

Land Rights, Mining and Resistance: New Struggles on Mongolia's Pastoral Commons

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Abstract

Since the collapse of the Soviet Union and agricultural decollectivisation, post-socialist rural contexts have afforded commons scholars particularly fertile ground for examination of institutional change and evolution under new modes of governance. In Mongolia, as elsewhere, such transformations have been characterised by the erosion of state influence and *de jure* and/or *de facto* devolution of land and resource rights. Particularly since 2000, policy and practice in Mongolia's herding sector have reflected donor-led concerns with the formation of local herders 'groups' or 'communities' and the implementation of group tenure solutions in pursuit of environmental and livelihood sustainability on the commons. Mining practices have also assumed increasing importance in shaping contemporary struggles over rural resource governance, as highlighted by the emergence of herder-led resistance groups and NGOs in direct response to mining-related land alienation and degradation. However, despite obvious linkages between mining practices and herders' resistance, 'community' formation and pastoral tenure reform, these have to date attracted little attention amongst commons scholars. Drawing on datasets which chart institutional evolution amongst herders' groups in Mongolia's Gobi region, this paper addresses these critical lacunae through examination of the impact of recent tenure reforms and social innovations, in the form of herders 'communities', on land rights and practice. Empirical data presented herein thus highlight the limitations of both state and community-led land reforms. These critiques are developed further through examination of local responses to mining-related land alienation, the emergence of herder-led resistance groups and links between these and the donor-initiated herders' 'communities' concerned with pasture management. The paper thus provides a critical analysis of recent, complex institutional innovations in rural Mongolia and their role in shaping commons management in the 21st century.

Keywords: *Mongolia, pastoralism, land reform, communities, mining*

1. INTRODUCTION

Since the collapse of the Soviet Union, post socialist rural contexts have afforded commons scholars particularly fertile ground for examination of institutional change, not least with reference to *de facto* or *de jure* land reforms. 'Transition' from communist-era collectivisation and regulation of rural spaces has necessitated not only evolution of the rules and norms of resource use, but of the social forms through which they are enacted and contested. Individualisation of agricultural land tenure through differing forms of privatisation, for example restitution of pre collective land rights, have been the subject

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of much study (e.g. Allina-Pisano, 2004; Deininger, 2002). However, critical and ongoing struggles over the future governance of pastoral commons have attracted relatively little scholarly attention to date.²

These lacunae matter for a number of reasons: at a practical level mobile or (semi) nomadic pastoralism remains a core livelihood strategy for significant proportions of national populations in the region, for example in Kazakstan, Turkmenistan, and Mongolia, wherein between an estimated 30% and 77% of national populations rely on herding as their main livelihood strategy (Thornton *et al.*, 2002; World Bank, 2003a). State and developmental endeavours to enhance livelihoods thus necessitate improved understanding of the functioning and regulation of pastoral systems. The unexpected Soviet-era legacy of vast, relatively underdeveloped rural spaces (Schwartz, 2005) has also rendered pastoralist landscapes in the region attractive to western conservationists. Hence, rural spaces have become subject to multiple and at times conflicting goals of poverty alleviation, sustainable livelihoods and biodiversity conservation, which reflect community agendas to varying and often limited degrees. Histories of external interventions in mobile pastoralist societies in other parts of the world are far from encouraging. The prevalence of informal, flexible institutions, permeability of both spatial and social boundaries of pastoral groups and attendant deviations from blueprints and models of commons management have often rendered them illegible to outsiders, thus confounding the achievement of externally formulated goals and land reforms (Forstater, 2002; Scoones, 1994). However, recent policy fashions of devolution in natural resource management and emphasis on the efficacy of customary tenure arrangements potentially offer a way forward amongst pastoralists groups. In particular, an emphasis on community 'ownership' of tenure reforms and on maintaining flexibility in customary tenure arrangements appear to accord well with pastoralist institutions and with current policy expectations concerning the benefits of community-led initiatives (Bruce and Mearns, 2002).

In practice, the implementation of such policies has frequently translated on the ground into group-based tenure options, which blur the distinction between state and community-led land reform initiatives. Amongst mobile pastoralists creation of formalised groups (albeit based on customary institutions) from loosely kin-based associations at the behest of state actors and donors has typically ensued, with poor or unexpected long term results and despite theoretical commitment to maintenance of flexibility (e.g. see Mwangi, 2007, on group ranches in Kenya's Maasailand). Specific difficulties with the application of group tenure arrangements in the case of the Maasai have included identification of legitimate group members, resolution of internal governance issues, including reconciliation of individual and collective interests, enhancement of inequality and population growth (Mwangi, 2007). A perceived need to protect more valuable or productive land from outsiders has also driven community-led pressures for progressive individualisation of tenure, while sedentarisation of previously mobile populations has typically resulted from hardening of social and spatial boundaries.

² Notable exceptions include Kerven's (2003) edited volume: *Prospects for Pastoralism in Kazakstan and Turkmenistan*.

The recent implementation of devolved and community-based approaches to tenure amongst pastoralists in post-soviet rural spaces affords commons scholars the opportunity to examine the domestication and limitations of community-based and led approaches to land in these little studied contexts. Despite widespread and recent application of these group-based approaches on Mongolia's pastoral commons, the empirical focus for this paper, detailed studies are lacking. According to UNDP (2002:9), 'it is now widely recognised in Mongolia that sustainable land use can only be achieved through a grassroots approach based on devolving key pasture management responsibilities to the communities of herders who are the primary users of the pasture'. However, to date we have little understanding of the nature and impacts of initiatives based on this emergent policy consensus.

In this paper I address aspects of current debates over land rights and land reform in commons governance, with particular reference to the role and limitations of 'communities', donors and the state in community-based land tenure reforms. Since decollectivisation and especially since 2000 Mongolia's pastoralists (some 35% of the population) have been the focus of state and donor-driven initiatives concerned with group formation, formal *de jure* as well as *de facto* devolution of pasture rights and the pursuit of environmental and livelihood sustainability on the commons. In many ways these initiatives present a radical departure from collective era social organisation and modes of governance, although empirical material also highlights elements of continuity, as discussed below. These innovations in land tenure have received little attention thus far. A further twist has been added in recent years by the proliferation of legal and illegal mining activities across the country, with attendant issues of effective curtailment of herders' land rights, for example through land degradation, pollution or physical exclusion of herders from previous customary grazing areas. To date there has been remarkably little attempt to explore the efficacy and limitations of new formalised herders' groups and their attendant tenure rights in the face of mining incursions.

In this paper I draw on empirical material from herders in Mongolia's Gobi region to examine pastureland tenure reforms related to group formation, in the context of recent historical manifestations of state regulation and dynamic 'customary' practices. I concentrate on three key donor projects: the GTZ 'Nature Conservation and Bufferzone Development' project and the successor 'Conservation and Sustainable Management of Resources: Gobi Component'; the World Bank 'Sustainable Livelihoods' project (SLP) and the UNDP 'Sustainable Grassland Management' project (SGMP). Although other donor projects also engage specifically with issues of formation of herders' groups and land tenure in rural Mongolia, notably the USAID funded 'Gobi Initiative' and IDRC funded 'Sustainable Management of Common Natural Resources in Mongolia', the three major donor projects considered here are amongst the largest and most ambitious in terms of funding and/or geographical extent and, in the case of GTZ and World Bank, offer the lengthiest engagement with herders and tenure issues on the ground. Through consideration of these three key donor projects, I examine the extent to which they reflect community agendas, their *de jure* and *de facto* impacts on land rights, responses to mining incursions and overall evidence for the limitations of state and community-led

land reform. In the final section of the paper I discuss the contributions of this Mongolian case study to current theoretical and policy debates.

2. STUDY AREAS AND RESEARCH METHODS

The empirical data in this paper draws on fieldwork undertaken amongst pastoral communities in Mongolia's Gobi region between 2000 and 2008. Longitudinal datasets from a single *sum* are used to explore the evolution of institutions, the emergence of the earliest donor-driven formalised herders' groups and attendant impacts on tenure between 2000 and 2004. Datasets from 2006 enable explicit comparison of the three donor projects in this respect, as case study sites were determined on the basis of the contemporaneous activities of all three projects. Finally, in 2008 case study sites were selected on the basis of the existence of formalised herders' groups linked to these same donor projects and the presence of legal and/or illegal mining activities, which might be supposed to impact on herders' livelihoods and land use.

During fieldwork events in 2000 and 2001 household surveys were conducted with all winter herding groups (individual families or *khot ail*)³ in the selected *bag* in Omnogov *aimag*, equivalent to a total of 183 families or *khot ail*.⁴ These survey instruments were dominated by open-ended questions concerning social organisation, land rights and land use. Follow up semi-structured interviews, focusing on pasture rights, were conducted with all groups in 2001. These interviews also encompassed questions concerning membership of emergent formalised herders' groups. In-depth key informant interviews and oral histories were undertaken with selected herders throughout these two fieldwork periods, in addition to participant observation while living in herding camps.

A further period of fieldwork in 2004 was designed specifically to explore emergent new herders' groups, institutions and tenure issues linked to the activities of international development projects in this *bag*.⁵ This involved in-depth semi structured interviews with 105 herding groups, focusing specifically on issues of herding practice and linkages to rights, institutions and institutional transformations contingent on developmental interventions.

In 2006 methods centred on semi structured interviews with all herding families (including members and non members of herders' groups), project staff and local administration personnel. Finally, in 2008 semi structured interviews were held with leaders and members of herders' groups, focusing particularly on land rights and responses to mining activities, with project staff and with local administration personnel. In the following discussion *bags* and *sums* are deliberately not named, in order to protect the confidentiality of respondents.

³ *Khot ail* are herding camps, usually kinship based, and typically include some 3 to 6 herding households, although numbers vary both regionally and seasonally.

