LAND REFORM IN MONGOLIA: OBSERVATIONS AND RECOMMENDATIONS

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## Glossary of Commonly Used Mongolian Terms

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## Executive Summary

Chapter 1: Introduction ............................................................... 1
Chapter 2: Private Ownership of Land ........................................... 1
Chapter 3: Implementing the Land Law ........................................ 2
Chapter 4: Expanding Transferability of Non-Ownership Rights ........................................................................... 3
Chapter 5: Regulating Land Use ................................................. 4
Chapter 6: Special Protected Areas ............................................. 5

## Introduction

I. Background ................................................................................. 7
II. Overview of Land Rights in Mongolia ....................................... 8
III. Report Scope and Objectives .................................................. 9

## Private Ownership of Land

I. Introduction................................................................................ 11
II. International Experience: Three Types of Ownership Systems ........................................................................... 12
III. Placing Limits on Private Land Ownership .................................... 20

## Implementing Mongolia’s Law on Land

I. Introduction................................................................................ 26
II. General Recommendations on Land Law Implementation .................. 27
III. Special Implementation Issues for Pastureland .................................. 36
IV. Special Implementation Issues for Arable Land .................................. 40
V. Special Implementation Issues for Urban Land .................................. 45

## Expanding Transferability of Possession Rights to Land

I. Introduction................................................................................ 47
II. Developing Land Markets: Efficiency and Potential Costs .................. 48
III. Restrictions on Transferring Land Rights: Comparative Approaches .......... 50
IV. Recommendations for Expanding Transferability of Land Rights in Mongolia ........................................................................... 54
V. Supporting Institutions for Facilitating Allowable Land Transactions .......... 56
VI. Recommendations on Developing Supporting Institutions to Facilitate Allowable Land Transactions ........................................................................... 58

## Land Use Requirements, Monitoring and Enforcement

I. Introduction................................................................................ 59
II. Problems with Existing Mongolian Law ....................................... 61
III. International Experience .......................................................... 61

## Special Protected Areas

I. Policy and Legal Framework....................................................... 65
II. Land Reform Issues: Displacing Current Users.................................. 66
III. Multiple Use Zones .................................................................. 68
ANNEX 1: FIELDWORK FINDINGS ................................................................. 1-1
I. Private Ownership .................................................................................. 1-1
II. Implementing the Land Law .................................................................. 1-2
III. Special Implementation Issues for Different Land Categories .......... 1-10
IV. Registration and Cadastre .................................................................. 1-15
V. Special Protected Areas ........................................................................ 1-16
VI. Water .................................................................................................... 1-17
VII. Economic Incentives .......................................................................... 1-18

ANNEX 2: OVERVIEW AND ANALYSIS OF PRIMARY LAND-RELATED LAWS OF MONGOLIA ......................................................... 2-1
I. Constitution of Mongolia ....................................................................... 2-1
II. Civil Code ............................................................................................. 2-3
III. The Mongolian Law on Land ............................................................... 2-6

ANNEX 3: SUMMARY OF RECOMMENDATIONS ..................................... 3-1
I. Introducing Private Ownership ............................................................. 3-1
II. Implementing Mongolia’s Land on Land .............................................. 3-2
III. Expanding Transferability of Possession Rights to Land ................. 3-6
IV. Land Use Requirements, Monitoring and Enforcement .................... 3-7
V. Special Protected Areas ...................................................................... 3-8

ANNEX 4: LIST OF PERSONS CONSULTED BY RDI IN ULAANBAATAR, JUNE 1999 ................................................. 4-1
GLOSSARY OF COMMONLY USED MONGOLIAN TERMS

Aimag – the primary sub-national administrative unit (‘province’) in contemporary Mongolia, consisting of several sums.

Bag – formerly a customary social institution; now refers to the lowest level of Mongolian state administration in rural areas.

Duureg – local administrative unit or urban district: municipal equivalent to a sum.

Dzud – generic term for a range of winter weather conditions that make it difficult for animals to obtain forage from open pasture (e.g. snow or ice covering pasture, or an absence of precipitation such that ‘dry’ pastures may not be used in the winter).

Ger – felt tent, household.

Khot ail – the group of households camping together and sharing labor. It also plays a social role as the smallest local community. It has a loose internal structure and flexible composition from year to year. In the pre-collectivization period, khotails were headed by (and named after) one of the eldest male members – hotyn ahlach.

Khoroo – a division of an urban district (urban equivalent of a bag).

Khural – elected parliament, present at all administrative levels from bag/khoroo up to national level (the latter known as Ikh Khural or Great Khural).

Sum – secondary administrative unit (‘rural district’) in contemporary Mongolia, consisting of several bags.

Takhi – rare, endemic breed of wild horse currently being reintroduced to Mongolia.

Tögrög – Mongolian currency.
EXECUTIVE SUMMARY

Chapter 1: Introduction

Mongolia’s land is perhaps its most valuable resource. Mongolia covers a vast and diverse territory of more than 156 million hectares. Pastureland comprises the great majority of Mongolia’s territory (about 126 million hectares), while arable land (about 1 million hectares) and urban and settlement areas comprise a very small fraction of total land areas.

The Government of Mongolia regards reforming land law and policy for all categories of land as a major development priority in order to create incentives for socially equitable and environmentally sustainable economic growth.

This report is the result of the authors’ short-term assistance to Mongolia’s Working Group on Land Reform in June 1999 under contract to the World Bank. The selection of land-related topics covered in the report is based on issues of greatest concern to the Working Group. Specific recommendations are presented throughout the report and compiled in Annex 3 at the report’s end. The other annexes include a summary of relevant fieldwork observations and an overview and analysis of the important land legislation.

Chapter 2: Private Ownership of Land

All land in Mongolia currently remains in state ownership. Although the Constitution provides for the possibility of private ownership of urban and arable land, the existing legislative framework does not provide a mechanism for introducing such private ownership. The privatization of pastureland is prohibited under the Constitution.

Private ownership of land is a controversial issue in Mongolia. Private land ownership can offer several potential and important advantages, especially for land with intensive economic activity. However, a country may realize much or most of the benefits of private land ownership with a State ownership system if it is willing to give long-term, relatively unrestricted, and transferable rights to land and is willing and able to enforce and protect those rights.

The introduction of private ownership rights (and transfer rights generally) must be analyzed separately for different categories of land. Several questions must be considered as part of the general cost/benefit analyses in introducing private land ownership for each category of land.

Introducing private ownership to urban (and other settlement) land is likely to provide benefits in the form of increased investment by holders of land, a more active land
market which can both broaden access and more efficiently allocate land, greater access to credit for holders of land, and a psychological pride and security of ownership that cannot be measured in economic terms.

The issues concerning arable land in Mongolia differ from urban land. Private ownership typically advances efficiency objectives on arable land. However, because of important equity concerns resulting from flawed aspects of collective farm privatization, Mongolia should accompany the introduction of private ownership rights to arable land with size restrictions of 100 hectares per individual and maintain (at least temporarily) restrictions on land ownership by agricultural enterprises.

It is important to recognize that the potential benefits of private land ownership apply primarily to land with intensive economic activity. Thus, they do not generally apply to most pastureland where the need and scope for investment in land is absent or extremely limited, and suitable alternative uses are lacking. In addition, under Mongolian conditions, there are strong ecological reasons why individualized tenure and the development of a land market for most pastureland is likely to be undesirable.

Certain restrictions on private ownership are necessary and exist in all countries. Chapter two presents specific recommendations concerning restrictions on the size of various types of landholdings and restrictions on foreign ownership.

**Chapter 3: Implementing the Land Law**

While certain provisions of the Mongolian Law on Land should be amended, the most fundamental and immediate problems with the Land Law involve its implementation. The primary concerns are threefold: (1) the lack of adequate institutions and processes to facilitate its implementation; (2) an over-emphasis on surveying, mapping, and record-keeping; and (3) an under-emphasis on a comprehensive allocation of legally valid possession rights to all categories of land.

Regional and local governments have interpreted the Land Law in a wide variety of ways reflected in a wide range of implementation measures. While implementing guidelines are necessary, designed flexibility is important to the workability of the law. The variations in land quality and availability, population density, herding migration patterns and land use throughout Mongolia require that any law, written to cover land rights throughout the entire country, be drafted broadly enough in many areas to allow for appropriate implementation in vastly different localities. The law’s implementing regulations (and in some cases the law itself) could be improved to more adequately define the range of choices available to regional and local governments in implementing the law. The most important role for State land legislation and regulations is to provide local governments with sufficient institutional support and clear direction on how to allocate and protect land rights in the way most suitable for their local populations, within the broad parameters of the Land Law.
Priorities in implementing the Land Law should include adequate regulatory guidance, institutional support, and public information to allow regional and local governments to make the best choices for their own jurisdiction. Successful implementation of the Land Law will depend on proceeding deliberately, prioritizing among implementation goals, and learning from pilot projects established to try different approaches in various geographic regions.

Chapter three offers detailed recommendations for: the implementing regulations; training local officials; strengthening implementing institutions; monitoring implementation; dispute resolution; information campaigns; determining and allocating land rights; and special implementation issues for pasture, arable, and urban land.

Chapter 4: Expanding Transferability of Non-Ownership Rights

In Mongolia, most private holders of land presently hold either possession rights or use rights. In general terms, holders of possession rights may lease but not sell their rights. Holders of use rights may not sell or lease their rights.

Land markets can function as a powerful tool for encouraging productivity and investment among holders of land rights. Effective markets for transferring land rights provide a means to reallocate those rights to the most productive users. Land markets also provide the basis for the mortgage of rights in land, which increases access to capital necessary for productivity-enhancing investments.

Efficiency and other gains resulting from effective land markets must, however, be balanced against competing social and environmental policy goals. As a result, all land markets are regulated to some extent. One such means of regulation is through restrictions on the ability to transfer land through sale, lease, or inheritance. Such restrictions involve a careful balancing of efficiency and equity goals.

Mongolia has not yet introduced private ownership rights to land. As such, the most relevant issue for expanding transferability of land rights in Mongolia involves possession rights (and perhaps at some later time, use rights). We urge that officials, when considering increasing the transferability of these rights, make the following three important distinctions.

First, distinguish among different categories of land. Allowing full transferability of possession rights to residential land involves a different set of issues than allowing full transferability of possession rights to pasture land. Transferability of rights to common property resources (e.g., pastureland held in common) must be approached very cautiously.

Second, distinguish among different types of land right holders. Providing full transferability to individuals or households that hold possession rights to relatively small
areas of arable land involves very different issues from providing these same, incremental rights to companies that hold possession rights to vast areas of arable land.

Third, distinguish between land rights that have been granted by the government for free and land rights that have been purchased. A stronger case can be made for allowing those who have purchased possession rights to receive the immediate right to transfer those rights in their entirety. Likewise, placing a time-limited prohibition on full transferability of possession rights that are granted by the government will lessen incentives for land speculation by those who seek government grants of land for the sole purpose of reselling that land.

Mongolian officials should carefully study the potential benefits and costs of expanding transferability of rights to each category of land and for each type of land right holder. For example: Does the lack of further transferability impose important constraints on efficiency and productive use? Is there a significant demand for further transferability from either those who hold land rights or those who do not hold land rights but want to hold them? Will the "windfall" for current holders of land rights that will result by expanding transferability lead to significant equity problems? Will lending institutions actually accept the rights as collateral if transfer rights are expanded?

As Mongolia begins to expand the transferability of rights pertaining to certain categories of land or rights held by certain types of landholders, officials will also have to pay some attention to the development of supporting institutions for facilitating the transfer of these land rights.

Chapter four provides specific recommendations for expanding transferability of possession rights to various categories of land, as well as recommendations for developing some of the supporting institutions for a land market.

**Chapter 5: Regulating Land Use**

Land use controls on private users of land require balancing of public purpose or needs with efficiency or private cost. Land use regulations can accomplish their intended purpose, but in doing so may impose unnecessarily high costs on individuals and the community. Countries that have recently emerged from central planning often emphasize public purpose but ignore efficiency, public and private cost, and other less costly alternatives to realizing intended objectives. Mongolia’s current laws reflect that trend present in many other transition economies.

The Land Law places an extremely high, and seemingly impossible standard on the State for monitoring the characteristics and quality of the land in order to insure that the land possessors and users have met the legislative land use requirements.
The potential penalty imposed on the land possessor or user for violating land use requirements is substantial. If the land possessor consistently or seriously violates the requirements, the government may confiscate the land.

The problems presented by Mongolia's land use requirement, monitoring, and enforcement scheme are primarily twofold. First, the monitoring scheme will be extremely costly and probably administratively impossible to implement. The monitoring costs themselves, which are placed both on the State and on land possessors and users, are far too substantial to warrant possible objectives. The opportunity costs of using skilled administrative personnel for such a task in a country where skilled administrative personnel are in short supply appears unwise. Second, the enforcement scheme involves a substantial penalty (termination of land rights) that is likely to result in tenure insecurity and a corresponding lack of investment by land possessors and users.

Chapter 6: Special Protected Areas

Mongolia has designated about 12% of the national territory as Special Protected Areas (SPAs). The government plans to increase the amount of land in SPAs to 15% of the country's territory by 2001 and 30% by 2030. This extensive expansion of SPAs is likely to come at a significant cost to current land users and possessors, to economic production, and possibly to sustainable land use in unprotected areas.

Much of the land currently in SPAs and planned for SPA expansion is traditional grazing land. Even with full implementation of the Land Law, much of this land use (summer and fall pastures, and in many cases winter pastures outside of winter camps) will not be legally protected by possession contracts. Takings of land rights that are not held in possession contracts are not subject to compensation under the law. This leaves herders vulnerable to the uncompensated loss of their customary grazing areas. Poorer herders are especially vulnerable. Displacing herders from some areas may increase pressure on the pasture land resources in other areas, some of which may already be degraded.

The risk of displacement is reduced to the extent that the SPAs are designated as "limited use areas" that may allow for continued grazing. The percentage of current and planned SPA land designated as "limited use" in Mongolia is unclear, as are the rights of grazers within limited use areas.
INTRODUCTION

I. Background

Mongolia covers a vast and diverse territory of more than 156 million hectares, yet has a population of only 2.3 million people. Pastureland comprises the great majority of Mongolia’s territory (about 126 million hectares). Forest and woodlands (18 million hectares) comprise the second largest category of land, while arable land (1 million hectares) and urban and settlement areas comprise a very small fraction of the total land area.

Table 1: Classification of Land in Mongolia, 1998
(Based on information from the Ministry for Nature and Environment, Mongolia)

<table>
<thead>
<tr>
<th>Land Classification</th>
<th>Subtotals (1,000 ha’s)</th>
<th>Percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Land</td>
<td>129,132</td>
<td>82.6</td>
</tr>
<tr>
<td>(of this):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>pasture</td>
<td>125,740</td>
<td></td>
</tr>
<tr>
<td>hay</td>
<td>2,045</td>
<td></td>
</tr>
<tr>
<td>arable</td>
<td>953</td>
<td></td>
</tr>
<tr>
<td>other</td>
<td>394</td>
<td></td>
</tr>
<tr>
<td>City, village, settlement</td>
<td>377</td>
<td>0.2</td>
</tr>
<tr>
<td>Roads</td>
<td>330</td>
<td>0.2</td>
</tr>
<tr>
<td>Forest</td>
<td>17,852</td>
<td>11.4</td>
</tr>
<tr>
<td>Water resource</td>
<td>1,665</td>
<td>1.1</td>
</tr>
<tr>
<td>Reserve land</td>
<td>7,056</td>
<td>4.5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>156,412</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The Government of Mongolia regards land reform as a major development priority in order to create incentives for socially equitable and environmentally sustainable economic growth. The term “land reform” is used here to refer to the entire spectrum of land relations in Mongolia. It includes efforts to define, allocate, and regulate property rights for all categories of land, including pastureland, arable land, urban land, and special protected areas. In 1999, the Government adopted a resolution that outlined an action plan on the acceleration of the land reform.1 The action steps listed fell under three categories: changes in the legislation; upgrading land management; and providing

training and equipment to land administration personnel. While the “action plan” resolution is not self-enacting or overly detailed, it does represent the government’s intentions to move forward with measures and activities that will concern all categories of land and those who presently (or might in the future) use or administer such land.

All land in Mongolia currently remains in state ownership. Although the Constitution provides for the possibility of private ownership of urban and arable land, the existing legislative framework does not provide a mechanism for transferring ownership of such lands into private hands. The privatization of pastureland is prohibited under the Constitution.

II. Overview of Land Rights in Mongolia


The stated purpose of the Mongolian Law on Land is to regulate the possession, use, and other related issues of land by citizens, economic entities, and organizations. The law is a decent law that is not entirely different from land legislation in many developed countries.

The law provides for, and further defines, four types of land rights: ownership rights, possession rights, use rights, and limited use rights. It generally repeats the Civil Code provisions in stating that land, other than that owned by Mongolian citizens, is owned by the State. It does not allow for land ownership by legal persons or for foreign citizens. Mongolian citizens are given the right to own land other than pastures, common-use land, and “land for State special needs.” However, the law has no implementing provisions that allocate private ownership rights to land. Instead, it provides that “[l]and ownership by citizens of Mongolia shall be regulated by an appropriate law.”

Although the Land Law provides that most land is State-owned, it does provide for possession rights that are both long-term, and, to a limited extent, transferable. Possession rights may be held by citizens, economic entities, and organizations of

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3 Id., art. 5(1).
4 Id., art. 5(2).
5 Id., art. 5(3).
Mongolia. All are given the preferential right to possess land in the sum or duureg where they reside. Holders of possession rights to most categories of land may keep them for a period of up to 60 years, and may extend the duration for up to 40-year periods if they have complied with the terms of land legislation and the land possession contract. Arable land is an exception. The initial term of possession or use rights to arable land cannot be less than five years or more than 25 years. Holders of possession rights may not transfer the entire right (except by inheritance), but they can transfer use rights to others with approval of the body that granted the possession right.

Next in the hierarchy of non-ownership rights is use rights to State-owned land. Use rights may be held by citizens, economic entities, and organizations pursuant to specific purposes, duration, and conditions established by contract and in accordance with legislation. Use rights have many of the characteristics of possession rights, but they may not be passed by inheritance or otherwise transferred. Limited use rights are use rights similar in nature to easements or servitudes.

III. Report Scope and Objectives

The authors of this draft report are World Bank international consultants hired to provide short-term assistance to the Government of Mongolia Working Group on Land Reform in preparing an Action Plan on Land Reform. The authors spent 12 days in Mongolia in June 1999, meeting with numerous government officials and conducting fieldwork in pastureland, arable land, and urban land settings. The authors also reviewed legislation, draft legislation, and numerous reports and papers prepared by other international experts. In particular, the authors have benefited greatly from the recent work of another World Bank consultant on pastureland issues (Maria Fernández-Giménez, “National Land Reform Strategy, Mongolia: Report of the International Consultant on Rangeland and Pasture Policy,” June 1999).

The selection of land-related topics covered in this draft report was based upon numerous discussions with and requests of individual members of the GOM Working Group on Land, and particularly with the Group’s Chair, Mr A. Enkh-Amgalan. The report contains six chapters, including this introduction chapter, and several annexes. Chapter two discusses the issue of private ownership of land. It contains a comparative overview of private and State ownership systems for land, and recommendations for introducing private ownership rights to land in Mongolia.

6 Id., arts. 6(1), 27(1). Foreign citizens and legal persons may not hold possession rights.
7 The exact nature of that “preferential right” and how it may be exercised is not further detailed in the Law on Land.
9 Id., art. 53(2).
Chapter three focuses on the important process of implementing the Mongolian Law on Land. It contains discussions and recommendations concerning general issues of implementation as well as specific issues for pastureland, arable land, and urban land.

Chapter four discusses land market issues and the transferability of land rights in Mongolia. It addresses the issue of whether holders of possession rights and use rights in Mongolia should have more extensive legal ability to transfer those rights, provides a theoretical discussion on the efficiency of land markets and why certain restrictions on transferring land may be appropriate. It also provides an overview of some international experience on restricting land transfers, and presents several recommendations for expanding transferability of possession rights in Mongolia.

Chapter five provides an overview of land use regulations placed on private users of land in Mongolia’s Law on Land, discusses and compares typical methods of land use regulations in socialist or transition economies with those in developed market economies, and presents recommendations for changing the Mongolian approach and legal provisions concerning land use regulation.

Chapter six focuses on land reform issues concerning Special Protected Areas (SPAs). Currently, SPAs comprise twelve percent of Mongolia’s territory, and the government plans to expand these areas to cover thirty percent of the national territory by 2030. This chapter discusses SPAs within the overall context of Mongolia’s land reform and offers recommendations.

The four annexes include: (1) a summary of results from the authors’ fieldwork in Mongolia, supplemented by previous fieldwork of others; (2) an overview and analysis of the land-related provisions of the Constitution, Civil Code, and Law on Land; (3) a compilation of the numerous recommendations that appear throughout the body of the report; and (4) a list of persons the authors met with in Mongolia.
PRIVATE OWNERSHIP OF LAND

I. Introduction

Private ownership of land is a controversial issue in Mongolia. The Constitution provides that land, except for pastureland and forest land, may be privately owned by citizens. The Land Law also allows for private ownership, but does not contain implementing provisions granting private ownership. A draft Land Ownership Law and a draft Land Privatization Law that would have allocated private ownership rights to urban and arable land have been prepared in the past, but not pursued because of political sensitivities and opposition. The Ikh Khural decided in 1998 not to further pursue the question of private land ownership for urban and arable land (together less than two percent of national land area) for at least the remainder of the term of the then government.

Private land ownership offers several potential and important advantages, especially for land with intensive economic activity (discussed below). Nearly all developed market economies recognize private land ownership rights for arable and urban land. However, a country can gain most of the benefits of private land ownership with a State ownership system if it is willing to give long-term, relatively unrestricted, and transferable rights to land and is willing and able to enforce and protect those rights. Moreover, the introduction of private land ownership rights in transition economies has typically been an extremely controversial issue. Mongolia appears to be no exception. The issue arouses ideological, nationalistic, and emotional opposition that may not be worth fighting against if the advantages of private land ownership can be realized through a more politically acceptable means.

Recent events in the Kyrgyz Republic show that the introduction of private land ownership has the potential to cause more problems than it solves. The Kyrgyz Republic, until 1998, had a constitutional ban on private land ownership. The president and parliament, however, had created a legal framework that allowed ninety-nine-year use rights to land that could be sold, leased, mortgaged, and passed by inheritance. Such rights provided virtually all the benefits of private ownership rights. When the government, in 1999, proposed to go one small step further and change the constitution to allow private land ownership, many Members of Parliament and other people raised serious concerns of the type being raised in Mongolia (fears of foreign ownership, land concentration, land speculation, etc.). Such fears led to calls for significant restrictions on the new private ownership rights that had not previously existed with the ninety-nine-year use rights (such as a five-year moratorium on sale which has led to a halt in government auctions of long-term private rights to state-owned land). The private land ownership rights that resulted arguably contained more restrictions and comprise less valuable rights than the ninety-nine-year transferable use rights that existed previously.

10 Constitution of Mongolia, art. 6(2).
II. International Experience: Three Types of Ownership Systems

The starting point for evaluating and categorizing land tenure systems involves the concept of ownership. Land tenure systems can be categorized in a variety of ways, but are often categorized by forms of “ownership”: private ownership, State ownership, and collective (or communal) ownership systems. These categories are all relatively formless composites, but they each have certain characteristics. More than one form of ownership typically exists within a given country. However, in most countries, one of these three ownership systems tends to dominate.

Private ownership dominates in most of Europe, North America, and Australia, especially in areas of more intensive economic interest. State ownership, with leases or rights of use and occupation given to private individuals or groups, is an important system of tenure, especially in parts of Africa, Asia, and the former Soviet Union. State ownership of large areas of pastureland is also common in North America and Australia, although most of this state-owned pastureland is leased to individual ranchers or herders. Lease or use rights exist within both private and State ownership schemes. Group ownership systems include collective, communal and other customary forms in which the local community exercises ownership rights, and dominate in Africa, many parts of the South Pacific, and rural China. The theoretical discussion below will focus on private ownership and State ownership since those are the two relevant forms under discussion in Mongolia.

Land tenure rights are not a single entitlement in any of the different ownership systems. The rights are multiple and varied. The analogy of a bundle of sticks has been used to describe the highly variegated land rights that are associated with the concept of “ownership” of land. The specific rights may include rights of possession; to exclude others from the land; to sell land or lease it to others; to use the land; and to enjoy the fruits or profits from the land. Any or all of these specific rights may be perpetual or may be for a limited term.

Specific clarification of the rights and duties associated with ownership are crucial in any land ownership system. Owners and non-owning users of land cannot operate efficiently or equitably if they do not know or understand what land rights and duties they possess.

A. Private Ownership Systems

The combination of private ownership and extensive individual rights has been the cornerstone of Western European, North American, and Australian societies for the last

11 For example, the United States has approximately 680 million hectares of pasture and grazing land, of which 154 million hectares are owned by the federal government and leased to individual ranchers or herders. 1997 STATISTICAL ABSTRACT OF THE UNITED STATES (prepared by the Chief of the Bureau of Statistics, Treasury Department), tables 370 and 543.
Private land ownership rights are not absolute in any developed market economy. Every country that recognizes private land ownership restricts the rights of the private landowner in order to meet societal interests. Private land ownership rights are restricted in various ways including land use regulations, limits on private acquisition, regulation of leasing relationships, and the State power to compulsorily acquire private property. The extent and nature of those restrictions vary from country to country, but in no country are the rights of private landowners absolute.

Private land ownership systems have several advantageous characteristics, especially in areas with intensive economic activity. These include: (1) security of tenure, which creates incentive for land improvements; (2) fewer restraints on the use of land, which allows landowners to put land to its most productive use; (3) fewer restraints on the transfer of land, which facilitates allocation of land to more productive users; and (4) greater ability to acquire capital using land as collateral.

These advantages are typically less characteristic of State ownership and group ownership systems. However, State and group ownership systems can be modified to include some, if not all of these important advantages inherent in private ownership systems.

In addition to the typical advantages of private ownership, some potential negative effects exist. These potential effects include: (1) a concentration of land resources in the hands of a small number of private owners; (2) the related problem of inequitable access to land by lower-income groups; and (3) a significant divergence between the private returns that motivate actions of private owners and the social gains and losses affecting the greater community.

High concentrations of land ownership and accompanying landlessness often lead to inequitable patterns of economic development. Such conditions almost always result from an initial inequitable allocation of private rights from the government. When the initial allocation of private land rights from the government is broad-based and relatively equitable, subsequent transfers of land through a regulated market rarely result in serious problems of land ownership concentration and accompanying landlessness. Mongolia should make any allocation of private ownership rights as broad-based as possible, and avoid granting substantial areas of land in private ownership to single individuals or entities.

In private ownership systems, significant divergences can arise between the private returns that motivate a landowner and the social gains and losses that impact the greater community. This divergence in private and social interests can arise for at least two reasons. First, some actions beneficial to a private owner impose costs on others in the community or on the community at large that are not incurred by the private owner.

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12 In these countries, all ownership of land was originally derived from the government and the government still continues to own some land. In the United States, for example, while most land (including 98% of arable land) has been granted in private ownership, federal government and individual state governments continue to own some land. Land still owned by the federal government is almost entirely grazing land, desert, tundra, or forest land.
(negative externalities). Second, some actions or investments involving privately owned land that would provide social gains, but not private gains (or not sufficient private gains), will not be undertaken by the private owner.

Many of the problems of divergent private and social interests have been addressed (although not entirely solved) by altering and regulating land rights to better reflect gains and losses. Most efforts by countries with private ownership systems to restrict rights of individual landowners are aimed at altering the balance between private and public rights to better reflect the actual gains and losses. Such restrictions include land use restrictions, State compulsory acquisition of privately held land for public needs, land taxation, and limits on the amount of land that can be privately held. Therefore, if private land ownership rights are introduced in Mongolia, it is appropriate to have some government regulation of those rights to properly balance private and social interests.

It is important to recognize that the potential benefits of private land ownership apply primarily to land with intensive economic activity. Thus, they do not generally apply to most pastureland where the need and scope for investment in land is absent or extremely limited, and suitable alternative uses are lacking. Under Mongolian conditions, there are also strong ecological reasons why individualized tenure and the development of a land market would be undesirable for most pastureland. Sustainable land use under an extensive grazing system where weather-related risks run high requires mobility and flexibility. Seasonal pastures must be and have been shared between neighboring herding households since their patterns of movement overlap and vary between years according to forage availability. In most areas, the risk of drought, dzud, and other natural hazards requires that herders have access to additional areas of pastureland for emergency use. Exceptions—areas of pastureland where individualized and exclusive tenure may be worth considering—include winter camps and wells, where investment or the need for investment may warrant exceptional treatment.

B. State Ownership Systems

Virtually all countries acknowledge and use the concept of State or government ownership of land to some degree. In its extreme form, the State may own all or nearly all the land and allocate rights of access, use, and development and transfer. This situation applies in many countries in sub-Saharan Africa and some of the former Soviet republics. In other cases, State ownership may be reserved for areas of strategic importance or as a reserve right in cases of future need.

The tenure arrangements for use of State land also vary. In some cases the State offers possession, use, or lease rights to individuals or groups. These may be for a variety of

purposes and for varying lengths of time. In Israel, for example, where most land is State-owned, the State offers transferable lease rights for up to 196 years.\(^\text{14}\)

In other cases, especially in Africa, these lands continue to be occupied by indigenous inhabitants in accord with their customary rules. Direct State operation and use of land is also common in settings with widespread State ownership and is typically carried out by State farms or other State enterprises.

State land ownership can place excessive demands upon the capacity and integrity of administrative systems and their ability to respond efficiently to changes in demand, especially in areas of intensive economic activity. It has also often resulted in insufficient tenure security for the users, which in turn has constrained investment patterns. As in the case of private ownership systems, land system rules can be modified to mitigate these negative consequences and to encourage more appropriate activity and investment by private rights to State-owned land that are long-term and transferable.

