

4.4 Proposed types of grazing land tenure

The complexity of existing resource allocation and tenure rules, varying ecological and economic requirements, and differing land use strategies followed by Mongolian herders suggests that there is no single solution to grazing land tenure reform. Different resources - even different seasonal types of use - will require different tenure systems. During the course of a single year, herding households will use resources with varying tenure status. And prevailing tenure systems will differ on the same resources, according to local conditions, in different parts of Mongolia.

The objectives of land tenure reform listed earlier (economic efficiency, social equity and environmental sustainability) will best be achieved by a mix of tenure types, with tenure arrangements adapted to resources and zones, with flexibility in the system to allow local adoption of the tenure system best suited to particular local conditions. The new Land Law should set out a legal framework of permitted tenure forms, from which particular local variants would be chosen. The broader Land Policy which has yet to be drafted should set out in detail the way the tenure system should operate in particular local circumstances.

The legal framework might include the following provisions:

Agricultural buildings and point resources

A first category of resources are those generally built structures which are easily appropriated and managed by individual households, or which are already and should in most cases be held as individual private freehold or in some cases individual public leasehold. Such resources include winter and spring shelters, corrals and other farm

buildings, and shallow wells and drinking troughs constructed by individuals. Such a tenure regime would also apply to houses built in winter or summer pastures.

The draft Land Law provides for the inheritance of land owned by citizens on which there are built structures. This provision is intended to refer specifically to the sites on which winter shelters, corrals and other fencing structures stand. It provides for tenure security within herding families that may facilitate investments at winter camps.

Such tenure status, whether private individual freehold or public individual leasehold, should be subject to conditions: such property should be constructed only with authorisation from the appropriate authorities (in most cases the *bag*); it would be inheritable or transferable within the immediate family (which would need to be defined) but could not be sold, since sale of winter shelters, small wells or houses would enable strangers with no customary pasture rights in the area to obtain a base there, disrupting the system of local community control.

Small-scale resources

A second category of pastoral resources is made up of the land immediately surrounding winter shelters and houses (say a maximum of 1 ha per site), intermediate capacity wells constructed by the former collectives, springs where individuals have made investments to channel and store water, arable fields opened by individual households or small groups with official authorisation, and in some areas hay fields. Such resources should probably be held on individual public leasehold, according to the rolling lease model described in section 4.5 below. In some areas, the winter and spring pastures used by each household are sufficiently distinct to warrant individual rolling leases of this sort, although in other areas this is not so.

No changes are required in the draft Land Law to give effect to these provisions, other perhaps than those required to allow rolling leases.

Large-scale resources

Large-scale pastoral resources, used by many people, include summer and autumn pastures, winter-spring pastures in some places, large capacity wells and boreholes. These resources are used in many cases by identifiable and relatively stable community groups (*neg nutgiinhan*), such as valley and well-user groups, according to the customary procedures outlined in box 1. The tenure system best adapted to these resources is group public leasehold, in which the customary user group holds the lease on behalf of its members and is responsible for compliance with its provisions. The community group would agree among themselves on procedures for joint possession of large-scale pastoral resources, and approach the *sum* government for official recognition as leaseholder. As a general rule, the leaseholding group should be the smallest group of herders consistent with the ecologically viable grazing territory. The larger the group, the more difficult becomes the task of monitoring and enforcing compliance with lease provisions among its members.

Where such customary user groups do not exist at the appropriate level or are insufficiently stable or cohesive, as is often the case in drier regions such as the Gobi, it

will be necessary to find a representative larger group which can take on the responsibilities of leaseholder. In some cases this would logically be the company, or a *horshoo* cooperative; the existing entity could simply approach the *sum* administration for official recognition as the leaseholder. In others, the *bag* represents a group of herders and a grazing territory of approximately the right size. However the *bag* itself cannot be the leaseholder: it is not a territorial unit, and there would be a conflict of jurisdiction with its role as an organisation of state control within the administrative hierarchy. In such circumstances, the best solution may be to encourage the creation of an economic entity, as a company or *horshoo*, at *bag* level, with a separate organisational and decision-making structure, and allocate a group pasture lease to this entity.

In some areas a single lease could cover the pastures of the group in all seasons of the year; this could be the case of leases held by the *bag*-level economic entities. In others, seasonal pastures would be subject to separate leases, even to a separate legal regime, with summer-autumn pastures held under group leases and winter-spring areas under individual leases.