⁴ *Bags* (subdistricts) are the smallest administrative unit in Mongolia, followed by *sums*(districts). *Aimags*, (provinces) are the largest administrative units are broadly equivalent to counties.

⁵ The World Bank and the GTZ projects were active in this area by 2004.

3. MONGOLIAN CONTEXT: INSTITUTIONS, LAND RIGHTS AND INSTITUTIONAL EVOLUTION

3.1 Introduction

Recent estimates suggest that Mongolia has the largest remaining contiguous area of common grazing land in the world (World Bank, 2003a). At present an estimated 82% of its 156 million hectares are classified as grasslands, these being central to the livelihood strategies of more than 30% of the population. Despite recent radical changes in the broader economic and socio-political frames for pastoralism, particularly in the 20th century, certain key elements of the system have persisted over the last century and beyond. The herding system was and continues to be based on seasonal movements between winter, spring, summer and autumn pastures and on herding of one or some combination of the 'five kinds of animals', namely sheep, goats, horses, cows and yaks, and camels, albeit with geographical and historical variations in movement patterns and herd composition. Pasture land remains officially in state ownership, despite formal allocation of possession contracts for winter and spring campsites to herding families, *khot ail* or more recently, to larger herders' groups or 'communities' under the auspices of recent legislative instruments and international development interventions, as discussed in Section 4, below.

As highlighted elsewhere, actual manifestations of land rights and herding practice in specific locations in rural Mongolia reflect both external (i.e. state and donor-led) and community agendas, the former often being reworked or domesticated 'on the ground' (Upton, 2005). For example, at the core of norms pertaining to pasture use is the reservation of winter and spring pasture through a system of seasonal deferral, supported by recognition of more exclusive rights of particular herding families or *khot ail* to these seasonal campsites. Recognition has recently occurred officially on the part of the state through legislative provision, namely the 1994 and 2002 Land Laws, but drawing to varying degrees on preceding acknowledgement by the state and other herders of customary usage and attendant rights in pre collective and even in collective eras (Fernandez-Gimenez, 1999; Mearns, 1996; Upton, 2005). Recent empirical data suggests that herders' claims to customary rights to pastures may variously reflect historical continuity of usage, pre collective or collective-era usage, direct inheritance, or more recent claims, centred on construction of physical structures such as winter shelters, these being supported by the state (Upton, 2005).

The following sub sections provide a very brief overview of key aspects of the institutional frameworks shaping pastoralism in recent history, including key elements of social organisation. These form a necessary pre requisite to analysis of recent post-decollectivisation transformations and attendant limitations of both state and community in devolved and group-based tenure reform (Section 4), and the role and efficacy of these groups in resistance to mining incursions (Section 5).

3.2 Historical contexts

Prior to Mongolia's communist revolution in 1921 pasture allocation within pre-defined herding territories (banners or *hoshuu*) was typically at the discretion of secular or religious officials, and usually made to *khot ail* within the boundaries of their particular administrative district (Potkanski and Szykiewicz, 1993).⁶ Within smaller administrative districts (*sums* and *bags*), available records indicate that individual herding families or *khot ail* gained access particularly to winter grazing areas on the basis of regular, customary usage while rights for summer grazing were more flexible (Bawden, 1968; Fernández-Giménez, 1999). Many such 'commoners' were responsible for herding single species herds of monastery or secular nobilities' livestock, in addition to their own, mixed species private herds, thus creating a two tier herding system with both yield-focused and domestic subsistence orientations (Sneath, 2003; Upton, 2005).

Land passed into state ownership in 1921, with the communist revolution marking the beginning of the erosion of the powers of preceding secular (e.g. banner princes) and religious (Buddhist) authorities. Customary pasture rights retained importance as means to access land for herding families and *khot ail* during this period, although available historical records afford little detail on actual herding practices and the continuation or reworking of pasture rights prior to collectivisation. The decay of the yield-focused sphere and emergence of a primarily subsistence oriented pastoral sector is, however, more widely reported (Sneath, 2003).

Collectivisation of pastoralism in the late 1950s marked a more radical transformation of pastoral organisation and practices. Land ownership was not, however, transformed, but remained with the state. Under the collective or *negdel* system all herders became wage earning employees of the state, responsible for the welfare of single species *negdel* herds, in addition to small herds of their own private livestock, thus reinstating parallel domestic and yield-oriented spheres (Sneath, 2003; Upton, 2005). Although pasture use was officially under the control of the *negdels* or state farms, customary rights and institutions reportedly coexisted to varying degrees with centralised control, and thus continued to shape land rights and pasture use (Mearns, 2002; Mearns, 1996). The *negdel* system was broadly supportive of norms of seasonal mobility and time partitioning of pasture use, which they facilitated through provision of mechanised transport on a seasonal basis and also in times of emergency.

While *khot ail* were arguably the only effective pastoral socio-economic institution between individual households and administrative authorities in the pre-collective era, collectivisation occasioned some reconfiguration of residence groups and institutions (Bold, 1996).⁷ Transformation of institutional and social organisation by *negdel* included

⁶ Prior to 1911 all land in Mongolia was owned by the Manchu emperor (Mearns, 1993). From 1911 until 1921, land was in the ownership of the Bogd Khan, the leader of buddhism in Mongolia.

⁷ The existence of neighbourhood level institutions such as *neg nutgiinkhan* (people of one place) and *neg usniikhan* (people of one water) in the pre and post collective era has been a matter of some contention in the literature (Bazagur et al., 1992; Mearns, 1993). However, for the pre collective era, these were arguably little more than abstract, imposed labels, with no reality in terms of socio-economic functions (Bold, 1996).

the effective replacement of kinship-based *khot ail* by *suur*, i.e. small groups of (theoretically at least) unrelated households as basic production units.⁸ A number of *suur* were members of one section (*heseg*), these in turn being part of larger brigades (*brigads*), who were responsible to the centralised *negdel* administration. While there is little evidence for substantial cooperation between neighbouring *khot ail* in the pre collective era, in the collective era *suur* cooperated with neighbouring *suur* through *heseg*, thus highlighting the *negdels'* creation of intermediate level herders' groups, between the *khot ail* and state, and overt cooperation at scales above the *khot ail*.

Decollectivisation of the pastoral sector in Mongolia between 1991 and 1993 marked a further transformation of the social organisation and regulation of herding. The two-stage privatisation of collective assets such as livestock and winter shelters in the early 1990s specifically excluded pastureland, which remained in state ownership. The immediate aftermath of decollectivisation was marked by a return to family, including *khot ail*, based herding units, who managed mixed species of herds primarily for domestic usage, albeit with some sales to local markets and 'middlemen'.

In the decade following decollectivisation, academic and policy reports on the pastoral sector have presented an image of a sector in crisis, characterised by growing sedentarisation of herders, conflict over pastures, effective retreat of the state from pasture regulation, and an overarching breakdown of pasture use norms, trust and cooperation amongst herders (Fernandez-Gimenez, 2002). These problems have apparently been compounded by an influx of 'new' herders to Mongolia's herding commons, particularly in the early 1990s, new herders being arguably especially prone to free ride on established pasture use norms and to eschew cooperation and collective action with more established herders (*ibid*; Mearns, 1996; Mearns, 1993).⁹ A series of natural disasters or *dzud* in the late 1990s have further adversely impacted an increasingly impoverished herding sector. Thus in the early years of the 21st century a sense of urgency concerning reform or support of the pastoral sector have informed emerging legislative and developmental initiatives focused around enhanced, legible tenure security for herders, through formal devolution of rights to herders' groups, albeit typically grounded in calls for the revival or strengthening of customary rights and practice (Mearns, 2002; Ykhanbai, 2004). The World Bank's SLP and UNDP SGMP epitomise these new initiatives, and in conjunction with GTZ's Gobi projects, have typically requiring formation or formalisation of herders' groups as foci for devolution of rights and for cooperation over commons management. It is to these initiatives in community-based commons management that I now turn.

⁸ Szykiewicz (1993) argues that *suur* were deliberately created from non-related families to ensure that primary allegiances of basic herding units were to the collective. However, this practice was reportedly relaxed over time (Mearns, 1996; Swift, 1991).

⁹ 'New' herders who did not look after livestock during the collective period, but were employed in other non herding occupations and only took up herding as their main livelihood strategy in the aftermath of decollectivisation.

4. 'DEVELOPMENT', HERDERS' GROUPS AND DEVOLUTION

4.1 Introduction

According to UNDP (2007) since May 2006, donors have allocated approximately \$77.5 million US to some 14 projects centering on creation and/ or formalisation of herders' groups in 19 of Mongolia's 21 provinces. These projects have resulted in recognition and documentation by the various projects of some 2000 herder groups, encompassing approximately 7% of all herding families in the country.¹⁰ Of these groups 71% are 'informal' groups (i.e. not officially registered as non governmental organisations (NGOs) or as cooperatives), 18% are formally registered as NGOs and the remaining 11% are registered as cooperatives (*ibid*). These emergent herders' groups are central to recent manifestations of land reform in rural Mongolia, being integral to the formal devolution of pasture rights to herders and to co management agreements between herders and the state.

These tenure reforms are but the latest manifestations of historical processes outlined in Section 3 (above) and are illustrative of the current limitations of both state and community-led land reform. In the case of the state, limitations pertain both to state capacity and legislative provision. Limitations are also evident in the extent to which recent state/ donor interventions reflect or respond to community agendas, and in the equity and livelihood implications of actual community practices facilitated by devolution. These are considered further below. However, prior to this analysis, the nature of herders' groups and community organisations emerging from recent state and donor initiatives are considered, as integral to understanding of their grassroots status and their impact on livelihoods and tenure.

