

# LAND PRIVATIZATION OPTION FOR MONGOLIA

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## CHAPTER ONE. Introduction

### 1.1. The current land issue in Mongolia

During the past decade in Mongolia, the most controversial political issue became the issue of the privatization of land. For more than 2200 years of statehood in Mongolia, land has never been privately owned but belonged either to the king or the highest body of the state legislature.

Over the past decade, the country has been changing rapidly undergoing economic reforms. Although the new Constitution and general Land Law as well as the Law on Land Payment Fees, Law on the State Protected Areas, Mining Code, etc., have been enacted since 1994, the issue of the land privatization remains unsolved. For each candidate or political party running for presidential or parliamentary elections, this issue is like a game field to make most promising statements.

The land cover in Mongolia is systematized according to the classification of the Land Law (discussed later in 3.3.3), 76.1 percent of which is used as agricultural and grazing lands (approximately 0.8 percent is cultivated, 1.6 percent used for hay-making, and 97.6 is pastureland). Land is not zoned by geographic factors but classified by law based on the basic utilization purposes, change of which during a term of a lease or use contract is not supported.

Livestock production from pasturelands is a mainstay of the Mongolian economy and society. Mongolian livestock husbandry is based on the nomadic life style of herders. For thousands of years they have moved with their livestock according to the seasonal pastoral schedule. Crop farming is not developed; domestic livestock is grazed year around.

The country is divided into 21 *aimags* (largest territorial and administrative units similar to provinces); of those, 3 are cities with an *aimag* status. *Aimags* are further divided into *sums* and the responsibility for land management lies with the *sum* government though titles are still held by the Parliament. A *sum* consists of *bags*, the smallest formal administrative and territorial unit.

As part of the economic reforms the Government started privatizing the state-owned enterprises in accordance with the Privatization Law enacted in 1992. Currently, the privatization process is ongoing, but landed property is still excluded from it: lands under the privatized businesses and commercial buildings are subject to mandatory *lease*; upon privatization, land lease fees are immediately imposed on the new owner.

The land issue of Mongolia as a country with complete state ownership of lands and pastoral life style of rural people is unique. Compared with other pastoral societies of Middle Asia and Africa, Mongolian herding practices are less dependent on rainfall, weather, and vegetation growth (most areas, except sand and gravel deserts, support vegetation). Compared with other former communist countries, denationalisation of state property, which has been recently conducted there, is not a tentative issue in Mongolia because no land or other immovable property was nationalised after proclamation of the Republic in 1924. Absence of private lands is a factor which slows down economic development of the country and restricts sustainable investment in land. Today, the

growing domestic private sector, rapid changes in the international market and globalization of the economy requires the Government of Mongolia to turn to more pragmatic approaches to the country's economic development and land reforms. This paper intends to make a brief analysis of the main aspects of land privatization issues in Mongolia, with an emphasis on grazing lands and the policy dimensions of the process, and to suggest a capable alternative to the existing problem.

## **1.2. Overview of the existing land laws and regulations**

The Mongolian legal concept of ownership operates with Roman law categories of property rights and specifies a right to own (*umchleh erh*) - right to use one's property within the limits of law; a right to dispose (*zahiran zarzuulah erh*) - right to change a form and substance of the property (*abusus*), eliminate it or transfer it to others all or some of the property rights; *usus fructus (ezemshih erh)*: right to possess and use a property belonging to someone else or to rent it to others and capture benefits from it, but not to sell or change its quality; *usus (ashiglah erh)* - right to actually possess and use a property belonging to someone else. Therefore, the land-related provisions of the Constitution, Civil Code and Land Law are based on these concepts. Exactly corresponding with concepts of *usus fructus* and *usus*, the Land Law specifies only 2 types of land contracts - "land possession contract" (contractor may sub-lease his land to others) and "land use contract".

The new *Constitution of Mongolia*, enacted on 13, January, 1992, among many new social features entitled a private land institution for first time in Mongolian history. It states that the land and subsoil and other natural resources shall be the property of the State, except the land given to the citizens of Mongolia for private ownership. The State may give for private ownership plots of land, except pastures and areas under public common utilization and special state needs, only to the citizens of Mongolia. Citizens are banned to transfer their private lands to foreign citizens by way of selling, bartering, donating or pledging or by way of transfer to others for use without permission from competent state authorities. The State retains the right to hold landowners responsible in connection with the manner the land is used, to exchange or take it over with compensation for the special state needs, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection, or national security. Article 16 of the Constitution declares the right of citizens to fair acquisition, possession and inheritance of movable and immovable property and prohibits illegal confiscation and requisitioning. If the State and its bodies expropriate private property on a basis of special state needs, they shall do so with due compensation and payment.

Under the *Land Law* effective since 1994, Mongolian citizens, business entities and organizations may be granted the right to lease state-owned land for up to 60 years with the possibility of extensions for 40 years each. Not all types of land are covered by this, however. For instance, forest lands or some of the State special needs lands may not be individually possessed. Also, it is provided that the initial term for a lease of farming land (i.e. arable as opposed to pastoral land) may not exceed 25 years. The law considers inheritance, but does not permit either transfer of landhold rights to others without permission of relevant state authorities or sale and pledge. The Law allows lease of land

by foreign citizens (up to 5 years with possible extensions) and legal entities (up to 60 years).

Fees for lease of land are established according the *Law on Land Fees*, first time enacted in 1997, and estimated from a value of land determined by the Cabinet based on the land's utilization purpose. The law does not provide exact figures of land fees but formulas and ratios to fix them.

If land management and contracting issues are regulated mainly by the Land Law, property rights are stated in 18 detailed articles of Chapter 7 of the *Civil Code*. The Code recognises such rights as common use, which needs no authorization, possession (*usus fructus*) - tenured, life-time, inheritable, divided and undivided group, use (*usus*) - contracted, servitude, tenured and for indefinite term, etc. Though property rights of owner, possessor and user are detailed and well defined, the government still reserves a strong proposition to protect its absolute ownership rights by excluding citizens from the existing legal concept of "land owner":

"Until regulations on ownership of land by citizens of Mongolia are enacted by law, the "land owner" named in this chapter shall be understood as the "State" (Article 100-4 of the Civil Code)<sup>1</sup>.

Several laws – *Mining Code*, *Law on the State Special Protected Areas*, *Law on Borders* and others - partly regulate the utilization of lands of a specific mentioned on page 1. According to the *Water Code* and *Law on Utilization of Natural Plants*, water and plants are used for household needs free of charge and for commercial purposes by agreement or licence and for certain fees.

Among the laws regulating specific natural resource's management, renewed in 1995, the *Forest Code* has made significant progress toward ensuring greater access to natural resources for the local residents. It recognizes community rights over forests and delegates the Government's right to possess these natural resources to *sum* communities (Article 3 of the Forest Code). Grant of rights is made by the provision of the law itself with no specific condition or time limit, and no further formal contract between the Government and local communities is required. Though the rights over forest *lands* have not been transferred to local communities, this provision creates a legal ground for sustaining a community based management of forest resources and, furthermore, empowers local communities against new comers - mining and non-local logging industries. The reason why only forest resources were provided with such special treatment is that forest lands are generally not used for grazing, and boundaries of forested area communities are better defined than of herding communities.

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

The *General Law on Environmental Protection* sets duties of a current owner, leasee or user to protect the environment and conditions of their land and its resources.

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

Besides the mentioned laws enacted by the Parliament, there are other sources of land-related norms which are effective within a certain social sphere or territory - administrative regulations by ministries and agencies and normative decisions of the local governments. The existing land legislation comprises a wide number of government regulations. For instance, according the power given by the Land Law and Law on Land Fees, the Cabinet establishes approximate land fees for lease of different types of land, value appraisal of all lands in Mongolia, etc. In rural areas, where grazing is extensively practised, authorized by the Land Law temporary decisions of local *Hural* or Governor play certain role in release of grazing pressure or allot pastures and winter quarters.

The land laws pose various restrictions on land rights which are understandable in Mongolian historical and cultural context but obviously inconsistent with the market-oriented economy. For example, limits of the Land Law on maximum size of leaseholds per a family (up to 0,05 ha) and businesses (vary according to each type of land), or layered administrative permits, or a shorter term of lease of farmland challenge the objective to promote investment and create an efficient economic structure. Another example is a bundle of provisions of the Land Law which make restrictions on change of a utilization purpose of a particular land type. Clearly, by this limitation the law attempts to achieve most efficient use of each type of land and prevent land degradation. In addressing such economic and environmental concerns the differential taxation, land market prices and other market mechanisms would serve better than administrative permits, sanctions and penalties, or threat of expropriation. These limitations of land rights will be subject to rejudgement against appropriateness to the principles of market and objectives of land reforms.