C. Group Ownership Systems

The third category of land ownership systems is group (collective or communal) ownership. While there is a wide variety of group ownership systems, most share basic characteristics. First, the “ownership” or ultimate rights to land are held by a defined group of people held together by ethnic, kinship or production relationships. Second, these systems are often largely concerned with ensuring access to land for all members of the group. Third, the systems often involve the establishment and maintenance of reciprocal obligations between people within a group. Fourth, nearly all allow for individual occupation and cultivation of at least some of the land. Finally, the systems typically prohibit or restrict transfer of land interests to individuals outside the group.

Many of the collective, communal, and customary or traditional tenure systems evolved when there were few opportunities for trading surplus production, a high degree of social cohesiveness of the group, little possibility of enforcement of contracts, and limited technical or economic change. Consequently, these ownership systems tend to treat land less as a factor of production and more as a source of security and a center of cultural or ideological values and obligations.

However, the degree of effectiveness of these systems is often the function of the social cohesiveness of the group, the relative lack of demand for land, and the dearth of new opportunities to utilize resources for gain. With an increase in rural population relative to land availability and greater opportunities for technological and market changes, some of the restrictions characteristic of these land systems come at increasing costs, especially for land with intensive economic activity. While such land systems often allow for individual occupation and cultivation of land, tenure is often insufficiently secure for individuals to be confident of receiving all the benefits of land improvements. Moreover, the corporate rather than proprietary nature of rights to transfer or allocate land acts as a

\(^{14}\) In Israel, 92% of land is state-owned and the remaining 8% is privately owned.
constraint to those desiring social mobility. Constraints on transferring land and using land as collateral for needed credit restricts economic and social mobility.

Group (collective or communal) ownership does not legally exist, nor is it being proposed in Mongolia. Allocation of group possession rights to pastureland, however, is being, and should be, considered. Control over pastureland in Mongolia resembles de facto collective tenure at the sum level. Most Mongolians appear to believe that access to pastureland in a particular sum requires official registered residency in that sum. Comparative models of group ownership may be useful for Mongolia as it develops group possession rights to pastureland. For a summary of communal pastureland tenure in Africa, see Box 1.
Box 1: Communal tenure of pastureland offers distinct advantages to grazing communities in Africa.

Most pasturelands in Africa are state-owned, but managed communally. Commonly-held property is often used by different groups within the community, each of which may use different resources at different times. For example, pastureland may be used for grazing, as a source of fuel and building materials, and as a source of plant foods and medicines. Common tenure of pasturelands in Africa takes advantage of the natural ecology of the land, as forage availability is patchy rather than evenly spaced and forage availability is not predictable. Using land communally has allowed herders great flexibility to respond to changes in rainfall or disease outbreaks. A mobile, opportunistic grazing strategy eliminates much of the risk that would face an individual grazer on a small, privately-held plot. Communal grazing systems often have higher rates of economic return than commercial ranching systems based on individual tenure.

Land reform efforts that are insensitive to traditional land use practices such as communal grazing strategies may result in less than optimal use of land and no relief from poverty. Distributing commonly-held land into individual holdings can have the effect of decreasing rather than increasing rights to land. (China’s experience under the 1995 Grassland Law may be instructive on this point. The state’s intent in adopting the law was to gradually allocate pastureland rights to individual households for 50-year terms. Where individual, enclosed, tenure rights have been strictly implemented, especially in dry areas, results have included escalated conflict over grazing rights within communities, constricted herders’ options for responding to risk, and long-term detriment to sustainable resource use.) Customary rights of secondary users can be lost during the distribution of land rights; groups such as women and pastoralists are especially vulnerable. Flexible, community-based solutions to pastureland management (including legitimization of communal rights) may better protect a wide variety of interests to land.

Sources:


Current proposals to introduce private ownership in Mongolia do not involve pastureland, but primarily urban and arable land. We have reviewed a 1996 draft Law on Private Land Ownership and a summary of a later draft Law on Land Privatization. Our recommendations concerning private ownership are based, in part, on the general concepts contained in those draft laws.

Our major recommendations concerning the introduction of private land ownership rights in Mongolia can be summarized as follows:

- **Enact enabling legislation introducing private ownership rights for urban residential land.**
- **Enact legislation establishing the automatic transfer of long-term possession rights for land associated with enterprises (up to a maximum area) from the state to enterprises that can demonstrate they actually possess or use such land.**
- **Amend current legislation to allow for the full range of market transactions for long-term possession rights.**
- **Enact enabling legislation introducing private ownership rights for arable land to individuals only for amounts of up to 100 hectares.**
- **Enact enabling legislation allocating underlying ownership rights to arable land to former members of state farms.**
- **Do not introduce private ownership for rural land in sums.**

Introducing private ownership to urban (and other settlement land) and arable land is likely to provide benefits in the form of increased investment by land holders, a more active land market which can both broaden access and more efficiently allocate land, greater access to credit for land holders, and a psychological pride and security of ownership that cannot be measured in economic terms. The potential costs, however, must also be considered. Moreover, the benefits must be viewed in incremental terms. That is, if the current rights to such land are long-term (sixty-year) and transferable possession rights, what incremental benefits will be realized by introducing private ownership rights? Several questions must be considered as part of the general cost/benefit analyses in introducing private land ownership for each category of land. These include:

1. What are the equity and related social impacts of changing existing possession rights on such land to ownership rights?
2. What constraints does the lack of private ownership rights place on holders of this land now?
3. What incremental benefits will be realized by holders of this land by introducing private ownership rights?

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15 One challenge evident in privatizing urban residential land will be to define tenure interests in peri-urban areas, which are currently host to increasing numbers of herder ger cites that may be permanent, seasonal, or even more temporary.
4. Does private land ownership have widespread political support among those who are likely to benefit?; and

5. What are the political and legal (in terms of greater restrictions) costs for the immediate introduction of private ownership rights to urban and arable land?

Applying this simplified cost-benefit analysis yields different recommendations regarding privatization of residential land, land associated with enterprises, arable land, and pastureland. It appears that private land ownership rights should be introduced for all residential land (up to a certain area-based amount). Long-term, renewable possession rights should be granted to enterprises for the land associated with their buildings (up to a certain area-based or value-based amount), in cases where such associated land is not already held in long-term possession by the enterprise. Possession rights should be automatically transferred to an enterprise upon demonstration that it has actually used or possessed the land for a given period of time. These possession rights, if fully transactable, would provide an imperfect substitute for ownership rights, which are forbidden to legal entities by the Constitution.16 Transferring all enterprise land into long-term possession by private entities could provide several benefits, as long as these rights are fully transactable, and subject to land tax. First, it will increase tax revenues, both through land tax, and through taxes related to subsequent sales, such as sales and/or profits taxes. Second, it will facilitate the movement of the land into the possession of the most efficient users. Entities that are not able to use their land productively will be motivated to sell it to those that can optimize its use. Third, enterprises that receive long-term, transactable possession rights to their land will be able to leverage these rights for capital through mortgage, thus creating a channel for economic revitalization of the industrial and commercial sectors. Long-term possession rights for land that is intended for enterprise use but that is not used or possessed by any enterprise should be sold through an auction or a tender process.

For arable land, we recommend a distinction be made between small farms and garden plots on one hand, and large farms (mostly farmed by economic entities) on the other. We strongly support allocating private land ownership rights to individuals for arable land of up to 100 hectares, and at low costs. Again, priority should be given to those currently possessing the land. Other arable land not currently possessed or used should be made available to citizens for private ownership through an application process.

For arable land currently held in possession by large farm entities, we recommend privatization of the underlying ownership right in fully transactable shares or plots to

16 The Constitution of Mongolia (1992), art. 6(3). The current Law on Land allows a 60-year maximum term for possession rights, followed by a 40-year right to renewal. The Mongolian Law on Land (1994), arts. 29(1), 33(1)(5). The Law limits transactions of possession rights, however, by establishing that the rights holder may only transfer the rights “in use,” and only after obtaining permission from the body that initially granted the possession right. Id. art. 29(1). To obtain the benefits associated with private ownership of enterprise land, the law should be amended to allow possession rights to be fully transacted (by purchase/sale, lease, gift, exchange, mortgage, and inheritance). For further discussion, see Annex 2, III(B) of this report.
individuals who were former members of the state farms. These shares or plots could be granted to the same people who were granted shares to the farm patrimony (physical infrastructure) upon privatization, or their heirs. While granting ownership rights to individual farm members would not affect the possession right held by the current farm entity (for a maximum of twenty-five years), it would give these individual owners a reversion interest at the end of the possession term. This could, in turn, raise the bargaining power of the former farm members, thereby helping to ensure a more equitable distribution of the wealth that will potentially be created through privatization of arable land. To further ensure a more equitable wealth distribution, consideration might be given to adopting legislation that would prohibit, at least for a temporary period, the permanent contribution of agricultural land ownership rights to enterprise charter capital. At the very least, allocation of land shares in ownership to individuals should be accompanied by a concerted effort to inform new share land owners of their rights, choices, and implications of these choices.

III. Placing Limits on Private Land Ownership

As stated above, private land ownership rights are not absolute in any developed market economy. Every country that recognizes private land ownership restricts the rights of the private landowner in order to meet societal interests. Private land ownership rights are restricted in various ways such as the State power to compulsorily acquire private property for public needs, land use regulations, maximum size restrictions, and restrictions on private ownership by foreigners and certain types of legal persons. Two types of restrictions particularly relevant for Mongolia, size restrictions and restrictions on private ownership, are discussed below.

A. Size Restrictions on Private Landholdings

Placing size restrictions on private landholdings is one means for protecting against real and perceived dangers that private land ownership or even long-term possession rights will lead to a high concentration of land into the hands of a few citizens or legal entities. Article 28 of the Land Law places size restrictions of the amount of certain categories of land under possession rights, including limits of 500 square meters for fenced ger land or house land, and 1,000 square meters for vegetable, fruit, or fodder cultivation. The earlier draft Law on Private Land Ownership set maximum sizes on privately owned land holdings and the draft Law on Land Privatization set limits on the amount of garden plot land and land surrounding gers and private houses that could be transferred into private ownership.

17 We strongly caution against introducing private land ownership rights to arable land held by economic entities in large farms. The Constitution (along with the Civil Code and Law on Land) does not allow economic entities to hold private ownership rights to land. While we believe this blanket prohibition on land ownership by economic entities is overly restrictive and should eventually be lifted, we think the State should allocate private ownership rights for arable land only to individuals.
In applying size restrictions on landholdings, laws in other countries have often distinguished between the primary land market (when land is sold or granted by the government to private persons) and the secondary land market (when private persons sell land to other private persons). In general terms, size restrictions are usually appropriate for the primary land market, but are less often appropriate for the secondary land market.

Maximum size restrictions are very uncommon in developed market economies, although they have been used in the early stages of land reform to restrict the amount of land a person could receive from the government. An older comparative experience from the United States serves as an illustration of size limits on the primary land market. The Homestead Act of 1862 in the US gave ownership of public land free of charge to settlers who had lived upon or cultivated the land for five years. This 1862 Act limited the amount of land that one person could receive for free. The Act did not, however, place restrictions on how much land might be further accumulated by purchasing land from private landowners.

Maximum size restrictions on privately owned land acquired through the secondary land market, however, are rare in developed market economies, although several developed market economies place restrictions on the minimum size of agricultural land plots, including Italy and Japan. The United States does have indirect size limits in that State subsidized water is only available to farmers who hold less than 960 acres (388 hectares). In general, landholding size restrictions for land acquired through the secondary land market are difficult to administer and can hinder or prevent appropriate land holdings, withdrawals, sales, or leases that would otherwise benefit the parties and the market as a whole. In some situations, however, maximum limits for arable land holdings may prove a useful tool in redistributive land reform. In India, for example, maximum ceilings on arable land holdings may have been an important factor in market-based land reforms, where there has been a credible threat of ceilings enforcement.\(^1\)

In Mongolia, article 28(1) of the Mongolian Law on Land states that the size of the fenced ger or house land to be possessed by a citizen for family needs shall not exceed 0.05 hectares. We found, however, that many existing fenced ger and house plots, especially in rural settlements, are considerably larger, often between 0.10 and 0.15 hectares. Article 28(2) of the Law on Land states that in addition to the fenced ger or house land, a citizen may possess up to 0.10 hectares for “family needs such as vegetable, fruit, and fodder cultivation.” The successful “Green Revolution” Program,\(^2\) however, offers possession rights to up to 2.0 hectares for garden plots. We believe the existing size restrictions should be increased to accommodate the situation on the ground.

We offer several preliminary recommendations for Mongolia concerning size restrictions on land held with possession rights or private ownership rights:


\(^{19}\) See Chapter 3 of this report for further discussion of the “Green Revolution” Program.
• Increase existing limits on the amount of fenced ger land and garden plot land that citizens can hold with possession rights to 0.15 hectares and 2.0 hectares, respectively. Clarify that these limits apply only to the primary land market and not to the secondary market.

• Limit the amount of arable land an individual citizen can receive from State (in either possession rights or private ownership rights) to 100 hectares. Clarify that individual citizens combining their landholdings in common possession or common ownership can receive up to 100 hectares multiplied by the number of common possessors or owners. Clarify that these limits apply only to the primary land market.

• Limit the amount of arable land an economic entity can receive from the State in possession to 6,000 hectares. Require that the land be held in common possession by the workers and shareholders of the economic entity.

• Avoid applying size restrictions on land obtained through the secondary land market. If such restrictions are to be applied, maximum size restrictions should apply only temporarily, apply to legal entities as well as persons, be set on a regional level, and be set at a level much higher than the maxima applied to the primary land market.

B. Restrictions on Foreign Ownership of Land

Foreign ownership or control of land is widely feared in Mongolia, as it is in many countries. According the Land Law, land in Mongolia may not be possessed or owned by foreign citizens or economic entities with foreign investment. Article 47 allows foreign citizens residing in Mongolia to use land for household production purposes for up to a five-year term. These foreign citizens may not use land for livestock husbandry or crop cultivation purposes. The Land Law also provides that land used by economic entities with foreign investment shall be regulated by the Foreign Investment Law which allows up to sixty-year use rights for such entities, with extensions for up to forty years.20

The laws of developed market economies vary widely on the issue of purchase of land by foreigners. Germany has no restrictions on purchase of land by foreign interests. Neither do France, the United Kingdom, Portugal, the Netherlands, Belgium or Luxembourg.21 Other developed countries, including Japan, Canada, and the US, have some indirect or direct restrictions on purchase of land by foreigners.22

20 Mongolian Law on Land (1994), art. 46(1); Foreign Investment Law of Mongolia (1993), art. 21(5).

21 Stephen Hodgson et al., Land Ownership and Foreigners: A Comparative Analysis of Regulatory Approaches to the Acquisition and Use of Land by Foreigners 1 (Food and Agricultural Organization Legal Papers Online No. 6, December 1999).

22 Japan has no overt legal restriction on purchase of land by foreigners, but its law requires the owner of agricultural land (or a member of his family) to directly cultivate the land. Since very few foreigners are interested in purchasing land in Japan for direct personal cultivation, foreign ownership effectively does not occur. Isoshi Kaji, Development of Structural Policy – Centering Around the Agricultural Land Legislation, in FOOD AND AGRICULTURAL POLICY RESEARCH CENTER, CHANGES IN JAPAN’S AGRARIAN STRUCTURE 35 (1998).
Restrictions on foreign ownership of land are more common in transitional economies. Many of these countries have found that prohibiting foreign ownership of land is a necessary political price to pay when introducing broad private ownership rights to land. Most of these countries do allow foreign persons to hold relatively long-term and transferable non-ownership rights to land.23

While any restriction on who can participate in the land market is an impediment to the market, prohibition of foreign ownership may bring advantages that, on balance, make such a restriction palatable. First, the numerous examples of this restriction in transitional economies demonstrate its political attractiveness. They may serve as

Several Canadian provinces restrict foreign ownership of land. The provinces of Alberta and Manitoba limit foreigners to owning only up to 20 acres (eight hectares) of land, while Saskatchewan uses a land bank to keep farmland in the ownership or control of direct land cultivators. Carl V. Dombek & Cynthia Button, Agrarian Law in Canada, in AGRARIAN LAND LAW IN THE WESTERN WORLD, 196, 199-200 (Grossman & Brussard eds., 1992).

United States federal law does not prohibit foreign purchase of agricultural or other types of land, but it does require foreign owners of farmland to report their holdings and transactions to the US Department of Agriculture. However, several US states do impose restrictions on foreign ownership of agricultural land. For example, the states of Iowa, Minnesota, and Missouri prohibit foreign ownership of agricultural land (but not other land), while Illinois requires foreigners acquiring agricultural land to file a report with the state department of agriculture. The states of Indiana and Nebraska require foreigners to divest themselves of such land within five years of acquisition. Not all states are concerned about foreign acquisition of land. In contrast, Alabama law affirmatively sanctions foreign ownership of land.

23 Latvia extends land ownership rights to legal persons who are registered in Latvia and have more than one-half of their equity from Latvian citizens or joint ventures from States with which Latvia has concluded investment agreements. William H. Meyers & Natalija Kazlauskiene, Land Reform in Estonia, Latvia, and Lithuania in LAND REFORM IN THE FORMER SOVIET UNION AND EASTERN EUROPE 87, 104 (Stephen Wegren ed., 1998).

Lithuania amended its constitution to extend land ownership rights to foreign natural and legal persons in the European Union and OECD member States but specifically excluded agricultural land. Russia does not currently forbid foreign ownership of land but several pending draft laws specifically forbid foreign ownership of agricultural land. Id.

Albania, Belarus, Estonia, Bulgaria, and Romania generally do not allow foreign ownership of land but do allow foreigners to hold long-term lease rights. Hodgson et al., supra note 21, at 46-47.
warranted concessions if necessary to pass legislation granting citizens broad rights to own and alienate land. Second, from an equity standpoint the reservation of such a fundamental and emotional property right for citizens may be justified if a significant risk of foreigners buying up large amounts of land is either real or perceived. On the other hand, prohibition of foreign land ownership or other significant restrictions on foreigners’ non-ownership rights to land may discourage foreign investment.

We offer the following recommendations concerning foreign ownership, possession, and use of land:

- **Until popular opinion and strong political opposition changes, generally maintain the current restrictions on foreign ownership, possession, and use of land.**

- **Create one exception, allowing a foreign creditor or heir to possess (or own if private ownership is allowed) land for a limited time period of one year if they receive that land through a foreclosure or succession proceeding.** (This will allow them time to sell the rights to a citizen.)
IMPLEMENTING MONGOLIA’S LAW ON LAND

I. Introduction

A law is only as good as its implementation. We have found this to be true in countries with transitioning economies as well as in countries with developed market economies. While we believe that certain provisions of the Mongolian Law on Land should be amended, our primary concerns with the Land Law involve its implementation. These concerns are threefold: (1) the lack of adequate institutions and processes to facilitate the law’s implementation; (2) an over-emphasis, in implementation, on surveying, mapping, and record-keeping; and (3) an under-emphasis on a comprehensive allocation of legally valid possession rights to all categories of land.

Formal land legislation, in countries where customary institutions and law have played a major role in land relations, often serves one or both of two objectives: (1) formalizing existing customary law and institutions; and/or (2) replacing customary tenure law and institutions with individual, private property. The Mongolian Law on Land balances these two objectives well. It attempts to formalize many of the informal institutions and laws that have governed pastureland and provides a framework that allows for long-term, individual rights to cropland and urban land where more intensive and sedentary activity requires such rights. Balancing these two objectives, given the vast geographical, social, and economic differences within Mongolia, requires that a central land law allow for a flexible and decentralized approach to implementation.

The Land Law and Resolution No. 143 (containing implementation regulations) place primary responsibility for implementing the Land Law with aimag and sum-level governments. It has become clear over the past four years that these governments have interpreted the Land Law in a wide variety of ways reflected in a wide range of implementation measures. Some sums, for example, have begun to allocate possession rights to winter pastures to herders, while others have allocated only the land within winter camps and still others have not allocated possession rights for winter camp or pastureland. Sums that have allocated possession rights to winter and spring camps have differed in the length of time covered by the allocation (ten to sixty years), the size of the recipient group (individual to several households), and the factors established to determine allocation priorities.

24 Recommendations for revising the Law on Land are discussed in various other chapters of this report. A more systematic overview and analysis of the Law on Land is presented in Annex 2.

25 RDI field interviews, June 1999 (see Annex 1 for detailed information); Maria Fernández-Giménez, National Land Reform Strategy, Mongolia, 11 (Report to the World Bank of the International Consultant on Rangeland and Pasture Policy, June 11 1999).

26 RDI field interviews, June 1999 (see Annex 1 for detailed information); Fernández-Giménez, supra note 25. Factors used to determine allocation priorities have included: (1) length and continuity of past campsite use; (2) hereditary rights; (3) use during negdel period; and (4) whether the camp was developed on a previously unused or abandoned site. Id.
Foreign consultants have generally criticized this variation in interpretation and implementation of the Land Law by aimag and sum-level governments. We believe, however, that some flexibility is important to the workability of the law. Pastureland tenure systems allowing for flexibility and mobility offer substantial advantages in implementation and in long-term efficient and sustainable resource use—this will likely be true in Mongolia as it has been in other regions of the world.27 The variations in land quality and availability, population density, herding migration patterns and land use throughout Mongolia require that any law, written to cover land rights in the entire country, be drafted broadly enough in many areas to allow for appropriate implementation in vastly different localities.

We believe that the law’s implementing regulations (and in some cases the law itself) could be improved to more adequately define the range of choices available to regional and local governments in implementing the law. This is especially important in a country where the general population often does not consider actions that are not explicitly allowed in the law to be legal. In contrast, the general population in most developed countries often considers actions not explicitly prohibited by the law to be legal.

The most important role for future State land legislation and regulations will be to provide local governments with sufficient institutional support and clear direction on how to allocate and protect land rights in the way most suitable for their local populations, within the broad parameters of the existing Land Law. The advantages of a flexible approach are many: implementation of the Land Law can be woven into current local customs, norms, and methods of self-management, which is likely to increase its long-term effectiveness; implementation will gain support from local people and governments if they have more decision-making authority over the process; and local governments can learn from each others' successes and failures as they proceed.

II. General Recommendations on Land Law Implementation

Priorities in implementing the Land Law should include adequate regulatory guidance, institutional support, and public information to allow aimag and sum-level governments to make the best choices for their own jurisdiction. We base the following recommendations on our experience with land law drafting and implementation in over twenty countries. As a preliminary note, the successful implementation of the Land Law may depend on proceeding deliberately, prioritizing among implementation goals, and learning from pilot projects established to try different approaches in various geographic regions.

27 See Agriteam Canada, supra note 13, at A-76 (internal cites ommitted); Policy Alternatives for Livestock Development in Mongolia, Options for the Reform of Grazing Land Tenure in Mongolia (PALD Policy Options Papers No. 1: 1993); Robin Meams & Jeremy Swift, Pasture Land Tenure and Management in the Retreat from a Centrally Planned Economy in Mongolia, in Rangelands For A Sustainable Biosphere 98, 96-98 (Proceedings of the Fifth International Rangelands Congress, 1995); Maria Fernández-Giménez, supra note 25. See also Box No. 3, infra, for further discussion of retaining flexibility and mobility in allocating pastureland rights.
A. Regulatory and Legislative Framework

1. Implementing Regulations

Implementation regulations should be established at the State, aimag and sum levels. State regulations should clarify those issues and procedures that are most important to establish uniformly around the country. Examples include: the application procedure for possession rights to urban, pasture, and arable land; dispute resolution and procedural safeguards (such as the right of an applicant to appeal a rejection to a neutral third party); and compulsory acquisition rules to protect right holders from arbitrary government takings. Appendices to the national regulations could include sample or model forms for licenses, contracts and certificates for possession rights, and contracts for land use agreements between two private individuals. It is quite possible and may be desirable to include two or more variants for each form from which local governments could select.

At the aimag and sum levels, regulations should contain more details than the national regulations according to different implementation decisions made at these levels. Aimag and sum-level governments should retain the authority to form localized implementation rules to the extent they do not conflict with the Land Law and State regulations. The State government could establish a review process for aimag and sum-level regulations before they are adopted, but this process should be as streamlined as possible to prevent unnecessary delays in land right allocation. The important thing is that aimag and sum-level governments actually adopt these written regulations, and follow up with an extensive information campaign among local officials and residents.

Regulations for Land Law implementation are insufficient at the State, aimag and sum levels in Mongolia. The Government of Mongolia passed Resolution No. 143 in 1995 to implement the Land Law. This resolution and its appendices, however, focus on the extensive collection of information regarding land quality, land boundaries, and land use rather than on the allocation of secure land rights. Basic questions about the process of securing and transacting possession contracts to land (such as the process for initial application, the process for assigning use rights to a third party, and the process for appeal if possession rights are denied) are left unanswered.

We offer the following preliminary recommendations concerning additional implementing regulations:


29 Resolution No. 143, Id., contains several appendices. Appendix 1 sets forth rules on land use “organization” or planning. Appendix 2 sets forth the procedure on land characteristics, requiring every citizen to receive a land quality certificate for his or her plot based on an extremely detailed survey that must be conducted once every five years. Appendix 3 establishes the procedures for land registration, which depend on the institution of a highly technical, computerized GIS system.
Recommendations:

- Adopt State regulations clearly defining procedures for application for and protection of land rights established in the Land Law. Regardless of variations in aimag and sum-level implementation policies, the application procedure itself, and the protection of a party’s rights once granted, should be uniform.

- Attach to these regulations sample or model forms for license agreements, certificates for possession rights, and contracts for transfer of possession right to use by a third party. Each form could include variants from which local governments could select.

- Adopt more detailed written regulations at the aimag and sum levels to augment the State regulations. Establish a streamlined procedure at the State level to review these regulations for consistency with the Land Law. Set a maximum time period for review, such as three months, and provide the aimag or sum regulation is automatically considered approved if the State fails to respond within this time period.

2. Delays Caused by Anticipation of New Legislation

Once a law is passed, officials authorized with implementing the law should not delay implementation in anticipation that another related law or regulation will be adopted in the near future. We have heard several accounts of such delays in our research and fieldwork in Mongolia. Sum officials, for example, had delayed issuing any possession contracts to pastureland or winter camps because they were waiting for a new law on cadastre to pass, or a new law on pastureland, or revisions to the land fee law.

Recommendations:

- Aimag and sum-level officials should not delay implementation in anticipation of new legislation or regulations related to land unless instructed to do so by State authorities.

- New legislation or regulations on land should not threaten the validity of land rights established under any law currently in place, but should incorporate existing rights to the extent possible.

B. Institutional Support

1. Training Local Officials

Successful Land Law implementation will require a significant training component for State and local officials. Effective implementation will involve not only mobilizing a large quantity of aimag and sum-level officials to conduct the implementation work, but also multi-day training sessions informing the officials of the implementation plan, the terms of the new land possession contracts, and the exact steps needed to implement the law (including determination of land rights, meetings with farmers, issuing contracts and certificates, and monitoring). The training sessions should include the issuance of
written training materials to all trainees that will assist them in conducting the implementation steps.

In our research and fieldwork in Mongolia we have noted a disparity in knowledge of land rights among sum-level officials. None of the officials we interviewed appeared to have a comprehensive understanding of Land Law provisions or a long-term plan for implementation.\(^{30}\)

**Recommendations:**

- Establish multi-day national training programs at the aimag and sum levels for implementing officials.
- Develop written training materials at the State, aimag and sum levels and distribute them at these trainings.

2. Institution Building within Implementing Agencies

Land law implementation by State, aimag and sum-level governments requires a sufficient level and quality of institutional capacity. This will require, in some cases, an increase in personnel at the aimag or sum administrative level or a re-designation of responsibilities within administrations to sufficiently cover land rights allocation and management. Land management responsibilities in Mongolia have often been added to the current responsibilities of sum and aimag governors, who may already be over-extended with other administrative responsibilities.

Land allocation and management authorities should also adequately represent the residents whose rights are being allocated and managed. The more residents perceive they have input in the decision-making processes at aimag and sum levels, the more likely they are to feel invested in the resultant policies and decisions. As discussed below, establishment of aimag and sum level land management boards, or local "grazing associations" (within bags), may be an appropriate means to provide adequate representation in pastureland allocation and management decisions, which would in turn better ensure that local implementation policies fit the needs of the local population. Refer to Box 2 for further information on decentralized, community-based approaches to pastureland management.

\(^{30}\) Fernández-Giménez, *supra* note 25, at 16-18. Fernández-Giménez observed that local officials do not perceive they have legal authority to regulate herdsmen’s migrations, designate reserve areas for pasture re-generation, or allocate possession rights to pastureland. The very officials authorized with implementation of the Land Law (from sum and bag officials to Land Management Agency officials in Bayankhongor aimag) believed the law called for all pastureland to remain open to common, non-exclusive use. *Id.*
Box 2: Decentralized, community-based approaches to pastureland management are gaining recognition by policy makers and pastureland experts.

Experts note that government encouragement of communal use of grazing lands should include formal but flexible recognition of customary regimes along with decentralized decision-making processes. This creates a two-tiered system with a legal framework at the national level which recognizes land tenure rights and provides flexible rules and procedures for local control of common property and dispute resolution. Governments have failed in past programs to recognize that centralized decision-making often leads to inappropriate rules that are ignored at the local level. Flexible, decentralized systems increase the probability that national policies will be implemented effectively.

The United Nations has acknowledged the potential success of community-based resource management for agriculture, including pasturelands. It recently promoted increased use of community-based projects in member countries to promote sustainable agricultural practices. Agenda 21 of the United Nations’ Sustainable Development Agenda supports the formation of sustainable development programs that integrate and coordinate government and private programs to most effectively address local problems. The agenda underscores the importance of community autonomy in implementing projects that meet local needs.

In a recent draft report on land policy and administration, the World Bank also recognized the importance of community-based pasturelands management. The authors of this document draw from the Bank’s experience with failed top-down approaches to pastoral development projects in West Africa in the 1980s, for example. Through the West Africa Pilot Pastoral Program, the Bank now supports a strategy based on local knowledge and priorities. In this program, field-tested in Chad, the government no longer allocates tenure or ownership rights without the community’s full agreement. Instead, pastoral communities determine rules for access to pasture resources. The government’s role is limited to providing a broad framework for the arrangements made within individual communities.

Australia and South Africa have recently established “land care” programs for community-based management of agricultural land, including pastureland. For more information on these programs, refer to the sources listed below.