4.2 Herders' groups and social innovations

In brief, groups such as GTZ 'communities' or *nukhurlul*, formed throughout Mongolia's Gobi region, represent institutional and social innovations, albeit drawing on aspects of customary practice and social organisation (Upton, 2008).^{11,12} By 2006, 83 *nukhurlul*, including some 1175 households were active across the 13 *sums* of the 3 Gobi *aimags* involved in the project (NZNI, 2006). This equates to some 20% of herding households in project implementation areas (*ibid*). Typically *nukhurlul* in case study areas comprised some 10-15 herding households (or approximately 40-60 people), including

¹⁰ As I demonstrate below, the figure of 7% overall does not reflect the full impact of these innovations on both member and non-member herders in project implementation areas.

¹¹ The GTZ/MNE 'Nature Conservation and Bufferzone Development Project' (1995-2002) was also implemented in other regions of Mongolia. It is only the implementation of this project in the Gobi region and its successor project, GTZ 'Conservation and Sustainable Management of Natural Resources – Gobi Component' project, implemented through the New Zealand Nature Institute (NZNI) (2002-2006), which are considered in this paper.

¹² According to some older herders in case study areas, *nukhurlul* bore some resemblance to collective-era *heseg*. *Nukhurlul* may also resemble 'people of one water' at least in geographical membership terms, although herders' accounts indicate that the latter lacked reality in terms of functions or activities in case study areas.

both related and non-related households, and with members living in geographical proximity to one another for at least part of the seasonal movement cycle, and thus sharing key seasonal grazing areas and/or water sources. Membership was via individual choice of households, but typically required financial or other contribution to secure membership, for example through donation of cashmere, a goat, or up to 50,000tg in cash.¹³

According to GTZ reports and interviews, the particular nature and form of *nukhurlul* arose from project attempts to strengthen self help initiatives and local forms of cooperation, and reflected changes from a more top-down approach to achievement of conservation goals in the project's earlier stages (Schmidt, 2006). In practice, detailed longitudinal material from one case study area (2000 to 2004) indicates that local self help initiatives were lacking amongst herders in this area prior to the project's intervention. Local forms of cooperation were also weak at scales above the household and *khot ail*, being confined to occasional and sporadic assistance over labour intensive tasks and general observance of pasture use norms (Upton, 2008). Herders commented on lack of trust and individualised behaviour of herding families in the aftermath of decollectivisation as detrimental to pasture use, but highlighted particularly a desire for greater state involvement in pasture regulation (81% of herders, n=111), albeit in parallel with improved mechanisms for discussion and conflict resolution between herding households and *khot ail*. Thus, despite a widely articulated desire for improved pasture use and livelihoods, prior to the advent of *nukhurlul*, herders in this case study area had no specific vision of community as opposed to state-led initiatives.

Project documents describe their role as a facilitative one. However, forms and organisation of *nukhurlul* exhibited great commonality across the project area. Most *nukhurlul* had community funds derived from the membership contributions highlighted above, which were used at least in part as a source of micro credit for members. Most also had elected leaders and community councils from amongst their members. Communities typical met formally at least once per season to plan, evaluate and carry out activities, with all member households theoretically required to send at least one household member to participate in *nukhurlul* activities. Activities of communities centred around shared labour and cooperation over timing of seasonal movements, mending winter shelters, shearing livestock and processing and marketing of livestock products. Livelihood diversification, for example into vegetable growing or tourism-related activities, was also integral to the activities of particular communities. Overt conservation activities, such as protection of rare and medicinal flora, and protection of key animal species, were also evident amongst some communities, reflecting more closely GTZ's declared goal of the promotion of biodiversity conservation in conjunction with the facilitation of sustainable livelihoods.¹⁴ Elsewhere, as project staff argued, project goals of 'nature conservation' 'translated into the Gobi herders' objective of

¹³ 1160 tugrug (tg) is currently equivalent to \$1 US. In 2004, the exchange rate was 1000 tg to \$1 US.

¹⁴ Subsequent documents concerned specifically with the later 'Conservation and Sustainable Management of Natural Resources' project refer specifically to community organisation as a response to 'the need to restore pastoral mobility and revive local institutions to coordinate pasture use' (NZNI, 2006), thus reflecting more broadly based notions of conservation.

“mobility”, which in itself was integral to achievement of more sustainable use of resources (Schmidt, 2006:20).

Social innovations associated with the UNDP SGMP (2002 -2007) are comparable in many respects. The SGMP operated in 9 *sums* of 3 *aimags*, two of which are in the Gobi region and also form part of the implementation area for the 2002-2006 GTZ project. On conclusion of the UNDP project 67 herder groups involving 780 herding families had been established in project *aimags* (UNDP, 2007). The UNDP project focuses less explicitly on conservation than its GTZ counterpart, but shares similar goals and mechanisms of implementation. Specifically, its stated aim is ‘to increase the welfare of herding families through the sustainable management of Mongolian grasslands...(through)...strengthen(ing) and formalise(ing) existing customary herder community institutions, and strengthen(ing) linkages between them and formal governance structures and the private sector’ (UNDP, 2002). The UNDP project also contains more explicit commitment to bottom up community-based approaches to pastureland management and to the support, revitalisation and (importantly) the formalisation of customary rights, cooperation and practice (ibid; UNDP, 2006). ‘Customary herder institutions’ and groups are equated in project documents primarily with geographical or neighbourhood groupings of herders and existing norms of cooperation amongst such herders (UNDP, 2002). Indeed one key assumption of the project is that ‘herders already cooperate in daily activities or can be easily convinced to cooperate’ (UNDP, 2002:28). As outlined above and considered further with specific reference to the UNDP project below, this assumption is questionable at levels above the household or *khot ail*.

Under the SGMP, herders’ communities typically comprise 10-15 households, who share at least some of the same seasonal pastures, in other words who have the geographical characteristics of *neg usniikhan* or *neg nutgiinkhan* groups. Typical community activities, as with the GTZ project, focus on labour sharing for herding tasks, cooperation over pasture use and management and processing and marketing of livestock products. Community structures are also similar, with elected leaders and community councils forming a core part of most herders’ groups. In practice, despite explicit commitment in UNDP project documents to extending membership beyond established donor-initiated groups (e.g. GTZ *nukhurlul*), empirical work in the one *sum* in Bayankhongor *aimag* where these two projects overlapped highlighted that of the six groups claimed by UNDP, two were originally GTZ *nukhurlul* and continued to be claimed by both projects.

The issue of overlap between groups or communities linked to the various projects is also replicated in the World Bank Sustainable Livelihoods Programme (SLP), the only one of these key projects under consideration still active in the Mongolian countryside. The first phase of this three phase project (2002-2012) was completed in 2006 and a second phase initiated in 2007. Results from Phase 1 indicate the creation, formalisation and/or support of some 544 herders’ groups across 7 *aimags* of which 313 were NGOs, 42 were cooperatives and the remaining 189 comprised ‘informal’ groups (World Bank, 2007a). Geographically, the project overlaps with GTZ and UNDP

projects in two *aimags*, Bayankhongor and Overhangai, and with the GTZ/NZNI project only in Omnogov *aimag*. Empirical data derived from fieldwork in one *sum* of Overhangai *aimag* in 2006 indicated that of six *nukhurlul* affiliated with the GTZ, three were also listed as World Bank NGOs. Herder groups associated with the SLP, perhaps not surprisingly, thus share a number of key characteristics with GTZ and UNDP projects.¹⁵ These include geographical proximity of members, development of community funds, presence of elected leaders and groups' *raison d'être*: the latter typically including (enhanced) cooperation over pasture use, livestock husbandry and marketing in addition to attempts to diversify into non-herding based income streams, for example through vegetable growing.

As for the UNDP project, WB project documents suggest an evolutionary scale of group organisation, with NGO and cooperative status offering advantages over and above 'informal' group status. NGOs and cooperatives constitute legally recognised entities able to transact legal agreements with bodies such as the *sum* administration, and to apply for loans. NGOs also have the advantage of being exempt from income tax, while cooperatives offer greater opportunities for business development, being able to use group assets as collateral in dealings with financial institutions (WB, undated; UNDP, 2006). However, as subsequently acknowledged by the World Bank (2007b), project emphasis on registration of formal herders' groups as NGOs may have been misplaced and encouraged formation of 'paper' NGOs, designed to receive cheap credit or other project support.

4.3 Limitations of community-based tenure reform

4.3.1 State and donor influence

Both state and donors have played important roles in development and implementation of the community-based tenure models at the core of this analysis. Immediately following the decollectivisation of the pastoral sector in 1991/2 the state effectively retreated from a significant role in its regulation and management. As discussed elsewhere, early attempts to reclaim a role in this respect were confounded by local state representatives' lack of capacity to fulfil legal rights and obligations devolved to them through new legislative provision, for example the 1994 Land Law (Fernandez-Gimenez and Batbuyan, 2004; Upton, 2005). State capacity still remains an issue in the implementation of more recent legislative provision, such as the 2002 Land Law, and in state collaboration with donor initiatives (World Bank, 2007a). However, ambiguities and weaknesses in this current legislation are even more important as evidence of limitations of the state vis a vis tenure reform and in shaping land use practice on the ground.

¹⁵ In this *sum* and elsewhere across the project area SLP had also produced pasture use maps which divided all herders into groups on the basis of their geographical location. This created some confusion amongst herders and project staff concerning groups in the case study *sum*. However, these latter forms typically included more than 30 or 40 households and had no activities or structure other than a named leader. Only where sub groups had decided to form NGOs for pasture management or other purposes were more active groups evident. It is to these latter that 'World Bank herding groups' refers, except where otherwise indicated.