Analysed all together, the complex of land regulations still isn't free of ambiguities, gaps, overlaps and unfairness. For example, the Land Law requires a contractor to register the land at *sum* Governor's office as a part of the cadastral system and specifies the order and schedule of cadastral book-keeping. Meantime, the ***Law on Registration of Immovable Property*** establishes a different registration system of contracted lands held by the Ministry of Justice. Such multiple registrations make additional exercise and expenses (verification and registration fees) for land contract seekers.

None of provisions of the land laws and regulations recognizes the traditional land rights of herders - the most common and continuous users of land in Mongolia. Though the Government supports herders by grazing fee exemption and aid in health insurance, lack of formalization of property rights or recognition by the Government makes this social group most vulnerable during land reforms in terms of losing their lands to non-herding practices<sup>ii</sup>. Any question of compensation or further development of the land is contingent on having a legal document which would show their land rights. "Such recognition is rare" in domestic laws of other countries, but "effective resource management at the local level is impossible without it. Until nation-states grant legitimacy and protection of [traditional] regimes, they will not advance." (Lynch 1995).

## **CHAPTER TWO. Identification of the problem**

## 2.1. Existing land use practices and problems in rural and urban areas

Although Mongolia is considered one of the few countries of the world which preserved the pristine nature of its environment, one of its important natural components - land - is affected by negative changes. Natural circumstances like Mongolia's high elevation, sparse vegetation, severe climate, thin and light soil cover, combined with overgrazing, chaotic roads and poor land cultivation practices and other human factors lead to land degradation. In addition, as much as 95% of the country's total land is considered to be highly vulnerable to desertification<sup>iii</sup>. Besides being changed by the



fundamental natural processes like slowly on-going desertification, the land is affected by some anthropogenic factors which are:

- a) traditional land use practices are being changed slightly during the collectivization period in 1960s-1980s, and especially during the past

decade of economic reforms;

- b) changes in land use and its load were not accompanied by appropriate land protection

*Sands in a sum centre*

measures.

*Courtesy of S.Baatar*

**2.1.1. Grazing practices.** During winter and spring a herding family is settled at an established site provided with shelters for animals and store-buildings and grazes its breeds on surrounding pastures. In summer and autumn herdsmen create nomadic camps, *hot ails*, the size of which is related to natural conditions (vary in plains, mountainous, forested areas or deserts; 2-8 families in average), to kinship ties and to specific demands of livestock breeding. Camps do not stay together throughout the year but often split out and re-join for various seasons and years, i.e. such groupings are informal and fragile social units. *Hot ails* commonly use the same well and adjacent pastures.



*Herding family at their winter site*



*Hot ail*

Several camps may consider themselves to belong to a larger group, *neg goliynhon*, *neg nutgiynhan*, co-using a river valley or mountain range. And the customary grazing rights have evolved as “a set of social customs allocating pastures to households and regulating behaviour within and between smaller and larger groups” (PALD 1993). There are no legal regulations about customary grazing practices. A herder's rights over the land are not exclusive and are recognized by the community members, e.g. by *hot ail*, *neg goliynhon*, on “a basis of continuous use, family tradition, membership in the community, kin or friendship with already established user, or informal agreement with the latter” (Szynkiewicz 1995)

Livestock production is characterized by high mobility dictated by seasons, landscapes, weather and size of herds. There are horizontal and vertical movements (for example, to alpine meadows) as well as short and long distance ones. Herding households move in a short distance, 10-50 km, to their seasonal pastures and during warm seasons of summer and autumn when herds are intensively grazed and a family does not need to be heavily equipped. Long distance movements up to 200 km, called *otor*, are a forced event, usually by weather or natural calamity, and are great challenge for both the families and herds.

Pasture management is characterized by separating them into seasonal pastures - for winter-spring and summer-autumn, and reserved areas (Purev 1990). Winter and spring pastures are used for continued period with restricted mobility of herds and a household, so for these pastures are selected low- and midland areas with certain vegetation and moisture conditions which promote faster recovery. Low density of herds are kept here. Summer and autumn pastures receive concentrated grazing during a short Mongolian warm season. There are two types of reserved pastures: within the winter pasture used by one *hot ail* there may be certain saved areas for emergency use, or several neighbouring camps may set aside from the summer some plain common areas, “traditionally on the north side of the river”, (Ferdinandez-Gimenez 1993) for emergency use during winter. The second type of reserved pasture is *otoriin belcheer* - distant, emergency pastures, perhaps, in mountain valleys or forested meadows, used during severe winter, or natural calamity.

The traditional grazing practices regulate individual possession and use of winter/spring shelters and adjacent pastures; allocation of summer and autumn pastures to families and *hot ails*; common use of wells, pastures during seasonal moves and climatic calamities; resolution of conflicts. No one is expected to graze at random on the land which is not his habitual pasture or occupy someone's winter shelter. If this occurs, an oral agreement between the habitual user and stranger will be made.

Inspired by the equity ideas and economic necessity and sanctioned by the Russian side, in 1959 the Government conducted the collectivization of nearly 70 percent of private herds and formed pastoral and agricultural cooperatives, roughly one per each district territory, and left herders the right to keep nearly 50-70 heads per family as a private stock. Unlike in China or the former Soviet Middle Asian republics where forced mass settlement were held "under directions of the settlement committees set up in regional and district levels" (Dachschleiger 1969), collectivization in Mongolia fortunately went without violence and, as S.Stabford noticed, has generally "received sympathetic treatment" from western writers (Stabford 1983)

In 1991, as a part of the market-oriented reforms, the rural cooperatives were dissolved and their property was privatized. The members of livestock cooperatives were eligible to receive animals. However, the herders faced hardships with marketing of animal products, supply of non-livestock goods and lack of services which formerly were provided by the cooperatives. With the introduction of private economy and market incentives, the traditional land management practices were inevitably changed due to intensification of mining, migration, overgrazing and uncontrolled use of pastures by newcomers.

**2.1.2. Overgrazing and migration problems.** By all accounts the traditional informal mechanisms of land and livestock management maintained most of Mongolia's rangelands in relatively good condition. After the breakdown of the cooperatives and centralized supply system, due to a limited market and purely developed social infrastructure in remote areas, their inhabitants migrated to the northern and central areas of the country where most settlements are located and the climate is milder (for example, statistical indexes show the population decrease by 2 - 3.3 percent since 1992 (Mongolian Statistical Yearbook 1997 ) in 3 Gobi *aimags* despite a relatively high annual birth rate there). Now in these areas pastures are heavily overgrazed. Grazing pressure is greatest near settlements and as a consequence these areas are the most degraded. The only way to regulate this situation is more formalized and individualized land utilization.



*Pastures near Ulaan Lake in 1980s*



*The same region in 1990s*

*Courtesy of S.Baatar*

In accordance with the Law on Land Fees, currently herders do not pay any fees for grazing and their annual income tax counted for 50 tugrugs (4 cents) per a head of sheep. This situation encourages herders to increase the number of their animals rather than their quality. However, the average grazing capability of Mongolian land is calculated to be approximately 26 million domestic animals. Therefore, future increases in the number of animals shall cause more overgrazing problems, imbalance in nature (for instance, the number of predator animals which prey on domestic animals is unnaturally high), and competition among herders for the best pastures.

Swedish economist C.G.Wildstrand writes that a classic pastoral livestock operation is “*not a capitalistic undertaking aimed at producing a marketable surplus*”. Rather, herds are held for regular supply of food for the family, for physical survival and a social status, and to have maximum chances of surviving during prolonged natural calamities and other risks (Windstrand 1975). Recent introduction of the national land utilization fees, land contracting system and privatization of herds in Mongolia are

evidencing that land relations now have features of a private economy, and under such conditions herders now are interested in converting herding into marketable production. There is a commonly accepted estimation in Mongolian scientific literature and official documents, including taxation and land laws, that to provide its caloric ration and other basic (minimum) needs and to save surplus for the future, an average herding family of 5 people requires 150 domestic animals (5 camels, 20 horses, 25 cows, 75 sheep and 25 goats) over the year. But many households now have herds the size of which far exceed of the size needed for a family and which the labour a single family can maintain by pastoral grazing (see table 1).