To give effect to these proposals, either or both of two changes could be adopted. First, the Land Law needs to be slightly modified to allow community groups to hold leases of public land. This could be achieved by revising clause 2 of article 16 in the draft to state that citizens should be entitled to possess pasture land jointly; in the present draft, only 'citizens and economic entities' are admitted as potential leaseholders. Second, the definition of economic entity (in the Law on Economic Entities) could be extended to provide official recognition of community groups as corporate entities for the purpose of leasing land. This need not imply that the corporate entity has any other direct economic function. However, the simplest solution may be to require such groups to constitute themselves as cooperatives or *horshoo*, which are considered economic entities under existing law.

Some pastoral resources, such as inter-*sum*, inter-*aimag* and state grazing reserves for emergencies, will remain in state control, their status unchanged.

The changes proposed here in tenure status from the present situation are summarised for each main category of pastoral resource in table 1.

Two further general points need to be made. The first concerns reciprocal access on pasture and water leases. The risky nature of Mongolian pastoral environments means that even quite large leased grazing territories will not provide enough resources in occasional years of great scarcity, usually caused by drought or heavy snowfall. In such years, herders have to move to neighbouring territories. Such movements took place in pre-revolutionary Mongolia, and continued during the period of collectivisation. They are an essential survival mechanism, especially in risky areas like the Gobi, and a new and more formalised grazing land tenure system should not be allowed to undermine them. The terms of group and individual pasture leases should encourage the possessor or leaseholder (whether a group or individual) to make agreements with neighbouring leaseholders for reciprocal access in case of emergency. In the Gobi, similar agreements may be necessary for reciprocal access to wells.

Table 1. Proposed changes in tenure for pastoral resources

RESOURCE	PRESENT (1993) TENURE	PROPOSED TENURE
winter-spring shelters, corrals, houses; small capacity wells	largely private individual	private individual freehold with restrictions
intermediate capacity wells	public	individual public leasehold
land immediately surrounding winter shelters and houses	public	individual public leasehold
individual arable fields	public	individual public leasehold
hay fields	public	individual or group public leasehold
winter-spring pastures	public	individual or group public leasehold
summer-autumn pastures	public	group public leasehold
large capacity wells	public	group public leasehold
collective arable and fodder fields	public	group or company public leasehold
state grazing reserves	public	public or inter-group or company

The second point concerns the *khot ail* as a potential leaseholder group. In some areas *khot ail* composition is perhaps stable enough to justify issuing leases to it as a land managing unit; in many others, however, *khot ail* composition changes regularly according to seasonal and other conditions, and it does not have the stability to act as a leaseholder.

Few changes would be needed in the draft Land Law to put into effect the proposals made here. First, it would be desirable to outline the provisions for rolling leases with automatic renewal, subject to satisfactory evaluation, for grazing land and other resources, as described in section 4.5 below. Second, it may be desirable to make clear that individual public leasehold is a possible option for specific resources, including household hay, fodder and arable fields, some wells, and in certain circumstances winter-spring pastures.

It may also be desirable specifically to mention in the Law that customary resource-management groupings of herders (*neg nutgiinhan*), notably well and valley groups where they exist, constituted as economic entities under existing legislation, should be eligible for such leases.

The Land Law needs do no more than provide a legal framework for the tenure options outlined above, which will in most cases be implemented by the *sum* and *bag* administration; it should not specify the details of each. This is the task of the general Land Policy which has yet to be drafted. This Land Policy will be an important document, giving detailed guidance on how the provisions of the Land Law should be applied in particular cases. Preparation of this Land Policy should be given high priority.

4.5 Group land leases for common grazing

This section makes specific recommendations on group land leases for common grazing. It includes details of the nature and terms of such leases, and how they could be monitored and enforced.