One key assumption underscoring the UNDP SGMP is that ‘an adequate legal environment (already) exists...to provide for the allocation of meaningful tenure rights to herder organisations...’ (UNDP, 2002: 29). However, at least with respect to the key piece of legislation, the 2002 Land Law, this remains highly debatable. According to particular donor interpretations, the 2002 Law permits herders’ groups to negotiate use or even possession contracts with *sum* governors for winter and spring pastures and campsites and even for all four seasons’ customary pastures (Ykhanbai, 2004; UNDP, 2002). However, recent interviews conducted by the author in Ulaanbaatar in 2006 confirm suggestions made in published work by Mongolian policy makers, namely that such interpretations are going somewhat beyond the letter of the law. Ykhanbai (2004:7) argues that, despite a generally favourable regulatory environment for co management or community-based management of natural resources in Mongolia post dzud, the ‘...allocation of pasture to communities or groups of herders is not yet fully legal. The new Land Law allows herder’s groups to contract with *sum* governors only for communal use of winter and spring pasture which can exclude outsiders in those two seasons only. For summer and autumn pastures informal contracts only exist’. UNDP and Centre for Policy Research (CPR) staff suggested in interviews in 2006 that the 2004 version of the Land Law, far from proving a basis for the strengthening of herders’ tenure security, actually represented a backward step in this respect. According to this line of argument the 2002 Law only permits use contracts for pasture, while the 1994 did at least arguably leave open the possibility of possession rights being granted to pasture. Clarification and strengthening of legislative provision pertaining to herders’ land rights has emerged as a key recommendation for future action from all three projects under consideration. Reforms to pastureland legislation were under consideration by the Mongolian Government at the time of writing.

Consensus amongst policy makers indicates that pasture contracts under the current provisions of the Land Law should be confined to winter and spring pastures (Ykhanbai, 2004; CPR, pers. comm., 2006). This is not always reflected in the practical applications of land legislation under donor projects. Project reports from UNDP SGMP indicate that of the 67 herders’ groups formed by the end of the project, 27 had concluded 15 year contracts for user rights over some 363,000 ha of pastureland with local *sum* officials, with most contracts pertaining only to winter and spring pastures (UNDP, 2007; 2006). However, empirical material from one *sum* in Bayankhongor *aimag* in 2006 identified at least one case in which a herders’ group had secured a use contract for all four seasonal pastures for a 15 year period under the Land Law. It also highlighted confusion amongst and between local project representatives, *sum* land officers and herders over the number and nature of pasture use contracts in particular areas. For example, in this *sum* project staff identified only one formal use contract for all four seasons pasture areas under the provisions of the Land Law. However, the *sum* land officer argued that all 6 UNDP herding groups had concluded a similar contract. Further discussion with UNDP group herders in this area revealed contrasting views and understandings of the existence, nature, extent and meanings of these pasture use agreements. Formal agreements had also been made between UNDP groups and *sum* officials concerning fencing of vegetable plots, haymaking areas and reserve pastures. Similarly for the World Bank SLP, project documents suggest that some 160 herders’

groups out of a sample survey of 335 in 2004 had concluded contracts with the local *sum* administration for 'long term use of winter and spring pastures' (World Bank, 2007a). These are distinguished from agreements over smaller-scale grazing reserves and from haymaking areas. Again, implementations and understandings on the ground differ amongst various stakeholders. For example, empirical work has revealed at least three instances in which contracts have been made between herders' groups and *sum* administration for all four seasonal pastures, while confusion amongst herders concerning the existence or nature of such contracts was widespread. According to one SLP local project representative in 2006, 'In fact, herders can't the understand meaning of pastureland contracts...'

Consideration of the GTZ/NZNI projects adds further complexity to the picture. The geographical overlap between the three key projects resulted in more than one instance in case study areas in which GTZ *nukhurlul* had concluded land use agreements with *sum* administration for all four seasons' pastures, under the Land Law, and as World Bank NGOs. In addition, these and other GTZ *nukhurlul* also claimed to be the stewards of Community Managed Areas (CMAs) (NZNI, 2006). At present CMAs are not a category of protected area extant in Mongolian conservation legislation, despite the designation of some 26 million km² as CMAs through the GTZ project, both within and beyond national parks in the region (NZNI, 2006).¹⁶ However, this has not prevented some CMAs from being recognised by local *sum* administrations, under legislation pertaining to protected areas, and through pilot contracts drawn up between the *sum*, Protected Area (PA) administration (for land is in National Parks) and the appropriate community members (NZNI, 2006). As admitted in recent evaluations, the legal basis for these contracts was 'rather weak', although not apparently contradictory to the Land Law. Since 2006 a decree by the Ministry of Nature and Environment (MNE) theoretically allows for group possession of natural resources for conservation purposes, albeit with an initial focus primarily on forests, and has been applied in some CMA agreements. Delineation and agreement of CMAs primarily reflects GTZ agendas of nature conservation, with the declared rationale being that the transfer of resource rights to local communities will facilitate their sustainable use and management. Examples of CMA agreements require herders to protect rare animals, medicinal plants, or important natural features, in addition to 'proper use' and protection of pasturelands more generally. The first formal land use contract concluded between *nukhurlul* and the local administration was an agreement of this type, by which land use and management rights for pastureland and associated resources were transferred by the *sum* and PA administrations to *nukhurlul* members for an initial period of 15 years. Where formal contracts have not been concluded, project staff argue that the delineation of CMAs enhances herders' sense of ownership and responsibility, hence promoting conservation-oriented behaviour, despite their lack of legal status.

Thus, recent state and development-led attempts at devolution of resource rights may be considered limited to some extent by the weaknesses and lack of clarity in attendant

¹⁶ NZNI specifically recommend that the Mongolian government consider explicit recognition of CMAs as a new category of protected area, in line with IUCN current debates (NZNI, 2006). However, this recommendation has not been enacted to date.

legislation. Empirical data suggests that these result in diversity and confusion over the recent innovations in tenure, as enacted through the three key donor projects considered here. While diversity in itself is not undesirable, as this may facilitate development of locally relevant tenure solutions, where diversity creates confusion amongst stakeholders, project goals of sustainable land use, underscored by enhanced assurance amongst herders concerning their land rights, are typically undermined. Other limitations of current tenure reforms lie in the extent to which state and donor-led initiatives in devolution actually concur with community agendas. Although concerns for enhanced security of land rights and livelihoods have indeed emanated from herders on the ground, especially since recent *dzud*, donor and state responses to these concerns have typically been conceived of, at least initially, in a top down manner. Reviews of the World Bank SLP have suggested that the push to form groups amongst herders is 'almost certainly...essentially donor-driven...' (Blench, 2004). Although herders' groups are variously described by donors as grassroots, or grounded in custom or tradition, these organised bodies (whether herders' *nukhurlul* or NGO) are, initially at least, donor-driven, state-supported innovations. As one local World Bank SLP representative told me, '... donor projects give the herders a good example of herders' groups, as local herders don't really initiate these activities from the bottom up...Herders don't really initiate these things themselves...'. Furthermore, herders' responses to recent donor and state attempts to formalise and strengthen devolved tenure reveal concerns over possible increases in pastureland disputes and declining flexibility in social and spatial boundaries and reciprocity between herders' groups (World Bank, 2007a). Project appraisal documents for Phase II of the SLP specifically acknowledge that project-driven emphasis on formal groups such as NGOs and cooperatives may have been misplaced (World Bank, 2007b).

Space for community ownership comes through the practical application and domestication of such initiatives, as considered further below. Herders' participation in policy-making arenas also presents an important opportunity for local stakeholders to claim ownership of these agendas. For example, under the UNDP SGMP herders' representatives have participated in sum-level co-management committees, involving three herders out of a total of 7-9 members. These committees were designed to strengthen linkages between stakeholders and to coordinate activities over pasture use through participatory development of *sum* pasture management plans (UNDP, 2006). No herders from case study areas were involved in these committees. Therefore, further detailed comment on their functioning or efficacy is not presented here.

To date, the low degree of take-up of group membership by herders in project areas may be considered at least in part indicative of herders' concerns over or lack of understanding of externally-derived project initiatives. As recognised in GTZ project summary documents, only some 20% of the local herding population has become involved in the project in implementation areas (NZNI, 2006). This picture is duplicated in WB and UNDP projects. Empirical material from my own fieldwork at multiple locations across the Gobi region from 2004-2008 also underscores the limited reach of projects. As noted above, there is a great deal of overlap between herders' groups in areas where more than one of the projects is active, leading to situations in which a

single group may at once be claimed as a GTZ *nukhurlul* and a World Bank NGO or UNDP group – or even in some cases all three. Thus the same herding families continue to engage with the projects, while the majority are not reached.

4.3.2 *Community-led reforms and their limitations*

Land reforms enacted and domesticated by the community may be limited in diverse ways, not least in their capacity to address environmental and livelihood issues. In this instance evidence from the projects under consideration suggests that, at least to date, innovations in social organisation and associated land rights have been unable to address fully and may even have exacerbated social exclusion amongst local herders. Data for project take up alone suggests the limited ability of community-based land reforms to engage with all herding households in an area. Although acknowledging their limited reach, project-related literature devotes little attention to considering the axes and impacts of this exclusion. Detailed empirical work in one case study area over the period 2000-2004 highlights the nature and results of exclusion or non group membership (Upton, 2008). This work suggests that non membership of GTZ *nukhurlul* is related to a complex array of material, attitudinal and geographical factors including poverty, lack of labour power, weak relations of trust with neighbouring herders (hence hindering abilities to form new communities) and lack of physical and familial proximity to established communities. Concern was also widely expressed amongst non-members over a perceived ‘hardening’ of communities’ social boundaries following initial recruitment of members, for example where communities had reached an optimum size for efficient cooperation and organisation, or where community leaders favoured the recruitment of wealthy households. Fieldwork in two *sums* of adjacent Gobi *aimags* in 2006, wherein all three key projects were active, confirms these factors as integral to non membership of emergent or established herders’ groups. Lack of knowledge and understanding of project interventions, perhaps surprisingly in view of projects’ presence since 2002/3, emerged as important factors in more remote parts of these 2006 case study areas.