Table 1. Grouping of households by a size of private livestock

<i>Number of animals</i>	<i>1990</i>	<i>1994</i>	<i>1998</i>
201-500 head	492	28249	36275
1000-1499 head	0	137	860
1500-2000 head	0	4	54
more than 2001	0	3	33
more than 3000	0	0	8

*Source:* State Statistical Office, 1998

As a result of privatization there has been a significant increase in the number of herding households. Many former employees of the dissolved cooperatives received animals and moved to the country as new herders. In 1990, there were nearly 75 thousand herding households and nearly 187 thousand in 1998. While the aggregated number of livestock have increased and reached more than 32 million head in 1998, a differentiation between mean livestock holdings per households is increasing. New entrants to herding communities are constrained in gaining access to pastures, as they tend to have much less developed kin-based and other social networks and have a greater tendency to remain sedentary. New-comers often disregard customary land utilization norms and are "held responsible for a perceived increase in grazing pressure on local pastures" (Mears R. 1991).

**2.1.3. Urban land problems.** Established 400 years ago, the capital of Mongolia, Ulaanbaatar, is home to 750 thousand people which is almost a third of the population of Mongolia. Suburban residents used to raise domestic animals; if in 1990, Ulaanbaatar livestock census counted 76 thousand head of private livestock, in 1998 this number increased up to 301 thousand head. This is why the lands next to the city are highly overgrazed and eroded which contributes to the city's air dust pollution.

Almost half of Ulaanbaatar population (and most residents of *aimag* and *sum* centers) live in *hashaas*: an individually fenced plot of land surrounding a traditional felt and wooden shelter - *ger*. According to the Land Law, the size of a *hashaa* shall not exceed 0.05 ha per household. Such *hashaas*, which originate a whole culture of urban laymen, make endless sprawls of the capital where the basic needs of their residents are hardly met.



Considering all problems Ulaanbaatar faces, in February of 1998, the Mongolian Parliament established an ad hoc Committee aimed at surveying the issue of moving the current capital city to the ancient one - Hara Horin, which is nearly 200 km southwest. Surely, replacement of the capital city to the historical sight requires tremendous investment, which the country cannot afford in the short run. So, privatization of Ulaanbaatar's suburban land will be a temporary measure.

**2.1.4. Agricultural land use.** In the 1950s, the Government started an ambitious program of crop cultivation and formed large and mid-sized state farms land use by which was based on a “non-term and non-payment principle” - free of charge and without fixed term. Because of this program, the country became able to provide its annual

demand of wheat and significantly decrease its imports. Over the past decade of economic transition, the government has been wisely prioritizing the development of livestock production as a basis of the Mongolian economy, but left out the reforms in its land cultivating sector.

Today, the crop sector is rightfully seen as one where the economic reforms and price liberalisation produced the most disappointing results. The state-owned enterprises and farms were privatized, but while the members of former livestock cooperatives received domestic animals, the members of crop farms got almost nothing, since the



land, the basis of their agricultural production, was not privatized. A break-up of crop farms into small production units incapable to maintain production and halt of centralized budgeting lead to a dramatic decline in crop production. For instance total sown area in Dundgovi *aimag* decreased from 226.3 ha in 1993 to 6.7 ha in 1997 (Mongolian Statistical

Yearbook 1997),

*Abandoned fields in Selenge aimag.*

*Courtesy of S.Baatar*

which in turn resulted in abandoned and deteriorated fields and increasing practices of inadequate use of valuable crop land. In the last 3 years 50000 ha of formerly

agricultural, now degraded and deserted lands were added to the “reserved lands” category as unsuitable for use (Ministry of Nature and Environment 1997).

## **2.2.Arguments against privatization of land**

The "hottest" issue is assumption that by privatizing pastures, herders will have to stop moving, which would change traditional husbandry relations and break down the entire rural economy and unique culture. This is a major argument of policy makers who vote against land privatization. Their main reasons are:

- **Preference to traditional life:** moving husbandry is the only type of production suitable to the Mongolian social, climatic and terrestrial conditions (very low population density, cold, dry climate, shortage of water, etc.).
- **Historical approach:** during the deep and rich history of Mongolia, land was always regarded as belonging to the state represented by the king, though he was never seen as a proprietor. He had no authority to sell or exchange the land with another country. Rather, he was a mean of guaranteeing land security and national consolidation.
- **Social justice:** Mongolia exports huge amounts of mineral resources and timber. Especially over the past decade, given market economy incentives, the pressure to exploit the country's natural resources have been increasing. For example, in 1997 there was exported 13 tons of gold alone. Newcomers like miners, loggers and businessmen having authorized mining or logging licenses, destroy pastures and change river streams. Although taxes and license fees are paid to the central and local governments, herdsman get nothing but lose pastures. By privatization of land, this tension will increase and will make herders more sedentary. Alienation of the lands used by herders and restriction of their movement not only increases the pressure on pastures, but also leads to change of lifestyles.
- **National security:** the Mongolian population is small and, basically, do not cultivate land; private land utilization will create a danger of demographic extinction by attracting foreign investors, mainly our southern neighbors, billion-numbered Chinese, as small scaled businessmen and farmers, among which 2 million of Mongols themselves shall disappear within some hundred years.

## **CHAPTER THREE**

### **Analysis of the land reform alternatives and their perspective outcomes**

#### **3.1.Arguments for land reforms and privatization**

Promoters of land reforms and privatization anticipate development and improved economic efficiency through intensive and rational use of land. Their main arguments are:

- **Economic efficiency:** studies show that the Governmental agencies have more conservative, bureaucratic management than dynamic private business, so by transferring land and other state owned property to the private sector with its flexible strategies, the state would achieve more efficient use of land resources and improve their profitability.
- **Public finances:** theoretically, privatization of land should reduce government funds to maintain its property and, in addition, should bring a surplus to the state budget.

At the time of current public finances deficit, the funds, which the government would receive through land sales and property tax revenues could be spent on such sensitive areas as social services or law enforcement.

- **National security:** The nation must consider strengthening its borders because Mongolia is situated between two superpowers - Russia and China - which often confront each other. Contrary to opponents of land privatization, its supporters seek security in a more individualized, labour invested form of land utilization. Direct coherence of herders with the land during production cycles is very limited by the nature grazing and this is doubled by their constantly moving lifestyle. Absence of private interests and ownership fosters irresponsibility, carelessness toward the land, and a sense of "no man's" land.
- **Wider share ownership:** is generally regarded as a very positive thing. There is a belief that spreading participation in a nation's wealth-generating through sharing ownership of land in some ways creates a more democratic society and national self-recognition (Campbell 1996).

During the period of economic transition with its budget deficit and increasing inflation, the international lending institutions and donor countries play their role in a certain constellation of factors influencing the policies of the Mongolian authorities. Over the past decade of emerging markets, the International Monetary Fund, the World Bank, the Asian Development Bank and similar international donor organizations have frozen their funding programs to the public sector as a response to the third-world debt crisis of the 1980s, and now encourage down-sizing of public spending and support privatization (see for example, WRI 1994, page 32).

### 3.2 Objectives of the land reforms

Defining objectives of land reforms will be of strategic importance. Firstly, the land reform strategies (privatization techniques, identification of stakeholders, scope of land reforms, institutional build-up, etc) will be determined depending on the chosen objectives. Secondly, to achieve objectives, many components of the existing legislation might need to be amended (statutes on foreign investment, banking, natural resources management, urban zoning, etc). Thirdly, the tax legislation is an important supplement to achieve the land policy goals, so introduction of an entirely new form of property ownership and objectives of this will explicitly influence the taxation laws.

Setting the objectives of land reforms will have a political ground. A problem may arise when the decision makers reverse major policy objectives to pursue their immediate purposes at the expense of long-run benefits. Therefore, continuity in pursuing the objectives of such fundamental program as land reforms is essential.

Besides the named objectives to improve economic efficiency, downsize public spending, and relieve the state budget and broaden ownership to a wider share of the population, it is necessary to bring up another very essential objective which is to sustain the traditional social organization in Mongolia. On the edge of the 21st century and during the ongoing basic social and economic changes to a market and globalization, the most affected social group will be herders. That is why their rights over pastures recognized in formal documents will be protected from alienation, uncertainties and fraud.