What group? The draft Land Law allows for the leasing of common grazing land by economic entities as well as Mongolian citizens. The Law on Economic Entities covers public and limited liability companies, and public and limited liability cooperatives (*horshoo*). Other, informal groups are not recognised. These include, for example *khot ail*, valley or well groups, and other local communities. The *bag* is an administrative unit, not a corporate group. Since land leasing implies a degree of formal land titling, it is recommended that community groups such as *neg nutgiinhan*, well or valley groups, within which common grazing is coordinated, should be allowed to become incorporated (officially recognised) as cooperatives (*horshoo*) for the purpose of leasing their existing grazing land. At least in some areas, this is happening anyway, for the purposes of marketing livestock products and purchasing inputs such as fodder. Such groups are likely to range in size between approximately ten and one hundred households. Where there are no stable customary resource-managing groups of this sort, the formation of new economic entities, often at *bag* level, should be encouraged, as discussed in the previous section. It is emphasised that the formation of such entities is in no way similar to the 'collectivisation' of economic production; its only purpose is to give the leaseholding group legal recognition and protection of its rights under existing law.

Group membership In all cases, the corporate group should be allowed to define its own membership, as well as rules governing entry to and exit from the group, on condition this does not allow richer or more powerful groups to exclude weaker neighbours. The *bag* administration should be given responsibility to ensure this does not occur. The membership of households in economic entities is usually registered under the name of the household head. This person is usually a man. In cases where there is no adult male in the household, and the household is therefore headed by a woman, under existing practice the eldest son is usually registered as the household head. This can give rise to problems of equity. It is recommended that women-headed households and single, independent women be specifically named in the lease along with all other households in the lease-holding group.

How long a lease? Existing legislation allows for leases of 15-60 years. It is recommended that leases be issued on a continuous, 'rolling' basis, ie. that they are monitored and reviewed regularly (eg. every 10 years) to ensure that the land leasing group is complying with its obligations under the Land Law. As a rough guideline, the term of the lease should be three to four times the length of the review period. At each review, new rights or obligations may be added to the existing ones, in case of unforeseen changes.

Renewal of lease It is recommended that the lease-holding group has the automatic right to renew its lease, provided all existing obligations have been complied with. With a continuous, rolling lease as described above, this means that the lease will automatically roll forward as long as the conditions are met. This gives the group the security of tenure it needs for productive and sustainable land management. For example, a lease of 40 years that is first reviewed after 10 years should be renewed, with another 10 years added on at the end, making a total of 40 years again, provided the land users have shown they have met all their obligations under the Land Law and the lease.

Disposal of lease rights It is recommended that lease rights be inherited by another member of the household in the event of the death or disappearance of the person registered on the lease (usually the head of household). For example, lease rights should be inherited by the widow in the event of her husband's death. While the inheritance of such rights by the next of kin within the immediate family is provided for in the Civil Code, it would be desirable to clarify this issue specifically in relation to land leases, in the Land Law. Lease rights should not be transferable by sale.

Compensation in the event of expiry or termination It is recommended that all relevant provisions in the draft Land Law concerning full compensation in the event of expiry or termination of the lease should apply. This applies to the value of the lease itself, where a charge is made for the lease, and to all structures built or land improvements carried out during the lease period (less depreciation costs).

Compliance with obligations It is recommended that it is the responsibility of the group as a whole to ensure that its individual members play their part in complying with obligations under the Land Law and the lease. The group may decide on a set of more specific rules to ensure that its members jointly respect their obligations (eg. by setting dates each year for moving to particular seasonal pastures). These rules will

usually be based on the kind of customs set out in box 1. If an individual member of the group flouts these rules, or any specific obligations under the lease (for example, to avoid grazing an area designated as 'severely degraded'), then other members of the group are expected to notice, to bring this fact to the individual's attention, and to punish consistent offences where necessary.

All these decisions should be the internal affairs of the lease-holding group itself. The relevant local authority (usually the *bag*) should not become involved, except in the case of serious disputes that cannot be resolved by the local community, or disputes between neighbouring lease-holding groups. In this way, the monitoring and enforcement costs to the local authority of the lease system are considerably reduced, and the system is more likely to be effective;

Reciprocal grazing rights between lease-holding groups In times of emergency, the herders in a given community (A) may need to use grazing leased by another herder community (B). At some other time, community (B) may need to use reserve grazing in the territory leased by community (A). It is recommended that these reciprocal rights be specified by separate contract between the lease-holding groups (A) and (B). In some cases, such shared access to a single area will be a regular feature of two communities' grazing strategies. It should be the responsibility of the communities concerned to negotiate the details of such arrangements, with the sanction and approval of the *bag* authorities. The standard terms of pasture leases should make provision for such reciprocal and shared access.