Sources:


Recommendations:

- **At the State level**, designate funds for increased human resources for land management and Land Law implementation at the aimag and sum levels.

- **Increase democratic representation in Land Law policy-making by the groups affected (such as herders).** See section below on implementation issues pertaining to pastureland for further discussion.
3. Monitoring systems

Monitoring the progress of various land law implementation approaches is essential to applying lessons learned to future and expanded implementation efforts. Monitoring should cover not only the numbers and types of land rights granted, but also the effect of these new land rights on households. The most effective way of monitoring the latter may be to conduct systematic household surveys (with a sample reflecting the range of socio-economic levels) on issues such as: the accuracy of information supplied by local officials; whether this household has been granted land rights and if not, why not; whether this household approves of implementation measures; and whether household members believe they have adequate channels to express their views on land law implementation with the local government. The State government could contract out these survey services to local universities or research institutes to better ensure accuracy and objectivity. The public information campaign (see below) should also, from the beginning, emphasize that such independent checks will be conducted. Such measures will help to ensure that implementation benchmarks set by the central government have actually been met by regional and local governments. Monitoring can also provide feedback for further improving the law or the implementation process.

Recommendations:

• Establish monitoring goals and indicators for pilot projects and implementation as a whole, based on household sample surveys.

• Contract these monitoring responsibilities to local universities or research institutes.

4. Dispute Resolution Systems

The development of equitable and efficient institutions for resolving land disputes is essential to the smooth functioning of land rights allocation, to the assurance of land tenure security, and to the development, where appropriate, of a land market. The lack of effective dispute resolution institutions can impede the development of land markets in two important ways. First, property rights in land are meaningless if they cannot be enforced. Second, even where property rights are well-defined and secure, transactions involving those rights will be less frequent where mechanisms for resolving contract disputes are ineffective.

Dispute resolution also can play an important role in refining rules so they apply adequately to new or differing situations. Rules crafted by the central government, regional government, or even local government will never be able to anticipate each and every factual setting for which the rules must apply. An ongoing process of dispute resolution can, through a “case law” approach, gradually refine rules so they are appropriate and comprehensive. In any case, the initial rule makers should recognize this role for dispute resolution and realize that rules will not, and probably should not, eliminate all disputes.
The Land Law provides that disputes are to be handled in the first instance by local administrative heads. The State government should assure that these local officials have adequate training and materials in both the substantive law and in dispute resolution methods.

The Land Law further provides that administrative decisions concerning disputes can be appealed to the courts but does not specify the nature of these courts, or how they will provide an adequate forum for land dispute resolution. An examination of comparative approaches to land dispute resolution institutions in both developed and developing countries indicates three possible models for Mongolia. First, land disputes could be resolved through courts of general jurisdiction. Second, land courts or tribunals could be established with jurisdiction over one or several types of land disputes, with remaining land disputes handled by courts of general jurisdiction. Third, land courts or land tribunals could be established with broad jurisdiction over all or nearly all land disputes. Because of the low population density in most of the Mongolian countryside, the best system might incorporate full-time land courts or tribunals in urban areas and "circuit-riding" courts in rural areas (one to three judges travel throughout a broad jurisdiction, sitting "in court" in selected central points within their jurisdiction on pre-specified days every month).

The most important elements of any of these types of land dispute resolution systems are: (1) objectivity and freedom from corruption; (2) efficiently-processed claims (with time limits on judicial consideration); and (3) procedural protections for both parties, including the right to appeal.

As demand for land in Mongolia increases, so will the need for well-developed land dispute resolution mechanisms. In our fieldwork we learned that many disputes over land and other issues are resolved informally in Mongolia. However, as demand for land increases as a land market develops in Ulaanbaatar, and as rural-to-urban and urban-to-rural migration trends continue (decreasing long-standing community ties), the number of disputes is likely to rise, and current informal dispute resolution mechanisms are likely to become insufficient. In designing new dispute resolution systems, Mongolian officials should study the form and impact (especially the equity impact) of existing informal systems so those systems can be supported, improved, and formalized whenever possible.

**Recommendations:**

- Provide training in both substantive law and dispute resolution methods and procedures to local officials charged with resolving land disputes in the first instance.
- Determine what type of judicial institution will handle land dispute resolution appeals: courts of general jurisdiction; mixed special courts and courts of general jurisdiction; or entirely special courts. Adopt enabling legislation as needed to establish and guide these institutions.
• Establish "circuit-riding" courts, if necessary, to cover disputes in rural areas.
• Train judges on land law and land rights issues.

C. Public Information (for implementing institutions and right holders)

1. Public Information Campaign

We recommend that the national government call for and oversee nationwide public information campaign to inform citizens of their rights and responsibilities under the Land Law. This campaign should continue for several years as implementation progresses around the country. The campaign should include: (1) publication and broadcasting of information through national and local media; (2) distribution of written materials by aimag and sum-level officials; and (3) meetings by trained aimag and sum officials with local herders, farmers, and urban residents. The information disseminated should include written summaries of recent disputes that have been resolved through new dispute resolution systems. The meetings conducted by trained regional and local officials should be with a small enough group to allow for active discussion. In most cases these meetings should be held at the bag level or lower.

Lack of accurate public information about the Land Law in Mongolia has been a significant impediment to its implementation. In our fieldwork we found a varying level of understanding about the land law among local officials and residents, as discussed briefly in section III.B of this chapter and in more detail in Fernández-Giménez's report. In some cases residents (particularly herding families) had not heard of the Land Law or possession contracts at all.

Recommendation:

• Adopt an information campaign at the State, aimag and sum levels which includes publication and broadcasting of information through national and local media, distribution of written materials by aimag and sum-level officials, and meetings by trained aimag and sum-level officials with local herders, farmers, and urban residents.

2. Manuals and Handbooks.

Manuals and handbooks on the land law and choices for implementation should be written in terms that are easy to understand by people with even low levels of formal education. Specific attributes of, and application procedures for, land rights should be clarified in detail. The State government could publish the first section of these materials, based on rights and processes set forth in the Land Law and State regulations which apply to all legal subjects. It could then distribute these materials to each aimag-

level government, which could each add a section based on its more detailed regulations, and then distribute it, along with the State materials, to each sum-level government within its territory, which could add a final section based on its more detailed regulations. The local governments could then distribute these manuals and handbooks to all local officials and make it widely available for local residents.

**Recommendation:**

- Write and distribute to all aimag and sum-level officials, and make available to all local residents, manuals and handbooks on Land Law implementation (including application processes, land management policies, and dispute resolution policies) written in part by the State government and each of the relevant aimag and sum-level governments.

**D. Allocation of Land Rights**

1. Determination and Allocation of Land Rights

Implementation strategies should prioritize determination and allocation of land rights over extensive information-gathering and mapping. An inventory of existing land resources, land uses and land rights within the jurisdiction should be adequate to begin the allocation process. Conducting an inventory of the current use rights could involve some field examination and verification of current land records and, in some cases, could require re-measuring of land parcels. In at least some cases, however, a sufficient inventory appears to already exist at the aimag and sum levels to allocate possession rights and certificates. In cases where a sufficient inventory does not exist, emphasis should be placed on low-cost alternatives to establish an inventory sufficient to allocate possession rights and certificates. Clear and simple application procedures for land rights should be adopted at the national level, to be locally administered. These procedures should include in detail legitimate reasons for local officials to accept or reject either an initial or renewal application for possession rights.

The current implementation focus in Mongolia, as evident in Resolution No. 143, is on extensive information-gathering rather than on determination and allocation of land rights. Some foreign consultants have encouraged this focus. However, as further explained in chapter four of this report, extensive surveying and mapping of individual parcels is not, and should not, be required before rights to land are allocated and registered. An initial over-emphasis on elaborate information-gathering is not only unnecessary, but it is also detrimental to the extent that it postpones the allocation of possession and use contracts.

**Recommendations:**

- Focus implementation regulations and strategies at the aimag and sum levels on allocation and distribution of land rights, rather than on information collection.
- Include clear and simple application procedures for land possession contracts in State regulations. (See section A.1, above.)
2. Issuing Written Certificates for Possession Rights

Once a local government has allocated possession rights, it should issue contracts and certificates to all right holders as rapidly as possible. The certificate should contain the signatures of both the right holder and the appropriate government official. The contract should contain a simple land description, the beginning and ending dates of the term, the process for renewal, and the various rights and responsibilities of both the land possessor and the issuing agency. Multiple copies of the certificate and contract should also be prepared and kept by the right holders, local land office, and other governmental entities as specified by the relevant rules.

**Recommendations:**

- Issue certificates and contracts to current possession right holders as quickly as possible, and issue certificates and contracts to future right holders directly upon allocation of the possession right.

- Make multiple copies of the certificate and contract for the right holder, local land office, and other governmental entities as specified by the relevant rules.

III. Special Implementation Issues for Pastureland

A. Flexibility

Maintaining flexibility in Land Law implementation (as discussed above) is perhaps most important for pastureland. To the extent possible, the Land Law should be interpreted to provide aimag and sum-level governments the leeway to establish policies most suitable to local populations. Policy choices consistent with current interpretations of the Land Law could include, for example: (1) whether to allocate possession contracts for pastureland to individuals or to groups (and to what size of groups); 32 (2) whether to allocate individual possession contracts to winter camps only or also to winter pastures; (3) whether and how to allocate group possession rights to summer and autumn pasture; and (4) whether and how, within a range of centrally-approved choices, to adopt other policies for pastureland management not directly related to land tenure, such as establishing a head tax for grazing in particular areas. Flexible local implementation of the Land Law in Mongolia could better facilitate incorporation of local nomadic customs into pastureland rights allocations, which may be critical to long-term sustainability. See Box 3 for potential benefits of retaining nomadic grazing customs in any system allocating pastureland rights.

32 On the issue of optimal group size, see Policy Alternatives for Livestock Development in Mongolia, supra note 27, at 21-22 (community groups of 10-100 households could become incorporated as cooperatives for purposes of leasing current grazing land); see also Fernández-Giménez (1999) supra note 25. Regardless of group size, it is very important that the groups be self-identified. Robin Mearns & John Bruce, Natural Resource Management and Land Policy, in LAND POLICY AND ADMINISTRATION: LESSONS LEARNED AND NEW CHALLENGES FOR THE BANK’S DEVELOPMENT AGENDA 109 (draft World Bank report circulated for feedback, Washington DC, 2001). South Africa’s Communal Property Association Act provides a useful legislative model for incorporation of such groups. Id. (This Act is available at http://www.polity.org.za/govdocs/legislation/1996/act96-028.html).
Recommendation:

- Allow State, aimag, and sum-level governments flexibility in implementation choices, to the extent consistent with any legitimate interpretation of the Land Law.
Box 3: Pastureland tenure regimes that acknowledge and allow for continued nomadic grazing patterns result in higher efficiency, higher security for herding families, and less pasture degradation.

In devising new tenure regimes for pastureland in Mongolia, it is important not to lose sight of the advantages of traditional nomadic herding patterns. Through development of and adherence to these patterns, Mongolian herders maintained a state of resource equilibrium for thousands of years. Evidence from other countries underlines the value of nomadic production systems on arid pasture lands. For example, studies show that production of protein per hectare of traditional nomadic pastoralists in Mali and Botswana is two or three times higher than production for sedentary production systems or ranching under similar climatic conditions in Australia and the USA respectively. One study of controlled grazing in Senegal found nomadic systems of grazing to be superior to an enclosed grazing system.

The controlled grazing experiment revealed the inherent limitations of the concept of carrying capacity in an environment not at equilibrium; the difficulties of applying a closed model of water and grazing management on a large scale; the reduction in animal mobility and flexibility which resulted; and the removal of the positive, symbiotic interaction of animals and plant communities. The study’s sponsors concluded that efforts to support pastoralists’ self-reliance would have to depend much more on the creation of a favorable institutional environment, including securing pastoral land rights, and access to fall-back areas. (See Thebaud et al., below.)

Other systems that individualize pastureland rights in a way that discourages or prohibits traditional nomadic grazing patterns have resulted in accelerated pastureland degradation. Such policies in Inner Mongolia and Tibet offer two examples. Refer to the cites listed below for detailed discussion.

Sources:


B. Increased Herder Participation in State and Local Policy-making

Increased herder participation in policy-making at the local level would strengthen implementation of laws and regulations on pastureland. Because the conditions of herding and pastureland vary so greatly around Mongolia, local herders may often be the most knowledgeable about wise resource management, and their input will be essential to setting up good local regulations for Land Law implementation. Perhaps most importantly, local herders will be more likely to abide by regulations they have agreed on implementing. Increasing herder participation in rule-making and in resolving disputes has other benefits including adaptability and internalizing costs. See Box 2, above, for further discussion of community-based decision making on pastureland policy.

Recommendation:

- Increase herder participation in policy-making and enforcing institutions in one of several ways, such as:
  - Establish grazing associations of about twenty-eighty families. Each of these associations could be governed by a general meeting and an elected council, and would be in charge of self-regulation within the parameters of the Land Law and State and State regulations. Group possession rights to pasture could be allocated to these associations. Group charters should allow for some fluidity in membership in order to address equity concerns.
  - Establish special boards to make pastureland management decisions at the sum and aimag levels, which would be democratically elected by all herders in the sum or aimag.

C. Pilot Projects

Pilot projects to test various implementation methods for pastureland allocation and management should be established in several regions of the country. Such pilot projects are currently under discussion as components of a World Bank-funded project and an Asian Development Bank-funded project. By focusing on one or more implementation policies and closely monitoring progress under this policy, pilot projects can offer valuable lessons for widespread implementation. In particular, pilot projects could test the practice of organizing grazing associations and allocating group rights to such associations for an area of land encompassing the four seasonal pastures. Such associations could also consider granting special individual use rights within the area to households for winter camps or wells or other water sources.

For a more detailed discussion of a “model option” for Land Law implementation based on the formation of grazing associations and “co-management committees,” see Fernández-Giménez, supra note 25, at 21-22.
Pilot projects should be developed to balance two potential shortcomings. First, Land Law implementation should continue in other areas while pilot projects are in progress. Pilot projects should not provide license for inaction in areas not under study. Second, lessons learned from pilot projects should be applied to other areas only to the extent they remain relevant at the time they are published. Since other areas will be moving toward implementation throughout the term of the pilot project, some of the lessons learned may not be applicable given the new and different "starting point" of the other areas.

**Recommendations:**

- Adopt and closely monitor Land Law implementation pilot projects focusing on one or more implementation strategies in several parts of the country.
- In particular, design and implement a pilot project to test the concept of granting group possession rights to grazing associations for an area encompassing all four seasonal pastures.
- Continue Land Law implementation in other, non-pilot areas.
- Filter "lessons learned" from pilot projects for timeliness and relevance to other areas.

**IV. Special Implementation Issues for Arable Land**

Difficult issues regarding allocation of possession rights to farm land arise largely from the fact that privatization of state and collective farm infrastructure into individual member shares occurred several years before the legal framework existed for allocation of possession rights to the land the farms occupied. This meant that the privatized shares allocated to farm members did not reflect the added value of the farmland, which was later granted to the private farm enterprises whether or not these farms were owned in any part by the workers.

**A. Privatization of Farm Infrastructure**

Prior to 1991, most arable land in Mongolia was held in fifty-four large state farms. In 1991 the state determined what portion of the ownership of each farm it would retain, and the value of the rest of the farm's infrastructural assets was divided among workers in the form of vouchers. Holders of vouchers could trade them on a national agricultural stock exchange; many employees and their families invested these vouchers in their own farm enterprise. During the initial period following privatization, the state retained a majority share in many farm enterprises. Over the past several years, however, the state

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34 Interview with D. Buyankhishig, Officer of the Ministry of Agriculture and Industry of Mongolia, June 16, 1999.

has sold most of its shares to private individuals and entities, retaining only a minority share in some companies.36

Currently, many agricultural enterprises are majority- or solely-owned by private individuals or entities,37 who have acquired shares (representing infrastructure only) in agricultural enterprises in one of two ways. First, some have purchased the majority share directly from the state. In some cases they have also bought out the rest of the minority shares to gain 100% ownership. In other cases they own 51% of the equity, the rest of which is owned by a number of minority members (who are in many cases the original recipients of the state farm share vouchers). Second, some individuals and entities have purchased the majority share from private investors on the stock exchange, rather than from the state.

The key issue is how to efficiently allocate possession rights for the land currently farmed by private companies without: (1) depriving farm workers (or those who were awarded property vouchers from the old state farm) of the added value to the farm created by the new land possession rights (which was not reflected on their initial share vouchers); and (2) granting one person or entity a "windfall" in land value.

Our recommendations, presented below, are based on the following three perceptions, which may or may not be fully accurate. First, distributing possession rights among all workers would be extremely complex due to the current division of company ownership between publicly-traded stock and private ownership. Second, the current possession rights held by some farm entities cannot be re-allocated among former farm members or workers without raising serious ex post facto issues.38 Finally, the market value of arable land currently appears to be very low (based in large part on the high availability of arable land in areas that have previously been under cultivation).

B. The Green Revolution Program

The Green Revolution Program in Mongolia, established in 1997 with Resolution No. 199,39 has provided up to 100,000 families40 with small plots of arable land for cultivating

36 See examples from RDI fieldwork interviews, discussed in Annex 1.

37 We were unable to gather detailed information on the enterprise ownership profiles of state farms. Important outstanding questions include: the frequency of different ownership compositions (e.g., the mix between state, minority and majority shareholders in a single farm); the origin of majority or complete private share ownership held by a single individual or entity (e.g., purchased from the state or on the stock market); and the characteristics of the individuals and entities holding majority or sole-interest in agricultural enterprises (e.g., the number of “new” majority or sole owners who are former state farm managers).

38 These ex post facto issues would not apply to an allocation of underlying ownership rights to the arable land currently held in possession by farm entities, as discussed in Chapter 2(III). Allocation of ownership rights to individual former state farm members would not disturb the current possession rights held by farm entities, but would only transfer the reversion interest from the state to individuals.

39 Resolution No. 199 was not available in English; information on its content is based on an interview with Mr. U. Galsan, Chief of the Green Revolution in the Government Agricultural Implementation Agency, on June 10, 1999.

40 We obtained this number from a government official and have not yet been able to verify it.
vegetables for sale and household sustenance. Although this project appears to have made impressive headway toward achieving its goal of poverty alleviation, tenure rights to the land allocated are not clear in some cases. According to the Land Law, participants who are granted possession rights to small garden plots (we found the average to be one ha per household, although the program director informed us that families were entitled to two hectares) are entitled to 25-year possession rights to this land. The majority of participants we interviewed, however, did not have any written record of this contract right and, in two cases, were unsure of the duration of their possession rights.

C. Allocation of Possession Rights to Arable Land

The Law on Land (November, 1994) establishes the basic legal framework for allocation and maintenance of possession contracts to arable land. Relevant provisions include:

1. Possession contracts may be granted for arable land for a period of not less than 5 and not more than 25 years (Article 53(2));
2. Possession contracts should contain the following information: purpose of land possession and accompanying rights; and responsibilities and obligations of contracting parties (Article 32(2));
3. Possession rights may be terminated (prior to the end of the contract period) for “consistent or serious violation by the land possessor of land legislation obligations and land possession contract conditions” (Article 34(2)(1)); and
4. Possession contract rights may be extended upon expiration of the contract term if the possessor has complied with legislation on land and the land possession contract (Article 33(5)).

Tables appended to Resolution No. 143, “On the Implementation of the Land Law” (1995) set forth maximum size limits for arable land possessed by individuals. According to these tables, up to 500 hectares of land for commercial production of potatoes, vegetables and technical plants could be held in a possession contract, but “only in co-ownership or group ownership, not in individual ownership.” The limit for commercial production of grains and fodder is 9,000 hectares, but “only in co-ownership or group ownership, not in individual ownership.” It is not clear whether these limits apply to enterprises owned by one individual, however. Even if so, it appears an individual could avoid these limits by creating a “co-ownership” by including his or her spouse’s name on the possession contract.

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41 See findings from RDI fieldwork interviews, discussed in Annex 3.
42 Mongolian Law on Land, art. 53(2).
43 See findings from RDI fieldwork interviews, discussed in Annex 3.
Since adoption of the Law on Land, the state has begun allocating possession rights to arable land. As of 1999, possession contracts had been granted for 572,000 hectares of arable land (out of about one million total hectares of arable land). These rights have been granted free of charge to the farm enterprise, which may be owned by one single individual or entity or a small group of individuals or entities. This has resulted in some instances in the grant of a 25-year land right for between 3,000 and 6,000 hectares of arable land to an enterprise solely owned by one individual. The state has not attempted to distribute possession rights, or the value of possession rights, to current farm employees, or to the ex-employees of the former state farm who were originally entitled to privatization vouchers.

D. Policy Objectives and Concerns

Before choosing a strategy for allocation of possession rights to arable land, policymakers may want to consider the following objectives.

1. Equity

The primary equity concern is how to avoid depriving farm workers (or those who were entitled to infrastructure vouchers from the old state farm) of the added value to the farm created by the new land possession rights (which their initial shares did not reflect). A related issue is how to avoid granting a “windfall” to a single or few primary owners in a company by allocating possession rights free of charge to the company, rather than to its shareholders. Resolving these equity issues in initial allocations of land rights from the state is not only important for current stakeholders, but also for avoiding long-term disparities in arable land ownership.

A secondary equity concern is promoting fairness to and stable expectations for agricultural investors. To the extent that the state has already granted possession contracts to agricultural enterprises, creating a new set of rules for the re-distribution of these land rights or the value of these land rights may be problematic. Requiring companies that have already received possession contracts to now share the value of this added asset with workers might be considered an unexpected and inequitable penalty on new investors. This concern would not be relevant, however, to laws and rules governing the future allocation of possession rights.

45 Interview with Dr. Gongor Purevtseren, Director of the Administration of Immovable Property Registration of Mongolia, June 16, 1999. Statistics on the number of possession contracts granted on arable land, and to what size farms, were not available.

46 Extreme disparities in agricultural land ownership in countries throughout the world exist largely as a result of large initial grants of land rights from the state to a few private individuals.

47 This concern is probably less relevant, both in terms of equity and a potential stifling effect on new investment, to the extent that “new” agricultural investors (majority or sole-owners of all the shares in a single enterprise) are in fact the former state farm managers.
2. Efficiency in Allocation Process

Equity concerns must to some extent be balanced with the need for efficiency in allocation procedures. Solutions should streamline the allocation and distribution of rights to the extent possible while honoring equity concerns for the various stakeholders involved.

3. Arable Land Productivity

According to several accounts, some large farm owners are holding substantial amounts of arable land out of production, waiting for a law on land ownership to pass so they can sell it. A net decrease in arable land under productive use from 787,000 hectares in 1991 to 323,000 hectares in 1999\(^48\) May be attributable to several factors, including lack of operating capital, the virtual absence of a rural credit market, and inadequate processing and marketing infrastructure.

Recommendations (for arable land): \(^49\)

- Where possession contracts have not yet been granted, implementing authorities should allocate common possession rights of up to 100 hectares for each common possessor to all workers and shareholders of the farm. Clarify that individual citizens combining their landholdings in common possession can receive up to 100 hectares multiplied by the number of common possessors or owners. Clarify that these limits apply only to the primary land market. (This would allow possession right holders to transfer their rights in use, for example, to the agricultural enterprise they work for.) If agricultural enterprises want to receive possession rights to land from the state, they can organize their shareholders or workers to obtain individual possession rights and hold them together as common possessors.

- Where there appears to be demand for a “Green Revolution” type of program on farms where possession rights have already been granted, consider adopting a policy of state “takings” to accommodate this demand by re-allocating possession rights for small plots of land (e.g., maximum two hectares) to individual families. All takings would, of course, be subject to fair compensation.

- If agricultural enterprises have not cultivated land for three years or more, and are unwilling to give up possession rights to the land even though there is a local demand for such land,\(^50\) sum governments should terminate the possession rights for non-use as allowed by the Land Law and allocate the land for other farms or

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48 Interview with Mr.D. Buyankhishig, supra note 34; see also RDI fieldwork interviews summarized in Annex 1.

49 Note: our preferred recommendations regarding allocation of arable land rights involve amending legislation to allow private ownership of arable land, then to allocate such ownership rights to recipients of Green Revolution plots and to former state farm members. See Chapter 2(III), supra. The recommendations contained in the current section are limited to implementation of existing legislation, and so do not address allocation of private ownership rights.

50 One preliminary step will be to create a set of indicators whereby sum governments could determine the level of demand for arable land. These could include the number of inquiries or requests made to the sum government for arable land, or whether the price for use rights transfers (from land possessors) has increased for arable land.
Termination could be based on violation of contract provisions assigning the possession right for the purpose of agricultural production. The sum government could re-distribute this land in shares or in kind to the farm workers.

- In the event the Land Law is amended to provide for purchase and sale of possession rights in general, provide that possession rights to arable land purchased by companies (from individual farmers or shareholders, for example) may be transferred in their entirety only after such rights have been held for two years. Provide that possession rights for arable land that have been granted to companies free of charge not be made further transferable. One way to encourage productivity on this land might be to allow for purchase and sale of possession rights, in the hope that some companies would sell off their rights to land they are not cultivating to small farmers who would cultivate it. Giving companies that acquired land possession rights for free the right to sell them would, however, create serious equity issues with both farm employees and minority shareholders (both of whom are arguably entitled to a share in the value of the land possession right). It would ensure windfall profits to a small handful of people and reward speculative behavior that resulted in land held out of production.

- Commission a study on the enterprise structures on arable land. This study could include questions such as: (1) the frequency of different ownership compositions among agricultural enterprises (e.g., the mix between state, minority and majority shareholders in any single enterprise); (2) the origin of majority or complete private share ownership held by a single individual or entity (e.g., purchased from the state or on the stock market); and (3) the characteristics of the individuals and entities holding majority or sole-interest in agricultural enterprises (e.g., the number of "new" majority or sole owners who are former state farm managers).

- Increase broad-based allocation of arable land rights through the Green Revolution program as quickly and as efficiently as possible.

V. Special Implementation Issues for Urban Land

The priority in Land Law implementation in regard to urban land is to continue the allocation of sixty-year possession rights to household plots, and distribute certificates.

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51 The State should normally avoid interfering with privately held land rights. (See the chapter on “Land Use Management” below.) There are, however, legitimate times for the state to become involved. Revoking or refusing to renew a large enterprise’s possession right to land -- when that right has been conditioned on use of the land for crop production and when the enterprise has held land out of production for an extended length of time -- presents a legitimate justification for state intervention. Such intervention should, of course, be firmly based in the law, both in terms of its substantive justification and the procedure by which it occurs.
and contracts to all current and future possessors. Currently, allocation of such rights appears to be based on applications rather than a systematic allocation. In Ulaanbaatar, however, and perhaps in other regions, a very large backlog of unprocessed applications exists. Public information on the processes required for applying for these rights is critical: some people we interviewed said the duureg administrator allocated the right automatically, based on their "known residence" in a certain house. Others said they needed to apply for the contract, but had not yet done so because they weren't sure how much it would cost and what procedure to follow, or they didn't see a pressing reason to do so.

**Recommendations:**

- Prioritize the allocation of possession rights and distribution of certificates for residential land and land under privatized enterprises.

- Standardize the process for allocation and distribution of possession rights in regulations issued at the State level. (Note that the same rationale for flexible implementation that exists with pastureland is much less relevant to urban land.)

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52 For further discussion of findings summarized in this paragraph, see Annex 3.
EXPANDING TRANSFERABILITY OF POSSESSION RIGHTS TO LAND

I. Introduction

Land markets can function as a powerful tool for encouraging productivity and investment among holders of land rights. Effective markets for transferring land rights provide a means to reallocate those rights to the most productive users. Land markets also provide the basis for the mortgage of rights in land, which increases access to capital necessary for productivity-enhancing investments.

The development of effective land markets requires two important steps. First, the relevant policies, laws, and institutions must provide secure tenure to land. Insecure land rights will generally not be transferred. Second, the transfer of land rights must be allowed and facilitated by relevant laws, policies, and institutions.

Two important and initial points must be made about land transfers that form the basis for a land market. First, transfers of both ownership and non-ownership rights (possession, use, lease, usufruct, etc.) to land are not only theoretically possible, but allowed in every developed market economy and in many developing countries.

Second, transfers of both ownership and non-ownership rights may involve transfers of the entire right or transfers of only certain aspects of the right, but not the entire right. Developed market economies typically allow both full transfers and partial transfers of the various ownership and non-ownership rights to land.

In Mongolia, presently most private holders of land hold either possession rights or use rights. Possession rights are superior to use rights in three important aspects. First, holders of possession rights may protect their rights against third parties, while holders of use rights must seek enforcement of their rights through the entity or person from whom they received the right. Second, holders of possession rights, unlike holders of use

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53 For land rights to be secure, they must be clearly defined and of adequate duration and breadth. The land rights must also be of adequate assurance, that is, enforceable.

54 The Mongolian Law on Land provides for two primary non-ownership rights: possession rights and use rights. Both of these land rights have been likened to lease rights (which are provided for in the Mongolian Civil Code but not mentioned in the Land Law). Possession rights in Mongolia are probably more similar to usufruct rights that are present in many civil law systems, while use rights are more similar to lease rights under civil law.

55 Transfer of the entire ownership right to land is typically called a “sale,” and transfer of the entire non-ownership right to land is typically called an “assignment.”

56 Rights to land have been likened to a bundle of sticks with each stick representing a certain aspect of the right. Ownership would be the full bundle of sticks, while lease rights (or other non-ownership rights) would involve a smaller bundle. In each case, a transfer of the entire right (whether it is an ownership or non-ownership rights) involves giving away all sticks held by the right holder, while a partial transfer involves giving away some, but not all of the sticks held by the right holder.

57 Mongolian Law on Land, art. 33(1)(3).
rights, have the right to renew the rights at the end of the term.\textsuperscript{58} Third, and more relevant to this chapter, holders of possession rights have the limited ability to transfer land rights. Holders of possession rights may not transfer (or assign) their entire right, but they may transfer use rights to another person or entity subject to the approval of the entity that allocated the rights.\textsuperscript{59} In general terms, holders of possession rights may lease, but not sell their rights. Holders of use rights may not sell or lease their rights.\textsuperscript{60}

This chapter addresses the issue of whether holders of possession rights and use rights in Mongolia should have more extensive legal ability to transfer those rights. Section two provides a theoretical discussion on the efficiency of land markets and why certain restrictions on transferring land may be appropriate. Section three provides some international experience on restricting land transfers. Section four presents several recommendations for expanding transferability of possession rights in Mongolia. Section five presents an overview of various supporting institutions to a land market.