Among other objectives of land reform in Mongolia there are priorities aimed at promoting domestic and foreign investment, resolve the migration problems, promoting agricultural food production, developing an efficient capital market and creating more employment. But budgetary matters and rapid budget revenue maximization should not be given the highest priority.

### **3.3. Lands to be privatized and lease alternatives; privatization methods**

Some of few research materials and publications on the current land issue in Mongolia overwhelmed by enthusiasm of their authors to conduct land reforms in “a broader sense of change of the land usage patterns” which would include a turn to “organization of farming” (MON/97/131 1997). They argue that in an agrarian society land ownership and farm organization form the basis for the overall social, economic and political structure and determine it. Therefore, wide-spread farm organization in Mongolia would entail changes in the pattern of economy including “its non-agricultural parts”. In my view, such farm-oriented version of land reforms in Mongolia, nourished by many foreign donors, is mistaking in the very starting point: the Mongolian society is not an agrarian one and land reforms there will not be “agrarian reforms”. Mongolian climatic and land conditions make small and middle scaled, family-based farming a highly venturesome business carried on under high rates of covariate risk.

Instead, the land reforms in Mongolia will be limited to formalization, distribution and registration of land rights in accordance with the Constitution of Mongolia which prohibits the private ownership of pastures, areas under public common utilization and lands for special state needs. Under land reforms, these lands shall be excluded from privatization but several “use contract” and lease options could be emphasized there. The rest of lands shall be regarded as potential to privatize in dependence with the government policy goals and local community interests.

The problem here is that the central government policy and local herding communities interests may not accord, or even may be contradicting. In such occasion, local voice will play a modest role because their rights over land are not stated in any law, while, reversibly, the government’s ownership rights are explicit: the Land Law, for example, clearly declares that the land “*is* the government’s property” (provision 1 of the Article 5). That is why the provision of the Forest Code, discussed in Chapter 1, sanctioning the forest possession rights of local residents, makes an exceptional precedent to protect rights of the local residents over natural resources.

Land utilization should be more formalized or individualized by delegating more rights and benefits to formal users, but the size and type to be privatized must be limited.

#### **3.3.1. Scale of land reforms**

The “**pilot**” program is often supported by foreign advisors and international funding agencies (see for example TA-2602-MON). I agree that a potential fault or errors of many new undertakings can be prevented by performing a preliminary, smaller project. But applicability of this method to the land reforms in Mongolia is very doubtful. Land itself can not be privatized under the condition that if the government program fails it shall be taken back after a while. Also, testing of land privatization and

other reforms as a pilot measure in a one selected district or project site seems senseless and will not expose all potential shortcomings of the upcoming larger reforms anyway. That is why a pilot, portioned land reform program is deemed inappropriate by the nature of property ownership and by the nature of land reforms in Mongolia.

A large scaled, comprehensive "**National Privatization Program**" is an opposite version of the precautionous "pilot" program. Many new democratic parties and their supporters tend to sympathize with bold, complex privatization actions: for example, "The Reform Agenda" of the current Government, elected in 1996 and which consists of the new social-democrats and national-democrats, declares its intention to "consider a full program of pasture land privatization" (The Reform Agenda of the Government 1996). In other words, their considerations are concerned with 73 percent of the country's territory which make up the category of pasturelands. In my view, for such an inexperienced in private property country like Mongolia, the way of large scaled "mass" land privatization is least desirable because of a high risk of fast collapse and a potential public disfavour.

The measures of privatization cannot be applied uniformly to all lands in Mongolia. The land reform program which I would call "**type-by-type**" is judged the most suitable. It was described earlier that various laws and regulations enforce differentiated treatment of different categories and sub-categories of lands. Therefore, the land reform program should have a tailored approach to each type of land. Besides differentiating according each category of land, this program should consider the regional and local specifics of the vast country as well as its ethnic diversity. The privatization program need not necessarily be one comprehensive written document or action plan. Design and enactment of such program (in addition to land privatization laws necessity of which is obvious) would take extensive time. Rather, the program will consist of a number of consequently adopted *legislative acts* (on land privatization, taxation, amendments to other laws, etc.) and *executive and normative documents* (of local governments and the executive), accompanied by adequate *credit programs* (developed by financial institutions and supported by central and local governments' policies)<sup>iv</sup> and *social security schemes* (implementation of which would be controlled by local governments).

**3.3.3. Methods of land privatization** . In the historic and global context, there are many different methods of land privatization, and in the case of land reforms in Mongolia selection of appropriate ones should be flexible according to the type of land and the particular objectives to privatize it. Several models which seem consistent with the specific conditions of land reforms in Mongolia are analyzed below.

-**Free giving** can be considered only with regard to urban residents who live in *hashaas*. Time to time it is urged that since during the ongoing privatization over the past decade "herders received their herds and those who live in apartments received their apartments for free", so logically, If the government would give to the urban middle and lower class the land, where they live, for free of charge, urban and suburban lands with the most potential of high revenues will be distributed away for a non-productive residential purpose, while at the same time this measure will not guarantee avoidance of disorders and social unfairness. But free leaseholds can be effectively applied in long term leases of pastures surrounding a winter shelter.

-A **direct sale** will be the main method of privatization of parcels of high-demand urban and suburban lands. This could have the form of an **auction** in series of open bidding rounds when the plot is sold to the highest bidder, or the form of a **tender** with submission of sealed bids which are opened publicly at an announced time with the plot going to the highest bidder too. At first sight, the mentioned forms of divestiture look attractive because of their relative simplicity, ease to implement and good chances to find a suitable buyer quickly. A deeper sight into these types of divestiture rises doubt about their appropriateness in today's condition of inflation and the low rate of capitalization in Mongolia. Poor development of the active capital market and low purchasing power of individuals and businesses dictate a necessity to make large sales on credits taken either from domestic banks or a foreign lender. In the current situation, when the domestic banks, which have been extending credits too liberally, are faltered, foreign lenders become the main source of capital flow in Mongolia. When this comes to the land privatization, it again hits the sensitive issue of foreign ownership of Mongolian land.

A sound alternative to an auction and tender could be **negotiated sales** (sometimes called **bargaining**) when the terms and price of the transaction is negotiated and agreed between the seller and the single buyer. Among several inconveniences associated with a negotiated sale Ernst and Young name a lower selling price compared with an auction and tender because the element of competition is absent, and possibility of financial improprieties and corruption because the negotiations take place out of the public control (Ernst & Young 1994). Gaining the highest bidding prices is not necessarily the aim of the first land privatization in Mongolia. The advantage of a negotiated sale is the possibility to realize the social, environmental and public health concerns related to privatization of a plot of land in negotiations and the agreement with a prospective buyer. It was mentioned earlier that change of the utilization purpose of each category and sub-category of the land is very restricted by the Land Law (see page 2 and 7). A negotiated sale suits the best to this condition because a utilization purpose will be negotiated and agreed between contracting parties.

It is necessary to differ a negotiated sale of a land parcel from its **conditional sale** when the seller poses a mandatory condition which a buyer has to accept. Often, it is a requirement to invest certain resources (financial, labour, etc.) into the land only after which the title over this land will be issued in favour of the investor. It is necessary to notice that conditional sales may be less efficient and yield lower revenues.

It follows from the above analysis that several mechanisms of land sales will be used in such combination which deems most appropriate to each case but negotiated sales will be the most secure, therefore, preferable method.

-**Transfer to current users through a sale or lease** is useful in terms that it may prevent absentee ownership or lease, the nature of which does not match with an objective of the land reforms to promote efficiency and investment.

-**Employee-buy-outs** can be performed in those rare cases when a formerly state owned enterprise has already been taken by its employees and now the government needs or the employees wish to privatize the land adjacent to this enterprise.