4.6 Grazing land fees

The idea of making herders pay a fee for use of grazing land has already been accepted by the government in Mongolia. The stated objectives of land use fees in Mongolia are:

- to move towards greater formalisation of property rights in agricultural land;
- to provide an incentive to land users to manage land in a conserving manner. By making land users pay for their rights to land, they are to be encouraged to think of it as having a value rather than being free. Different fee levels will be used to encourage the desired changes in herders' land use practices, for example by heavily taxing people who overstock, and especially to distribute grazing pressure more in relation to ecological productivity;
- to raise government revenue. It is intended that this will make a contribution to the costs of land administration, resource assessment and monitoring, and the enforcement of land legislation.

For common grazing land, a methodology has been devised by the Research Institute of Land Policy (RILP) and the Institute of Agricultural Economics (IAE) to evaluate land and set grazing fees and fees for cropland use. It is based on assessment of physical land resources and their productivity, availability of water, distance from *sum* centre and other locational factors. Grazing fees are set according to these variables, based on a combination of an area-based fee and head tax on livestock. This work is

now almost complete. *Aimag* administrations are expected to pay for land evaluation, and to recover at least part of the cost by charging grazing and other land use fees (eg. for arable crop and vegetable production).

The first objective can be met by a small or nominal fee. The third objective can be achieved at various levels. It is reasonable that grazing fees should contribute towards the annual cost of implementing land tenure policy and especially the cost of administering, monitoring and enforcing the terms of leases; spread over a number of years, they could also recover the cost of setting up the system, including especially the initial land assessment. But grazing fees at much higher levels will have to be charged if they are to provide a substantial source of additional revenue for local (*sum* or *aimag*) or even central government, since the levels of fees currently envisaged will probably do little more than cover the cost of administering the system.

PALD research suggests that the imposition of large grazing fees on pastures will not be easily accepted by herders. Herders do not yet have the idea of a land tax, as opposed to a tax on animals, in their conceptual system.

The same problems may arise in the case of using differentiated land fees as a way to distribute grazing pressure more in relation to ecological productivity (the second objective above). In theory, it is a good idea to charge substantially more for high quality land, or land near towns, in order to encourage use of lower quality or remote pastures. In practice, Mongolian grazing land is not an undifferentiated resource, where economic values alone determine behaviour; social, cultural and historical elements influence herders' choice of grazing areas. In particular there is the danger that high grazing fees will have the opposite effect from that intended: they might instil an overly economic attitude in herders, and a sentiment that the land is no longer theirs to be carefully managed by them, but belongs to the government, can be taken away at any time, and should therefore be used in ways which maximise short-term returns.

There are no easy solutions to these problems. However, given that much investment has already gone into devising a system for charging grazing land fees, certain specific recommendations are made here in order to ensure that the stated objectives of the system are likely to be met in a manner which is administratively feasible.

First, it is recommended that leased territorial units be assessed as a whole, as the sum of their individual ecological sub-units. The area-based portion of the grazing fee should be assessed at the level of the whole group that holds a grazing land lease, not at the level of individual herding households. An attempt to do the latter will greatly multiply the administrative cost of the system, and makes it more likely that herders will dispute their individual fee assessments. It would then be up to the members to decide how to share the group fee. It is also in the interests of the whole group to collect and pay the fee, since this is one of their obligations under the terms of the lease.

Second, it is recommended that the animal head-tax portion of the grazing fee is graduated: that is, as herd size increases, the tax charged on each individual animal also rises and, for example, a herder with 100 cattle pays more per animal than a

herder with only 20 cattle. This is important if the fee is to achieve its stated objective to encourage conservative land use. For this reason, it is recommended that graduated animal head taxes be applied at least in the case of land on which it is desirable to discourage concentration of livestock numbers, for example, close to *sum* centres (see below). If the head-tax portion of the grazing fee increases only in direct proportion to herd size, there is little incentive to herders to limit animal numbers on common grazing. With a graduated head tax, as long as other economic incentives are favourable, herders have an incentive to maximise productivity per animal rather than the total number of animals.

The same principle of a variable scale of fees applies to the land area-based portion of the grazing fee. Groups of herders will only be discouraged from grazing their animals on land close to *sum* centres, for example, if they have to pay a fee that is a lot higher, not just a little higher, for doing so. The example of Arkhangai *aimag* illustrates this problem. The proposed range of variation in grazing fees of 4-5 tug/yr is too small to be effective as an instrument for changing herders' land use practices. The range of variation should probably be in the order of 4-40 tug/yr, depending on total herd size.