II. Developing Land Markets: Efficiency and Potential Costs

Every developed country uses land markets as an important means to provide access to land resources, efficiently allocate land resources, encourage productivity and investment among land users, and allow both physical and economic mobility to land holders. Land markets play a crucial role in the transformation of agriculture-based, particularly crop-based economies, to industrial and service-oriented economies. As such economies develop, land markets facilitate the gradual transition of labor from agricultural to non-agricultural sectors, as those who wish to leave agriculture sell their land rights (including the value of the improvements they have made) to those who wish to remain engaged in agriculture. At the same time, land markets also facilitate changes within the agricultural sector, particularly the crop sector, from labor-intensity to capital-intensity, as the size of farms is gradually and voluntarily increased through purchase and consolidation. Undeveloped or heavily restricted land markets can slow these processes, delaying important efficiency gains.

Land markets also play an important role in access to and efficient use of residential and commercial land. Markets provide the flexibility to allow business owners to acquire needed land resources and to transfer their rights to land resources if they are no longer needed. Furthermore, markets for residential land (and buildings) facilitate flexible household responses to new job opportunities (thus facilitating labor markets) and changes in life stages (household residential needs change as household size increases or decreases). In both residential and commercial cases, land markets can also facilitate access to credit if mortgaging of the transferable land rights is allowed.

\textsuperscript{58} Id., art. 33(1)(5).

\textsuperscript{59} Id., art. 33(1)(4).

\textsuperscript{60} Id., art. 39.
Efficiency and other gains resulting from effective land markets must, however, be balanced against competing social and environmental policy goals. As a result, all land markets are regulated to some extent. One such means of regulation is through restrictions on the ability to transfer land through sale, lease, or inheritance. Such restrictions involve a careful balancing of efficiency and equity goals.

Importantly, transferability of rights to common property resources (e.g., pasture land held in common) must be approached very cautiously because of the ecological disadvantages to subdivision (see Box 1, supra), and the much greater potential that one or more members of those holding common rights will use the transfer rights to benefit themselves at the expense of the remaining common owners or possessors.61

From an economic standpoint, land markets for non-common property resources can promote efficiency in at least three important ways. First, land transactions such as sales, leases, and inheritance provide a mechanism for the movement of property rights from less productive to more productive users. The following example illustrates how transferability promotes efficiency:

Suppose X (who may be a farmer with arable land or a private businessman with commercial land) owns a piece of land that he anticipates will yield 100,000 togrogs a year above his labor and other costs, indefinitely. Just as the price of a share of common stock is equal to the present value of the anticipated earnings to which the shareholder will be entitled, so the present value of a parcel of land that is expected to yield an annual net income of 100,000 togrogs can be calculated and is the minimum price that X will accept in exchange for his property right. Suppose Y believes that she can use X’s land more productively than X. The present value of Y’s expected earning stream will therefore exceed the present value calculated by X. Suppose the present value calculated by X is 1,000,000 togrogs and by Y 1,500,000 togrogs. Then at any price between 1,000,000 and 1,500,000 togrogs both X and Y will be made better off by a sale. Thus, there are strong incentives for a voluntary exchange of X’s land for Y’s money.62

Second, effective land markets encourage users to make productivity-enhancing investments in their land by ensuring that they will be able to recoup the value of such investments upon sale or transfer of their land. The following example illustrates this principle.

61 In some cases, allowing sublease of the rights to common grazing land could provide benefits in terms of equity and livestock management where livestock or labor-poor herders hold grazing rights they can sublease to livestock-wealthy herders, they gain an alternative source of household income. This approach may also encourage sustainable stocking rates on grasslands. Practices adopted in Gansu Province, China, provide evidence of the potential benefits from subleasing. Bruce & Mearns, supra note 32, at 26.

Farmer X is considering whether or not to dig a well on his or her land for irrigation purposes. Irrigation from the well will greatly improve the productive capacity of X’s land. X estimates, however, that the well will cost 250,000 togrog, recoverable (including a reasonable return on the original investment) over twenty-five years from the proceeds of the resulting increase in production. However, uncertainty over the ability to stay on the land and/or capture all benefits of the well for the entire term required to recover the investment, or the ability to transfer the land during the same period will most likely lead X to decide against digging the well. If, however, X has long-term land rights and can transfer those land rights through a market mechanism, the ability to recover the value of the well will not factor into the decision, because the market price of the land upon transfer (if, sometime during this generation X can no longer work the land or finds better opportunities outside of agriculture) will reflect the value of the well.

Third, effective land markets are typically a prerequisite for the use of land as collateral to obtain access to credit. From a lender’s perspective, the value of land rights is determined by the ability to transfer those rights to someone else who wants to use the land, for a price that satisfies the debt. This requires not only the legal right to transfer land rights, but the existence of a land market with a reliable effective demand for land. From a landholder’s perspective, mortgage of land rights increases access to credit that can be used for productivity-enhancing investments.

### III. Restrictions on Transferring Land Rights: Comparative Approaches

Restrictions on transferability of land typically serve an equity objective. This equity objective, in turn, can create efficiency costs. Therefore, governments must often balance somewhat competing goals of efficiency and equity. Restrictions on transfer, however, can often be designed in a manner that effectively achieves equity goals without significantly impeding efficiency.

Restrictions on land transfers are often introduced to address existing inequalitarian landholding patterns. In some cases, however, they may be introduced based on suspicions or fears of how a land market will operate. Government regulation to restrict the transfer of land generally falls into one of six broad categories: (1) restrictions on transfers to foreigners; (2) restrictions on transfers to “outsiders” (defined more broadly than foreigners); (3) maximum ceilings on landholdings; (4) restrictions on transfers or arable land to non-farmers; (5) prohibitions on transfer for a certain time period; and (6) broad prohibitions on transfer.

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A. Restrictions on Transfer to Outsiders

Restrictions on transfer of land to foreigners are discussed in Chapter 2, Private Ownership of Land and will not be covered here. Restrictions on transfer of land may extend to a much broader group of “outsiders” than foreigners or non-residents. Within some countries, members of a particular community receive exclusive or priority rights to purchase rights to land owned by or reserved for that community. This is the case in most of rural China, Fiji, Papua New Guinea, and many African countries.

In Japan, under the 1952 Agricultural Land Law, the sale of arable land to another party for continued farming was not permitted unless the buyer was a local farmer. Moreover, non-farmers could not own arable land. As Japan’s development progressed these restrictions were gradually relaxed, first to allow absentee ownership by individuals who inherited land, and eventually to allow even private corporations with non-farmer owners to own and operate farmland. The latter, however, was not permitted until 1992.64

In Russia in the early 1990s, all the members of collective and state farms were given ownership in common of the land used by the farm, with the right to leave with their proportion of the land separated and demarcated on the ground. They were also given the right to sell that land right, but other members of the collective had a “preemptive right” to buy if they could match the offer made by an outsider.65

B. Maximum Ceilings on Landholdings

Restrictions may also be placed on the total amount of land that can be owned by an individual or household. This is usually intended to spread ownership of landholdings widely among the rural population, or to forestall the formation of large latifundia (large landlord estates). Such restrictions for arable land are discussed in chapter 2, Private Ownership of Land.

In some countries, ownership of urban land has also been subjected to maximum ceilings. This may be a very difficult policy to impose, however, since there can be such a wide variety of different uses for urban land, ranging from a single-family home to a steel mill. In Nigeria, for example, urban land ownership is limited to 0.5 hectares.66 In India, the Urban Land (Ceiling and Regulation) Act of 1976 restricted owners to vacant landholdings up to 500 square meters in Bombay, Calcutta, Delhi, and Madras; to 1,000 square meters in other cities with a population of 1 million or more; and up to 2,000 square meters in towns with a population of 200,000 to 500,000. Under the Act, landholdings in excess of these limits are subject to acquisition by the state at below-

64 Kajii, supra note 22.

65 Decree of the President of the Russian Federation No. 1767 On Regulations of Land Relations and Development of Agrarian Reform in Russia, available in LEXIS, Intlaw Library, Rflaw File.

66 Farvacque & McAuslan, supra note 63, at 52.
market prices.\textsuperscript{67} We are not aware of any developed market economy that attempts to set maximum size limits for urban land.

\section*{C. Restrictions on Transfer to Non-Farmers}

Some governments require administrative approval of agricultural land transfers in order to protect against a change to non-agricultural use. For example, German law requires prior administrative approval for the sale of certain categories of agricultural and forest land.\textsuperscript{68} Land can be sold to a non-farmer only if no farmer is willing to purchase the land at the price stipulated between the seller and the non-farmer. The requirement of bureaucratic approval on a case-by-case basis, however, slows down the sale process and is burdensome to both the administrators and the purchaser.

Other developed countries address such concerns in ways that do not directly interfere with private transactions in land. In cases where conversion of agricultural land to non-agricultural land is a concern in the US and Canada, the regional governments have developed general criteria for such conversion within land-use planning laws. In these cases, the purchaser of the land must obtain permission to develop the land after the land is purchased.

\section*{D. Time-Limited Restrictions on Transfer}

Time-limited prohibitions on transfer have been used in many land reform settings to encourage development of the land, to prevent land speculation, and to allow time for the supporting institutions to prepare for a land market. The 1865 Homestead Act in the United States provided plots of land in the unsettled western US to citizens who were willing to move to the land and farm it. These citizens were prohibited from selling the land until they had farmed it for five years.

Time-limited prohibitions have been used in many transition economies.\textsuperscript{69} Some of these time-limited prohibitions apply broadly to all land categories, others apply only to certain types of land or to certain classes of landowners. These time-limited prohibitions are applied for several different policy reasons. In general terms, they are an impediment to the rapid development of a land market. They may in some cases, however, be an appropriate means for achieving other legitimate goals.

Some governments in transition economies have placed time-limited transfer prohibitions on government land that has been transferred to private parties free of charge. In some cases this involves land which is transferred with the expectation that

\textsuperscript{67} Id.

\textsuperscript{68} German Law on the Administrative Control of the Transfer of Ownership of Agricultural Holdings, v. 28.7.1961 (BGB1. IS.1091), sections 2, 9.

the new landowners will develop the land for farming or for other purposes. These land allocations are sometimes conditioned by time-limited transfer prohibitions so that the land will be attractive only to those interested in developing it, not those intending to resell the land for a quick profit. For example, Bulgarian law provides that agricultural land in certain unproductive or depopulated localities can be transferred to citizens for cultivation, with the stipulation that ownership (and thus transfer rights) may be granted only after the citizen has cultivated the land for ten years.70

A related policy concern behind time-limited prohibitions on transfer for land obtained free from the state is the prevention of what is perceived as quick and unjust profits. Many policy makers and citizens fear that land speculators will obtain land from the state for free or at low prices, then quickly turn around and sell the land off, making what many perceive is an unjust profit. These fears can even apply to land obtained from private parties. This policy seems to be the justification for Article 17 of the Land Code of Ukraine, which prohibits sale of private land for six years after privatization.71 While addressing fears of quick and unjust profits through time-limited transfer prohibitions may not always make the best economic sense, such temporary prohibitions may be politically necessary or at least helpful in building political support for developing a market in land.

It should be noted that some countries that initially adopted time-limited prohibitions later removed them because of the constraints they posed. At the beginning of the reform process Bulgarian law prohibited citizens who received any land from a state or municipal land fund from transferring that land for a ten year period.72 The three Baltic countries also initially had five-year moratoria on agricultural land sales.73 Upon recognizing that such prohibitions were causing more problems than they were solving in the particular country environment, these moratoria were lifted.74

E. Broad Prohibitions on Transfer

Countries sometimes place broad or absolute prohibitions on transfer of land, especially arable land, in order to ensure that current tillers are not deprived of the land. In many cases, such as in the Philippines, Mexico, and Indonesia, these broad prohibitions on transfer were established following redistributive land reforms to protect the land reform beneficiaries from distressed sales. Such prohibitions, designed to protect the relatively poor beneficiaries, typically have the opposite effect.

72 Bulgarian Law on the Ownership and Use of Agricultural Land, art. 20(2).
73 Meyers & Kazlauskiene, supra note 23, at 92.
74 Id.
The 1972 Land-to-the-Tiller Program in the Philippines converted certain share tenants into leaseholders (with fixed rents) or owners. In an effort to ensure that land reform beneficiaries remained the tillers, legislation denied the beneficiaries the right to lease or sub-lease the land. Years later, many of the land reform beneficiaries had become relatively wealthy by increasing production on their land. With increasing wealth came a decline in the amount of farm labor that beneficiaries wanted to supply. Before the land reform, the usual practice for such landowners was to lease their land. The prohibition on leasing led these beneficiaries to hire wage laborers through a semi-permanent labor contract, giving rise to a new landless labor class with less opportunity for upward mobility than did the pre-1972 tenants whom they replaced.\textsuperscript{75}

Mexico’s twentieth-century land reform involved expropriating land from holders of large estates for distribution to rural communities known as ejidos. Members of the ejidos were prohibited from buying, selling, or mortgaging their individual parcels. While the prohibition may have initially provided some protection to the land reform beneficiaries, it later became a substantial impediment to increasing the income and productivity of beneficiaries. An illegal land market (involving higher transaction costs and decreased tenure security) developed to circumvent the restrictions. The problems inherent in the prohibitions became more apparent as time passed, and Mexico removed the prohibitions in 1992.\textsuperscript{76}

Governments in many transition economies have also placed broad prohibitions on transfer of all or certain land rights. In Ukraine, for example, the Land Code provides for private ownership of agricultural land, but does not authorize the right to buy and sell such land.\textsuperscript{77} In other cases, these broad prohibitions on transfer apply to long-term use or lease rights. For example, in Belarus, Uzbekistan, and Russia, long-term use rights to agricultural land have often been allocated in “permanent use” or “lifetime inheritable proprietorship.” These forms of tenure, by their definitions, do not allow transfer by sale.

IV. Recommendations for Expanding Transferability of Land Rights in Mongolia

Mongolia has not yet introduced private ownership rights to land. As such, the most relevant issue for expanding transferability of land rights in Mongolia involves possession rights (and perhaps at some later time, use rights). We urge that officials, when considering increasing the transferability of these rights, make the following


\textsuperscript{76} For detailed discussions of Mexico’s land reform and the likely effects of the 1992 changes, see \textit{generally REFORMING MEXICO’S AGRARIAN REFORM} (Laura Randall ed., 1996).

\textsuperscript{77} Ukrainian Land Code, art. 3 (March 13, 1992). The Ukrainian Presidential Decree on Urgent Measures to Accelerate Land Reform in the Sphere of Agricultural Production (November 10, 1994) establishes that agricultural land shares may be bought and sold, but nothing is said about buying or selling rights to agricultural land itself.
distinctions. First, officials should distinguish among different categories of land. Allowing full transferability of possession rights to residential land involves a different set of issues than allowing full transferability of possession rights to pasture land.

Second, officials should distinguish among different types of land right holders. Providing full transferability to individuals or households that hold possession rights to relatively small areas of arable land involves very different issues from providing these same, incremental rights to companies that hold possession rights to vast areas of arable land.78

Third, distinguish between land rights that have been granted by the government for free and land rights that have been purchased. A stronger case can be made for allowing those who have purchased possession rights to receive the immediate right to transfer those rights in their entirety. Likewise, placing a time-limited prohibition on full transferability of possession rights that are granted by the government will lessen incentives for land speculation by those who seek government grants of land for the sole purpose of reselling that land.

We also urge that Mongolian officials carefully study the potential benefits and costs of expanding transferability of rights to each category of land and for each type of land right holder. For example: Does the lack of further transferability impose important constraints on efficiency and productive use? Is there a significant demand for further transferability from either those who hold land rights or those who do not hold land rights but want to hold them? Will the “windfall” for current holders of land rights that will result by expanding transferability lead to significant equity problems? Will lending institutions actually accept the rights as collateral if transfer rights are expanded?

We offer the following recommendations for expanding the transferability of possession and use rights in Mongolia.

- **For residential land:** Amend the Land Law so that possession rights to residential land may be transferred in their entirety immediately (that is, so possession rights to residential land may be sold).

- **For urban commercial land:** Amend the Land Law so that possession rights to urban commercial land granted by the government may be transferred in their entirety. If politically important, adopt a two-year moratorium on secondary transfers of enterprise land rights that have been granted by the state. Possession rights to urban commercial land that are purchased should be transferable in their entirety immediately.

78 The privatization of state farms and the corresponding initial allocation of rights to these farms’ arable land has resulted in a relatively small number of private companies holding control over vast areas of arable land. It appears that at least some, and perhaps many of the companies are owned by only one shareholder or a small number of shareholders. We have not yet seen statistics on to what extent these companies have formally received possession rights to this land, reflected by possession certificates. Until more information is gathered about the ownership of these farms and their formal rights to these vast areas of land, and until other measures for reallocating at least a portion of this land are considered, we caution that such companies should not be given the ability to sell these rights.
• For arable land rights held by individuals: Amend the Land Law so that possession rights to arable land granted to individual citizens may be transferred in their entirety two years after such rights have been granted. Possession rights to arable land that have been purchased by individual citizens should be transferable immediately.

• For arable land rights held by companies: Amend the Land Law so that possession rights to arable land purchased by companies may be transferred in their entirety after such rights have been held for two years. We urge that possession rights for arable land that have been granted to companies free of charge not be made further transferable until equity concerns about the initial allocation of this land can be studied and sufficiently addressed.

• For pastureland: We urge that the transferability of possession rights to pasture land not be expanded.

• Amend the Land Law by deleting the requirement, in law, that holders of possession rights must obtain the approval of the government office that initially allocated the possession right in order to transfer it. Instead, provide in law that possession rights may be transferred in their entirety (sold) unless otherwise indicated by the possession contract.

• After expanding the transferability of possession rights, conduct studies on the impact before expanding the transferability of use rights.

V. Supporting Institutions for Facilitating Allowable Land Transactions

As Mongolia begins to expand the transferability of rights pertaining to certain categories of land or rights held by certain types of landholders, officials will have to pay some attention to the development of supporting institutions for facilitating the transfer of these land rights.

A number of governmental and private sector activities can play an important role in facilitating land transactions and developing land markets. First and foremost, the creation and maintenance of a land registration system not only helps to make land rights legally secure, but is an important mechanism through which governments can facilitate land transfers. Land registration systems facilitate land transactions by providing a greater degree of certainty and security to prospective land transaction participants, by increasing the ease by which an owner’s right to deal with property can be established, and by increasing access to market information on the part of land transaction participants.

The development of standardized legal forms and specific laws and regulations will also facilitate land transfers. Standardized legal forms such as sale and lease contracts increase the convenience and reliability of land transactions while decreasing the cost. In a developed land market, private sector actors will likely develop their own
standardized “business forms” for land transactions. In fledgling markets, however, this need is more likely to be fulfilled by the government. Specific laws and regulations containing principles and procedures for the transfer of land use rights make such transfers more predictable and transparent.

In the United States, developed land markets have encouraged private sector actors to develop additional mechanisms that facilitate land transactions, particularly for residential and urban commercial land. One such mechanism is the Multiple Listing Service for real estate. Real estate in the United States is typically sold by the owner-occupant of the property or by private real estate agents who receive a commission based on a percentage of the sale price of the property. To provide real estate agents with greater access to market information, an association of real estate agencies has developed a searchable database, called the Multiple Listing Service, that contains updated information on available properties that have been offered for sale. When a property owner chooses to list a piece of land as available for purchase with a real estate agency, information concerning the property, including its location, size, and detailed descriptions of any structures, is entered into the database. For a fee, any real estate agent can subscribe to this service. By searching the database, such an agent can quickly and efficiently locate properties that match the needs of a potential buyer.79

Governments of developed countries often play a role in shaping effective private sector professional service institutions that facilitate land market development, such as land surveyors and land market (or real estate) brokers. Government regulation of private sector land surveyors and of land market brokers is common in both the US and Europe. Governments often regulate these professional services through certification and licensure. Certification is a system whereby an authority is legally empowered to certify individuals as having satisfied particular educational and training requirements judged to indicate competence in a particular range of professional services. Non-certified providers can offer services, but cannot claim certification. Licensure is much more strict than certification since providers may not provide the specified professional services unless they obtain a license. The government may license providers directly or delegate that authority to private associations of already licensed providers.

All 50 states of the US require licensing both for land surveyors and land market brokers.80 State law often establishes state boards with powers to adopt rules regulating the profession. Such boards can set minimum qualification criteria, administer licensing tests, and oversee complaint processes concerning licensed providers.81

79 Similar services are also available for rental properties. In the city of Seattle alone, there are more than a dozen private companies that compile and maintain lists of available rental properties.


81 See Robert Mitchell, Regulating Surveyors and Real Estate Brokers, (Nov. 21, 1993) (unpublished memorandum, on file with the Rural Development Institute, Seattle, Washington).
VI. Recommendations on Developing Supporting Institutions to Facilitate Allowable Land Transactions

- Create and maintain a land registration system. (For further details, please see chapter five of this report.)

- Develop specific laws and regulations containing principles and procedures for the transfer of land use rights.

- Develop and adopt standardized legal forms, such as sale and lease contracts, for land transfers.

- Encourage private sector development of a “Multiple Listing Service” containing updated information on available properties that have been offered for sale.

- Develop state regulations to guide the development of effective private sector professional services that facilitate land market development, such as land surveyors and land market (or real estate) brokers.
LAND USE REQUIREMENTS, MONITORING AND ENFORCEMENT

I. Introduction

Land use controls on private users of land require balancing of public purpose or needs with efficiency or private cost. Land use regulations may accomplish their intended purpose, but in doing so may impose unnecessarily high costs on individuals and the community. Land use restrictions or requirements that impose too heavy a burden on private parties can cause insecure land tenure, and place unnecessary, burdensome, and even impossible standards on understaffed administrative institutions and private users of land. Countries that have recently emerged from central planning often emphasize public purpose but ignore efficiency, public and private cost, and other less costly alternatives to realizing intended objectives. Mongolia's current laws reflect this trend in other transitional economies.

This chapter provides an overview of land use regulations placed on private users of land in Mongolia's Law on Land, discusses and compares typical methods of land use regulations in socialist or transition economies with those in developed market economies, and presents recommendations for changing the Mongolian approach and legal provisions concerning land use regulation.

A. Land Use Management Regulation in Mongolian Law

The Law on Land (1994) and Resolution No. 143 “On the Implementation of the Law on Land” contain the primary regulations on land use by holders of possession rights, measures for land use monitoring by the state, and penalties for land use violations.

1. Rules for Land Use

Article 33 of the Law on Land provides that land possessors must “comply with legislation on the efficient and rational use of land, protection of the land, and environmental protection and the common requirements established by the State authorized organization for citizens, economic entities, and organizations in relation to land use.” According to the requirements placed on land possessors and users for efficient and rational land use and protection are detailed in Article 49. They include:

1. preserving land characteristics and quality;
2. preventing the reduction of soil fertility, overgrazing of vegetation cover, soil erosion, degradation, drought, saturation, salinization, pollution, and chemical pollution caused by nature or human activities;
3. immediately restoring eroded and damaged land;

4. maintaining and restoring land changed due to tests, experiments, and mineral exploration;
5. preventing adverse impacts to the environment and land due to use of the land, its resources and commonly distributed mineral resources;
6. preserving and protecting land with small forested areas, rare and endangered animals and plant, and cultural and historic monuments; and
7. preventing activities with potential adverse impacts to the environment, land possessed or used by others, and State owned land.\textsuperscript{83}

\textbf{B. Land Use Monitoring}

The Land Law places an extremely high, and seemingly impossible standard on the State for monitoring the characteristics and quality of the land in order to insure that the land possessors and users have met the requirements for land use outlined in Articles 33 and 49. The State is to measure and record land characteristics and quality for each land parcel on a “State certificate of land characteristics and quality.”\textsuperscript{84} The certificate is to include the following indicators:

1. thickness of fertile soil layer;
2. contents of decomposition;
3. soil pollution and chemical pollution;
4. changes in land surface characteristics;
5. changes in vegetation cover; and
6. changes in the composition of pasture and hayfield plant species.

The Land Law calls for the State certification to be conducted on all land in the country once every five years and upon the expiration of a land possession or land use right.\textsuperscript{85} The costs for such certification for each land parcel are certain to be very high. The State is responsible for paying for the original certification, but land possessors and users are responsible for paying the expenses of all subsequent certifications.\textsuperscript{86} Resolution No. 143, Appendix 2,\textsuperscript{87} sets out in further detail the procedures for collecting information on land and soil quality required by the Land Law.

\textsuperscript{83} Id., art. 49.
\textsuperscript{84} Id., art. 55(2).
\textsuperscript{85} Id., art. 55(5).
\textsuperscript{86} Id., art. 55(7).
\textsuperscript{87} Resolution No. 143, supra note 28, Appendix 2, “Procedure on the Land Characteristics, Quality National Review Certificate and its Delivery:” This appendix calls for the establishment of independent “Land Units” for reviewing, certifying and obtaining information, and identifies the factors to be considered in establishing land monitoring indicators. These factors include details such as, for crop farming, the thickness of the soil fertility layer, the soil humus and pH content, and distribution of weeds. (See Id., section 22 (2)).
1. Penalties for Violations of Land Use Rules

The potential penalty imposed on the land possessor or user for violating the land use requirements is substantial. If the land possessor consistently or seriously violates the requirements, the person who allocated the possession right (usually the sum or duureg governor) "shall terminate it."\(^{88}\)

II. Problems with Existing Mongolian Law

The problems presented by this land use requirement, monitoring, and enforcement scheme are primarily twofold. First, the monitoring scheme will be extremely costly and probably administratively impossible to implement. The monitoring costs themselves, which fall both on the State and on individual land possessors and users, are far too substantial to warrant possible objectives. The opportunity costs of using skilled administrative personnel for such a task in a country where trained administrative personnel is in short supply appears unwise. Second, the enforcement scheme involves a substantial penalty (termination of land rights) that it is likely to result in tenure insecurity and a corresponding lack of investment by land possessors and users.

III. International Experience

State controls, monitoring, and enforcement of land use requirements in formerly Soviet-style economies are often based on the systems that existed before recent changes. These rules tend to differ substantially from those existing in developed market economies. In general, the Soviet-style approach assumes that landowners have no internal incentives to preserve or improve land quality, and so use expensive monitoring schemes and severe penalties to enforce "proper" land use.\(^{89}\)

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\(^{88}\) Id., art. 34(2).

\(^{89}\) For example, article 285 of the Russian Civil Code provides that land can be withdrawn from its owner if there is a flagrant violation of rational land use rules, in particular if the parcel is not used in accordance with its designated purpose "or if its use leads to a material reduction of the fertility of agricultural land or to a significant worsening of the ecological situation." Civil Code of the Russian Federation, art. 285. These provisions are vague and at the same time subject land owners to serious sanctions. Article 243 of the Russian Civil Code allows confiscation (without compensation) as a sanction for the "commission of a crime or other violation of law."

Article three of Kazakhstan's Civil Code states that land relations cannot result in damage to the land, or to the rights or interests of third parties. Article 116 tries to ensure "rational use" of land. In the Kazakh Civil Code, articles 34 and 110 require owners to "raise the productivity of the soil." Despite the lack of specific definition, landowners are subject to severe consequences if they are found to violate these broadly stated requirements. Article 71 of the Civil Code allows for termination of property rights for "the systematic breaching by the land owner or user of his obligations" and article 125 provides for administrative and even criminal sanctions. Steven Hendrix, *Legislative Reform of Property Ownership in Kazakhstan*, 15 DEVELOPMENT POLICY REVIEW 159, 162 (June 1996).

The Land Code in Moldova also has a "rational use" of land requirement with severe penalties for non-compliance. Land Code of Moldova, arts. 23, 24 (as amended December 25, 1991). The Land Code in Moldova gives the state the power to confiscate land based upon non-use or a reduction in soil quality, which includes using the land in ways that violate local plans for erosion control. Land Code of Moldova, arts. 23, 24 (as amended December 25, 1991).
Developed market economies generally take a much less restrictive and severe approach in regulating “rational” use of land. In large part, this is based on the realization that land users either have long-term tenure security and thus have their own incentives for maintaining land quality, or they are leasing from someone who has long-term tenure security and will ensure and enforce good land practices. Box 4 provides information on an approach to pastureland use regulation taken by one Australian state.

Box 4: South Australia’s Pastoral Lands Management Act of 1989

The State of South Australia’s Pastoral Lands Management Act of 1989 repealed its 1936 Pastoral Act and set up a new framework for the state’s management of pastoral lands. Under the new law, State-owned (or “Crown”) land may no longer be sold to private individuals by the various states or territories, but must be leased on a competitive basis. The basis term for these leases is 42 years. The lessee has the duty to follow good management practices and prevent degradation of the land. Owners of land also have the duty to ”take all reasonable steps to prevent degradation of the land” under Art. 8 of the Soil Conservation and Land Care Act of 1989. Lessees are charged rents based on a percentage of the value of the land as determined by the government.

If the Pastoral Board determines that land is damaged or deteriorated or in danger of damage or deterioration, it may require the lessee to submit a property plan. The lessee is also required to report stock levels annually. The Pastoral Board may require the lessee to reduce the stock level or require other management changes if damage to the land has occurred or is likely. Aboriginal peoples are given the right of access and traditional use on any pastoral lease. Limited public access to pastoral land is also preserved.

Source:


Recommendations for Mongolia:

- Retain the rules for land use set forth in Articles 33 and 49 of the Law on Land, but qualify them with language such as “Land possessors and users shall make reasonable efforts to . . .”. These requirements would then more closely correspond with land use requirements in many countries with developed market economies. Changing requirements for evaluation, monitoring and penalties, as discussed in the following two recommendations, are more important than changing the rule for land use.