-**Leasing** of land is currently made under 2 options - "possession contract" and "use contract"- according to the Land Law. Terms, conditions and procedures to make

these contracts as well as rights and obligations of the contracting parties are prescribed in the law. The land laws do recognise common and individual group leases, however they are still very rare in practice, especially in rural areas. So, a new approach of the suggested land reform could be a promotion of group leases of pasturelands. A difficult question limiting this promotion concerns the leasees: to whom the land is likely to be leased? The moving lifestyle of herders makes it difficult to determine exact boundaries of a local community and membership in it. There are three approximate possibilities for leasees as members of a group to make a leasing contract: 1) *hot ail*, 2) *neg nutgiynhan*, and 3) *bag* members. It was described earlier that the first two informal groups are very fragile and formed seasonally only or not formed at all for a certain season, while a *bag* has delimited land boundaries, an elected leader and registered members. I would favour a *bag* as a subject of a group lease of pastures. Clearly, *bag* group leases of pasturelands will result in two different phenomenon: this action will protect grazing lands from alienation but meantime deepen restriction of herders' movement with respect to frequency and distance. This process, called sedentarization, has been forced in this century by formal division into administrative and territorial units and registration of their residents which led to herders' movement within one larger territorial unit; further specialization such as a *bag* group lease of the *bag* lands will intensify this process. However, importance of group, *bag*, leases is apparent: this will serve as a protection tool against alienation of pastures for non-herding activities and against new-comers in areas where pastures are at shorthand - areas close to large settlements, north-central regions of the country, and so on.



*Pastures around settlements are fenced for individual families or non-grazing purposes; wooded houses instead of traditional gers.*

Now, when the methods of land divestiture have been discussed, there is a question of which land categories and how much lands are potential for such divestiture. A brief overview of the land categories, their sizes and legal regimes are the following:

- **Agricultural and grazing lands:**

- cultivated (total 9537 km<sup>2</sup>, appraised at 1738,0 - 3843,4 thousand tugruks per hectare): no law restricts these lands to be privately owned;
- pasturelands (total 1163496 km<sup>2</sup>, appraised at 202,9 - 548,2 thousand tugruks per hectare): can not be in private ownership according to the Article Six of the Constitution;
  - summer and autumn pastures: may not be utilized individually but commonly according to the Article 51 of the Land Law, in other words, no "land possession" or "use" contract for the grazing purpose can be

made over these pastures. This should mean no fees for such traditional grazing utilization.

-winter pastures: the Article 28 of the Land Law differentiates the size and location of land to be possessed by an individual for household and by a business unit and organization for business activity. However, no law gives details about lease options of winter pastures. Does this mean a total ban to contract winter pastures similarly with above mentioned summer and autumn pastures? I'd suppose not. In conformity with the general legal principle "allowed if not prohibited" and with respect to perceptions with which the Land Law was discussed and enacted, it can be concluded that winter pastures are implicitly subject to individual and group "possession" or "use" agreements.

-hay-making land (total 19074 km<sup>2</sup>; 912,2 - 2675,3 thousand tugrugs per hectare): neither the Constitution nor the Land Law specifies ownership or utilization right options over this type of land. Although the Land Law classifies hay-making lands separately from and equally with pastures within the agricultural and grazing land category, traditionally hay-making lands have always been considered a component of pasturelands, so I would assume that limitations on privatization by the Article Six of the Constitution applies to hay-making lands as well.

- **Lands occupied by cities, villages and other settlements:** (total 3133 km<sup>2</sup>, appraised at 5 mil - 440 mil tugrugs per hectare):

- lands under buildings and constructions:

- lands allocated for mining activities: a mining site may be contracted from any category of lands except special protected areas (see below). In such occasion, this parcel of land is automatically moved to the category of "lands occupied by cities, villages and other settlements". Lands for mining are contracted by procedures prescribed by the Land Law and Mining Code which pose certain restrictions on management and strict requirements for land recovery.

- public common use lands: which are streets, squares, public gardens and recreation areas, graveyards, sport grounds, etc. Privatization of them is strictly prohibited by the Article Six of the Constitution.

- suburban lands.

This paper proposes to privatize some urban and most of suburban lands, especially of rural towns. Property taxes in Ulaanbaatar must be rather high. These procedures are expected to bring visible income to the state budget and may bring some solution to land the shortage problem of the capital city too.

- **Lands for roads and communication network** (total 3133 km<sup>2</sup>): since all modern roads, railways, electricity lines and other infrastructural facilities were built by the Government, it owns them along with the underlying and adjacent lands. Since the Government has very limited public funds for maintenance of these facilities, their privatization along with underlying lands or without (e.g. privatization of services) or leasing options should be considered.
- **Lands covered by forest** (total 125320 km<sup>2</sup>) **and lands covered by water** (total 17231 km<sup>2</sup>): neither the Land Law nor the Forest Code and the Water Law contains

specific provisions which would regulate utilization rights over these categories of lands except part 2 of the Article 38 of the Land Law which prescribes that forest lands shall be utilized commonly not depending on whether a particular lease agreement has been made regarding them.

- **Reserved lands** (total 28197 km<sup>2</sup>): lands in desert and semi-desert areas and high mountains, deteriorated and other unsuitable for usage lands are to be privatized. Here, land should be sold or leased free of charge to its current users and no property taxes should be posed. These measures would serve the following purposes: facilitate investment, release heavy pressure on productive lands and encourage herders to move to remote areas and support by this a solution of some aspects of migration problems.
- **Lands for the state special needs:** may not be individually owned according to the Article Six of the Constitution.
  - special protected areas (total 172315 km<sup>2</sup>): are classified into 4 categories (strictly protected areas, national parks, natural reserves and monuments) with different protection regimes which restrict most economic activities there, particularly mining, logging and construction of buildings. These lands cover 172 million hectares which is almost 11 percent of the country's territory and it is planned to increase their size up to 30 percent of the total land mass of Mongolia (The National Program 1998). Only short term (up to 5 years) land use contracts can be made here and foreign citizens, businesses and organizations are forbidden from making such contracts. Land utilization fees are high.
  - borderlands (approximately 40800 km<sup>2</sup>): according to the Law on Borders, the border lands within 5 km toward the Mongolian territory falls under the sub-category of "borders lands of State special need lands". Remote areas on the borders of the country should be leased to the Mongolian citizen with no land use fees. Here, private use of land by the Mongolian should be regulated in terms of type of land utilization, location, etc. For instance, under the Land Law, individual foreigners may obtain a land use contract for five years with possible extensions for additional five years, but they are expressly forbidden from using land for pastoral animal husbandry and farming. However, on borders, formal possession and contracting land use agreements by foreign citizens and stateless persons should be prohibited;
  - lands allocated for the state security and defence purposes: insignificant mass allocated for army garrisons, military security equipment and prisons. Since no law regulates legal regimes of these lands, they could be contracted at least under short term "use" agreements at the discretion of the relevant authorities, for instance, a prison administration;
  - important pastures used in emergency cases, trails of national importance used for moving livestock breeds and other sub-categories: the paper does not proposes any changes into the legal regimes of these lands.

The changes proposed by this paper in the current tenure regimes are summarized for each category of lands in table 2.

Table 2. Suggested changes in legal regimes for land categories.

Land category	Current legal regime	Suggested to promote under land reform
<p>Agricultural and grazing lands:</p> <ul style="list-style-type: none"> <li>- cultivated</li> <li>- pasturelands</li> <li>- hay-making lands</li> </ul>	<ul style="list-style-type: none"> <li>-no legal restrictions on private ownership</li> <li>-no private ownership</li> <li>-no private ownership</li> </ul>	<ul style="list-style-type: none"> <li>-private (individual or collective) ownership; long term, renewable leases under “possession” contract</li> <li>-long term, renewable individual or collective leases of winter pastures</li> <li>-long term, renewable individual or collective leases</li> </ul>
<p>Lands occupied by cities, villages, other settlements:</p> <ul style="list-style-type: none"> <li>-lands under buildings and constructions:</li> <li>-lands allocated for mining activities:</li> <li>-public common use lands</li> </ul>	<ul style="list-style-type: none"> <li>-owned by the State or leased to the owner of a building</li> <li>- leased under a “possession” contract</li> <li>- no private ownership or leases</li> </ul>	<ul style="list-style-type: none"> <li>- private (individual or collective) ownership by the owner(s) of a building; long term, renewable leases under “possession” and “use” contract</li> <li>-no changes to the current regime</li> <li>-no changes to the current regime</li> </ul>
<p>Lands for roads and communication network</p>	<ul style="list-style-type: none"> <li>-owned by the State</li> </ul>	<ul style="list-style-type: none"> <li>- private (individual or collective) ownership by the individual or business which builds a new road; long term, renewable conditional leases of existing roads and other utilities along with underlying lands</li> </ul>
<p>Lands covered by forest</p>	<ul style="list-style-type: none"> <li>owned by the State</li> </ul>	<ul style="list-style-type: none"> <li>-conditional leases under “possession” or “use” contracts; forest stewardship under a “possession” contract.</li> </ul>
<p>Lands covered by water</p>	<ul style="list-style-type: none"> <li>no legal restrictions on private ownership</li> </ul>	<ul style="list-style-type: none"> <li>-no change to the current regime; conditional leases where appropriate</li> </ul>
<p>Reserved lands</p>	<ul style="list-style-type: none"> <li>no legal restrictions on private ownership</li> </ul>	<ul style="list-style-type: none"> <li>private (individual or collective) ownership</li> </ul>
<p>Lands for the state special needs:</p> <ul style="list-style-type: none"> <li>-borderlands</li> <li>- lands allocated for state security and defence</li> <li>-other sub-categories</li> </ul>	<ul style="list-style-type: none"> <li>may not be individually owned</li> </ul>	<ul style="list-style-type: none"> <li>-leases to Mongolian citizens under “possession” contracts with no lease fees;</li> <li>-short term “use” contracts;</li> <li>-no changes to the current regime</li> </ul>

### 3.4. Privatization process

The process of land reform and privatization will advance in series of actions carried out simultaneously or/and consequently. The approximate series of such actions, grouped in certain “steps”, are described below.