Impacts of tenure reforms associated with (membership or non membership of) herders’ groups are to some extent masked by their relatively recent appearance. However, in the first case study area cited above, by 2004 concerns over declining mobility and pasture access for non member herders were becoming apparent. As one non-member herder observed: “...now the community people have gathered and stay close to each other and it’s difficult to move to these community areas...other people can’t move there...”. CMAs had only very recently been discussed between herders and project staff, and none had been formally contracted with local *sum* personnel at the time. Nonetheless, the formation of *nukhurlul* and hardening of social boundaries had in itself contributed to a sense of declining flexibility of resource access amongst non-member herders.

A number of recent manifestations of successful collective action by functioning communities in this area, notably the repair of old mechanical wells and creation of new surface water points in dry steppe areas, had also contributed to a sense of more exclusive rights to surrounding summer pasture, thus extending notions of exclusivity in

pasture use from winter and spring to other seasons' grazing areas. During interviews in 2004 one non-member herding family complained that "community herders...are mainly just relatives...they don't involve other people and behave as if their community owns the pasture". Another cited a specific incident in which a non-member family were refused permission to stay in summer pasture around one of the new water points by community members. While these are isolated incidents, they serve to highlight the potential for and arguably nascent forms of both social and spatial exclusion linked specifically to recent development-led institutional transformations and associated incremental changes in norms and rights of pasture use. Three *bag* communities had also formed NGOs under the auspices of the World Bank project and concluded land use contracts with the *sum* administration for an initial period of five years. Under the contract, NGO members were required to use in the land in accordance with the provisions of the Land Law, particularly in respect of rotational and seasonal use of pastureland. They were also supported in protecting their pastures from lengthy periods of use by non-members, with the option of informing *sum* and *bag* governors of problems, where necessary. However, contracts also included a provision requiring *sum* governors to make provision for those on *otor* from other group territories and to assist them in negotiating with resident herders.¹⁷

Clearly, the intention of such contracts is to facilitate more sustainable use of pastureland and enhance tenure security, while retaining a degree of flexibility in group/ NGO membership and in land use rights. Community membership appeared to confer a variety of livelihood and land-use benefits. However, the position of non-member herders who rely on the same pasture areas as NGO members was unclear in 2004, as was the ability of these new NGO groups and institutional forms to respond flexibly in times of *dzud*. Thus increasingly complex social boundaries (membership/ non membership of GTZ communities, World Bank groups and NGOs), the diverse relationships of these groups to the spatial boundaries of seasonal grazing territories and lack of clarity over the pasture rights associated with their membership create very a complex terrain in which possibilities for exclusion of particular herding households or *khot ail* are enhanced. Data from adjacent case study areas in 2006 confirm this picture of increasing institutional complexity and perceptions of pasture rights. Certain non group members in close proximity to more active *nukhurlul*, NGOs or UNDP groups complained of exclusion from pasture and/or haymaking areas allocated to groups under CMA or other agreements. Discussions with local group members charged under the Land Law or CMA agreements with management of pastureland indicates a similar understanding, namely that non members should not use designated areas. However, in more than one instance *nukhurlul* members complained of their limited ability to enforce agreements against non-members. In more remote areas limited penetration of the projects and low population densities precluded significant project impacts (negative or positive) on land use or livelihoods.

Thus, in this instance limitations of community-based and community-led reform relate to issues of social exclusion and attendant impacts on informal and formally contracted

¹⁷ *Otor* is long distance migration in search of pasture. In recent years it has been carried out primarily in response to *dzud* or adverse climatic and environmental conditions in herders' usual pasture areas.

or designated pasture rights. These have yet to be tested, for example through *dzud*, but empirical evidence suggests some hardening of social and spatial boundaries associated with group formation and an attendant decline in flexibility where herders' groups are more active. In more densely populated areas, however, group members have on occasion suggested that they are unable to defend these rights fully or that these rights have insufficient strength to protect them against trespassing by non-member herders. A more fundamental limitation of these recent tenure reforms is with respect to mining activities, an issue to which we turn below.

5. MINING AND RESISTANCE: LIMITATIONS OF COMMUNITY-BASED REFORMS

5.1 Introduction

Both the formal and informal mining sectors have expanded extremely rapidly in Mongolia since the late 1990s. Mapping of extensive copper, gold and fluorspar reserves in conjunction with recent development of a favourable legislative framework for foreign investors, have propelled significant expansion of formal mining and mineral exploration activities.¹⁸ In 2006 the minerals sector accounted for some 17% of GDP and 58% of the country's export earnings, with future growth in economic importance of the sector widely predicted (MNMA, 2007; World Bank, 2006; World Bank, 2003b). Current estimates concerning the extent of licensed mineral extraction or exploration activity vary between 11% and 32% of the country's land area (*ibid*; Farrington, 2005). Again, this is predicted to expand in the future. Current mining activities are concentrated primarily in the north eastern, central and southern parts of the country, including the Gobi region.

Informal or artisanal mining has also risen dramatically in importance as a 'safety net' for impoverished individuals, including herders in recent years (World Bank, 2003b).¹⁹ Overall, recent estimates suggest that up to 100,000 people, including herders, participate in 'ninja' mining activities (World Bank, 2006). For the herders the move into mining has typically been propelled by loss of livestock in recent natural disasters (*dzud*). Informal mining is concentrated particularly around placer (alluvial) and hard rock gold deposits in the vicinity of large scale commercial operations, or small-scale, previously unworked placer deposits. Adverse effects of both formal and informal mining practices are felt particularly by remaining local herding populations, for example through effective loss of access to and pollution of grazing land and water resources.

Current understanding of the multiple conflicts and accommodations between mining and herding in the Mongolian countryside is extremely limited, with debates over mining issues having typically been almost wholly divorced from those concerned with

¹⁸ The new Minerals Law of Mongolia, adopted in 1997, was designed to enhance tenure security, profitability and transparency for mineral licence holders and hence the attractiveness of the sector to foreign investors (MNMA, 2007).

¹⁹ This is typically referred to in Mongolia as 'ninja mining' and its practitioners as 'ninjas'. These terms refer to the miners' apparent resemblance to the childrens' cartoon characters, the ninja turtles, occasioned by the green plastic bowls carried on their backs.

sustainable herding livelihoods, group formation and tenure reform within the pastoral sector. However, struggles over land rights are integral to the resolution of conflicts over mining and the protection of herders' livelihoods. In particular the question arises as to whether the devolved and supposedly strengthened land rights assigned to herders through the key donor projects discussed above actually have any meaning when faced with significant external pressures beyond the herding sphere.

According to the World Bank (2006) existing national legislative frameworks are insufficient to ensure that the environmental and economic impacts of formal, legal mining activities are fully addressed or compensated. Furthermore, 'important social topics that are largely unresolved include the complex issues of land use...and the role of informal mining' (*ibid*:3). The 1997 Minerals Law does require compliance with environmental laws and the preparation of Environmental Impact Assessments (EIAs) for mining and exploration activities. Rehabilitation and pollution mitigation thus both constitute legal responsibilities of licence holders. According to Article 49 of the Minerals Law disputes over land should be resolved in accordance with the provisions of the Land Law. However, the only specific reference to pastureland appears is in the requirement for any mining related damages to winter shelters or associated relocation costs to be compensated (*ibid*). According to the World Bank (2006), requirements for compensation for land use are opaque, weak and poorly regulated, as is public or stakeholder participation in any element of the initial licence allocation or subsequent activities or restoration of mine sites. Thus, prospects for acknowledgement and recognition, much less compensation, of herders' land rights under existing legislative provision appear limited (Asia Foundation, 2006; World Bank, 2003b).

Prognoses for herders with respect to the burgeoning informal mining sector are equally gloomy: according to the World Bank (2003b) 'local herdsmen, though resentful of the loss of pasture [associated with artisanal mining activities] are generally voiceless and powerless to make it stop'. However, there is as yet little empirical data to support these propositions, either with respect to *ninja* or large scale formal mining practices. Furthermore, such analyses neglect recent pastureland tenure reforms, through devolution and donor-driven formation of herders' groups. This paper's analysis of such innovations has concentrated thus far on the nature and implications of recent tenure reforms amongst herders. However, critical limitations of community-led and community-based reforms may be in the (lack of) ability to confer or assure security of tenure in the face of major external market, non-herding and development pressures.

In the final section of this paper I begin to address these important lacunae through analysis of empirical data from Gobi region case study sites where mining activities overlap geographically with established *nukhurlul*, NGOs or other herders' groups. The recent countrywide emergence of herders' resistance movements, in response to the environmental and livelihood threats posed by mining, suggest that existing tenure provisions alone are insufficient to protect herders' land rights and livelihoods.²⁰

²⁰ The most famous of these movements is the Ongii River Movement, formed in 2001, and whose leader, was recently awarded the prestigious international Goldman Environmental Prize. An additional 10

However, they also, and more optimistically, highlight the development of social and political activism and social capital amongst Mongolia's herders. In addition to analysis of the efficacy of recent tenure reforms in protecting herders' land rights against mining incursions, the following section thus also considers the implications of these emergent genuinely community-led initiatives. Specifically, the following analysis considers whether membership of new donor-driven herders' groups such as *nukhurlul* and World Bank NGOs may have less tangible but nonetheless important benefits in defence of herders' land rights, namely in facilitating herders' mobilisation as members of grassroots resistance movements.