- Change the monitoring scheme (and related provisions in the Land Law and Resolution No. 143) to provide for an initial, simplified, and inexpensive

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90 For an overview and illustrations of such approaches, see Renée Giovarelli, Land Use Regulation, in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA: A COMPARATIVE PERSPECTIVE, supra note 69, at 81, 88-102.
measurement of land characteristics and quality at the State’s expense. Any subsequent measurement should be taken only when the relevant agency has significant reason to expect that land has been “seriously degraded” or polluted. The evaluation and monitoring costs required by the current scheme, both for the state and for land possessors, are excessive. Requiring five-year re-evaluations on the level of detail set forth in the Land Law and Resolution No. 143 would require a commitment of human resources that is not realistic given the current level of local administrative capacity and competing future priorities.

- **Remove confiscation of land rights as a penalty for not meeting the land use requirements.** Provide for a graduated series of fines that reflect the damage caused by the land possessor and user. In serious cases, provide notice to the land possessor or user that they have six months to reverse the degradation and restore the land quality. If this has not been accomplished in six months, terminate the land rights, but compensate the land possessor for the value of the land rights taken minus the value of the damage caused, and provide the land possessor with an opportunity to appeal to a higher administrative or judicial body either the grounds for the confiscation or the terms of compensation. Countries with developed market economies have found that tenure security provides the best incentive for sound land use management. Allowing the state to confiscate land rights when a right holder has not fulfilled a complex set of land use requirements is likely to diminish tenure security and thus undermine the right holder’s incentives for sustainable (or enhancing) land use practices. Termination of land use rights should be a penalty of last resort, and should only be levied after repeated notice to the land right holder, opportunity to “cure” the problem, fair compensation for the value of the land rights, and an opportunity to appeal the government’s decision.

- **Consider adopting positive incentives to encourage sound land use practices, rather than relying solely on penalties and enforcement.** Such incentives could include tax deductions, eligibility for state subsidies, and complimentary technical assistance concerning land conservation techniques.
I. Policy and Legal Framework

Mongolia has designated over eighteen million hectares of land (11.67% of the national territory) as Special Protected Areas (SPAs). The government plans to increase the amount of land in SPAs to 15% of the country’s territory by 2001 and 30% by 2030.

Primary legislation governing Special Protected Areas in Mongolia includes the Law on Land (1994), Resolution No. 143 (1995) (Appendix 5 on the "Procedure on the Taking Away of Land for Special Needs"), the Law on Special Protected Areas (1995), and the Law on Buffer Zones (1997). A legislative program adopted by the State government in April 1998 also appears important. It establishes a national plan to increase the area under special protection from its current level of 11.67% of the national territory to 30% of the national territory by the year 2030.91

Chapter three of the Law on Land sets forth the legislative framework for "special needs land," which includes "land under state special protection."92 The Law grants authority to take land for special state protection to the national legislature (Ikh Khural) and to several layers of local government, including aimag, Capital City, sum and duureg. Articles 36, 37, and 40 of the Law on Land set forth somewhat inconsistent rules governing compensation by the government for takings of privately held possession rights to land for SPAs. Resolution No. 143 (Appendix 5) adds further detail to these rules. While these rules may provide some protection for the holders of possession contracts to land, they do not provide for any compensation to land users or occupiers (such as herders) who do not hold formal possession contracts.

Mongolia's compulsory acquisition rules governing takings of land held under possession contract are unclear. Article 36 of the Law on Land states that if the government wants to prematurely terminate possession rights in order to take land for special needs, it must obtain the agreement of the land possessor and provide compensation.93 The compensation is to include the value of immovable construction, other property, and the costs for land release estimated at the time.94

However, the Law on Land provides the government another alternative when they need land possessed by others for special needs. Instead of prematurely terminating possession rights which requires both consent of the possessor and compensation, the

91 Interview with Banzragch and Myagmarsuren from the Ministry for Nature and Environment on June 8, 1999. The 1998 program was not translated into English at the time this report was written.
92 Mongolian Law on Land, art. 18.
93 Id., art. 36(1), (2).
94 Id., art. 37(2).
government may proceed to use the land without terminating the possession right according to Article 40 of the law.

Article 40 of the law allows government authorities to use land possessed by others for special needs without terminating the possession rights. This may be done based on prior agreement with the land possessor, or without such agreement if it is based on “essential social needs.” In both cases, this may be done either with or without fees. If it is used for special needs based on a prior agreement, it must be for a certain time period, but if based on essential social needs (thus not requiring a prior agreement), the special needs use may continue “until the needs finish.”

An implementing regulation of the Law on Land, Regulation No. 143, appears consistent with Article 40 of the law and inconsistent with Article 36. This regulation authorizes the Mongolian central government to take land under possession by citizens, entities and organizations for special needs. It gives current possessors the right to negotiate with the government for either monetary compensation or an alternative area of land.

The Law on Special Protected Areas sets forth the basic mandate and guidelines for establishing SPAs. It establishes four categories of SPAs: (1) Strictly Protected Areas; (2) National Conservation Parks; (3) Nature Reserves; and (4) Monuments. The law further breaks down each category into subcategories, or zones. One of these zones within both Strictly Protected Areas and National Conservation Parks is the "Limited Use Zone" which allows for some degree of regulated multiple uses.

The Law on Buffer Zones (1997) provides the legislative framework for establishing buffer zones around SPAs. The law leaves determination of the size and management of the zones up to the SPA administration working together with a group from the sum and "micro-district" administration.

II. Land Reform Issues: Displacing Current Users

A. Protecting Existing Land Occupiers and Right Holders

In developed market economies, governments retain some degree of public ownership of land for a variety of purposes, including protection of sensitive environmental areas.

95 Id., art. 40(1). Article 32(2)(9) provides that a land possession contract between a land possessor and the government authority granting the possession right should include “conditions and procedures for altering or taking the land possessed with compensation.”

96 Id., art. 40(2).

97 Id., art. 40(1).

98 Id., art. 40(2).

99 Regulation No. 143, supra note 28, at Appendix 5, art. 4(4)(c).

100 Id., art. 9.
Sometimes these governments take privately held land rights into public ownership. Taking land out of the use or ownership of private individuals for this purpose, however, comes at a significant cost. This cost may include displacement of people from their homes and land, and displacement of economic activity. An indirect effect of compulsory acquisition of land (involuntary takings of privately held land rights), especially in transitional economies, is the insecurity of current patterns of land use and land tenure that results. Security of land tenure, as discussed earlier in this report, is a critical element of wise land use (whether this means increased investment in the land or, in the case of pasture land, self or group resource management by adoption of sustainable grazing practices) and is an important building block for development of a land market.

Governments with developed market economies attempt to minimize tenure insecurity by: (1) establishing strict rules for the allowable purposes of government takings, procedural fairness and compensation to private property owners in the event of compulsory acquisition; and (2) encouraging voluntary acquisition whenever possible. Although compulsory acquisition systems vary depending on each country’s balancing of public needs with private interests, all effective compulsory acquisition systems share three important characteristics. First, expropriation of land is restricted to circumstances that serve public purposes. Second, the basis for compensation, typically the market value of the land to be expropriated, is defined in law. Finally, procedural rights of interested parties, including notice, the right to be heard, and the right to appeal, are guaranteed by law.

In Mongolia, the expansion of SPAs to thirty percent of the national territory by the year 2030 is likely to come at a significant cost to current land users and possessors, to economic production, and possibly to sustainable land use in unprotected areas. According to interviews with several officials, much of the land currently in SPAs and planned for SPA expansion is traditional grazing land. Even with full implementation of the Land Law, much of this land use (summer and fall pastures, and in many cases winter pastures outside of winter camps) will not be legally protected by possession contracts. Because takings of land rights not held in possession contracts are not subject to compensation under the law, this leaves herders vulnerable to the uncompensated loss of their customary grazing areas. Poorer herders who have less capacity to travel long distances to new areas are especially vulnerable. Furthermore, displacing herders from some areas may increase pressure on the pasture land resources in other areas, some of which may already be degraded. Of course, the risk of displacement is reduced to the extent that the SPAs are designated as "limited use areas," allowing for continued grazing, and to the extent that regulations and prohibitions on grazing within the SPAs are not enforced.

According to our research in Mongolia, some herders have already been displaced from SPAs without compensation. According to one official, displacement has occurred from protected areas in the Gobi region, on the takhi horse reserve near Ulaanbaatar and

101 For further information on displacement from SPAs, see RDI fieldwork findings in Annex 2.
also in the mountain steppe region. It is unclear whether any of these herders held possession rights to winter pastures within the areas from which they were displaced.

**Recommendations:**

- Proceed toward the goal of SPA expansion with caution, taking into account socio-economic costs of displaced people and economic activities, and clarifying the purposes and scientific rationale for each new SPA.

- Develop legislation for the compensation of displaced herders and other traditional land occupiers who do not hold formal possession contracts to the land. Such legislation should include significant opportunity for input from the displaced individual or community in determining the area of land and value of traditional use rights lost, and developing a plan for relocation of the herders and their animals.

- Continue implementation of the Land Law and allocation of possession contracts. Ideally, possession contracts for winter camps, at least, and perhaps group possession contracts for larger areas of pasture would be in place prior to the establishment of future SPAs. This would facilitate compensation in the event of compulsory acquisition and would also provide herders with incentives to better manage pasture land within SPAs.

- Clarify the government’s rights of compulsory acquisition in the Law on Land and in Resolution No. 143. Include clarification of the basis for compensation and procedural protections for right holders, such as notice, the right to a fair hearing, and the right to appeal the decision on takings or compensation.  

- Conduct a study on the interaction between wild and domestic herbivores to determine the necessity of restricting domestic livestock use within SPAs. SPA planners appear to assume that the interaction is always competitive, but other experts believe the interaction is primarily symbiotic.

### III. Multiple Use Zones

To maximize the utility of public lands, and minimize the disruption of current economic activity, some countries with market economies have adopted regulations that allow for multiple uses within many protected areas. Great Britain, for example, has established a system of national parks that allows for a wide variety of uses, including grazing, limited forestry and mining, recreation, and tourism. The parks are managed by local authority, and special emphasis is given to preserving and assisting the local

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102 See discussion and recommendations concerning compulsory acquisition provisions of the Law on Land in Annex 1.

103 For information on Great Britain’s national parks, see David Harmon, *National Park Residency in Developed Countries: The Example of Great Britain, in Resident Peoples and National Parks: Social Dilemmas and Strategies in International Conservation* 33-39 (1991); see also R. Michael Wright, *Sharing the Wealth: The Needs of the World’s Rural Poor, Who Live Surrounded by Biological Riches, Must be Included in Plans for Preservation*, 68 NATURAL PARKS 24 (1994).
farming economy. Ecologically beneficial practices, such as maintenance of hedgerows by local farmers, are fostered through a system of financial incentives and reciprocal legal agreements.

The percentage of current and planned SPA land designated as "limited use" in Mongolia is unclear (one official estimated limited use land to comprise about two-thirds of SPA land). The grazer's rights within limited use areas are also unclear. The Law on Special Protected Areas allows for livestock in Limited Use Zones within Strictly Protected Areas and in Limited Use Zones within National Conservation Park. In National Park Areas (42% of all SPA land), "traditional livestock husbandry" is allowed in the Limited Use Zone. In Strictly Protected Areas (57% of all SPA land), however, only a limited number of livestock are allowed, pursuant to an "approved program and method," in the Limited Use Zones.

Recommendations:

- Amend the Law on Special Protected Areas or provide in supplemental regulations further detail on programs for determining allowable grazing levels in Limited Use Zones within Strictly Protected Areas. The programs should take into account not only the environmental goals of the SPA but also the impact on grazing communities. Provide for substantial herder representation in the designing of these programs.

- When expanding SPAs into new areas, designate the maximum amount of the new territory possible (consistent with the specific Stated purpose of the new SPA) as a Limited Use Zone.

- Experiment with cooperation agreements for resource management with local herding communities within SPAs. These agreements would be based on plans designed by the State and local communities which allowed continued grazing on the land in exchange for adoption of self-regulation mechanisms to achieve sustainable pasture land use and could provide for assistance by the local community in other areas of resource management within the SPA.

104 Mongolian Law on Special Protected Areas, art. 17(2).
105 Id., art 11(4).
ANNEX 1: FIELDWORK FINDINGS

This annex contains selected, representative findings from RDI interviews of state, aimag and sum officials, herders, farmers, pensioners, and urban residents in June, 1999, supplemented by references to the extensive fieldwork conducted by others over the last nine years. Views expressed are those of the interviewees, rather than of the authors, except where noted. The findings are arranged under the following topical headings: (1) Private Ownership; (2) Implementing the Land Law; (3) Special Implementation Issues for Different Land Categories; (4) Registration and Cadastre; (5) Special Protected Areas; (6) Water; and (7) Economic Incentives. In the interest of protecting confidentiality of our interviewees, we have ommitted names in many instances.

I. Private Ownership

Herders in Mongolia generally oppose individual private ownership of pasturelands. Their primary concerns are: (1) unsustainable grazing patterns in some areas (caused in part by interruption of traditional nomadic grazing patterns which spread impact on pastures over broad areas of land and over four seasons); (2) inadequate supply of land and flexibility in event of natural disaster such as severe winter storms and summer droughts—private ownership could prevent herders from relying on their traditional escape routes through and onto land occupied by others; (3) inequitable allocation of land into private ownership; and (4) scarcity of water resources and problems concerning access to water on privately owned land. Those few herders who favor privatization are often the very poorest and/or newest herders who have not been able to secure decent winter pastures within the current system.

106 RDI interviews with herders, senior state officials, and domestic and foreign livestock and pasturelands experts, 6/99. Herder and farmer residents held different opinions about privatization of farm and residential land and privatization of pastureland. Most herders we interviewed strongly favored full privatization of their residential land holdings, and recipients of land from the “Green Revolution project” (see section III.B.1 of this annex) favored full privatization of their small-scale (up to two hectares) arable land holdings.

107 RDI fieldwork interviews, 6/99. Most of the herders we interviewed moved from three to five times each year.

108 RDI interview with Dr. Batjargalyn Erdenebaatar, Mongolian Agricultural University Research Institute of Animal Husbandry, 6/6/99; and RDI fieldwork interview with a herder in Altanbulag sum, Töv aimag, 6/9/99. Even possession rights to pastureland could have disadvantages, as herders would have no place to go in the event of heavy snows or droughts.

109 RDI interviews with two renowned Mongolian livestock experts, 6/9/99. None of the herders we interviewed favored full privatization of pastureland, regardless of their wealth level and the length of time they had been herders.
Field research conducted in Arhangai and Dornogobi aimags in 1991-93,110 and in Gobi-Altaï, Zavkhan and Töv aimags in 1996-97,111 underlines the importance of highly flexible tenure arrangements to herders (and to the difficulties with pastureland privatization). For example, herders in the dry south of Dornogobi aimag must move their livestock 400-500 kilometers to neighboring aimags during the summer months to ensure sufficient fodder supply. Herders rely on difficult negotiations between aimags in order to continue their nomadic patterns.112

Residents we interviewed favored privatization of residential homes and household plots. Several people told us they would be willing to pay an additional amount to transfer their tenure from 60-year possession rights to full ownership, even if this would pose a financial burden. The primary reason cited was additional security for themselves and especially for their children.

Mongolians are concerned that ending the current prohibition on foreign land ownership (or holding of possession or use rights) would open the door to large-scale land purchases by the Chinese.113 They also fear that privatization of land into ownership would affect the same end, even if foreign ownership was formally prohibited. According to several officials, this fear (as it pertains to urban and agricultural land) is not ungrounded.

In one sum we visited, the administration had granted four-year use rights for a 6,000-hectare former state farm to a Chinese company. Local residents protested this decision and forced the sum administration to apply for approval from the aimag government (which the sum eventually received). The sum land administrator we interviewed said the law was unclear about their right to allocate land use rights to foreigners: the Law on Land prohibited it, but the Law on Foreign Enterprise allowed it.

II. Implementing the Land Law

A. Need for greater clarification of land rights

One Member of Parliament described several of the most acute problems arising from ambiguous pastureland rights under the current system.114 First, current use patterns cause pastureland degradation due to increasing numbers of livestock and changes of


111 Agriteam Canada, supra note 13, at A-46 (herders move approximately 50 kilometers between seasonal pastures for adequate forage).

112 Id.

113 RDI interview with Erdenebaatar, supra note 108; RDI interview with a senior government official, 6/7/99; RDI interviews with herders, 6/99.

114 RDI interview with a member of the Mongolian Parliament, 6/11/99.
herd composition (toward more goats for cashmere production). Second, sum and aimag governments experience a high level of conflict in pastureland management. Third, agricultural companies are increasingly unable to cultivate the land they possess, due to a drying up of state subsidies. New companies and individuals who could use the land productively are unable to access it and the land remains uncultivated. Fourth, urban areas lack land use planning, registration and mapping.

Herder families travel long distances at great costs between summer and winter pastures. Under the current system of ambiguous land rights these families face a serious risk of arriving to their traditional pastures to find someone else already occupying them for the season.115

Social and demographic factors have contributed to increased number of herding households, increased herd sizes, and increased competition for pastureland, competition for grazing land among herders. Livestock privatization in the early 1990s contributed to a net urban-rural migration, as people with newly acquired livestock moved out to the pastureland to escape high unemployment and tend their herds.116 The number of livestock in the country has increased by 1.5 million per year since 1991, largely because of “demand-side” factors (including a sharp decrease in export of meat to Russia and a decreased demand for meat from schools and hospitals on the former herding collectives within Mongolia). Another factor contributing to increased size of the national herd was the removal of herd limits per household that existed during the collective era.117 In Altanbulag sum, Töv aimag (located within 50 kilometers of Ulaanbaatar), livestock population doubled (from 30,000 to 70,000 head) between 1991 and 1999.118 One herder we interviewed in Altanbulag reported that many herders have migrated to the sum over the last three years from the western past of the country and

115 RDI interview with Erdenebaatar, supra note 108.

116 RDI interview with herders, 6/9/99. Several herders we interviewed in sums located within 100 kilometers of Ulaanbaatar were, in fact, recent migrants from the city. Others acknowledged that many new herders had migrated to their sum over the past several years. In one typical case, a herder told us 13 to 14 households now share the winter pastureland that used to be occupied by 10 households. Some of the new households came from other sums further from Ulaanbaatar, and others were first-time herders. One herder noted that the pastureland was more degraded than it was ten years ago, but attributed this to drought rather than overgrazing. See also Maria Fernández-Giménez, Landscapes, Livestock, and Livelihoods: Social, Ecological and Land Use Change among the Nomadic Pastoralists of Mongolia: Summary of Research Results 1994-1995 2 (April 13, 1999). (“The lack of employment in cities, towns and villages combined with spiraling inflation and the opportunity to acquire livestock through privatization led to dramatic urban-rural migration and a significant increase in the number of herding households. In Bayankhongor aimag, the number of rural households increased from 8,510 to 14,903 in 1993.”) See also Policy Alternatives for Livestock Development, supra note 110, at 9. (Urban-rural migration to Arhangai aimag began in the period preceding privatization, as families moved back to herding collectives to secure their livestock entitlements.)

117 The herd limit until 1989 was 50 animals per household in most areas and 75 animals per household in the Gobi. In 1990 the limits increased to 75 animals in most areas and 100 animals in the Gobi. Eventually these limits were completely removed. Policy Alternatives for Livestock Development, supra note 110, at 5.

118 RDI interview with an Altanbulag official, 6/10/99. One reason for this increase is the proximity of this aimag to Ulaanbaatar. Many people within the city had begun sending their livestock into outlying areas for local herders to tend. Also, big companies within Ulaanbaatar own livestock they keep in surrounding rural areas through contracts with local herders. We interviewed one herder household who grazed 100 sheep for an agricultural enterprise located in the sum center, in addition to her family’s 200 sheep. They told us this was common for herders in the area. See also Agriteam Canada, supra note 13, at A-61-62. (Many new herding households have entered Altanbulag sum from the city of Ulaanbaatar, from both neighboring and distant sums.)
Ulaanbaatar, causing a higher livestock density. The land manager of another sum (located within 50 kilometers of Ulaanbaatar) told us that many newcomers had recently entered the sum. Some come from the city to herd their animals in the countryside during the summer and then return to the city in the winter but leave their animals in the sum without registering them (sum rules require a newcomer to register their residence before they can receive possession rights to a winter camp). In another interview, a former collective farm member told us many people left the collective (located near the sum center) after privatization to become first-time herders. Fieldwork conducted in four ecologically different zones in 1997 underscored the trend toward increased herding households and herds. From 1991 to 1996, each of the areas studied experienced marked increases in the total number of privately owned livestock and total number of herding households.

Current herding systems raise equity concerns. In the winter, for example, poorer herding families are pushed out to the edges of the valleys by wealthier herders with “traditional” claims to the most desirable land. Since privatization of the herding collectives, social services (especially schools and medical facilities) have become increasingly concentrated (and so less accessible) in rural areas, increasing the burden on herding families located far from the sum and aimag centers. Detrimental effects of overgrazing may fall first and hardest on poorer families, according to fieldwork conducted by the Mongolian Ministry of Nature and Environment (MNE) in Khangai sum, Arkhangai aimag, and by Maria Fernández-Giménez in Bayakhongor aimag.

Current patterns also raise environmental and sustainability concerns. One Mongolian livestock expert stated that thirty percent of the pastureland is severely degraded. According to this expert, the only way to create incentives to avoid desertification and further degradation of pastureland is to issue possession contracts, although it will also be important to teach people how to take care of the land.

119 RDI fieldwork interview, 6/99. The sum government, this herder told us, charged a fee to these “new” herders. It was unclear whether this fee had any effect, or whether it was actually collected.

120 RDI fieldwork interview, 6/10/99.

121 Id. See also Agriteam Canada, supra note 13, at A-20. (The mean livestock holdings per herding household decreased in three of the four areas, while the disparity in wealth (in terms of livestock holdings) increased dramatically.)

122 See Agriteam Canada, supra note 13, at A-72. (Groups of wealthy herders in Altanbulag sum, Töv aimag, and Bulnai sum, Zavkhan aimag, have organized takeovers of pastureland used communally by other herders.)

123 RDI interview with an Altanbulag official, 6/9/99. See also Maria Fernández -Giménez, supra note 116, at 3. In the summer months, by contrast, it has become more and more profitable to move herds long distances away, as land around aimag and sum centers has become more degraded. Only the larger, more wealthy families are able to afford these moves and therefore to access the better pastureland. Several of the herding families we interviewed identified the cost of transporting their camps as one of their primary hardships. RDI fieldwork interviews, 6/9/99 - 6/13/99. Field research in four different areas found that new and poorer herders contributed disproportionately to an overall trend toward decreased distance and frequency of herder moves. Agriteam Canada, supra note 13, at A-62-65.


126 RDI interview with Erdenebaatar, supra note 108.
Increased year-round grazing on winter pastureland is one of the primary causes of degradation of these lands, according to many of the people we interviewed (including herders, farmers, sum and state officials). Fieldwork conducted by the MNE in 1997 explored overgrazing in two sums—Huvsugul sum in the semi-desert Gobi region and Khangai sum in the forested mountain region. The MNE found increased herd sizes caused severe overgrazing of winter pastures in both sums from 1992-1997, for the first time ever. (In Huvsugul sum, for example, the total number of animals increased by 26 percent between 1994 and 1996.\textsuperscript{127}) Several of the herders we interviewed in June were living and grazing their crops in areas traditionally used only for winter pastures.\textsuperscript{128} In one case, an older man who had been recently very ill stayed in the winter pastureland to stay close to medical facilities in Ulaanbaatar. This land was protected by a “green zone” established by the local government due to severe pasture degradation. (“I should probably not be here,” he told us.) He believed that year-round grazing on these pastures (by others) was ruining them for winter use, and that the sum government should make sure these pastures are preserved for winter months. Another herding family we interviewed now remained in their winter pastureland in the summer to stay closer to the schools that their daughters attended at the sum center. We interviewed one herder on land he identified as his winter camp, and observed a number of gers located within his camp boundaries. All of these gers, he told us, belonged to herding families who were grazing livestock on the winter pastureland.\textsuperscript{129}

Qualitative factors within the herds have also increased pressure on the pastureland. One problem is an increase in the relative number of goats in the herds, in response to high cashmere export prices. Goats are considered the animal within the herds with the most harmful impact on pastureland. A second concern is that herders can’t afford the best quality animals that would allow them to decrease herd numbers.

According to the land manager in one agricultural sum near to Ulaanbaatar, herders from the city and western Mongolia continued to encroach on cropland, causing conflict with local farmers. The sum administration created several protected crop zones, which pushed the herders onto concentrated areas of pastureland around two wells. This land is now severely degraded.

In Altanbulag sum, Töv aimag, the lack of clear possession rights for pasturelands creates significant problems due to conflicts from trespassing herders. The main problem is


\textsuperscript{128} In 1997 fieldwork interviews, herders in Tsetsen Uul sum, Zavkhan aimag, identified restricted availability of winter camps as the most serious constraint to grazing their herds. In Tsetsen Uul sum and Bulnai sum (also in Zavkhan aimag), the availability of winter camps decreased from 1991 to 1996. In Bulnai sum, the average number of households sharing a winter camp went from 3.6 to 4.7 over this time period. In Tsetsen Uul sum, 41 percent of herding households currently have no winter camp of their own. This percent continues to rise. Agriteam Canada, supra note 13, at A-60.

\textsuperscript{129} RDI fieldwork interview, 6/99. Like a previous interviewee, this herder cited severe pasture degradation in his winter pastures, but attributed it to a lengthy drought rather than the increased number of livestock he told us now grazed year-round in the area.
keeping winter pastures out of grazing in the summer and fall. Also, the current norm of accessibility to winter pastures (as discussed below, officials in Altanbulag believe the law does not allow them to allocate possession rights to pastureland) discourages herders from making long-term investments in the land (such as irrigation, fertilization, re-seeding, or windbreaks to prevent erosion). One herder in Altanbulag noted that possession rights would be good because they would encourage farmers to take better care of and actually improve their land. One state official told us that possession rights might also encourage long-term investment in herds, such as purchasing animals with higher productive quality.

Establishment of clear possession rights to land used by herders, farmers and other residents may also be necessary to protect their rights against “outside” users, such as Special Protected Areas (see Chapter 7, infra) or mining. According to an interview with a Mongolian official on 6/10/99, a Mongolian and Chinese joint venture was recently given mining rights to land in Ulaanbaatar. This land turned out to be occupied by gers, but the families living in them did not yet hold possession rights and so had limited defense when the joint venture company forced them to move. Another state official of the Department of Mining acknowledged that mining is not allowed on land held in 60-year possession contracts, but said that this was not a great problem for mining companies because so few possession contracts had been issued yet.

According to an official from the Strategic Planning and Management Department (within the MNE) herds reduce natural regeneration of the forests by eating and trampling seedlings and young trees (especially in the dry season). Promoting greater security of pastureland rights through allocation of possession contracts could reduce “spill-over” grazing in forest lands.

B. Sporadic Implementation

Implementation of the Law on Land has been sporadic to date. As of June 1999 some sums have issued possession contracts for winter camps but none have granted

130 RDI interview with Altanbulag officials, 6/99; Fernández-Giménez, supra note 102. (An influx of new herders into Bayankhongor aimag brought higher rates of trespassing and out-of-season grazing).

131 RDI fieldwork interview, 6/9/99. As noted above under the privatization section, this herder also expressed concern that possession rights would leave herders more vulnerable to regional heavy snows and drought.

132 RDI interview with senior state government official, 6/99. The official who told us this story used it to demonstrate the need for a uniform cadastre system so that such “mistakes” would not be made in the future. Had possession contracts been previously allocated to these families and registered with the city of Ulaanbaatar (under the current system), this should have been sufficient to provide the joint venture company (and the department of mining) with adequate notice that the land was occupied. Because no possession rights had been issued, the residents’ claim to their land vis-à-vis the mining company was not secure. This case may instead illustrate the importance of an efficient, rapid allocation of possession rights under the Law on Land using a simple registration process, rather than the need for complex mapping and cadastral rights prior to allocating possession rights.

133 RDI fieldwork interviews, 6/99.
possession contracts for the surrounding area of winter pasture. Other sums have allocated possession rights to some but not all of the winter camps, or have allocated possession rights but have not issued any certificates or contracts. Methods of issuing certificates or contracts also vary. In some cases herders must apply for them. In other cases the sum government distributes them to the households that have traditionally held winter camps within the sum. In one sum with a large amount of arable land, the government had distributed possession rights certificates to herders for their winter pastures and to residents located on the edge of town, but to very few people located in the sum center.

C. Herder Response

Herders we interviewed had mixed opinions on the usefulness of contracts for their possession rights to winter camps. Some were anxious to receive them. One herder in Altanbulag sum said she wanted a contract for these rights as soon as possible because she heard privatization of the rights might follow. Another herder told us he would use his contract to demonstrate his rights to an encroaching herder. Other herders who had received contracts were uncertain about their usefulness. One herder we interviewed (who grazed 200 of her own family’s sheep, 100 sheep for an agricultural enterprise located in the sum center, 100 of her own goats, 20 of her own horses, and 30 of her own cattle) had never heard of possession contracts.

D. Institutional Support

1. Level of knowledge held by local officials

In Altanbulag sum, Töv aimag, the government has allocated possession contracts to 100 percent of the herders for winter camps, but has not allocated any rights to winter pastures. According to an official we interviewed, the aimag government believes allocation of pastureland rights is necessary, but does not believe such allocation is legal under the Law on Land. The law, he told us, requires pastureland to be held in common use. To avoid what the local officials perceived as a prohibition on pastureland rights allocation, the government made a local rule allowing herders to have rights and responsibilities of the land within a three-kilometer radius of their winter camps.

Officials in more than one sum reported they had ceased allocation of possession rights while waiting for expected changes in the laws, such as a new cadastre law. They were unsure whether actions taken pursuant to current laws would be valid if new laws or amendments (e.g., to the Law on Land) were adopted, and did not want to take actions now if new laws would require revoking, repealing, or revising these actions.

A sum land manager told us the first possession rights certificates were issued in 1996. Now the sum center was trying to replace all the former certificates with new ones.

134 Interview with an official from the Department of Land Management and Real Estate Registration of Ulaanbaatar, 6/10/99. We did not encounter any cases in our fieldwork where possession rights had been allocated for winter pastureland (as opposed to winter camps).
issued in 1999. She did not understand why the certificates had been re-issued (it was unclear which level of government was responsible for the re-issue), told us only the “color of the paper” had changed, and that many people refused to buy the replacement certificate for the cost of 2,000 togrogs (about $7). This land manager also told us that possession certificates to household plots (for 25-100-year rights) could be inherited but not sold.