If revenue is raised through fees and taxes of this sort, there is an argument for directing it into a local, probably *sum* level, fund for livestock development, and especially into building up a renewed SEFF-type operation to meet emergency fodder needs.

5 CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

This paper has considered the options for grazing land tenure reform in Mongolia. Variability, low productivity and risk in the Mongolian grazing system mean that the simple allocation of pastures to individual herding households as private property is economically and ecologically unviable. In response to these constraints, Mongolian pastoral production currently takes place in a nomadic fashion, regulated by effective customary systems of collective grazing resource tenure and management. The challenge is to reconcile these customary or informal systems of grazing management with the demands of a formal Land Law in ways which are economically efficient, socially just and environmentally sustainable. This paper discusses ways to achieve such a solution.

The paper comes to the following main conclusions and recommendations:

1. Mongolian herding communities are generally organised around the management of viable grazing territories, and have effective customary rules and procedures to manage the resources of these territories. The period of collectivisation to some extent weakened these customary tenure systems, but they are re-emerging rapidly under economic reform. They have important weaknesses however, and cannot cope on their own with the rapid and far-reaching changes triggered by privatisation and the move to a market economy.
2. Ecological and social conditions vary widely in different parts of Mongolia. It would be unwise to try to impose a single general model of grazing land tenure. Tenure systems should be adapted to local conditions.
3. Given ecological and other constraints, private freehold tenure of grazing land by individual households is not a viable general solution. Different mixes of public and private freehold and leasehold, at individual and group level, offer the best solutions, and provide the flexibility needed to adapt the tenure system to varying local conditions.
4. Different resources should have appropriate tenure systems. These include:
 - private individual freehold or public individual leasehold tenure for built structures such as winter-spring shelters and small wells; such property should be transferable within families but not saleable;
 - public individual leasehold for land around winter shelters, intermediate capacity wells, arable and hay fields. In some places this might also be the best solution for winter-spring pastures;
 - public group leasehold for summer and winter pastures and large capacity wells and boreholes. Where identifiable customary groups of resource users such as well or valley groups exist, they should become the leaseholder, constituted for that purpose into cooperatives or *horshoo*; where they do not exist, it may be necessary

to create new economic entities at *bag* level as a leaseholder. In some cases, companies may be appropriate leaseholders.

5. Reciprocal access agreements between groups to allow a group to use the territory of a neighbouring group in the event of an exceptional pasture shortage should be encouraged.

6. The draft Land Law now before Parliament can accommodate these proposed tenure policies, with a small number of clarifications and additions:

- to make clear that individual public leasehold is a possible option for specific resources, including hay fields, individual arable and fodder fields and perhaps winter-spring pastures;
- to make clear that the category of economic entities permitted to hold group leases of public land includes community groups of herders, notably valley and well-groups; this can best be achieved by requiring such groups to constitute themselves formally as cooperatives or *horshoo* (which are classified as economic entities) under existing legislation;
- the Land Law, or alternately the Land Policy, should also outline the provision for renewable, rolling leases.

7. Where existing community groups do not exist at the appropriate level, or are insufficiently stable or cohesive, a new corporate entity at *bag* level should become the grazing land leaseholder.

8. Most leases to individuals and groups of grazing land resources (including wells, hay and individual arable and fodder fields, and exceptionally winter-spring pastures) should be issued on a rolling (ie regularly renewable) basis for 30-40 years, subject to regular review of the performance of the leaseholder in keeping the conditions of the lease.

9. The enactment of the Land Law should be followed rapidly by the preparation of a general Land Policy giving detailed guidance on how the provisions of the Law should be applied in particular cases. Among other things, the Land Policy should specify the level and type of community groups who may be given grazing land leaseholds, and the conditions, nature and details of rolling leases.

10. Grazing land fees should be assessed on the territories leased by groups as a whole, and be raised and paid by the group leaseholder on behalf of its members. The livestock head tax portion of the fee should be graduated, with tax per animal increasing as herd size increases. Taxes on grazing land should be substantially increased on the best land, and on land close to *sum* centres as a way of distributing grazing pressure more evenly. An important potential use of such fees is to create a local livestock development fund, and an emergency fodder fund to replace the SEFF.