5.2 Mining and Resistance

Fieldwork in 2008 commenced with interviews with leaders and members of one of the oldest *nukhurlul* established through the GTZ project. This group was also one of the first to conclude a formal land use agreement for a CMA, in this case for all four season's pastures for a 15 year period and within the boundaries of a Protected Area (PA). According to the *nukhurlul* leader the contract requires members to use pastures properly, in seasonal rotation, and to protect them from use by outsiders or non-members, particularly in the case of key winter grazing areas. In practice, according to the community leader, this does not mean that non member herders are necessarily excluded from the CMA, but that they should only use these areas following discussion and in agreement with community members (a position echoed by *nukhurlul* leaders for their CMAs elsewhere in the *bag*). Since establishment of the community and particularly since agreement of the contract in 2002, changes in behaviour of non-member herders have been remarked on by members. Specifically, the community leader observed that in the years following conclusion of this agreement outsider herders still came to the contracted area and did not always engage in negotiations with community members. In the past two years no outsider herders have come to this area, a situation ascribed by the leader and also by local project representatives to growing awareness and recognition of this pastureland as comprising their community's CMA. Outsiders have, however, recently arrived in the vicinity of the CMA in the form of ninja miners, involved in gold mining. Further discussion highlighted the weaknesses of *nukhurlul* rights and ability to resist mining incursions. Ninja mining is in any case illegal, as are all mining activities in PAs. Initially *nukhurlul* members, on some occasions with PA staff, were involved in trying to chase ninjas away from the mining area and also in rehabilitation of excavations. However, as the leader stated, 'this kind of ninja activity is very difficult... the community has no kind of advantage in this situation...when we went to that area no-one listened to us, even though we worked with the Protected Areas people...'. Further discussions suggested a change in attitude amongst a minority of community members, with a growing belief that it was better for them too to benefit from the mining, but then to ensure adequate restoration.

A second GTZ *nukhurlul*, within whose pastures most of the ninja activity was taking place, had also apparently concluded a CMA agreement through the project with the

movements have since formed, all of whom are part of a coalition of River Movements, the Mongolian Nature Protection Coalition, based in Ulaanbaatar. (MNPC, 2007).

local *sum* administration. According to the *nukhurlul* leader this use contract covered all four seasonal pasture areas for the member households and enable them to prevent outside herders from using these pasture areas. These provisions had yet to be tested as outsider herders had not attempted to use the contracted areas in recent years. However, as with the earlier *nukhurlul*, limitations of their rights with respect to ninja activity soon became apparent. The *nukhurlul* members were unable to displace ninjas, even with assistance of PAA, with the result that a minority of local, including community, herders began to participate in ninja activities.

Thus, empirical evidence suggests that devolved formalised tenure through CMAs may affect other herders' behaviour, but has little efficacy in the face of artisanal mining practices. Very few community members were also members of or interested in emergent River Movements, perhaps because of the currently rather limited activities of these movements in the area at the time of writing. Although one of the 11 herders' movements was established in the *sum* in 2006 and had a local representative in the case study area, membership and awareness of the group were very low amongst all local herders, including community members. Membership of communities also presented no apparent barrier and little disincentive to participation in mining activities. GTZ project staff in the area also commented on the general weaknesses of CMA agreements in the face of mining activities. Should commercial mining activities occur in areas where CMA agreements were extant, project staff conjectured that communities would be effectively powerless, CMAs being but 'a kind of promotional activity for the communities... they don't really have full rights' (pers.comm., 2008).

Commercial mining activities in the area were centred on a gold mining operation to the north of the Protected Area. Discussions with the local *bag* governor suggested that these activities were being carried out in the winter grazing areas of three local herding families. Interviews with one of the herding families, who had been using the same winter pastures for 17-18 years, confirmed that their customary winter pastures had been effectively adversely affected and effectively curtailed by mining activities, with no discussion or offer of compensation from the company concerned. In this instance the family had formal contracts for the campsites only and was not part of a *nukhurlul*, NGO or located in a CMA, although they had joined one of the River Movements, in response to mining impacts on their livelihoods. However, after an initial meeting with local leaders, in which they had agreed to join, the herding family had received no further information nor been involved in any activities. Household members had also made representations concerning their situation at *bag* and *sum* meetings, to no apparent effect.

In nearby *sums*, land designated as a CMA had, however, reportedly been adversely affected by commercial exploration and mining activities. Despite community action in reporting this to *sum* and also *aimag* officials, no recompense has been forthcoming (pers. comm., GTZ community organiser, 2008). Rather community members had been informed that the mining company in question has a licence according to the law - and hence no action could be taken.

Summary reports by two of the three projects considered in this paper confirmed the above indications and highlighted mining-related incursions as major issues facing herders' groups in the future. World Bank reports specifically identified take over and adverse impacts by mining on herders' pastures and campsites as among the most urgent issues requiring resolution in one of the Gobi *aimags*, based on herders' own comments (World Bank, 2007a). Phase 2 reports recognise the need to reconcile competing land uses, including mining, as integral to sustainable resource use in the future, and propose an emphasis on participatory land use planning with herders as a key tool (World Bank, 2007b). GTZ/ NZNI similarly recognise mining as one of the key current and future threats to devolved tenure and herders' sustainable use of pastures, arguing that 'the current procedure and practice of issuing licences....to outsiders without the free, prior and informed consent of local communities...is endangering all successes of engaging communities in conservation, as they lose their stake in the natural resource base and thereby the incentive to invest in it and protect it' (NZNI, 2006).

6. CONCLUSIONS

In conclusion, the foregoing analysis of complex tenure reforms on Mongolia's pastoral commons highlights limitations in both external and locally reworked manifestations of land reform. Current policy fashions of devolution and community-based initiatives tend to blur the boundaries between state and community-led reforms. As in previous historical manifestations of land tenure arrangements, actual herders' practices around land tend to reflect both contested interpretations of 'custom' and state influences. Since decollectivisation of Mongolia's pastoral sector in the early 1990s, donor-led initiatives in conjunction with the state have become increasingly influential, especially in promoting tenure reforms based on the formation and formalisation of herders' groups.

Limitations of externally driven reforms since decollectivisation have centred around weaknesses in state capacity, but most importantly around weaknesses in legislative provision. Lack of clarity over key legislation, such as the 2002 Land Law, has resulted in diverse interpretations and confusion over the actual status and legitimacy of implemented reforms under various donor projects amongst key stakeholders, not least amongst herders themselves. These cannot be divorced from the issue of capacity: both local state actors and project staff have struggled to enact new initiatives, to explain them to herders and to enrol herders in their implementation on the ground. The presence of multiple donor projects in the same districts, each attempting to enact variations of tenure reform, has only added to this growing complexity. Diversity in actual land reform practices at local levels is by no means undesirable where these reflect grassroots agendas and local contexts. However, where these reflect contested interpretations of a weak legislative framework, empirical data suggest that goals of enhanced tenure security and livelihoods may be compromised.

As noted in the Introduction, characteristics of nomadic pastoralist communities make the implementation of state and donor-driven tenure reforms particularly challenging,

and, historically, particularly unsuccessful, even when these have concentrated on community-based solutions. Flexibility in social and spatial boundaries is integral to 'customary' systems, but may be compromised by formal recognition of customary arrangements under state or donor-led devolution. Furthermore, a normative notion of equity and livelihood benefits of customary systems, allied to flexibility, may be equally misplaced. Empirical material from the Mongolia case studies serves to highlight the formidable challenges faced by community-based tenure reforms aimed at enhancement of livelihoods and sustainable, conservation-oriented land use. Evidence from case study areas suggests that new institutional forms such as NGOs and *nukhurlul*, while beneficial for their members, have failed to address or may have even enhanced broader patterns of social and spatial exclusion, not least through changing perceptions of pasture rights supported by *sum*-level interpretation of national legislation. At the same time, a minority of group members have complained that their devolved rights are too weak to fully enforce what they see as more defined social and spatial boundaries allied to their group membership.

Related questions arise concerning the extent to which recent tenure reforms reflect herders' own agendas. Participatory implementation methods on the part of donors have enabled group members to rework and domesticate recent initiatives. However, the limited reach of the projects in case study areas suggests both a lack of engagement of herders' with the basic models and premises underlying the interventions and/or their effective exclusion from participation in new initiatives. Axes of exclusion are complex, with empirical material highlighting combinations of factors such as wealth, labour power, trust, geographical and kinship proximity to established groups and lack of knowledge or understanding of donor initiatives. In practice this has resulted in the same herders being enrolled again and again in donor projects in case study areas, while the many remain uninvolved.

Recent expansion of minerals licensing across the countryside has also brought the weaknesses of current legislative provisions into sharp relief. Herders' traditional or 'customary' rights, even where supported by the diverse group tenure arrangements enacted by various donor projects, seem powerless to ensure compensation or protection of herders' land rights. The need to address lacunae in current legislative provision is highlighted in recent project documents for the key donor initiatives considered here. These issues are currently under consideration by the Government of Mongolia, as are provisions for regulation of *ninja* activity, which currently threatens to undermine group-based conservation and land management activities.

Although there is currently little overlap between membership of the grassroots herders River Movements and donor and state-initiated *nukhurlul* or NGOs, the former offer the prospect of more genuinely community-led land reforms in the future. Current debates over land tenure and mining issues at the national level are involving leaders of River Movements for the first time, while national human rights NGOs have begun to test provisions and weakness of the legislative framework at the behest of herders and in response to mining-related land alienation. These developments highlight prospects for greater legislative clarity in the future and for the growing influence of herder-initiated

social movements in future land reforms. The recent completion of GTZ/NZNI and UNDP projects and associated withdrawal of donor funding also offer both an opportunity and a challenge for grassroots initiatives in tenure reform. Questions persist concerning the sustainability of these initiatives, but their aftermath also offers herders a critical opportunity for further reworking, domestication and proliferation of these activities. Follow-up capacity building projects are already underway in the Mongolian countryside, for example the IFAD funded project '*Good Governance for Sustainable Natural Resource Management and Poverty Reduction – Scaling Up through Community-Led Learning*', implemented by NZNI. This seeks to build on the GTZ projects considered in this paper, with a particular emphasis on strengthening established community organisations (e.g. *nukhurlul*), and on scaling up and learning policy-related lessons from community-led activities in resource management and poverty reduction (NZNI, 2007). Outcomes are, of course, uncertain at present.