2. Dispute resolution

Conflicts over land exist within the current system. About 70 percent of these disputes are negotiated among the parties, who have a significant social investment to settle if they are from the same bag. When one party is from outside the bag, the dispute may go to the sum leader for resolution. About 5 percent of all disputes result in fistfights between the parties, according to one experienced researcher.

Fieldwork conducted in four different areas of the country in 1997 found increased congestion (or perceptions of increased congestion) and decreased mobility among herders since decollectivization resulted in a rising number of conflicts over pastureland. The incidence of conflict rose in each of the four study sites during this time period. Conflicts stemmed from trespassing (unauthorized use of winter pastures during the summer), “free-riding”, and mismanagement of possession rights by the sum government.

According to one senior central government official, the frequency of disputes over pastureland boundaries varies by region. Few disputes arise in the south Gobi because land is plentiful and distance between winter camps is great. Disputes arise constantly in other areas, however, where camps are closer together and herds wander between them. Most disputes are resolved informally, without involvement by the local administration.

A livestock expert agreed that border disputes exist within certain sums, and when herders come in from outside a given the sum during the winter. The sum often levies a fee on outsiders, making it hard to enter and at times creating conflict. Intra-sum disputes usually arise when the snow gets high in December and January, forcing

135 RDI interview with a senior Mongolian official on 6/6/99.
136 Id.
137 See Agriteam Canada, supra note 13, at A-68-74, for a good discussion of fieldwork findings on pastureland disputes.
138 Id. at 72. (“Trespassing and free-riding behavior has reached epidemic proportions” in Altanbulag sum, Töv aimag, and Bulnai sum, Zavkhan aimag.)
139 In Bulnai sum, Zavkhan aimag, the newly elected governor issued a resolution giving legitimacy to claims to winter camps submitted by newcomers whose parents customarily occupied the camps prior to collectivization. This resolution directly conflicted with actions of the former governor (a former senior official of the herding collective), who had already granted winter camp possession rights based on assignments made during collectivization. Some of the disputes arising from the divergent actions of the two governors have resulted in violence. Mistrust among herders and between herders and the sum government frustrates mediation attempts by the current governor. Id. at A-71.
people to move their camps within the sum. Most of these moves are conducted peacefully through informal negotiation among herding families.

In Altanbulag, according to sum official, disputes over allocation of possession rights to winter camps are submitted to the local parliament, then to the government. Judgment is based on factors such as whether one party’s father or grandfather occupied the site, and which party was there first. Only three or four allocations (one percent) have been disputed.

Disputes also arise between farmers and herders. Small farmers facing encroachment by livestock have appealed for help to the sum governments and Green Revolution program administrators. Sum administrators responded by prohibiting livestock from entering certain areas (drawn closely around the cultivated fields), and penalizing herders who allowed their animals to wander into these areas (sometimes by confiscating the animal itself). The sum administration did not appear to have established formal channels for herders or farmers who disagreed with specific instances of enforcement (or lack thereof) of the new rules.

3. Public Information

The level of knowledge about land rights varied substantially among the herders, farmers, and other residents we interviewed. Most herders knew the term length for possession contracts to pastureland was sixty years. Interviewees with possession rights to arable land were less sure of the terms. One interviewee (a herder who was also the bag leader and a sum administrator) had a vegetable plot in the sum center. Although he held a certificate for this plot, he did not know the length of the term for possession rights. Some people believed that possession and use rights were transferable through purchase and sale while others did not. Others believed that in the case of a “natural disaster” such as heavy winter snows, they would be able to move their winter camps into an area held in possession by another household.

Herders in Altanbulag sum, according to sum officials we interviewed, do not really understand the meaning of the contracts that have been issued for winter camps. Their tenure security derives from traditional norms in nomadic society discouraging trespass into a family’s winter camp.

Several households we interviewed were uncertain of the length of their possession right terms to houses and household plots. Many had not yet received certificates for their rights.

140 For further discussion of the Green Revolution program, see Chapter 3, infra.

141 See section V of this annex for discussion of disputes arising from conflicts between herders and administrators of Special Protected Areas.
III. Special Implementation Issues for Different Land Categories

A. Pasture Land

The Law on Land leaves room for a variety of statutory interpretations and flexible implementation. According to one Member of Parliament, the Law on Land could be interpreted (and has been interpreted) to allow possession contracts for winter camps only, or for winter camps and winter pastures. Flexibility is important. In some areas of the country, for example, pastureland within possession contracts could be demarcated by fences. In the southern steppe and the Great Gobi Desert, however, the herds roam over too much land to fence.

Flexible implementation may help the Law on Land meet the needs presented by a wide range of social and cooperative herding arrangements throughout the country. The degree of organization among herding families varies significantly throughout the country and within a geographic area. Most of the herders we interviewed in sums within 100 kilometers of Ulaanbaatar did not cooperate extensively with other herding families, or share a winter camp with other families. In other sums, closer cooperation is the norm. One senior and knowledgeable central government official believes that possession and use rights for winter pastures could be allocated in some areas to groups of two-six herding families. Herders in all areas, he said, could continue to use the summer pastures in common without any negative effects on animal husbandry.

A Mongolian livestock specialist opined that flexibility for aimag and sum governments may assist in implementation of the Law on Land, but only with much more detailed regulations explaining how to implement the law.

Access to water is an important issue under any scheme that allocates individual or group land rights, and different water sources in pasturelands around the country may require different access rules.

Different aimag and sum-level governments have in fact implemented possession rights to pastureland in different ways. In Altanbulag, according to sum officials, each family within a winter camp has its own contract for the land held in common with other families. The government automatically accepted and granted applications by all households for possession rights to their winter camps. The contract includes the name of the household, the area of land, and names of other households. All households

142 RDI interview with a member of the Mongolian Parliament, 6/11/99. (Source for remainder of paragraph except where otherwise noted).
143 RDI interview with Erdenebaatar, supra note 108; RDI interviews with sum officials and herding families, 6/99.
144 Interview with an official from the Department of Land Management and Real Estate Registration of Ulaanbaatar, 6/10/99.
145 RDI interview with a foreign livestock and pasturelands expert, 6/9/99.
within a winter camp share the same herd [N.B. This statement is not generally true], so few conflicts arise between them. The law, according to these officials, allows up to 700 square meters per household. If more than one household share a winter camp, the sum allocates them more than 700 square meters total but not the full 700 square meters per household. One official thought that this system was not sustainable, as families will want to break apart and have their own winter pastures. Another official disagreed, saying the high productivity of the pastureland in this area required continued communal use within traditional winter camp groups. Other sums have implemented the law differently, or have instituted their own requirements, such as registration of a herder's residential status within the sum before application for possession rights to a winter camp.  

B. Arable Land

1. The Green Revolution Program

The Mongolian government established the Green Revolution program in 1997 in order to alleviate poverty by allocating small plots of arable land to economically and socially vulnerable groups of people. The Green Revolution program allocated possession rights for up to two hectares of arable land to each of 100,000 households in 1998. Most have been poor, unemployed, pensioners, or households headed by single women. About fifty percent of the recipients were located in or around the three largest cities in Mongolia, which, according to the official in charge of the program, is where poverty is most concentrated. Most of the land comes from abandoned state farms. In its first year, the program increased domestic production of fruits and vegetables, decreasing the need for imports.

Green Revolution participants told us the process for receiving land was simple. For example, one woman heard a radio announcement about the program, applied, and less than a month later was able to choose a plot. Another recipient told us she presented a straightforward application and proof of her residence in the sum to the sum administration to receive the land. She received land within one month.

According to our field interviews, Green Revolution recipients receive only a portion of their potential legal land rights. For example, possession rights to Green Revolution plots were for five to fifteen years, rather than twenty-five years as allowed by the Law on Land. Several recipient households told us they had not yet received a certificate for their possession rights, and one interviewee told us she would not know the term of her possession rights until she received her certificate (which she expected over the next year).

146 RDI interview with sum official on 6/12/99; and RDI fieldwork interviews, 6/9/99 to 6/13/99.

One household that received two hectares of Green Revolution land in early 1998 was assessed a fee of 3,000 togrogs ($10)/year but had yet to pay it. The issue of payments, they said, was under discussion in the parliament.

A Mongolian livestock specialist told us that some land rights under the Green Revolution program have been granted on land that has traditionally been used for winter pastures, raising the possibility of conflict between herders and new Green Revolution farmers. Several Green Revolution farmers told us that herds encroached into their plots. Some had constructed fences to keep the animals out. In another case the local government enforced protection of the arable land by guarding it from stray livestock and fining encroachers (sometimes through confiscation of the animal itself).

Interest in the Green Revolution program by herding families was mixed. One herder we interviewed expressed interest in receiving Green Revolution land to grow vegetables on. Another interviewee expressed little or no interest.

Many members of a former collective farm within 50 kilometers of Ulaanbaatar had received land from the “Green Revolution,” according to one woman farmer. The plots were about one hectare each, depending on the size of the participating family’s household plot possession of small household plots in the sum center did not appear to disqualify families from receiving additional land through the Green Revolution. Families used most of what they produced for household consumption, and to give to friends and relatives who were herders in the countryside.

2. Rights to arable land in large farms

Agricultural companies are increasingly unable to cultivate the land they possess, due to decreased state subsidies.\textsuperscript{148} \textit{[note that the near-absence of rural credit and collapse of the banking sector in rural areas is the real underlying issue – investment need not depend on state subsidies]} The amount of traditionally arable land now out of production is approximately fifty percent.\textsuperscript{149} Many companies and individuals who could use the land productively are unable to access it because other companies hold possession rights, and the land remains uncultivated.\textsuperscript{150} One of the problems with this abandoned land is that the previous, collective-era requirement that uncultivated land be planted in perennial grasses is no longer enforced, so invasive and noxious weeds have taken hold over much of the abandoned land.\textsuperscript{151} This prevents the land from being used for grazing and increases the start-up costs of clearing and cultivation.\textsuperscript{152}

\begin{flushright}
148 RDI interview with a member of the Mongolian Parliament, 6/11/99. Only 307,000 hectares were cultivated in 1999, compared with 800,000 cultivated in the past. RDI interview with Erdenebaatar, supra note 108.

149 RDI interview with a senior state official, 6/6/99.

150 RDI interview with the Chief of the Food and Agriculture Division of the Strategic Planning and Unified Policy Department, Ministry of Agriculture and Industry, 6/99. This interviewee's views were similar: it is difficult to attract new agricultural companies considering the difficulty of resting the land from current rights holders.

151 RDI interview with Erdenebaatar, supra note 108.

152 Id.
\end{flushright}
Agricultural companies currently hold use rights to most of the arable land. Individuals hold rights to a very small percentage.\textsuperscript{153}

When agricultural cooperatives were “privatized” in the early 1990s, members received vouchers representing shares in the farm infrastructure but not in the land. Some farm members did not even receive shares in the infrastructure. After infrastructure vouchers were allocated they could be traded on a stock market or sold directly. In field interviews, former members of collective farms told us they had either not received a voucher or had sold it off at a low price to a person who now managed or owned the farm. In one case the interviewee had received only a small dividend on his share for one year (1996) two years before he sold it.

One interviewee who did not receive a voucher continued to work for his former collective after it privatized in 1991, until it went bankrupt in 1994. Since then he had worked for the sum administration doing odd jobs, but was “basically jobless.” He had no livestock, no household plot and no equipment to cut hay with.

A woman whose husband managed a large former state farm (now owned privately by a Mongolian company) described to us the farm’s ownership history. The state originally kept fifty-one percent of the farm’s assets, retaining majority control. The remaining forty-nine percent of the non-land assets were divided by the number of farm members (198). One hundred and ninety-eight shares were issued, each worth 7,000 togrogs (about $23). Members who sold their share relinquished all rights to the farm property. Members did not receive any certificate or written title representing their share in the farm assets. All of the 198 members sold their shares to the current owner, who now owned forty-nine percent off the company’s assets.\textsuperscript{154} In 1999, the state sold its majority share to a Chinese company which now held, interviewees believed, a five-year possession contract to the land. The Chinese company employed about half of the former state-farm workers.\textsuperscript{155}

The Mongolian agricultural company holds a fifteen-year possession contract with the right to renew for up to 100 years (subject to approval by the aimag government) for the forty-nine percent of the farm it owned.\textsuperscript{156} Although the company had the right to apply for a sixty-year contract, they chose a shorter term.

The Chinese company holds a four-year use right to the land according to the sum land management director. She said that granting these rights to a Chinese company was a volatile decision. She believed that the Law on Land prohibits foreign companies from

\textsuperscript{153} RDI interview with a member of the Mongolian Parliament, 6/11/99.

\textsuperscript{154} RDI interview with sum land manager, 6/12/99. The sum land manager confirmed that one person now owned 100 percent of the shares in the Mongolian company.

\textsuperscript{155} The farm history grew more complex in 1999, when the majority part (51 percent owned first by the state and then by the Chinese company) split off from the majority part, which continued to be held by a single Mongolian investor. The Chinese farm produces milk, while the Mongolian farm produces grains and vegetables.

\textsuperscript{156} RDI interview with sum land manager, 6/12/99.
holding use or possession rights, but the foreign investment law allows this. Due to the angry response from some residents at the sum government for granting these rights, the sum went to the aimag center for a final judgment.

C. Urban and Residential Land

One of the areas where the need for more formalized rights is most acute is in the peri-urban pasturelands just outside of Ulaanbaatar, now home to nearly fifty percent of the city’s population. These areas have become increasingly populated. Over 300,000 head of livestock now live within city limits. One reason is that herdsmen who also grow vegetables in small plots want to be near to the inner-city markets during produce season. The carrying capacity of these pastures is threatened. They are not regulated, and herds graze indiscriminately over all of the land. Possession rights to pastureland do not appear to have been allocated in these areas. Individual herders have few incentives for good stewardship.

While certificates for possession rights have been issued for much of the homestead land, these rights are not generally registered. A senior government official told us that settlers are entitled to sixty-ninety year use rights to their residential homestead land, but not full ownership (the Law on Land says up to sixty years). Privatization of “homestead” land is in dispute. Homestead owners do not register their rights unless they need a loan, in which case banks ask for a registration certificate as security. Although the maximum amount of land per ger is .05 hectares according to the Land Law, many interviewees reported that their homes and household plots exceeded this amount.

Possession rights have been allocated for only a minute fraction of the land within Ulaanbaatar city limits, through either application (usually by the current occupier) or by auction. Of the 25,000 hectares of land within the city (10,000 of which are used), rights have been allocated to only 468 hectares. Auctions only occur in the event of a dispute over possession rights during the application process. If a dispute arises, the land goes to auction even if one of the claiming parties currently occupies the land, although this party receives a priority right. Land subject to auction is usually unoccupied. The auctioned possession rights carry terms of fifteen to sixty years, with forty-year extensions. As of June 1999, the department had auctioned only eight parcels for a total of 1.8 hectares (a small fraction of the 468 hectares to be allocated through

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157 Interview with an official from the Department of Land Management and Real Estate Registration of Ulaanbaatar, 6/10/99; and RDI interview w ith Erdenebaatar, supra note 108 (Source for remainder of the paragraph except where otherwise noted).

158 Interview with an official from the Department of Land Management and Real Estate Registration of Ulaanbaatar, 6/10/99.

159 Interview with an official from the Department of Land Management and Real Estate Registration of Ulaanbaatar, 6/10/99. According to the interviewee, many contracts for possession and use of commercial buildings, however, have been issued within Ulaanbaatar (70-80% of all commercial and industrial enterprises have possession contracts).

160 The 10,000 hectares are used as follows: 4,000 in “homesteads”, or gers; 3,500 in apartments, government buildings, roads and infrastructure, 2,000 in industrial production, and 500 in commercial buildings.
auction or applications). An additional 200 hectares have been allocated through applications.

Once the rights to an apartment in Ulaanbaatar are privatized, the owner may sell the property after first registering the rights. The director of the Administration of Immovable Property Registration reported 7,700 registered sale transactions for all immovable property for the period of January-April, 1999. The transaction rate in 1998 was similar.

IV. Registration and Cadastre

A. Registration of residences within city limits.

We interviewed residents on their way to and from the immovable property registration department in Ulaanbaatar. Interviewees said they wanted to register their apartments and receive a certificate of possession in order to feel secure in their ownership of the property, to make their rights “seem more real," and to “guarantee” their rights. One interviewee said registration would give the owner the right to sell, gift or inherit the land. Several people (both those interviewed outside the registration department and herder households interviewed in the countryside) said they wanted to register their rights and receive a certificate simply because others were doing it.

B. Land descriptions

A livestock specialist told us he believed that the initial cadastral/soil survey called for by the law would take fifteen-twenty years to complete, and that updating/redoing it every five years would be physically impossible. He further stated that recording even basic land use (which land is used for winter camps, summer and winter pastures, etc) would take more than seven years.

Current possession contracts to winter camps (where they have been issued) do not appear to include rigid fixed boundaries. The contracts do not mention exact areas of land, but use geographic names for land parcels.

One state official commented that some within Mongolian government wanted to combine mapping and registration in the “cadastre”. He believed this would be a mistake, and that the government should focus first on registration.

Current maps may be sufficient for allocating land rights. The Department of Land Management and Real Estate Registration in Ulaanbaatar (responsible for registration of all rights to land—but not improvements to land—within Ulaanbaatar) keeps a general map which enables it to allocated land parcels tied to fixed points. Although they successfully allocated nearly 500 parcels using this map, they decided to cease issuing
any further certificates until the new law on cadastre was adopted. As a result, over 60,000 applications were outstanding in June, 1999. According to an official in the Government Agricultural Implementation Agency in charge of the Green Revolution program, maps from the Soviet period were sufficient for allocating possession rights to agricultural land.

The land manager of one sum explained that upon application for possession rights to a field, she accompanies the applicant to the plot, takes measurements and sketches the boundaries. She recorded this information at the sum administration. No boundary disputes had arisen after allocation of land rights in either the residential areas or the winter camps.

V. Special Protected Areas

The State plans to expand the land in Special Protected Areas (SPAs) to fifteen percent of the national territory by 2001, and to thirty percent by 2030. The head of the Environmental protection Agency within the Ministry of Nature and Environment claimed that there is no opposition to these plans. He stated that the greatest challenges for expanding SPAs come from mining, tourism, and grazing. About two-thirds of the SPAs will be designated as “limited use” land, allowing for some multiple use. Within limited use zones, grazing is allowed at regulated densities. The government is also formulating regulations to allow increased use of SPAs for grazing in times of “natural disaster” affecting livestock. According to these officials, not many conflicts with herdsmen have arisen, partly because the SPA areas are not always strictly enforced. Many herdsmen currently “move in” to the SPA areas for seasonal use.

A Mongolian specialist on livestock management offered a different view on conflicts between herdsmen and the newly established SPAs. Rules for SPAs have been strictly enforced in some areas (especially in the Gobi), he said, resulting in displacement of some nomadic herdsmen from their traditional pastureland. These herdsmen have not been compensated. Herdsmen have also been displaced, without compensation, from the Takhi horse reserves. Enforcement on SPA territory in the Mountain Steppe areas is also taking place. Officials, for example, have evicted some bee boxes (hives) traditionally kept in this area by bee farmers.

Fieldwork conducted in Altanbulag sum, Töv aimag, and Erdene sum, Govi-Altai aimag, in 1997 also found a growing number of conflicts between administrators of protected areas and herdsmen. At this time, the state proposed to further restrict herder activities on

161 Interview with an official from the Department of Land Management and Real Estate Registration of Ulaanbaatar, 6/10/99. Although department officials cited no shortcomings of their previous method of allocating possession rights using the existing map, they decided they could not proceed until a “good cadastre map” was established.

162 RDI interview with the head of the Environmental Protection Agency (within the Ministry of Nature and Environment), 6/9/99; and RDI interview with the Director of Special Protected Areas, 6/99 (source for the remainder of paragraph).
the reserve by upgrading it to National Park status.\textsuperscript{163} As a “reserve,” the area allowed a restricted level of use within buffer zones, which in this case are the customary winter grazing pastures of local herders. As a National Park, all use by herders would be prohibited within this area. According to the fieldwork report, this proposal was “strongly resented by local herders, who threaten to shoot the wild horses if they are prevented from gaining access to their customary grazing.”\textsuperscript{164} In Erdene soum, bordering the Great Gobi Strictly Protected Area, conflicts with herders have not been as prevalent as land is more abundant and the area set aside is not customary grazing ground. Herders have traditionally used this area in times of heavy winter snows, however, and want to negotiate access rights in the event of an emergency (although all such use is currently prohibited under law).\textsuperscript{165}

\section*{VI. Water}

Access to water appears to be an acute issue for many herders. Some wells are state-owned and some are privately owned. Whether all herders have a right to access water, free of charge, is currently under dispute.

According to one herder we interviewed in Altanbulag soum, the wells are not being sufficiently maintained. A herder from another soum identified a broken well-engine as one of his family’s biggest problems.

A land manager in an agricultural soum told us access to water is a constant problem for the farmers. Faced with increasing prohibitions on access to crop land from the sum government, herders gathered in small areas around two wells, causing degradation of these pastures.

Fieldwork conducted by the MNE in Huvsugul soum (in the semi-desert Gobi region) found limited water supply was a dominant factor in overgrazing of certain areas within a given bag. Although the bag contained a sufficient amount of ungrazed pastureland to support recent increases in herd size, herders were unwilling or unable to move their livestock away from known water sources.\textsuperscript{166}

In the Tsetsen Uul soum of the Gobi-Altai aimag, access to water has become an increasing restraint to pastureland use since decollectivization, according to fieldwork findings in 1997.\textsuperscript{167} Before 1991, the collective maintained current wells and sank new ones when necessary. Twelve out of fourteen wells in the bag studied had fallen into disrepair in the past few years. The reasons they had not sunk new wells, herders explained, were

\begin{footnotes}
\begin{enumerate}
\item Agriteam Canada, \textit{supra} note 13, at A -74.
\item \textit{Id.}
\item \textit{Id.}
\item Ministry of Nature and Environment, \textit{Huvsugul Soum Guide} 45 (December 1997).
\item Agriteam Canada, \textit{supra} note13, at A -46.
\end{enumerate}
\end{footnotes}
that they could not afford to do so individually, did not know how to proceed on a collective basis, and did not know where to locate the wells.\textsuperscript{168}

**VII. Economic Incentives.**

One well-recognized livestock expert expressed interest in regulating livestock by creating economic incentives, both penalties and fees, to discourage pasture degradation. Another idea is to use fees on the land to regulate the number of livestock.

This expert also believes some effort in addition to allocating possession contracts will be required to encourage good stewardship of the pasturelands. Regulation of herd sizes is one alternative. Another might be to provide financial incentives for purchase and/or breeding of better quality livestock which will produce more per head, reducing the necessity for sheer numbers.

\textsuperscript{168} Id.
ANNEX 2: OVERVIEW AND ANALYSIS OF PRIMARY LAND-RELATED LAWS OF MONGOLIA

This annex includes an overview and initial analysis of the three foundational pieces of Mongolia's legal framework for land relations: the Constitution, the Civil Code, and the Law on Land. Descriptive discussions of the legal provisions are followed by a listing and discussion of the related potential problems and ambiguities.

I. Constitution of Mongolia

The constitutional provisions concerning land are generally adequate, but do contain several potential problems or ambiguities which are listed and discussed at the end of this section. The Constitution recognizes all forms of both public and private property.\(^{169}\) The state retains ownership of all pastureland, forests, subsoil, and water resources.\(^{170}\) The Constitution authorizes the State to allocate private ownership of other types of land to Mongolian citizens only.\(^{171}\) It does not allow foreign ownership of land.\(^{172}\) Foreign nationals, legal persons, and stateless persons may receive land leases from the State.\(^{173}\) Mongolian citizens may also transfer possession (but not ownership) rights to foreign nationals and stateless persons, but only with State permission.\(^{174}\)

The State retains the right to take land from landowners for special public needs and with the provision of either other land or due compensation.\(^{175}\) The State also reserves the right to confiscate land if it is “used in a manner adverse to the health of the population, the interests of environmental protection and national security.”\(^{176}\) The Constitution also guarantees Mongolian citizens the right to “fair acquisition, possession, and inheritance of movable and immovable property.”\(^{177}\)

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169 The Constitution of Mongolia (1992), art. 5(2).
170 Id., art. 6(2). The prohibition on private ownership on pastureland, historically a common-property (but not necessarily an open-access) resource in Mongolia, has precedent in numerous countries and is not in itself problematic. See discussion in Chapter 2, infra. State ownership of subsoil resources is also maintained in numerous countries that allow for private ownership of land (including Portugal, Mexico, Chile, and Russia). See Renée Giovarelli & Tim Hanstad, Land Ownership in Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia: A Comparative Perspective, supra note 69, at 23-24.
171 The Constitution of Mongolia 1992), art. 6(3).
172 Id.
173 Id., art. 6(5).
174 Id., art. 6(3).
175 Id., art. 6(4), 16(3).
176 Id., art. 6(4).
177 Id., art. 16(3).
Potential Problems and Ambiguities

1. State’s broad rights to confiscate land. Although law in a few other transition economies allows for confiscation of land, no developed market economies allow for such confiscation. The threat of confiscation, especially for such a broad range of circumstances, can substantially threaten land tenure security which will lower land values, act as an impediment to investments in land, and become an obstacle to land market development. These problems could be mitigated without changing the constitution if the constitutional provisions concerning confiscation were not followed by enacting legislative language. The Law on Land, however, as discussed below, does contain such provisions.

2. Legal persons cannot own land. While this is not explicitly prohibited, Article 6(3) states that private ownership can be given only to citizens. The Civil Code does allow for legal persons to hold indefinite use rights to land. While this makes the non-allowance of land ownership by legal persons less problematic, indefinite use rights are an imperfect substitute. The purpose for not allowing legal persons to own land is not clear. In some other transition economies in Central and Eastern Europe, policy concerns that both foreign and domestic enterprises would buy up all the newly privatized land in the early stages of privatization led to a similar prohibition (which was sometimes applied only to agricultural land). Such prohibitions, especially when they apply to non-agricultural land, present substantial constraints to private sector enterprises that need both land and credit (which is often accessed using mortgages) to conduct business.

3. Prohibition on foreign ownership of land. This provision, while potentially problematic, is much less of a problem than the two discussed above. Many if not most countries discriminate against foreign ownership of land through various restrictions and regulations, although few have outright prohibitions such as Mongolia’s. Mongolia’s outright prohibition of foreign ownership is unlikely to become a significant impediment, however, so long as foreigners can obtain long-term and transferable non-ownership rights to land.

4. State ownership of water resources. The significance of this provision as a problem depends upon the definition of water resources. It is probably not a problem if it is to refer only to land under, and shorelines, of sizable or nationally significant bodies

178 See Brian Schwarzwalder, Compulsory Acquisition in Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia: A Comparative Perspective supra note 69, at 227-47.

179 See Giovarelli & Hanstad, supra note 170, at 25-27. Developed countries almost always allow enterprise ownership of land. Most of the exceptions or restrictions are narrow and apply only to agricultural land. Id., 35-36.

180 For further discussion, see Chapter 2, infra.

181 See discussion on restrictions for foreign ownership of land in section IV.B of chapter 2, Private Ownership of Land, infra.

182 See Hodgson et al., supra note 21.
of water. Unfortunately, the Law on Land appears to define “water resources land” very broadly, such that nearly all land in the country could be categorized as “water resources land.”

II. Civil Code

As in most civil law systems, Mongolia’s Civil Code provides a comprehensive foundation of the country’s private law. The Civil Code provides that other civil law must be consistent with the Code. The Code is divided into seven parts, two of which (property law and contractual liability) contain articles directly relevant to land rights. These land-related provisions are generally adequate. In at least two cases, they help to resolve part of a potentially problematic constitutional provision. The land-related Civil Code provisions do, however, contain a few potential problems and ambiguities which are noted throughout this section.

The Code repeats the constitutional provisions concerning state ownership of pastureland, forests, water, and all subsoil. It further provides that areas under “public and special use” must be owned by the State. Importantly, it appears to allow state-owned land to be allocated into the ownership of provinces or districts (aimags, the capital city, sums, and duuregs). Other types of land may be owned “only by the citizens of Mongolia,” but only after the establishment of procedures for private ownership of land.

Importantly, the Code provides that owners are entitled to possess, use, and dispose of their property at their discretion according to law. It also provides that owners are entitled to transfer their rights to others who are entitled to possess, use or dispose of the things within the definite authority given by the owner according to law or contract. Owners may not violate the rights or legitimate interests of other owners and holders by the exercise of their own rights of ownership.

183 The Lithuanian constitution takes a less restrictive approach to this issue by providing that the state maintains ownership of nationally significant internal waters and forests. Such constitutional language offers a more flexible approach as later law can designate which bodies of water or forests are nationally significant.

184 Article 15 of the Mongolian Law on Land states that “[l]and containing bodies of water such as rivers, lakes, ponds, springs, glaciers, and riparian zones shall be referred to as Water Resources Land.”

185 Civil Code of Mongolia (1994), art. 87.
186 Id.
187 Id., art. 144.
188 Id., art. 87(4). The implicit prohibition on enterprise ownership, especially for non-agricultural land, has already been noted as a problem.
189 Id., art. 100(4); see also art. 141(2).
190 Id., art. 87(1).
191 Id., arts. 75(3), 88(1).
192 Id., art. 87(3).
The Code states that the competent State authorities located at the place where immovable property (land and things attached to land) is situated shall register it in accordance with the procedures prescribed by law.\textsuperscript{193} It appears that the State authorities are to register the immovable property regardless of whether it is under state, local, or private ownership.