**Step 1:** Clearly, for introduction of an institute of private land ownership, the Parliament has to enact a law on privatization of land. The advantage of such law is "an immediate and concrete statement of explicit political support for and commitment to the privatization process" (Guislain 1997). The core elements of this law will be enabling provisions authorizing and organizing the privatization process. The laws will also clarify such issues as sizes and location of land to be privatized and privatization procedures for each type of land. Besides organizing *the land privatization actions*, it is necessary to *define property rights*, that could be done either by enactment of a law on private ownership of land or amendments in a form of addendum to the Civil Code.

A great challenge facing the reformation of land rights is to institute an appropriate legal basis. A whole institution of private land property needs to be introduced in the Mongolian legal structure and its framework must be shortly set up through amendments into existing statutes. At the present, all legislative acts, administrative regulations, permit and licensing system, structure of government institutions, etc., presuppose and are designed for state land ownership. In addition, an entire juridical system, including courts, judges, attorneys, procedures, regulations and so on, has to be renovated around the requirements of introducing a new object into the legal mechanism. Laws on juridical procedures have to be changed to resolve disputes arising between (i) the relevant state agency and private parties during the privatization process, property right grants and registration, etc., and between (ii) private parties on property rights issues, in ordinary courts rather than through a state arbitration agency. An adequate mechanism for enforcement of regulations and court decisions must be supplied.

Among others, the Civil Code and taxation laws are expected to meet the most addendum where property rights like a long term lease, group lease should be enhanced and specified, while ownership rights have to be established, and rights-of way and other related issues are addressed, e.g. full specification of rights and obligations of owners, titling, transfer of property, succession, nationalization, compensation, expropriation, taxing. The principal question to be reflected is how far the government's considerations about public interests shall regulate private land management.

Another question deserving attention is how to regulate public utilization of water, wildlife and other common natural resources (for instance, *hujir*<sup>v</sup> commonly used by herders at no any permission or fees) on privatized lands. My understanding is that upon land privatization, the existing regimes of use of water and other widespread natural resources will remain intact, in other words, a new owner of land will still need to contract the use of other resources if required by law, because they will still belong to Government as stipulated in the Constitution.

To implement the above mentioned provisions, the Government must carefully determine its taxation policy. First, it must be admitted that the land laws and tax laws should show a clear distinction between land use fees and national taxes. Often, there have been proposals to impose and collect pasture utilization (grazing) fees through taxes. This is explained by that such mechanism is less costly to the state and simpler to

perform in rural conditions of Mongolia, thus, more acceptable by herders. In my view, these two different economic institutions should not be mixed because in Mongolia the grazing fees appear as a fee for use of natural resources not yet *privatized*, but taxes are a contribution to the government claimed upon *private* incomes.

Second, the Government must introduce a progressive, graduated livestock head tax as opposed to the current uniform head tax as an incentive to increase the productivity of individual animals rather than an aggregate number of livestock.

Third, land property taxes will be instituted by enacting a new law as a part of the package of existing tax laws. A balanced tax structure is a very important mechanism for achieving economic policy goals. Besides using taxation “to encourage desired land uses and discourage undesired land uses” (Laconte 1981), it is often employed to generate state revenues, especially for local governments, or realize certain social policies as well. Upon imposing new taxes in Mongolia, the following considerations will appear essential:

- A yield from land property taxes should not be seen as a substantial source of revenue to cover the current budget deficit, but should appear as an alternative, additional resource. If the central authorities will too much on property tax revenue to finance local needs, the local governments will tend to increase revenues by privatizing more lands or higher value lands.
- Basically, there will be an ad valorem land value tax instead of a real property/real estate tax. Here is a dilemma what to tax, land or improvements, and in what proportion? There is a consensus that real property taxes, where land and improvements are taxed both and somewhat equally, “discourage building construction and maintenance, delay development and redevelopment, increase land and building prices, encourage land speculation, and promote inefficiently and under-used land. Taxes on improvements are also thought to decrease the intensity of development by favouring smaller buildings and lower the quality and quantity of development and maintenance” (Roarke 1997). That is why in case of Mongolia higher rates of taxes on land and lower rates, if any, on buildings, constructions and other improvements would be more sound. To promote long term stable development of private land, a tax on land transfer, sub-contracting and speculations should be imposed as well, which may shift some of the tax burden from the current users to land speculators. Taxing at a variable rate the land conversions, i.e. change of the utilization purpose of the parcel of a certain type, coincides with the earlier named objective to sustain present traditional social organization and protect indigenous land rights. To summarize, introduction of a land value tax combined with land speculation and conversion taxes should produce stable investment and a higher quality of improvements, and thus will best serve the current goal of the land reform to promote a market development of the country and for protection of pastures too.
- A very initial step to introduce a land value tax will face an obvious obstacle: there is no private land market in the country yet, whereas this tax is based on the *market value* of the land. A smooth solution may be found in the government’s matrix of appraisal of lands which the Law on Land Fees manipulates. Contained in this matrix, the rough appraisal of lands, approved by the Cabinet, is subject to further

justification by local authorities. Government's estimation of values of land can be used for a certain period as a ground for tax estimations, initial land assessments, opening sales and auction bids.

If the recent divestiture of the state owned enterprises has been connected with reforms of the pension funds and modification of labour legislation, in the case of Mongolian land reforms the most controversial social issue will be a factor of justice and equity. Social safety measures should be taken to ascertain the public to go over the land reforms. In the law on privatization of land the government should clearly state its intention to pay fair compensation to those "laid-off" people who would lose their land rights due to the reforms.

Transfer of land to individualized utilization should in no way lead to increased degradation and pollution of the land and other natural resources. Thus, in addition to matching with the tax and social policies, the land reforms should be carried out in full compliance with existing environmental legislation.

**Step 2:** Even after an optimal legal framework for managing privatization is set up, its success would not be guaranteed. Much of its accomplishment depend on availability of resources (human, budget, etc.) and how the process is actually handled, i.e. performance of an executive agency (agencies) which shall hold, manage and control the privatization process. The experience of recent privatization programs held in Central and Eastern European countries show that they have chosen a variety of institutional structures to implement their privatization programs. The specific organization of the privatization body in each country depends on the country's features and objectives of land reforms (fast speed, restitution of rights of the former land owners, etc.). In some countries there was one governmental body functioning at different levels (for example, in Albania), while in other cases there were more than one institution with different functions (Ministry of Privatization and Land Fund in Czech Republic), while in some countries these functions were mainly delegated to local governments (Municipal Land Councils in Bulgaria).

Being aware of many positive distinctions of the Ministry of Justice and the Committee on State Property (presence of relevant staff, etc.), I'd still bias that these agencies will have a more standardized, uniform approach toward land reforms and tend to ignore its social complications. Besides this, the Committee has no local extension and, generally, is not very much appreciated by the public. Realizing the long tradition of managing land issues by the Ministry of Nature and Environment, it is obvious to suggest that this agency should be the main subject to implement land reforms in Mongolia though the land reforms in current Mongolian context will have rather political, economic and social dimensions than environmental ones. The Committee on State Property and Bureau of Registration of Immovable Property will interfere at a later stage of technical arrangements to conduct privatization transactions, register contracts, etc.