Overall, in Mongolia clear prospects exist for enhanced herders' influence in land reform in the future. However, significant challenges remain, for example in the extent to which herders' agendas will be supported by ongoing legislative reforms. Normative notions concerning community-led land reform must also continue to be challenged. As empirical material shows, community-based and community-led reforms do not offer a panacea to exclusion, inequality and poverty.

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Land Rights, Mining and Resistance: New Struggles on Mongolia's Pastoral Commons

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Abstract

Since the collapse of the Soviet Union and agricultural decollectivisation, post-socialist rural contexts have afforded commons scholars particularly fertile ground for examination of institutional change and evolution under new modes of governance. In Mongolia, as elsewhere, such transformations have been characterised by the erosion of state influence and *de jure* and/or *de facto* devolution of land and resource rights. Particularly since 2000, policy and practice in Mongolia's herding sector have reflected donor-led concerns with the formation of local herders 'groups' or 'communities' and the implementation of group tenure solutions in pursuit of environmental and livelihood sustainability on the commons. Mining practices have also assumed increasing importance in shaping contemporary struggles over rural resource governance, as highlighted by the emergence of herder-led resistance groups and NGOs in direct response to mining-related land alienation and degradation. However, despite obvious linkages between mining practices and herders' resistance, 'community' formation and pastoral tenure reform, these have to date attracted little attention amongst commons scholars. Drawing on datasets which chart institutional evolution amongst herders' groups in Mongolia's Gobi region, this paper addresses these critical lacunae through examination of the impact of recent tenure reforms and social innovations, in the form of herders 'communities', on land rights and practice. Empirical data presented herein thus highlight the limitations of both state and community-led land reforms. These critiques are developed further through examination of local responses to mining-related land alienation, the emergence of herder-led resistance groups and links between these and the donor-initiated herders' 'communities' concerned with pasture management. The paper thus provides a critical analysis of recent, complex institutional innovations in rural Mongolia and their role in shaping commons management in the 21st century.

Keywords: *Mongolia, pastoralism, land reform, communities, mining*

1. INTRODUCTION

Since the collapse of the Soviet Union, post socialist rural contexts have afforded commons scholars particularly fertile ground for examination of institutional change, not least with reference to *de facto* or *de jure* land reforms. 'Transition' from communist-era collectivisation and regulation of rural spaces has necessitated not only evolution of the rules and norms of resource use, but of the social forms through which they are enacted and contested. Individualisation of agricultural land tenure through differing forms of privatisation, for example restitution of pre collective land rights, have been the subject

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of much study (e.g. Allina-Pisano, 2004; Deininger, 2002). However, critical and ongoing struggles over the future governance of pastoral commons have attracted relatively little scholarly attention to date.²

These lacunae matter for a number of reasons: at a practical level mobile or (semi) nomadic pastoralism remains a core livelihood strategy for significant proportions of national populations in the region, for example in Kazakhstan, Turkmenistan, and Mongolia, wherein between an estimated 30% and 77% of national populations rely on herding as their main livelihood strategy (Thornton *et al.*, 2002; World Bank, 2003a). State and developmental endeavours to enhance livelihoods thus necessitate improved understanding of the functioning and regulation of pastoral systems. The unexpected Soviet-era legacy of vast, relatively underdeveloped rural spaces (Schwartz, 2005) has also rendered pastoralist landscapes in the region attractive to western conservationists. Hence, rural spaces have become subject to multiple and at times conflicting goals of poverty alleviation, sustainable livelihoods and biodiversity conservation, which reflect community agendas to varying and often limited degrees. Histories of external interventions in mobile pastoralist societies in other parts of the world are far from encouraging. The prevalence of informal, flexible institutions, permeability of both spatial and social boundaries of pastoral groups and attendant deviations from blueprints and models of commons management have often rendered them illegible to outsiders, thus confounding the achievement of externally formulated goals and land reforms (Forstater, 2002; Scoones, 1994). However, recent policy fashions of devolution in natural resource management and emphasis on the efficacy of customary tenure arrangements potentially offer a way forward amongst pastoralists groups. In particular, an emphasis on community 'ownership' of tenure reforms and on maintaining flexibility in customary tenure arrangements appear to accord well with pastoralist institutions and with current policy expectations concerning the benefits of community-led initiatives (Bruce and Mearns, 2002).

In practice, the implementation of such policies has frequently translated on the ground into group-based tenure options, which blur the distinction between state and community-led land reform initiatives. Amongst mobile pastoralists creation of formalised groups (albeit based on customary institutions) from loosely kin-based associations at the behest of state actors and donors has typically ensued, with poor or unexpected long term results and despite theoretical commitment to maintenance of flexibility (e.g. see Mwangi, 2007, on group ranches in Kenya's Maasailand). Specific difficulties with the application of group tenure arrangements in the case of the Maasai have included identification of legitimate group members, resolution of internal governance issues, including reconciliation of individual and collective interests, enhancement of inequality and population growth (Mwangi, 2007). A perceived need to protect more valuable or productive land from outsiders has also driven community-led pressures for progressive individualisation of tenure, while sedentarisation of previously mobile populations has typically resulted from hardening of social and spatial boundaries.

² Notable exceptions include Kerven's (2003) edited volume: *Prospects for Pastoralism in Kazakhstan and Turkmenistan*.

The recent implementation of devolved and community-based approaches to tenure amongst pastoralists in post-soviet rural spaces affords commons scholars the opportunity to examine the domestication and limitations of community-based and led approaches to land in these little studied contexts. Despite widespread and recent application of these group-based approaches on Mongolia's pastoral commons, the empirical focus for this paper, detailed studies are lacking. According to UNDP (2002:9), 'it is now widely recognised in Mongolia that sustainable land use can only be achieved through a grassroots approach based on devolving key pasture management responsibilities to the communities of herders who are the primary users of the pasture'. However, to date we have little understanding of the nature and impacts of initiatives based on this emergent policy consensus.

In this paper I address aspects of current debates over land rights and land reform in commons governance, with particular reference to the role and limitations of 'communities', donors and the state in community-based land tenure reforms. Since decollectivisation and especially since 2000 Mongolia's pastoralists (some 35% of the population) have been the focus of state and donor-driven initiatives concerned with group formation, formal *de jure* as well as *de facto* devolution of pasture rights and the pursuit of environmental and livelihood sustainability on the commons. In many ways these initiatives present a radical departure from collective era social organisation and modes of governance, although empirical material also highlights elements of continuity, as discussed below. These innovations in land tenure have received little attention thus far. A further twist has been added in recent years by the proliferation of legal and illegal mining activities across the country, with attendant issues of effective curtailment of herders' land rights, for example through land degradation, pollution or physical exclusion of herders from previous customary grazing areas. To date there has been remarkably little attempt to explore the efficacy and limitations of new formalised herders' groups and their attendant tenure rights in the face of mining incursions.

In this paper I draw on empirical material from herders in Mongolia's Gobi region to examine pastureland tenure reforms related to group formation, in the context of recent historical manifestations of state regulation and dynamic 'customary' practices. I concentrate on three key donor projects: the GTZ 'Nature Conservation and Bufferzone Development' project and the successor 'Conservation and Sustainable Management of Resources: Gobi Component'; the World Bank 'Sustainable Livelihoods' project (SLP) and the UNDP 'Sustainable Grassland Management' project (SGMP). Although other donor projects also engage specifically with issues of formation of herders' groups and land tenure in rural Mongolia, notably the USAID funded 'Gobi Initiative' and IDRC funded 'Sustainable Management of Common Natural Resources in Mongolia', the three major donor projects considered here are amongst the largest and most ambitious in terms of funding and/or geographical extent and, in the case of GTZ and World Bank, offer the lengthiest engagement with herders and tenure issues on the ground. Through consideration of these three key donor projects, I examine the extent to which they reflect community agendas, their *de jure* and *de facto* impacts on land rights, responses to mining incursions and overall evidence for the limitations of state and community-led

land reform. In the final section of the paper I discuss the contributions of this Mongolian case study to current theoretical and policy debates.

2. STUDY AREAS AND RESEARCH METHODS

The empirical data in this paper draws on fieldwork undertaken amongst pastoral communities in Mongolia's Gobi region between 2000 and 2008. Longitudinal datasets from a single *sum* are used to explore the evolution of institutions, the emergence of the earliest donor-driven formalised herders' groups and attendant impacts on tenure between 2000 and 2004. Datasets from 2006 enable explicit comparison of the three donor projects in this respect, as case study sites were determined on the basis of the contemporaneous activities of all three projects. Finally, in 2008 case study sites were selected on the basis of the existence of formalised herders' groups linked to these same donor projects and the presence of legal and/or illegal mining activities, which might be supposed to impact on herders' livelihoods and land use.

During fieldwork events in 2000 and 2001 household surveys were conducted with all winter herding groups (individual families or *khot ail*)³ in the selected *bag* in Omnogov *aimag*, equivalent to a total of 183 families or *khot ail*.⁴ These survey instruments were dominated by open-ended questions concerning social organisation, land rights and land use. Follow up semi-structured interviews, focusing on pasture rights, were conducted with all groups in 2001. These interviews also encompassed questions concerning membership of emergent formalised herders' groups. In-depth key informant interviews and oral histories were undertaken with selected herders throughout these two fieldwork periods, in addition to participant observation while living in herding camps.