The Civil Code also recognizes a variety of non-ownership rights to land. These non-ownership rights include possession rights, use rights, lease rights, and limited use rights (servitudes). Non-owners are entitled to possess, use, and dispose of property within the definite authority given by the owner according to law or contract.\textsuperscript{194}

The Code places no limits on the duration of any of the non-ownership rights, although it clearly envisions that limits on duration may be established by law or contract.\textsuperscript{195}

The Code provides that a citizen may acquire lifetime possession rights to land under state ownership in accordance with the grounds and procedures established by law, as well as the right to transfer that land by inheritance.\textsuperscript{196} Moreover, unless otherwise provided by law or contract, a citizen with the right to lifetime inheritable possession may transfer the land to another’s use subject to its utilization and terms.\textsuperscript{197}

The Code states that “unless otherwise provided by law,” a legal person (entities or organizations)\textsuperscript{198} may be granted the right to use land under state ownership for an indefinite period.\textsuperscript{199} Owners of buildings and other immovable property on land owned by another may also acquire the right to use the land for an indefinite period.\textsuperscript{200}

The specific attributes of possession rights and of use rights are not detailed in the Civil Code, although it appears that possession rights are superior to use rights. The Code does contain relatively greater detail on limited use rights (servitudes)\textsuperscript{201} and lease rights.\textsuperscript{202}

The Code’s provisions for leasing of property, notably, are located in Part Four of the Code titled “Contractual Liabilities,” rather than in Part Two titled “Property Law” like the above-mentioned provisions. This is important because it appears to provide a

\textsuperscript{193} Id., art. 77(3).
\textsuperscript{194} Id., art. 88(1).
\textsuperscript{195} See, e.g., id. arts. 268(1), 88(1).
\textsuperscript{196} Id., art. 103(1).
\textsuperscript{197} Id., art. 103(3).
\textsuperscript{198} Id., art. 21.
\textsuperscript{199} Id., art. 104(1).
\textsuperscript{200} Id., art. 104(2).
\textsuperscript{201} Id., arts. 108-111.
\textsuperscript{202} Id., arts. 265-281.
distinction between the possession and use rights in the property law section and these lease rights in the contract law section. If the law is interpreted to make this distinction and “possession rights” and “use rights” in the property law portion are not “lease rights,” then two important implications follow (one positive and one negative for the non-owning land right holder).

First, according to civil law theory and civil law as recognized in most countries, property rights (ownership rights, possession rights, and use rights) typically have several important advantages over contract rights, including lease rights. For example, property rights have the nature of confronting all persons and legal persons, while contact rights can be asserted only against the specific person who is the party to the contractual relationship. This means that a holder of a property right can invoke state protection against interference from all the world and can assert his right against any infringer or trespasser. A contract right is a right against an individual party. If the party who holds a contract right is somehow prevented from performing it by actions of a third party, the holder of the right has no action against the third party. Furthermore, property rights have priority over contract rights if both rights exist on one item of property at the same time. In cases of mortgage, for example, a holder of a property right will have preferential rights relative to a holder of a contract right.

The second consequence of an interpretation distinguishing possession and use rights from lease rights is that the Civil Code’s provisions governing lease (Articles 265-281) may not apply to possession and use rights. Some of these provisions provide real benefits to the non-owning right holder such as Article 274 which gives lessees preemptive rights if the property is subleased or sold.

With regard to the State’s compulsory acquisition of land for special public needs, the Code essentially repeats, with some additional detail, the constitutional provisions. The Code allows the State to “take over” land on the grounds of “special public need” and land that has been granted for construction of agricultural dwellings, houses, or other buildings and facilities if it is not used according to its designated utilization. The taking must be based on a government decision. The State must provide compensation or (if the parties agree) other land. Unless otherwise provided by law or contract, the compensation shall include the value of the land and immovable property

203 Article 281 of the Civil Code states that “[t]he procedures for leasing land shall be established by law.” The Mongolian Law on Land, however, does contain the word “lease” (but it does address possession rights and use rights in detail). See discussion of Land Law below.

204 This means that if the property being leased is sold by the owner to another party, the lessee must first be given the opportunity to purchase it on the same terms.

205 See Civil Code of Mongolia, arts. 112-113.

206 Id., art. 112.

207 Id., art. 114.

208 Id., art. 112(2).
on it as well as other expenses incurred as a result of the taking. Any disputes concerning the taking or compensation are to be decided by a court.209

The Civil Code, following the constitutional provisions,210 allows the State to confiscate land of landowners and other land holders who have violated the law by using the land contrary to the health of others, ecological interests, or national security.211 The Code instructs the government to establish a grace period during which the landholder may remove the illegal use and avoid confiscation.212 This grace period helps to lessen the potential problems inherent in the state’s ability to confiscate land.213

**Potential Problems or Ambiguities**

1. Distinctions between possession and use rights in the property law section and lease rights in the contract law section are not clear. Are possession rights and use rights as defined in the property law section also “lease rights” as defined by the contractual liabilities section? Do the provisions concerning lease in the contractual liabilities section apply to possession rights and use rights? The Civil Code should provide explicit answers as it will have important consequences for the nature of these rights, as discussed above.

**III. The Mongolian Law on Land**

The Land Law was adopted in 1994 and became effective in April 1995. The law’s stated purpose is to regulate the possession, use, and other related issues of land by citizens, economic entities, and organizations.214 In general, the law is a decent piece of legislation, although it does appear to contain some problems and ambiguities. From a comparative perspective and considering Mongolian needs, the law can serve Mongolia quite well if it is: (1) slightly revised; (2) followed with well-drafted accompanying regulations; and (3) effectively implemented.

The Law on Land defines six classifications for land: agricultural land,215 urban and settlement land,216 public infrastructure land, forest land, water resources land, and

209 Id., 113(4).
210 Mongolian Constitution, art. 6.
212 Id., art. 116.
213 See the discussion of the constitutional provisions on confiscation, above, and the discussion of Law on Law provisions concerning confiscation, below.
215 Id., art. 11.
216 Id., art. 12. Urban and settlement land contains a sub-classification of land called “Common Use Land” that is defined as [s]treets and squares in cities, villages and other settlements, as well as camps, entertainment and sport facilities, parks, cemeteries, garbage sites and treatment areas not possessed by citizens, economic entities or organizations . . . .” Id., art. 12(2).
reserve lands. The law also defines the institutional rights and responsibilities of various central, regional, and local governmental bodies concerning land relations.\textsuperscript{217}

The law provides for and further defines four types of land rights: ownership rights, possession rights, use rights, and limited use rights. Notably, it does not include any provisions on lease rights. The remainder of this section is arranged along topical lines. It will discuss important Law on Land provisions concerning: land ownership rights; possession rights; use rights; limited use rights and common use; allocating non-ownership rights; land fees; land rights of foreigners; land use regulations; compulsory acquisition; land records; and land disputes. Each subsection will first discuss the law’s important provisions concerning the topic and then list and discuss potential problems related to those provisions.

\textbf{A. Land Ownership Rights}\textsuperscript{218}

Land ownership is defined as “the management of land with the right to dispose thereof within the framework allowed by law.”\textsuperscript{219} It generally repeats the Civil Code provisions in stating that land, other than that owned by Mongolian citizens, is owned by the State.\textsuperscript{220} It does not allow for land ownership by legal persons or for foreign citizens. Mongolian citizens are given the right to own land other than pastures, common-use land, and “land for state special needs.”\textsuperscript{221}

The hierarchy of non-ownership rights to land provided in the Land Law starts with possession rights, then use rights, and then limited use rights. They are discussed below.

\textbf{B. Possession Rights}

Possession rights may be held by citizens, economic entities, and organizations of Mongolia.\textsuperscript{222} All are given the preferential right to possess land in the district (sum or duureg) where they reside.\textsuperscript{223}

Holders of possession rights may keep them for a period of up to sixty years, and have the right to extend the duration for up to forty-year periods if they have complied with the terms of land legislation and the land possession contract.\textsuperscript{224} An exception exists for

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{217} Id., arts. 20-24.
\item \textsuperscript{218} For a more comprehensive discussion of land ownership see chapter 2, Private Ownership of Land, infra.
\item \textsuperscript{219} The Mongolian Law on Land (1994), art. 3(2).
\item \textsuperscript{220} Id., art. 5(1).
\item \textsuperscript{221} Id., art. 5(2).
\item \textsuperscript{222} Id., arts. 27(1), 6(1).Foreign citizens and legal persons may not hold possession rights.
\item \textsuperscript{223} The exact nature of that “preferential right” and how it may be exercised is not further detailed in the Law on Land.
\item \textsuperscript{224} See supra note 219, arts. 29(1), 33(1)(5).
\end{enumerate}
\end{footnotesize}
cultivated land. The initial possession (or use) term for cultivated land cannot exceed twenty-five years and cannot be less than five years (although it appears that extensions may be up to forty years).\(^{225}\)

The law places limits on the size and location of land to be possessed. The size of the fenced ger or house land to be possessed by a citizen for family needs is not to exceed 500 square meters.\(^{226}\) In addition to the fenced ger or house land, citizens may possess up to another 1,000 square meters of land for family needs such as vegetable, fruit, and fodder cultivation.\(^{227}\) Note that these limits apply to each citizen, not to households. The law states that the Government “shall establish” the maximum size of land to be possessed by economic entities.\(^{228}\)

Importantly, holders of possession rights do have some ability to transfer their rights. This is somewhat confusing and has been misinterpreted by several international consultants who have stated that possession rights are not transferable. The term “land possession” is defined in Article 3 of the Land Law as a management right with “no right to dispose thereof.”\(^{229}\) Article 33, however, in listing the land possessor’s rights provides that possessors have the important right “to partially or completely transfer the land possessed for use by others” pursuant to approval by the body which granted the possession contract. Note that a possessor cannot transfer or “dispose” the possession right, but can transfer a use right to another. Importantly, a citizen holding a possessory right may transfer it through inheritance.\(^{230}\)

Holders of possession rights have the rights to use the land according to the purposes in the possession contract, the same right held by land users. However, holders of land possessory rights, unlike holders of use rights, can require violators to compensate for damaging the land.\(^{231}\)

The Law on Land also places numerous obligations on land possessors including complying with the land use provisions in the land legislation, paying land fees in a timely manner, and respecting the rights and legal interests of others concerning land possession and use.\(^{232}\)

\(^{225}\) Id., art. 53(2).
\(^{226}\) Id., art. 28(1).
\(^{227}\) Id., art. 28(2). Sum and duureg khurals may establish lower ceilings for this additional family land.
\(^{228}\) Id., art. 28(5). Sum and duureg governors are to establish the size and location of land to be possessed by economic entities and organizations. Id., art. 28(6),(7).
\(^{229}\) Id., art. 3(3).
\(^{230}\) Id., art. 29(1).
\(^{231}\) Id., art. 33(1).
\(^{232}\) Id., art. 33(2).
Possession rights can end by expiration or termination. Expiration occurs when the contract term ends, the land possessor dies or disappears without heirs, and when the possessor requests that the contract be ended.\textsuperscript{233} The person who provided the land possession contract (often the sum or duureg governor) can also terminate the right “pursuant to administrative procedures” if: (1) the possessor consistently or seriously violates legislative and contract obligations; (2) the possessor uses land in a manner inconsistent with human health, environmental protection, and national security interests; or (3) the land is taken for State special needs.\textsuperscript{234} The termination issues are discussed below in the subsection III. H on regulating land use and subsection III. I on compulsory acquisition.

**Potential Problems or Ambiguities**

1. Possession rights to cultivated land are shorter than for other types of land. The law only allows twenty-five-year possession rights to cultivated land (for the initial term), while sixty-year rights are allowed on other land. Long-term rights to cultivated land are at least as important, if not more important, than such rights on other land because farmers need the motivation of long-term tenure security in order to make investments on the land.

2. Limited transferability of possession rights.\textsuperscript{235} The law allows holders of possession rights to transfer rights, but contains two limiting conditions. First, the holder of the possession right may only transfer use rights, which cannot be further transferred. Second, the possessor must obtain permission from the body that initially granted the possession right. Lawmakers in Mongolia should consider whether each or both of these restrictions are necessary. What purposes do these restrictions serve, and can those purposes be served with less limiting restrictions? Presently, these restrictions place a significant impediment to the ability of individual economic actors to effectively respond to what is sure to remain a very fluid economic situation by transferring or obtaining rights to land.

3. Low ceilings for land possessed for residential and family needs.\textsuperscript{236} The 500 square meter limit per citizen for fenced ger or house land and the 1,000 square meter limit for household garden or fodder land is too low. Many existing fenced ger and house plots, especially in rural settlements, are considerably larger, often between 0.10 and 0.15 hectares. The successful “Green Revolution” Program, currently offers possession rights to up to 2.0 hectares for garden plots. The existing size restrictions should at least be increased to accommodate the situation on the ground. Moreover, lawmakers should

\begin{itemize}
\item \textsuperscript{233} Id., art. 34(1).
\item \textsuperscript{234} Id., art. 34(2).
\item \textsuperscript{235} For a more comprehensive discussion of the transferability of possession rights, See chapter 6, Expanding Transferability of Possession Rights to Land.
\item \textsuperscript{236} For a discussion of (and more specific recommendations concerning) land ceilings in Mongolia, see sections III and IV.A of chapter 2, Private Ownership of Land, and section III of chapter 4, Expanding Transferability of Possession Rights to Land, infra.
\end{itemize}
consider distinguishing between ceilings on land acquired directly from the government and that obtained through a secondary market.

4. Lack of clarity on whether legal persons can have possession rights of indefinite term. Article 104 of the Civil Code provides for indefinite terms for legal persons unless otherwise provided by law. Article 29 of the Law on Land states that land may be possessed by “citizens, economic entities, and organizations of Mongolia for a period of up to sixty years.” Taking both of these together, it is not clear whether legal persons that are not “economic entities” or “organizations” can have rights of an indefinite term.\(^{237}\)

**C. Use Rights**

Use rights to state-owned land may be held by citizens, economic entities, and organizations pursuant to the specific purposes, duration, and conditions established by contract and in accordance with legislation. Use rights may be obtained directly from sum or duureg governors,\(^ {238}\) or by contract from those who hold possession rights.\(^{239}\)

Land users are subject to the same obligations as land possessors, but they have lesser rights. In particular, land users may not: (1) require violators to compensate damage caused to the land; (2) transfer their land rights; or (3) extend their contract upon expiration of the contract term.\(^{240}\)

Although the Land Law limits the duration of possession rights and the amount of land that may be held with possession rights, the law does not explicitly limit the duration of use rights nor the amount of land that may be held with use rights.

**Potential Problems**

1. *Use rights cannot be transferred.*\(^ {241}\) Lawmakers should consider allowing transfers of use rights with the approval of the body that granted the use right.

2. *No limit on term or size of land held under use rights.* The law places limits on the duration of possession rights and the size of land held under possession rights, but places no corresponding limits for use rights.\(^ {242}\)

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237 See also article 21 of the Civil Code which defines “legal persons” with some confusion and without using the term “economic entity.”


239 *Id.*, art. 38(4).

240 *Id.*, arts. 33, 39.

241 See discussion in chapter 6, *Expanding Transferability of Possession Rights to Land*, infra.

242 The limit on the term length for possession rights will itself limit the term for use rights that derive from possession rights. However, use rights may also be granted directly from the government in which case no duration limits exist.
D. **Limited Use Rights and Common Use**

The Land Law provides for other non-possessory rights that can be likened to easement and servitude rights in other countries. In the Mongolia Law on Land, these include both “limited rights” to land and “common use”.

Owners of immovable property have the right to demand limited use rights on land possessed or used by others for a variety of purposes including constructing physical infrastructure such as roads, power lines, and communication lines. The limited land use right is to be created pursuant to an agreement between the land possessor or user and the person demanding to use the land with limited rights. If the exercise of the limited land use right makes the land unusable for its original purposes, the land possessor or user may terminate the limited right. If the possession or use of land subject to limited land rights is transferred, the limited rights are preserved.

Even without a limited land use right, persons may enter or cross land used or possessed by others if: (1) the land is not specially protected by means such as a warning sign prohibiting entrance or a fence; and (2) entering or crossing the land will not damage the land.

Land possessed or used by others may also be used for “Common Use” for a defined period of time. This “common use” designation may be based on a prior agreement or contract, but it may also be based on a governmental administrative decision based on “essential social needs.” The agreement or designation of land possessed or used by others for “common use” may be accomplished “with or without fees.”

Certain types of land can always be “commonly used” (if not otherwise indicated by law) regardless of whether the land is allocated for possession and use by others. These types of land include: (1) water sources in pastures and saltlick areas; (2) Common

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243 The Mongolian Law on Land (1994), art. 43(1).
244 Id., art. 43(2).
245 Id., art. 43(3).
246 Id., art. 44(1).
247 Id., art. 42(1).
248 Id., art. 40.
249 Id., art. 40(1).
250 Id., art. 40(2).
251 Id., art. 40(1), (2).
252 Id., art. 38(2).
Use land in cities, villages, and settlement areas; transportation and network land; forest resources land; and water resources land.

**Potential Problems**

1. The terms “Common Use” and “commonly used” are not adequately defined and thus confusing. The law does not define the term “Common Use” or “commonly used” even though these terms occur throughout the law. It is not even clear if “Common Use,” “common use land,” and “commonly used” have the same meaning. Article 12(2) provides that land in cities, villages or settlement areas (one of six land classifications in the law) that is not possessed by citizens, economic entities, or organizations and used for certain purposes such as streets and squares, camps, entertainment and sports facilities, parks, cemeteries, garbage sites and treatment areas shall be referred to as “Common Use Land.” Article 40 addresses using land for “Common Use,” but it does not appear that “Common Use” as used in Article 40 is referring to “Common Use Land” in Article 12, because Article 40 mentions that land possessed or used by others can be designated for “Common Use” and Article 12 includes in the definition of “Common Use Land” that such land is not possessed by others. Furthermore, “Common Use Land” in Article 12 only applies to land in cities, villages, and settlement areas. The references to land that is “commonly used” in Articles 38(2) and 51(3) would not appear to directly overlap with either Article 12 “Common Use Land” or Article 40 “Common Use” land. All of these terms need to be specifically defined. How are the terms “Common Use” land and “commonly used” to be specifically defined? Do they mean open access? If not, common use by what defined group of people? And what are the extent of the rights and obligations of those group members who do not have allocated possession or use rights when others do have such allocated rights?

2. Allowing for “common use” of land that has already been allocated for possession or use may substantially decrease the benefits or value of the allocated possession or use right. Article 38(2), in a broad-sweeping manner, provides that several large categories of land are to be commonly used even if possession or use rights have been allocated to some or all of that land. Article 40 also allows for designating any state-owned land for Common Use even when it has been allocated for possession or use. These provisions threaten to significantly decrease the benefits or value of allocating possession or use rights to that land. Of course, much will depend on how “common use” and “commonly used” are specifically defined (see preceding paragraph). What is the meaning or value of having an allocated possession or use right to a specific parcel of land if that land is subject to common use?

253 *Id.*, Common Use Land in cities, villages, and settlements is defined in Article 12(2) of the law.

254 *Id.*, Transportation and network land, forest resources land, and water resources land are three of the six land classifications defined in chapter two of the law (Articles 10, 14, 15, and 16). The other three classifications are: agricultural land; cities, villages, and settled areas land; and reserve land. *Id.*, arts. 10-12, and 16.

255 *Id.*, “Common Use” (with capital letters) is used in Articles 12(b) and 40. Article 24(1) and 24(2) refer to “common use land” (with lower-case letters. Articles 38(2) and 51(3) refer to land that is “commonly used.”
3. It appears that only owners of immovable property (and not possessors and users) can hold limited use rights as defined in Article 43. Possessors and user of land, as well as any person or legal person eligible to hold such rights, should be eligible to obtain limited use rights. This would be consistent with corresponding law in other countries.

4. The law gives owners of immovable property, in a broad range of circumstances, the right to demand limited rights to land possessed or used by others. Although the limited right must be created pursuant to an agreement, the possessor or user of the right is given no right to contest or resist the demand unless the limited right makes the land unusable. Owners, possessor, or users of land should be given greater rights to contest those who seek to obtain (rather than demand) limited use rights to land they own, possess, or use.

E. Allocating Non-Ownership Rights

The Land Law gives sum and duureg governors the authority to grant both possession and use rights to citizens, economic entities, and organizations. Those desiring possession or use rights to a certain land parcel submit requests to the governors. The governors must publish the requests to determine if any other person is interested in possession or use of the land parcel.

Governors then decide whether to grant the request. If they do, a written decision must include information about the land possessor or user, the land, and whether the possession or use is single or joint. A refusal must also be in writing and include justification for the refusal. If two or more persons request possession or use of the same land, the governor must choose between them after considering where the applicants reside, their payment ability, the purpose and efficiency of the proposed land use, and the impact on the land and environment.

Land possessors can also allocate use rights to the land they possess, but only with the consent of the legal body that gave them possession. Such use rights must be reflected in a written contract.

256 Id., art. 43(1).
257 Id., art. 43(2).
258 Id., art. 43(3).
259 Id., art. 31.
260 Id., art. 30.
261 Id., art. 30(5).
262 Id., art. 31(2).
263 Id., art. 31(3).
264 Id., art. 38.
If possession or use rights are allocated based on a decision by a sum or duureg governor, the possessors or users must enter into a written contract with the government. The law specifies what is to be included in such a contract. The governor’s office must also grant a certificate to the possessor or user and register the contract with the State Registry.

**Potential Problems**

1. Those requesting possession rights must submit a map with their application. Article 30 requires that citizens, economic entities, and organizations include a “map showing the size, location, and administrative and territorial jurisdiction of the land to be possessed.” The law does not specify the minimum standards for the map. This may be a problem if creating such a map involves significant expenditures for the applicant. If the map standards are high, making this requirement an expensive one, persons or legal persons with limited resources will be precluded from obtaining possession rights to land.

2. Requirement that state certificate on land characteristics and quality accompany a land possession contract may delay legal recognition of possession rights. Article 32(3) provides that a “State certificate on characteristics and quality for land allocated for possession shall be attached to the land possession contract.” As discussed below, the detailed assessment necessary to complete such a state certificate will be time-consuming and costly. Formalization or legal recognition of the possession rights should not depend on or wait for such a certificate. Instead, the signed possession contract itself should be sufficient evidence of the legal right of possession.

3. Conditions and procedures for altering or taking land under possession rights should be uniform. Possession contracts are to include the “conditions and procedures for altering or taking the land possessed with compensation.” The Article implies that such conditions and procedures could be uniquely specific to each possession contract. The conditions and procedures for altering or taking the land with compensation should be uniform and established by law. Including those conditions in the possession contract is a good idea, but they should not be separately negotiated for each contract.

**F. Land Fees**

The Land Law provides that those possessing or using land are to pay a land fee pursuant to both legislation and their possession or use contract. The Land Law anticipates that subsequent law will set ranges for the land fee amount, as well as the procedures for land fee discounts and exemptions. Land fee revenues are to be

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265 Id., art. 32(2).
266 Id., art. 32(1).
267 Id., arts. 30(2)(2), 30(3)(4).
268 Id., art. 32(2)(9).
deposited in the local budget with an “appropriate” part spent on land protection and restoration. 269

A Land Fee Payment Law was passed in April 1997 that identifies land fee payers, sets criteria for calculating the level of land fees for various categories of land, establishes payment procedures, and provides exemptions.

G. Land Rights of Foreign Citizens and Legal Entities 270

The Land Law does not allow foreign citizens and legal persons to hold ownership or possession rights to land in Mongolia. 271 Foreign citizens and legal entities may hold use rights to certain types of land. 272 The Land Law does not specially restrict the purposes for which foreign legal entities may use land, the duration of the use term, or the amount of land used. The law does, however, place such restrictions on land use by foreign citizens. First, only foreign citizens (and stateless persons) “permanently” residing in Mongolia can use land for household or production purposes. Second, land may be used by foreign citizens for terms of up to five years (with extensions not to exceed five years). 274 Third, foreign citizens may not use land for livestock husbandry or crop cultivation. 275

Potential Problems

1. Use restrictions for foreign citizens are significantly different than those for foreign legal persons. The law contains significant use restrictions for foreign citizens that do not exist for foreign legal persons. The reasons for the differing treatment are not clear. Moreover, lawmakers should consider the possibility that foreign citizens might easily avoid the restrictions by forming a legal entity.

H. Efficient and Rational Land Use and Protection 276

The Law on Land contains numerous provisions (including an entire chapter) aimed at requiring or encouraging those who use land to do so “rationally,” “efficiently,” and in a manner that protects and conserves the environment. Article 4 sets the basic

269 Id., art. 7.
270 See also related discussions in section IV.B of chapter 2, Private Ownership of Land, infra.
271 See supra note 238 ,arts. 5, 6.
272 Id., art. 6(2).
273 Residing in Mongolia for more than 183 days. Id., art. 47(1).
274 Id., art. 47(2).
275 Id., art. 47(3).
276 For a more comprehensive discussion of land use requirements in Mongolia, See chapter 7, Land Use Requirements, Monitoring, and Enforcement, infra.
277 “Use” is defined here in the broad sense, not in the narrow sense of “use right” as distinct from a “possession right.”
framework by providing that: (1) all land shall be under state control and protection; (2) land shall be used efficiently and rationally according to conditions and stipulations stipulated by law; and (3) activities contrary to human health, environmental protection, national security, and environmental balance shall be prohibited.

Sum and duureg governors are to conduct control over whether land possessors and users are using and protecting land efficiently, rationally and in accordance with law and contract in their territory.

The “efficient and rational land use and protection” requirements placed upon land possessors and users are numerous, broad, and restrictive. Land possessors and users must, at their expense, “preserve land characteristics and quality, as well as to prevent the reduction of soil fertility, overgrazing of vegetation cover, soil erosion, degradation, drought, saturation, salinization, pollution, and chemical pollution caused by nature or human activities.” They must also “immediately restore eroded and damaged land,” “prevent adverse impacts to the environment and land due to the use of land,” and even prevent activities with potential adverse impacts to the environment and land.

The law anticipates, but does not designate or create a “certified Organization” that will be charged with overseeing “efficient and rational land use and protection.” Land possessors will be required to obtain, at their expense, an environmental impact assessment from the certified organization before developing land use proposals, introducing new technology on their land, or using chemicals or fertilizers that have not been tested in Mongolia. Permission from the certified organization is also required before constructing buildings or installing equipment that may have an adverse environmental impact and before storing and discharging wastes. Land possessors must also inform local government authorities and local residents before engaging in these activities.

278 The Mongolian Law on Land (1994), at art. 4(1).
279 Id., art. 4(2).
280 Id., art. 4(3).
281 Id., art. 23(2)(2). Articles 33(2)(2) and 39 obligate land possessors and users to “comply with legislation on efficient and rational use of land, protection of the land, and environmental protection and the common requirements . . . in relation to land use.”
282 Id., art. 49(1).
283 Id., art. 49(2).
284 Id., art. 49(4).
285 Id., art. 49(6). Possessors and users must also: maintain and restore land changed due to tests experiments, and mineral exploration; and preserve and protect land with small forested areas, rare and endangered animals and plants, and cultural and historical monuments. Art. 49(3), (5).
286 Id., art. 50(1).
287 Id., art. 50(2).
288 Id., art. 50(3).
The law requires the “Certified Organization” to prepare a “state certificate on land characteristics and quality” for all land. The certificate is to include a substantial amount of information, including thickness of the fertile soil layer, contents of decomposition, soil and chemical pollution, changes in land surface characteristics, changes in vegetation cover, and changes in the composition of pasture and hayfield plant species.

These certificates (and the associated evaluations and measurements) are to be conducted once every five years and also upon the expiration of possession and use rights. The expenses for the initial state certificate on a given land parcel will be financed from government budgets, but land possessors and users will be required to finance the expenses of subsequent certificates. Indicators on land characteristics and quality gathered from the periodic evaluations will be compared to the initial indicators to determine if the land has decreased in quality. If land or environmental quality has decreased, those responsible face punishment, up to and including confiscation of the land.

The person who made the decision on the initial allocation of possession rights (usually the sum or duureg governor) is authorized to terminate those possession rights under various circumstances, including when: (1) the possessor commits consistent or serious violations of land law obligations and contract conditions; or (2) the land use is contrary to human health, environmental protection, and national security interests.

If the land possession right is terminated for the above-stated reasons, the land possessor is not entitled to compensation. While this is consistent with the Civil Code’s allowance that the State may confiscate land of landowners and other landholders who have violated the law by using the land contrary to the health of others, ecological interests, or national security, confiscation is an unduly harsh remedy. Furthermore, the Civil Code instructs the government to establish a grace period.

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289 Id., art. 55(1), (4), (5).
290 Id., art. 55(2).
291 Id., art. 55(5).
292 Id., art. 55(7).
293 Id., art. 55(1).
294 Id., arts. 55(6), 58, 59, and 34(2).
295 Id., art. 31(1).
296 The official English-translation of the law reads “and”, but it should probably read “or”.
297 See supra note 238, art. 34(2).
298 Id., art. 35(2), which in these cases (consistent and serious violations of land law and possession contract or use contrary to human health, environmental protection, and national security interests) provides that “all expenses related to the land release shall be covered by the former land possessor.” While “all expenses related to the land release” does not necessarily include compensation related to the prematurely terminated land right, the law has no provisions providing for compensation in these circumstances.
period during which the land holder may remove the illegal use and avoid confiscation.\textsuperscript{300} The Law on Land does not establish such a grace period.