Another major actor in a process of land reforms is the local authorities - *aimag* and capital city *Hurals* and Governors, local *sum* and *bag Hurals* and Governors - whose major role will be in planning, preparing and carrying out the privatization measures on the site. The experience of global privatization shows that the process "tends to proceed faster when it is decentralized" (Ernst & Young 1994). Although in no

way a speed acceleration is the objective of the initial land reforms in Mongolia, a decentralized approach will, firstly, contribute to local democratic decision-making and a greater participation of local residents in it. Secondly, in technical terms, such approach will help to avoid time-consuming administrative reviews at each level or “*ad hoc* approvals of every major decision” (Ernst & Young 1994) on land reforms. To perform decentralization, the central authorities should transfer many of the decision making rights to the local administrations, but in the meantime, increase their responsibility and accountability both to the public and to the upper level administration because it is necessary to provide a unified chain of command through all levels to avoid free local interpretation of the central policy of land reforms.

The privatization bodies will need an adequate budget for preparing the land cadaster and plans, negotiating with local authorities, and monitoring transactions of land reforms. It is important to provide the privatization body with sufficient autonomy including financial independence. This is the reason why certain ways of covering land reform expenses such as a fund financed out of privatization receipts (case of Peru) or external financing and borrowings (case of Morocco) are not acceptable because of a bias to be led by the donor's conditions or a side interest to get higher revenues through selling off more land at a higher price. In Mongolia, financial independence would be best achieved by total government financing.

**Step 3:** If building a legal and institutional environment for land reform is associated mainly with functions of the central government, the next step of targeting and valuation of lands for privatization will be for matter of the local governments and communities. Before this phase starts, the Cabinet, privatization agency and *aimag* Governors should issue an approximate time-schedule and detailed regulations of how to carry out this process to their subsequent organizations to provide synchronicity and uniformity of comprehension.

Targeting lands for privatization will start from meetings of local communities at a *bag/horoo* level through *sum/duureg Hural* meetings and final decisions will be made by the *aimag/capital city Hurals*. This is the existing order of local decision making on land management issues established by the Land Law. Chapter 3 of the law describes procedures performed by *Hurals* at all local levels for working out an action plan on lands qualified for utilization under lease and use contracts in each territorial unit. This plan is subject to annual revision, and additional lands for further private utilization through sales, group leases and other chosen methods can be incorporated into the plan. In other words, the land reforms will not be conducted as a separate program but as a part of existing local patterns of land management.

Local plans and chosen methods of privatization will be actively negotiated with the relevant government agencies - Ministry of Nature and Environment, Committee on State Property, Ministry of Infrastructure and others, after which the plans and maps of *bag, sum, aimag*, capital city and nationwide levels will be comprised and confirmed by the Ministry of Nature and Environment or discussed by the Cabinet.

This stage of the reforms should proceed with strong involvement of the local community members in sharing decision making and with significant public participation in local meetings to express their interests and priorities in developing their own communities.

Introduction of a new economic unit - private land - into the country's financial institutions (for instance, banking, sales or mortgages) requires an initial appraisal of land. Surely, there will be abundant debates regarding what to appraise - soil, land or ecosystem, how to assess the land's capability and its economic constituents, which techniques should be used, and so on.

Summarizing, this phase of targeting and valuation of lands will start the on-site actions of the land reform and will be most resource- and time-consuming.

**Step 4:** The next step of selection and verification of potential land lease contractors and buyers should be handled in a delicate manner, given the issue of ethnic minorities (discussed later) and intentional discrimination against some foreigners and preference to others. Timely disclosure of information to contract seekers and strict assurance of eligibility requirements are essential. The limitation of a number of potential contractors on the basis of nationality is "not uncommon", as the analysis of the domestic privatization legislation of other countries shows (Guislain 1997)<sup>vi</sup>. In the case of Mongolian land reforms, under some circumstances (connected with foreign investors in particular), the selecting and verifying bodies - *sum/duureg*, capital city Governors, Committee on State Property - may be given more discretion in choosing land contractors.

The next stage will comprise exciting measures by actual privatizing: public announcements, sales, lease contracts, designing, printing and granting title certificates.

Divestiture of lands itself will not be end of the reforms. The Government must carry out such policies which would foster new banking mechanisms, develop infrastructure (mainly electrification, roads and telecommunication for rural areas of Mongolia) and provide security of tenancy to land contractors because the threat of frequent changes keeps landholders from making sound investments

### **3.5.Issues around privatization**

#### **3.5.1.Obstacles**

Sound management of land reforms may be hampered by certain obstructions of various technical or general social matters. Here, I'd like to name some of the existing and expected obstacles (not intending to discuss possible solutions):

- of technical matters:
  - old, inadequate natural resources data base; map data availability is restricted in terms of coverage, precision and access;
  - geographic and population information is not unified and computerized only fragmentally; limited capacity for data analysis;
  - poor communication facilities, especially in rural areas;
  - underestimation of complexity, costs and other weaknesses of the land reform program design (MON/97/131, 1997).
- of economic matters:
  - limited development of the active capital markets and of private financial institutions; low purchasing power of Mongolian businesses and individuals; indebtedness and losses of state owned enterprises;
  - restricted financial and institutional capacity to allocate adequate resources for implementation of land reforms

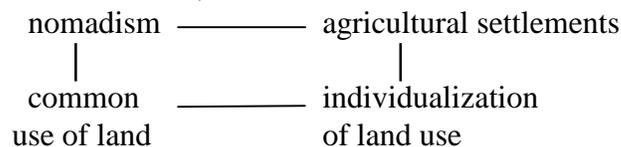
- of political matters:
  - risk of policy change

### 3.5.2. Effects of land reforms

Land reforms will be a new phase of Mongolia's economic and social progress which will include development of a national middle class and of a sound private sector with well-functioning goods, capital and labour markets. But in the short term, land privatization may produce various negative "side-effects" a brief analysis of which is following.

- There is no doubt that the recent market reforms brought up a great differentiation of incomes among various groups of Mongolian society. From a certain stereotyped viewpoint it may be argued that land reforms will increase inequity in income distribution and aggregation of land into larger holdings. However, my understanding is that equity results of the land reform will be determined not by reform itself but by the government policy and the economy as a whole. Greater equity in land ownership and utilization may be achieved by the shape of the law and security of land tenure.

- The sedentarization process in Mongolia is not a specific concern of this paper. However, to predict the consequences which land reforms may bring, it is necessary to recall some historic circumstances and observations. Most scholars describe sedentarization in historic context as the process of change of the production model (see for example Grossman 1992):



Sedentarization in Mongolia is characterized by another pattern: restriction of herders' movements and changes in the shapes of movement with respect to frequency and distance. Prior to this century, the non-pastoralist population of the country were concentrated mainly around monasteries, i.e. the settlements were religious centres. The history of Mongolian cities and settlements of the settled society type and of urban social life is relatively short, some 60 years. The sedentarization process of this century has been forced by the following factors:

- a) formal division into administrative and territorial units and registration of their residents which led to herders' movement within one *sum*;
- b) alienation of grazing lands and building of settlements by newly introduced agricultural and industrial sectors - the large state-owned crop cooperatives, mining and logging.

Obviously, promotion of lease contracts and registration of group leases in pasturelands and privatization of urban lands conducted under the land reforms, as proposed in this paper, will lead to further sedentarization of herding communities. In densely populated areas, this may cause intense pressure on grazing lands. However, there is a believe that rural grazing practice will adjust to the new conditions and regenerate itself because herders, given market incentives and concerned about

multiplying their stock, will have to adequately manage their grazing lands. An interesting observation made by F.V.Muller during his consequent travels to the Mongolian countryside can prove the soundness of this expectation: right after dissolution of herding cooperatives he observed “ever more reduced pastoral movements”, while in 1995, he found that “the herders who managed to accumulate or breed larger stocks..[].. migrate more often and over greater distance” (Muller 1995).

Summing up, sedentarization, expected to intensify during the land reform, should be regarded as a natural, objective process reflecting the larger, global processes of merging cultures and markets.