In addition to the general rules on efficient, rational, and protective use that cover all land categories, the Law on Land contains special rules for pasture land,\textsuperscript{301} hayfields,\textsuperscript{302} and cultivated land.\textsuperscript{303}

1. Pasture Land

Article 51 provides rational use and protection of pasture land and contains appropriately broad, decentralized authority to sum and duureg governors (in cooperation with the appropriate certified organization) to regulate the use of pasture land, whether or not possession or use rights have been allocated to that land.\textsuperscript{304} The law allows, but does not require, allocation of either individual or group possession rights to pasture land. The governors are to regulate pasture use with a general schedule for winter, spring, autumn, and summer settlements “pursuant to the traditional system.”\textsuperscript{305} They are to allocate summer, autumn and reserve pastures to bag and khot ail for common use.\textsuperscript{306} Governors may also take measures for pasture protection such as release of pasture that has been overgrazed and whose carrying capacity has been exceeded, or limit the number of livestock.\textsuperscript{307}

2. Hayfields

Sum and duureg governors, in cooperation with the appropriate certified organization, are also given authority to initiate land management for hayfields and take measures for their protection, but their scope of authority appears less broad than for pasture land.\textsuperscript{308} The governors are to annually allocate hayfields for use by citizens, economic entities, and organizations, but such allocation is to be based on a schedule established by the bag and khoroo public khurals.\textsuperscript{309} The governors can require those who are allocated rights to hayfields to protect them, and the law flatly prohibits grazing in hayfields from May 15 to September 1.\textsuperscript{310}

\textsuperscript{300} Id., art. 116.
\textsuperscript{301} See Mongolian Law on Land (1994), art. 51.
\textsuperscript{302} See id., art. 52.
\textsuperscript{303} See id., art. 53.
\textsuperscript{304} Id., art. 51(2), (5).
\textsuperscript{305} Id., art. 51(3).
\textsuperscript{306} Id.
\textsuperscript{307} Id., art. 51(6).
\textsuperscript{308} Id., art. 52(1).
\textsuperscript{309} Id., art. 52(2).
\textsuperscript{310} Id., art. 52(2), (3).
Potential Problems

1. In general, the regulation regime for protecting land and ensuring its rational and efficient use places onerous and complicated requirements on private possessors and users. The legal requirements placed upon possessors and users in Article 49 appear well-meaning, but are overly broad and restrictive. The provisions are too broad unless they are to be accompanied by standards or definitions and too restrictive because owners need not be forced to take actions that are likely to be within their own interest. Legislators should understand that private possessors and users with continuing rights have their own interests in efficiently using and protecting land, so such strict control by the state may not be needed. Furthermore, the strict requirements may place an unduly heavy and costly toll on private possessors and users that could lower the value of land rights and stifle economic activity. This is particularly true if (as is the case currently) the penalties or potential penalties are extreme.

2. Confiscation for failing to meet the protection and rational use requirements may be unduly harsh. More problematic than the requirements themselves are the penalties for not meeting the requirements. The consequences of violating the land use requirements include confiscation, which is fairly draconian. The authors are unaware of any developed market economy that allows for confiscation of land as a result of land use violations. The potential for confiscation creates tenure insecurity for land possessors and users (as well as prospective purchasers and mortgagees). Lawmakers should consider less draconian alternatives such as a forced sale or lease (with proceeds to the possessor). In any case, the Law on Land should, consistent with the Civil Code, require the governing authorities to notify the land possessor or user and allow them some time to correct the violation before confiscation (or any other severe penalty) is enforced.

3. Environmental impact assessments are required for an overly broad range of circumstances. Article 50 requires land possessors, at their own expense, to obtain an environmental impact assessment even when they are introducing new technology and obtain government permission for installing equipment. This could cover an excessively broad range of circumstances, and could be excessively costly to land possessors and user and administratively burdensome for the government. Lawmakers should consider more strictly defining the circumstances under which an environmental impact assessment and government permission is required.

4. The process of preparing state certificates on land characteristics and quality appears excessively burdensome and costly. The regime required by Article 55 that involves frequent and extremely detailed assessments of soil characteristics and quality is likely to involve more administrative capacity than the government has and more costs than land possessors and users can afford. The overall costs would appear to far outweigh the benefits. Lawmakers should study the costs and administrative machinery necessary for this process and consider a scaled-down monitoring regime. Alternatives might involve an initial evaluation followed by less frequent follow-on evaluations on a small number, but representative sample of land parcels (and at the state's expense).
5. Definition of pasture land is confusing. Article 51 defines pastureland as “land allocated for livestock husbandry” which implies that unallocated land used for grazing is not pasture land for purposes of the law.

6. Definition of “commonly used” in Article 51(3). Article 51(3) provides that “[s]ummer, autumn, and reserve pastures shall be allocated to bag and khot ail and be commonly used.” Does this mean commonly used only by members of the bag or khot ail or commonly used by all, even those outside the group?

I. Compulsory Acquisition

The law in most countries allows the government to compulsorily acquire private rights to land, as long as the land is needed for a public purpose and the government compensates for the taking. The Mongolia Law on Land contains such provisions that allow the government to take back land, thus prematurely terminating possession rights, when the land is needed for “special needs.” “Special Needs Land” includes a wide variety of public purposes.

Possession rights normally expire when the contract term ends, the land possessor dies or disappears without heirs, or the land possessor requests early termination of the possession contract. However, the law also allows for early “termination” of land possession rights. The person who made the decision on the initial allocation of possession rights (usually the sum or duureg governor) is authorized to terminate those possession rights under a variety of circumstances, including when the land is taken for State special needs.

If the authorized government organization decides to prematurely terminate the possession rights in order to take the land for special needs, it must obtain the agreement of the land possessor and provide compensation. The compensation is to

311 Special Needs Land includes: land under state special protection; border strip lands; land allocated for ensuring national defense; land for foreign diplomatic purposes or for international organizations; state livestock herding roads; inter-aimag reserve pastures; state fodder resource hayfields; land for state travel, tourist, and treatment centers; scientific test sites; and permanent environmental and weather prediction observation sites. Id., art. 18.

312 Id., art. 34(1-1).

313 Id., art. 34(1-2).

314 Id., art. 34(1-3). The law does not specify whether the request for early termination is automatically allowed, although Article 35(3) indicates that early termination may not be automatic. If early termination is not to be automatically allowed, the law should specify who is authorized to make the decision and under what criteria.

315 Again, the provisions on involuntary termination refer only to possession rights and not to use rights. It would appear that termination of the underlying possession right would result in termination of the use right, but that is not explicit in the law. The law does provide that land users are not entitled to compensation from the state when land is taken. Id., art. 37(1).

316 Id., art. 31(1).

317 Id., art. 34(2).

318 Id., art. 36(1), (2).
include the value of immovable construction, other property, and the costs for land release estimated at the time. The law is not clear as to whether the “costs for land release estimated at the time” includes the fair market or economic value of the possession rights being taken. The compensation for the land possessor is transferred from the State central budget to the sum and duureg governors, who then forward the compensation to the land possessors. This applies, it appears, even if the regional or local government is taking the land for its special needs.

The Law on Land provides the central, regional, and local governments another alternative when they need land possessed by others for special needs. Instead of prematurely terminating the possession rights which requires both consent of the possessor and compensation, the government may proceed to use the land without terminating the possession right according to Article 40.

Article 40 of the law allows government authorities to use land possessed by others for “Special Needs” or for “Common Use” without terminating the possession rights. This may be done based on a prior agreement with the land possessor, or without such agreement if it is based on “essential social needs.” In both cases, this may be done either with or without fees. If it is used (for either special needs or common use) based on a prior agreement, it must be for a certain time period, but if based on essential social needs (thus not requiring a prior agreement), the special needs use or common use may continue “until the needs finish.”

Potential Problems

1. The law does not make clear whether a request by the land possessor for early termination of possession rights automatically results in such termination. The law should provide clarification on this point. If a request for termination of possession rights by the possessor is not to automatically result in such termination, then the law should clarify who makes the decision and on what criteria.

319 Id., art. 37(2).
320 Id., art. 37(3), (4).
321 “Common Use Land” is defined in Article 12(2) as “[s]treets and squares in cities, villages and other settlements, as well as camps, entertainment and sport facilities, parks, cemeteries, garbage sites and treatment areas not possessed by citizens, economic entities or organizations.” (italics added). Furthermore, Article 38(2) provides that certain types of land “shall be commonly used if not otherwise indicated by law regardless of whether it is allocated for possession and use by others.” (italics added). These categories of land include: water sources in pastures and saltlick areas; Common Use land in Cities, Villages, or Other Settled Areas; Transportation and Network Land; Forest Resources Land; and Water Resources Land. Art. 38(2). It is not clear whether the Article 40 takings for “Common Use” refer only to the narrower definition of “Common Use Land” in Article 12 or the broader definition of “commonly used” land in Article 38.
322 Id., art. 40(1). Article 32(2)(9) provides that a land possession contract between a land possessor and the government authority granting the possession right should include “conditions and procedures for altering or taking the land possessed with compensation.”
323 Id., art. 40(2).
324 Id., art. 40(1).
325 Id., art. 40(2).
2. Governing authority must obtain voluntary consent of land possessor in order to terminate possession right when taking the land back for “Special Needs”. Nearly every land law regime in the world, including private landownership regimes in developed countries, allow governing authorities to compulsorily take privately held land for important public purposes so long as the government provides compensation to the dispossessed land right holder. In Mongolia’s case, requiring consent from the land possessor is even more problematic because it provides an incentive for the government to apply Article 40 rules that allow the government to use the land without terminating the possession right and without providing compensation.

3. The law does not make clear whether the compensation afforded the possessor upon a taking includes the fair market value of the remaining possessory right. Article 37 should clarify that when a governing authority takes back land possessed by others, that the compensation afforded the land possessor include the fair market or economic value of the possession right taken.

4. Central government provision of compensation upon takings may encourage regional and local governments to take back land for special needs. The central government, as well as aimag, capital city, sum, and duureg governments may take back land possessed by others for special needs. However, Article 37 provides that the compensation for the land possessor come from the central government even if the land is taken for regional or local government needs. This may provide an unnecessary incentive for regional and local governments to take back land. The requirement is especially puzzling because the land possession fees go to the local budget and not the central budget.\textsuperscript{326} Requiring the governing authority that is taking the land to provide the compensation to the land possessor sets up a more reasonable set of incentives by forcing the land taker to shoulder the costs of the taking.

5. Article 40 allows governing authorities to accomplish a taking without compensating the land possessor. Law in nearly all developed market economies prevents governing authorities from taking land held by private possessors or owners without compensating that possessor or owner. Articles 36 and 37 in Mongolia’s Law on Land provide for such compensation when the governing authorities terminate possession rights in order to take back land for special needs. However, Article 40 undermines the rights of private possessors by allowing the governing authorities to use their land for “Special Needs” or “Common Use” without compensating the possessor. Article 40 should be changed to require compensation.

6. Definition of “Common Use” in Article 40 is unclear. Article 40 provides that governing authorities can declare land used or possessed by others to be used for “Common Use”. However, the definition of “Common Use” in Article 40 is unclear. “Common Use Land” is defined in Article 12(2) as “[s]treets and squares in cities, villages and other settlements, as well as camps, entertainment and sport facilities, parks, cemeteries, garbage sites and treatment areas not possessed by citizens, economic

\textsuperscript{326} Id., art. 7(3).
entities or organizations” (italics added). Furthermore, Article 38(2) provides that certain types of land “shall be commonly used if not otherwise indicated by law regardless of whether it is allocated for possession and use by others.” (italics added). These categories of land include: water sources in pastures and saltlick areas; Common Use land in Cities, Villages, or Other Settled Areas; Transportation and Network Land; Forest Resources Land; and Water Resources Land. Art. 38(2). It is not clear whether the Article 40 takings for “Common Use” refer only to the narrower definition of “Common Use Land” in Article 12 or the broader definition of “commonly used” land in Article 38.

7. The Law on Land lacks compulsory acquisition provisions for privately-owned land. The law’s provisions on compulsory acquisition refer only to possessory rights and not to private ownership rights. Private land ownership is currently permissible under the Law on Land, but the government has yet to enact a law to allocate such private landownership rights. New provisions concerning government compulsory acquisition of private landownership rights will be necessary at such a time that private ownership rights are allocated.

J. Land Records and Registration

The land records provisions in the Law on Land (except for the provisions on state certificates on land characteristics and quality) are fairly general and broad, and thus will likely require more detailed regulations to govern specific implementation. Article 26 states that Unified Land Territory records should include information concerning allocation status to land possessors and users, land size, assessment, payment, characteristics, and protective activities in the administrative and territorial units. These records are to include a map.327

Each year, the sum and duureg governors are to write a current Unified Land Territory report, and submit it to the aimag governors who, in turn prepare a report and submit it to “the authorized government organization.”329 This organization must then present a unified report to the government.330

Potential Problems

1. Relationship or interface between the land records and the State Registry is unclear. The law calls for the establishment of “Records on Unified Land Territory” and requires registration of possession contracts with the “State Registry,” but it is unclear how or whether the information in the land records will interface with the land information in the State Registry.

327 Id., art. 26(1).
328 Id., art. 26(2).
329 Id., art. 26(4).
330 Id., art. 26(5).
K. **Land Dispute Resolution**

Article 56 of the law provides the general rules for settlement of land disputes. Many, if not most types of disputes are to be settled administratively without a defined role for the courts. The article categorizes disputes into four categories. First, land disputes involving possession or use rights between a governor and a citizen, economic entity, or organization are settled by the organization or official of a level higher than the governor involved.\[331\]

The second category involves disputes concerning possession or use rights between citizens, economic entities, and organizations. They are to be settled by the governor of the corresponding level.\[332\]

The third category is disputes concerning land characteristics and quality and the efficient and rational use of land and its protection. These disputes are to be settled by the official in charge of the appropriate certified organization or the governor of the corresponding level.\[333\]

The final category involves limited use right (easement and servitude) disputes and ["land property"] disputes. These disputes are to be settled by the courts.

If a party to a dispute in the first three categories disagrees with the decision, they may appeal to an official or organization of a level higher than the original decision-maker.\[334\]

**Potential Problems**

1. **No role for courts in most land disputes.** Disputes in three of the four categories are to be resolved administratively, and even the single appeal allowed by law is an administrative appeal. The law should explicitly allow parties to appeal these administrative decisions to the courts. For disputes involving takings of land, this would be consistent with Article 113(4) of the Civil Code.

2. **Disputes on land characteristics, quality, and protection can be resolved by a party to the dispute.** Many, if not most, disputes on land characteristics, land quality, efficient and rational use, and land protection are likely to be between a land possessor and either the certified organization charged with monitoring land use and quality or the governor who allocated the possession right. Yet the law provides that such disputes are to be settled by the official in charge of the certified organization or the governor.\[335\]

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331 *Id.*, art. 56(1)(1).
332 *Id.*, art. 56(1)(2).
333 *Id.*, art. 56(1)(3).
334 See supra note 301, art. 56(2).
335 *Id.*, art. 56(1)(3).
This creates a clear conflict of interest and concentrated, unchecked power in the hands of the certified organization and the governor.
ANNEX 3: SUMMARY OF RECOMMENDATIONS

This annex is a compilation of the recommendations offered throughout the main body of the report. It follows the organization of the report.

I. Introducing Private Ownership

A. General Recommendations

- Enact enabling legislation introducing private ownership rights for residential land.
- Enact enabling legislation allocating underlying ownership rights to arable land to former members of state farms.
- Enact enabling legislation introducing private ownership rights for arable land to individuals only for amounts of up to 100 hectares.
- Do not introduce private ownership for pastureland.

B. Size Restrictions on Privately-Owned Landholdings

- Increase existing limits on the amount of fenced garden plot land that citizens can hold with possession rights to 0.15 hectares and 2.0 hectares, respectively. Clarify that these limits apply only to the primary land market and not to the secondary market.
- Set limit on amount of arable land that an individual citizen can receive from State (in either possession rights or private ownership rights) at 100 hectares. Clarify that individual citizens combining their landholdings in common possession or common ownership can receive up to 100 hectares multiplied by the number of common possessors or owners. Clarify that these limits apply only to the primary land market.
- Set limit on the amount of arable land that an economic entity can receive from the State in possession to 6,000 hectares. Require that the land be held in common possession by the workers and shareholders of the economic entity.
- Avoid applying size restrictions on land obtained through the secondary land market. If such restrictions are to be applied, maximum size restrictions should apply only temporarily, apply to legal entities as well as persons, be set on a regional level, and be set at a level much higher than the maximum applied to the primary land market.
C. **Restrictions on Foreign Ownership of Land**

- Until popular opinion and strong political opposition changes, generally maintain the current restrictions on foreign ownership, possession, and use of land.
- Create one exception, allowing a foreign creditor or heir to possess (or own if private ownership is allowed) land for a limited time period of one year if they receive that land through a foreclosure or succession proceeding.

II. **Implementing Mongolia's Land on Land**

While certain provisions of the Mongolian Law on Land should be amended, the primary immediate problems with the Land Law involve its implementation and are twofold: (1) the lack of adequate institutions and processes to facilitate its implementation; and (2) an over-emphasis, in implementation, on surveying, mapping, and record-keeping, and an under-emphasis on a comprehensive allocation of legally valid possession rights to all categories of land.

Priorities in implementing the Land Law should include adequate regulatory guidance, institutional support, and public information to allow aimag (or district) and sum (or duureg) governments to make the best choices for their own jurisdiction.

A. **Implementing Regulations**

- Adopt State regulations clearly defining procedures for application for and protection of land rights established in the Land Law. Regardless of variations in aimag and sum-level implementation policies, the application procedure itself, and the protection of a party's rights once granted, should be uniform.

- Attach to these regulations sample or model forms for license agreements, certificates for possession rights, and contracts for transfer of possession right to use by a third party. Each form could include variants from which local governments could select.

- Adopt more detailed written regulations at the aimag and sum levels to augment the State regulations. Establish a streamlined procedure at the State level to review aimag and sum regulations for consistency with the Land Law. Set a maximum time period for this review, and provide that the State's failure to respond within this period results in automatic approval of the aimag or sum regulation.
B. Training Local Officials

- Establish multi-day national training programs at the aimag and sum levels for implementing officials.
- Develop written training materials at the State, aimag and sum levels and distribute them at these trainings.

C. Institution-Building Within Implementing Agencies

- At the State level, designate funds for increased human resources for land management and Land Law implementation at the aimag and sum levels.
- Raise democratic representation in Land Law policy-making by the groups affected (such as herders). See section below on implementation issues pertaining to pasture land for further discussion.

D. Monitoring Implementation

- Establish monitoring goals for pilot projects and implementation as a whole, based on household sample surveys.
- Contract these monitoring responsibilities to local universities or research institutes.

E. Dispute Resolution Systems

- Provide training in both substantive law and dispute resolution methods and procedures to local officials charged with resolving land disputes in the first instance.
- Determine what type of judicial institution(s) will handle land dispute resolution appeals: courts of general jurisdiction; mixed special courts and courts of general jurisdiction; or entirely special courts. Adopt enabling legislation as needed to establish and guide these institutions.
- Establish "circuit-riding" courts, if necessary, to cover disputes in rural areas.
- Train judges on land law and land rights issues.

F. Information Campaign

- Adopt an information campaign on the State, aimag and sum levels which includes publication and broadcasting of information through national and local media, distribution of written materials by aimag and sum-level officials, and meetings by trained aimag and sum-level officials with local herders, farmers, and urban residents.
- Write and distribute to all aimag and sum-level officials, and make available to all local residents, manuals and handbooks on Land Law implementation (including application processes, land management policies, and dispute resolution policies)
written in part by the State government and each of the relevant aimag and sum-level governments.

G. **Determination and Allocation of Land Rights**

- Focus implementation regulations and strategies at the aimag and sum levels on allocation and distribution of land rights, rather than on information collection.
- Include clear and simple application procedures for land possession contracts in State regulations.
- Issue certificates and contracts to current possession right holders as quickly as possible, and issue certificates and contracts to future right holders directly upon allocation of the possession right.
- Make multiple copies of the certificate and contract to keep with the right holder, local land office, and other governmental entities as specified by the relevant rules

H. **Special Implementation Issues for Pasture Land**

- Allow State, aimag, and sum-level governments flexibility in implementation choices, to the extent consistent with any legitimate interpretation of the Land Law.
- Increase herder participation in policy-making and enforcing institutions in one of several ways, such as:
  - Establish grazing associations of about twenty to eighty families. Each of these associations could be governed by a general meeting and an elected council, and would be in charge of self-regulation within the parameters of the Land Law and State and State regulations. Group possession rights to pasture could be allocated to these associations. Group charters should allow for some fluidity in membership in order to address equity concerns.
  - Establish special boards for pastureland management decisions at the sum and aimag levels, which would be democratically elected by all herders in the sum or aimag.
  - Adopt and closely monitor Land Law implementation pilot projects focusing on one or more implementation strategies in several parts of the country.
  - In particular, design and implement a pilot project to test the concept of granting group possession rights to grazing associations for an area encompassing all four seasonal pastures.
  - Continue Land Law implementation in other, non-pilot areas.
  - Filter "lessons learned" from pilot projects for timeliness and relevance to other areas.

I. **Special Implementation Issues for Arable Land**

- Where possession contracts have not yet been granted, limit the allocation of possession rights for arable land to 100 hectares per individual or enterprise. Clarify
that individual citizens combining their landholdings in common possession can receive up to 100 hectares multiplied by the number of common possessor or owners. Clarify that these limits apply only to the primary land market. (This would allow possession right holders to transfer their rights in use, for example, to the agricultural enterprise they work for.) If agricultural enterprises want to receive possession rights to land from the state, they can organize their shareholders or workers to obtain individual possession rights and hold them together as common possessors.

- Where there appears to be demand for a “Green Revolution” type of program on farms where possession rights have already been granted, consider adopting a policy of state “takings” to accommodate this demand by re-allocating possession rights for small plots of land (e.g., maximum two hectares) to individual families. All takings would, of course, be subject to fair compensation.

- If agricultural enterprises have not cultivated land for three years or more, and are unwilling to give up possession rights to the land even though there is a local demand for such land, sum governments should terminate the possession rights for non-use as allowed by law and allocate the land for other farms or garden plots. The sum government could then redistribute this land in shares to the farm workers.

- Encourage sum governments to refuse renewal of possession contracts held by any large agricultural company once the initial contract period is over if that company has failed to cultivate any significant part of its land (other than that normally left fallow) for more than two years. The sum government could re-distribute this land in shares to the farm workers.

- In the event the Land Law is amended to provide for purchase and sale of possession rights in general, provide that possession rights to arable land purchased by companies may be transferred in their entirety only after such rights have been held for two years. Provide that possession rights for arable land that have been granted to companies free of charge not be made further transferable.

- Commission a study on the enterprise structures on arable land to determine nature and origin of arable land ownership.

- Ensure that Green Revolution participants are granted tenure rights set forth in the Land Law (twenty-five-year possession rights, and the right to pass the possession rights by inheritance and to otherwise transfer these rights in use), and that they receive written contracts and certificates formalizing these rights as soon as possible.

- Increase broad-based allocation of arable land rights through the Green Revolution program as quickly and as efficiently as possible.

**J. Special Implementation Issues for Urban Land**

- Prioritize the allocation of possession rights and distribution of certificates for residential land and land under privatized enterprises.
• Standardize the process for allocation and distribution of possession rights in regulations issued at the State level. (Note that the same rationale for flexible implementation that exists with pastureland is much less relevant to urban land.)

III. Expanding Transferability of Possession Rights to Land

• For residential land: amend the Land Law so that possession rights to residential land may be transferred in their entirety immediately.

• For urban commercial land: amend the Land Law so that possession rights to urban commercial land granted by the government may be transferred in their entirety two years after they have been granted. Possession rights to urban commercial land that are purchased should be transferable in their entirety immediately.

• For arable land rights held by individuals: amend the Land Law so that possession rights to arable land granted to individual citizens may be transferred in their entirety two years after such rights have been granted. Possession rights to arable land that have been purchased by individual citizens should be transferable immediately.

• For arable land rights held by companies: amend the Land Law so that possession rights to arable land purchased by companies may be transferred in their entirety after such rights have been held for two years. We urge that possession rights for arable land that have been granted to companies free of charge not be made further transferable until equity concerns about the initial allocation of this land can be studied and sufficiently addressed.

• For pastureland: do not expand the transferability of possession rights to pasture land.

• Amend the Land Law by deleting the requirement, in law, that holders of possession rights must obtain the approval of the government office that initially allocated the possession right. Instead, provide in law that possession rights may be transferred in their entirety (sold) unless otherwise indicated by the possession contract.

• After expanding the transferability of possession rights, conduct studies on the impact before further expansion.

• Develop specific laws and regulations containing principles and procedures for the transfer of land use rights.

• Develop and adopt standardized legal forms, such as sale and lease contracts, for land transfers.

• Encourage private sector development of a “Multiple Listing System” containing updated information on available properties that have been offered for sale.

• Develop state regulations to guide the development of effective private sector professional services that facilitate land market development, such as land surveyors and land market (or real estate) brokers.
IV. Land Use Requirements, Monitoring and Enforcement

The problems presented by the land use requirement, monitoring, and enforcement scheme in Mongolian law are primarily twofold. First, the monitoring scheme will be extremely costly and probably administratively impossible to implement. The monitoring costs themselves, which are placed both on the State and on individual land possessors and users, are far too substantial to warrant possible objectives. The opportunity costs of using skilled administrative personnel for such a task in a country where trained administrative personnel are in short supply appears unwise. Second, the enforcement scheme involves a substantial penalty (termination of land rights) that it is likely to result in tenure insecurity and a corresponding lack of investment by land possessors and users.

- Retain the rules for land use set forth in Articles 33 and 49 of the Law on Land, but qualify them with language such as “Land possessors and users shall make reasonable efforts to . . .”

- Change the monitoring scheme to provide for an initial, simplified, and inexpensive measurement of land characteristics and quality at the State’s expense. Any subsequent measurement should be taken only when the relevant agency has significant reason to expect that land has been “seriously degraded” or polluted.

- Remove confiscation of land rights as a penalty for not meeting the land use requirements. Provide for a graduated series of fines that reflect the damage caused by the land possessor and user. In serious cases, provide notice to the land possessor or user that they have six months to reverse the degradation and restore the land quality. If this has not been accomplished in six months, terminate the land rights, but compensate the land possessor for the remaining value of the land rights taken minus the value of the damage caused, and provide the land possessor with an opportunity to appeal to a higher administrative or judicial body either the grounds for the confiscation or the terms of compensation.

- Consider adopting positive incentives to encourage sound land use practices, rather than relying solely on penalties and enforcement.
V. Special Protected Areas

- Proceed toward the goal of SPA expansion with caution, taking into account socio-economic costs of displaced people and economic activities, and clarifying the purposes and scientific rationale for each new SPA.

- Develop legislation for the compensation of displaced herders and other traditional land occupiers who do not hold formal possession contracts to the land. Such legislation should include significant opportunity for input from the displaced individual or community in determining the area of land and value of traditional use rights lost, and developing a plan for relocation of the herders and their animals.

- Continue implementation of the Land Law and allocation of possession contracts. Ideally, possession contracts for winter camps, at least, and perhaps group possession contracts for larger areas of pasture would be in place prior to the establishment of future SPAs. This would facilitate compensation in the event of compulsory acquisition and would also provide herders with incentives to better manage pasture land within SPAs.

- Clarify the government's rights of compulsory acquisition in the Law on Land and in Resolution No. 143. Include clarification of the basis for compensation and procedural protections for right holders, such as notice, the right to a fair hearing, and the right to appeal the decision on takings or compensation.

- Conduct a study on the interaction between wild and domestic herbivores to determine the necessity of restricting domestic livestock use within SPAs. SPA planners appear to assume that the interaction is always competitive, but other experts believe the interaction is primarily symbiotic.

- Amend the Law on Special Protected Areas to include, or provide in supplemental regulations, further detail on programs for determining allowable grazing levels in Limited Use Zones within Strictly Protected Areas. The programs should take into account not only the environmental goals of the SPA but also the impact on grazing communities. Provide for substantial herder representation in the designing of these programs.

- When expanding SPAs into new areas, designate the maximum amount of the new territory possible as a Limited Use Zone.

- Experiment with cooperation agreements for resource management with local herding communities within SPAs. These agreements would be based on plans designed by the State and local communities which allowed continued grazing on the land in exchange for adoption of self-regulation mechanisms to achieve sustainable pasture land use and could provide for assistance by the local community in other areas of resource management within the SPA.
### ANNEX 4: LIST OF PERSONS CONSULTED BY RDI IN ULAANBAATAR, JUNE 1999

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banzragch, Samdangiin</td>
<td>Director General, Environmental Protection Agency</td>
</tr>
<tr>
<td>Bardajch</td>
<td>Sustainable Development Advisor, UNDP</td>
</tr>
<tr>
<td>Batbuyan, Batjav</td>
<td>Center of Nomadic Pastoralism Studies at the Institute of Geography, Mongolian Academy of Sciences</td>
</tr>
<tr>
<td>Binye, Bataa</td>
<td>Chief of the Food And Agricultural Division of Strategic Planning and Unified Policy Department, Ministry of Agriculture and Industry</td>
</tr>
<tr>
<td>Boldkhuu, L.</td>
<td>Lawyer, Ministry of Justice</td>
</tr>
<tr>
<td>Buyankhishig, D.</td>
<td>Officer of the Agricultural Department, Ministry of Agriculture and Industry, Mongolia</td>
</tr>
<tr>
<td>Davaabaatar, J.</td>
<td>Director and General Land Manager at the Municipality of Ulaanbaatar, Department of Land Management and Real Estate Registry at the Municipality of Ulaanbaatar.</td>
</tr>
<tr>
<td>Enkh-Amgalan, A.</td>
<td>Economic Advisor to the Prime Minister</td>
</tr>
<tr>
<td>Enkhbold, Ts.</td>
<td>Director of the Mining Office, Mineral Resources Authority of Mongolia</td>
</tr>
<tr>
<td>Erdenebaatar, Dr. Batjargalyn</td>
<td>Head of the Livestock Department, Mongolian Agricultural University Research Institute of Animal Husbandry</td>
</tr>
<tr>
<td>Galsan, U.</td>
<td>Chief of State Plant Protection and Agricultural Services, Chief Central Staff of “Green Revolution”, Government Agricultural Implementation Agency</td>
</tr>
<tr>
<td>Myagmarsuren, D.</td>
<td>Director, Special Protected Areas Bureau, Environmental Protection Agency of Mongolia</td>
</tr>
<tr>
<td>Nyam, L.</td>
<td>Director, National Land Management Agency</td>
</tr>
<tr>
<td>Purevsuren, V.</td>
<td>Past Secretary General, Secretary of Board of Urban Development and Land Use Planning of Professional Practice Committee Meeting, Department of Land Management and Real Estate Registry at the Municipality of Ulaanbaatar.</td>
</tr>
<tr>
<td>Name</td>
<td>Title</td>
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</tr>
<tr>
<td>Purevtseren, Dr. Gongor</td>
<td>Director of the Administration of Immovable Property Registration, Implementation Agency of the Mongolian Government</td>
</tr>
<tr>
<td>Yhkanbai, Dr. Hijaba</td>
<td>Research Specialist, Leader on “Economics and Sustainable Development”, Ministry for Nature and Environment</td>
</tr>
</tbody>
</table>