- Expected interrelation between land reforms and rural-urban migration is not clear. There are two factors affecting the process in opposite ways:

- a) it may be argued that formalization of property rights gives more security and control over the land, so herders and residents of rural settlements will be less prone to move out of rural areas;

- b) however, there is the existing evidence which suggests that market oriented reforms, including land reforms, support an accelerated rate of migration from rural areas to the city. Challenges of herding production, concentration of people around settlements and competition for better pastures may result in further migration of the younger generation of herders to leave pastoral life. Researchers of Environmental and Cultural Conservation in Inner Asia project (Humphrey 1999) observed that "gangs of youths hanging around the district centers are particularly prevalent in Mongolia.[...] Gangs draw in young men from outlying camps [...] and the excitements they seek are of an urban kind. They are trying to create a microcosmic city life of their own, though they are so distant from real cities". This migration is likely to advance by the "by-step" pattern - several short movements from smaller settlements to larger, from *sum* centers to *aimag* centers and, lately, to the capital city. If the main reason for rural-urban migration in previous years was better chances for salaried work in city which was attractive for rural migrants previously self-provisioning, now they would look for a greater opportunity for private entrepreneurship there. An alternative to stop this chain is promotion of the local economy and creation of jobs at rural settlements, and to achieve this less restricted divestiture of land there, democratic local planning with participation of residents and increasing a role of the local public sector should be of a strategic matter. Ironically, due to centralized planning and budgeting of economic development, the roots of many social problems of rural settlements in Mongolia lay outside of the local arena.

- The land reforms may unintentionally give rise to the ethnic issue. There are up to 20 different ethnic groups in Mongolia., among which the Kazaks (approximately 92400 people - citizens of Mongolia living mainly in the far western *aimag* Bayan-Ulgiy), Chinese and Russians are not of Mongolian descent. The Chinese, the closest neighbours of Mongols, lived in the country for the last 2 centuries and their number used to vary according to favourable or unfavourable living conditions and regimes both in China and Mongolia. The number of Russian merchants and peasants settled in Mongolia became somewhat significant by the end of the 19th century as a part of the recent expansion of the Russian empire in Siberia and the Far East. Then, their numbers were steadily decreasing; particularly after the *perestroika*, many ethnic Russians moved

out seeking better chances in the new Russia. From the forties onwards, Moslem Kazaks migrated to western Mongolia from the neighbouring Xinjiang-Uigur region of China running away from repression and hunger.

The major reason for these ethnic groups to migrate to Mongolia was primarily economic: limited access to land back in their own country, land free to occupy in Mongolia, greater opportunities for business and the tolerant nature of the Mongolian people<sup>vii</sup>. The point here is that, compared with the Mongols, these nations are traditionally either more sedentary or purely agriculturalists<sup>viii</sup>. P.Finke observed that today along the lower course of the Buyant river, which is “one of the major agricultural areas in western Mongolia”, farming is practiced “almost exclusively by Kazaks” (Finke 1995). That is why wider support for land reforms can be expected from this non-pastoralist part of the country's population. During the land reforms these ethnic groups will feel themselves eligible to own a share of Mongolian land, while the Mongolian authorities may not express the same feelings. Another constraint may occur in relations between the Mongolian and non-Mongolian parts of the population of a particular area, especially with Kazaks concentrated in Bayan-Ulgiy *aimag*, in connection with disputes over membership in local communities, grazing land rights and ownership of winter shelters. Such disputes are going on now too. The end of the socialist era in Mongolia affected these ethnic groups unevenly, but certainly less hurtful than on the Mongolian part of the population. By opening up the borders and social changes in both Mongolia and Kazakhstan and privatization of cooperatives the considerable number of Kazaks chose to migrate to Kazakhstan, while many Mongolian families moved to the countryside to become herders (see page 17) and occupied vacant winter shelters along with adjacent pastures left by the Kazaks. Vacant job positions, quarters, if any, were also quickly filled up. However, many Kazaks shortly came back and this caused the current uncertainties about grazing rights and access to pastures. The fact that Bayan-Ulgiy *aimag* borders with China and many Kazak families still have relatives on the other side of the border would create another obstacle to carrying out notable land reforms in this *aimag*.

- Social economist A.Klich observed that the move to market based economies by the former Soviet Union and Eastern Block had a negative side-effect - the rise of corruption - which "became a serious concern for newly arriving foreign investors". (Klich 1996). To implement the land privatization program in Mongolia successfully, mechanisms to minimize corruption and fraud are also needed. It is a difficult and politically sensitive task and may be reached if handled through multiple channels such as stringent legislation, adequate supervision of the privatization process and greater information disclosure and publicity in decision making and implementation of the process. Obviously, regular public announcements, meetings and comments slow the process but this is the channel of achieving community participation and commitment to the land reforms.

The mentioned above are only some of expected (and unexpected) social effects which may raise shortly after implementating of the land reform program. It should be kept in mind that the social costs of privatization may be higher than it's immediate economic benefits, and the government will have to allocate additional financial resources and organizational measures to deal with those problems. The right way to

address these social outcomes will not be just some ad hoc measures but a set of well-defined social policies as a component of long-term development policies of the country and wider democracy.

### **Conclusion**

The Mongolian land tenure system is very complex. Over this century Mongolian society has undergone several transformations, each one of which would bring significant changes in way of life and thinking. The land tenure system, although having been adapting to and transforming along with those economic and social changes and co-existing with formal institutes of land administration, still remains the main mechanism of land management. The characteristics of Mongolian land and climate combined with the recent introduction of market incentives have made improving land management a high priority for the nation.

Land reforms in Mongolia will differ greatly from those held in other countries because, first, unlike in most other countries, the total land fund in Mongolia is owned by the State. Second, the share of pastoral livestock breeding in the country's economy and its output are much larger than in many other countries in the world. And third, the prevalence of the nomadic culture still remains the main factor influencing the social life of Mongolia.

There will be no uniform methods of land privatization and lease reforms, each type of land shall be privatized, leased or commonly used differently in accordance with the Constitutions and other laws. The overall goal of the land reforms is a not transfer of some amount of land from the state ownership to the private sector, but introduction of new incentives and an innovative way of economic development of Mongolia.

### **List of Mongolian words used in this paper**

*Aimag* - largest territorial and administrative unit similar to province, has a Governor, population elects their Representatives to the *aimag Hural*, divided into *sums*.

*Bag* - smallest territorial and administrative unit in rural areas similar to a county, has a Governor, residents hold public meetings.

*Duureg* - territorial and administrative unit in urban areas similar to a district, has a Governor, population elects their Representatives to the *duureg Hural*; divided into *horoo*.

*Ger* - traditional felt tent of the Mongols.

*Hashaa* - a fenced plot around a *ger* or a small house.

*Horoo* - smallest territorial and administrative unit in urban areas similar to a district, has a Governor, residents hold public meetings.

*Hot ail* - social unit of herders, nomadic camp

*Hural* - assembly

*Otor* - long distance movements of herders and herds (up to 200 km)

*Sum* - territorial and administrative unit in rural areas similar to a district, has a Governor, population elects their Representatives to the *sum Hural*; divided into *bags*

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Notes

<sup>i</sup> Translated by the author.

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

<sup>iii</sup> For the 1994 World Conference on Natural Disaster Reduction, the Government of Mongolia estimated that 76 percent of the nation's rangelands were subject to slight desertification, 20 percent to moderate desertification, and 4 percent to severe.

<sup>iv</sup> Such challenges were not unique among new independent states of the former Soviet Union. In Kyrgyzstan, Kazakhstan and Turkmenistan, for instance, new farmers had no practical means of developing land - no start-up capital or machinery, no infrastructure or markets for delivery and sale of products. "The result, in Kazakhstan at least, is that many more farmers are leaving the land than are taking up new leases". See O'Rourke 1998.

<sup>v</sup> Type of soil rich with minerals used as a nutritional supplement for domestic animals or treating their decease. *Hujir* is especially important in deserted areas characterised by shortage of water and poor vegetation.

<sup>vi</sup> The motivation of privatization in Malaysia to strengthen the economic power of the Malayan nationals and reduce the relative weight of Chinese in the local economy, seems similar to concerns regarding land privatization in Mongolia. See Case 1993.

<sup>vii</sup> For example, W.Hinton wrote about on-going Chinese migration to Inner Mongolian grasslands that "the thrust behind this movement is the relatively high standards of living of many herdsmen as compared to the level of many land tilling peasants in China". See Hinton W. 1990.

<sup>viii</sup> The experience of land reforms in new independent states of the former USSR shows that ethnic tensions on the issue of access to land were not exceptional. For instance, in 1990 land privatization in

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Kyrgyzstan caused riots between ethnic Kyrgyzs, a traditionally nomadic people more used to shepherding in the hills and Uzbek minority (some 15 percent of the population) mainly occupied in farming in the plains, so the Soviet troops had to intervene to quell the riots. *See O'Rourke 1998.*