A further period of fieldwork in 2004 was designed specifically to explore emergent new herders' groups, institutions and tenure issues linked to the activities of international development projects in this *bag*.⁵ This involved in-depth semi structured interviews with 105 herding groups, focusing specifically on issues of herding practice and linkages to rights, institutions and institutional transformations contingent on developmental interventions.

In 2006 methods centred on semi structured interviews with all herding families (including members and non members of herders' groups), project staff and local administration personnel. Finally, in 2008 semi structured interviews were held with leaders and members of herders' groups, focusing particularly on land rights and responses to mining activities, with project staff and with local administration personnel. In the following discussion *bags* and *sums* are deliberately not named, in order to protect the confidentiality of respondents.

³ *Khot ail* are herding camps, usually kinship based, and typically include some 3 to 6 herding households, although numbers vary both regionally and seasonally.

⁴ *Bags* (subdistricts) are the smallest administrative unit in Mongolia, followed by *sums*(districts). *Aimags*, (provinces) are the largest administrative units are broadly equivalent to counties.

⁵ The World Bank and the GTZ projects were active in this area by 2004.

3. MONGOLIAN CONTEXT: INSTITUTIONS, LAND RIGHTS AND INSTITUTIONAL EVOLUTION

3.1 Introduction

Recent estimates suggest that Mongolia has the largest remaining contiguous area of common grazing land in the world (World Bank, 2003a). At present an estimated 82% of its 156 million hectares are classified as grasslands, these being central to the livelihood strategies of more than 30% of the population. Despite recent radical changes in the broader economic and socio-political frames for pastoralism, particularly in the 20th century, certain key elements of the system have persisted over the last century and beyond. The herding system was and continues to be based on seasonal movements between winter, spring, summer and autumn pastures and on herding of one or some combination of the 'five kinds of animals', namely sheep, goats, horses, cows and yaks, and camels, albeit with geographical and historical variations in movement patterns and herd composition. Pasture land remains officially in state ownership, despite formal allocation of possession contracts for winter and spring campsites to herding families, *khot ail* or more recently, to larger herders' groups or 'communities' under the auspices of recent legislative instruments and international development interventions, as discussed in Section 4, below.

As highlighted elsewhere, actual manifestations of land rights and herding practice in specific locations in rural Mongolia reflect both external (i.e. state and donor-led) and community agendas, the former often being reworked or domesticated 'on the ground' (Upton, 2005). For example, at the core of norms pertaining to pasture use is the reservation of winter and spring pasture through a system of seasonal deferral, supported by recognition of more exclusive rights of particular herding families or *khot ail* to these seasonal campsites. Recognition has recently occurred officially on the part of the state through legislative provision, namely the 1994 and 2002 Land Laws, but drawing to varying degrees on preceding acknowledgement by the state and other herders of customary usage and attendant rights in pre collective and even in collective eras (Fernandez-Gimenez, 1999; Mearns, 1996; Upton, 2005). Recent empirical data suggests that herders' claims to customary rights to pastures may variously reflect historical continuity of usage, pre collective or collective-era usage, direct inheritance, or more recent claims, centred on construction of physical structures such as winter shelters, these being supported by the state (Upton, 2005).

The following sub sections provide a very brief overview of key aspects of the institutional frameworks shaping pastoralism in recent history, including key elements of social organisation. These form a necessary pre requisite to analysis of recent post-decollectivisation transformations and attendant limitations of both state and community in devolved and group-based tenure reform (Section 4), and the role and efficacy of these groups in resistance to mining incursions (Section 5).

3.2 Historical contexts

Prior to Mongolia's communist revolution in 1921 pasture allocation within pre-defined herding territories (banners or *hoshuu*) was typically at the discretion of secular or religious officials, and usually made to *khot ail* within the boundaries of their particular administrative district (Potkanski and Szykiewicz, 1993).⁶ Within smaller administrative districts (*sums* and *bags*), available records indicate that individual herding families or *khot ail* gained access particularly to winter grazing areas on the basis of regular, customary usage while rights for summer grazing were more flexible (Bawden, 1968; Fernández-Giménez, 1999). Many such 'commoners' were responsible for herding single species herds of monastery or secular nobilities' livestock, in addition to their own, mixed species private herds, thus creating a two tier herding system with both yield-focused and domestic subsistence orientations (Sneath, 2003; Upton, 2005).

Land passed into state ownership in 1921, with the communist revolution marking the beginning of the erosion of the powers of preceding secular (e.g. banner princes) and religious (Buddhist) authorities. Customary pasture rights retained importance as means to access land for herding families and *khot ail* during this period, although available historical records afford little detail on actual herding practices and the continuation or reworking of pasture rights prior to collectivisation. The decay of the yield-focused sphere and emergence of a primarily subsistence oriented pastoral sector is, however, more widely reported (Sneath, 2003).

Collectivisation of pastoralism in the late 1950s marked a more radical transformation of pastoral organisation and practices. Land ownership was not, however, transformed, but remained with the state. Under the collective or *negdel* system all herders became wage earning employees of the state, responsible for the welfare of single species *negdel* herds, in addition to small herds of their own private livestock, thus reinstating parallel domestic and yield-oriented spheres (Sneath, 2003; Upton, 2005). Although pasture use was officially under the control of the *negdels* or state farms, customary rights and institutions reportedly coexisted to varying degrees with centralised control, and thus continued to shape land rights and pasture use (Mearns, 2002; Mearns, 1996). The *negdel* system was broadly supportive of norms of seasonal mobility and time partitioning of pasture use, which they facilitated through provision of mechanised transport on a seasonal basis and also in times of emergency.

While *khot ail* were arguably the only effective pastoral socio-economic institution between individual households and administrative authorities in the pre-collective era, collectivisation occasioned some reconfiguration of residence groups and institutions (Bold, 1996).⁷ Transformation of institutional and social organisation by *negdel* included

⁶ Prior to 1911 all land in Mongolia was owned by the Manchu emperor (Mearns, 1993). From 1911 until 1921, land was in the ownership of the Bogd Khan, the leader of buddhism in Mongolia.

⁷ The existence of neighbourhood level institutions such as *neg nutgiinkhan* (people of one place) and *neg usniikhan* (people of one water) in the pre and post collective era has been a matter of some contention in the literature (Bazagur et al., 1992; Mearns, 1993). However, for the pre collective era, these were arguably little more than abstract, imposed labels, with no reality in terms of socio-economic functions (Bold, 1996).

the effective replacement of kinship-based *khot ail* by *suur*, i.e. small groups of (theoretically at least) unrelated households as basic production units.⁸ A number of *suur* were members of one section (*heseg*), these in turn being part of larger brigades (*brigads*), who were responsible to the centralised *negdel* administration. While there is little evidence for substantial cooperation between neighbouring *khot ail* in the pre collective era, in the collective era *suur* cooperated with neighbouring *suur* through *heseg*, thus highlighting the *negdels'* creation of intermediate level herders' groups, between the *khot ail* and state, and overt cooperation at scales above the *khot ail*.

Decollectivisation of the pastoral sector in Mongolia between 1991 and 1993 marked a further transformation of the social organisation and regulation of herding. The two-stage privatisation of collective assets such as livestock and winter shelters in the early 1990s specifically excluded pastureland, which remained in state ownership. The immediate aftermath of decollectivisation was marked by a return to family, including *khot ail*, based herding units, who managed mixed species of herds primarily for domestic usage, albeit with some sales to local markets and 'middlemen'.

In the decade following decollectivisation, academic and policy reports on the pastoral sector have presented an image of a sector in crisis, characterised by growing sedentarisation of herders, conflict over pastures, effective retreat of the state from pasture regulation, and an overarching breakdown of pasture use norms, trust and cooperation amongst herders (Fernandez-Gimenez, 2002). These problems have apparently been compounded by an influx of 'new' herders to Mongolia's herding commons, particularly in the early 1990s, new herders being arguably especially prone to free ride on established pasture use norms and to eschew cooperation and collective action with more established herders (*ibid*; Mearns, 1996; Mearns, 1993).⁹ A series of natural disasters or *dzud* in the late 1990s have further adversely impacted an increasingly impoverished herding sector. Thus in the early years of the 21st century a sense of urgency concerning reform or support of the pastoral sector have informed emerging legislative and developmental initiatives focused around enhanced, legible tenure security for herders, through formal devolution of rights to herders' groups, albeit typically grounded in calls for the revival or strengthening of customary rights and practice (Mearns, 2002; Ykhanbai, 2004). The World Bank's SLP and UNDP SGMP epitomise these new initiatives, and in conjunction with GTZ's Gobi projects, have typically requiring formation or formalisation of herders' groups as foci for devolution of rights and for cooperation over commons management. It is to these initiatives in community-based commons management that I now turn.

⁸ Szykiewicz (1993) argues that *suur* were deliberately created from non-related families to ensure that primary allegiances of basic herding units were to the collective. However, this practice was reportedly relaxed over time (Mearns, 1996; Swift, 1991).

⁹ 'New' herders who did not look after livestock during the collective period, but were employed in other non herding occupations and only took up herding as their main livelihood strategy in the aftermath of decollectivisation.

4. 'DEVELOPMENT', HERDERS' GROUPS AND DEVOLUTION

4.1 Introduction

According to UNDP (2007) since May 2006, donors have allocated approximately \$77.5 million US to some 14 projects centering on creation and/ or formalisation of herders' groups in 19 of Mongolia's 21 provinces. These projects have resulted in recognition and documentation by the various projects of some 2000 herder groups, encompassing approximately 7% of all herding families in the country.¹⁰ Of these groups 71% are 'informal' groups (i.e. not officially registered as non governmental organisations (NGOs) or as cooperatives), 18% are formally registered as NGOs and the remaining 11% are registered as cooperatives (*ibid*). These emergent herders' groups are central to recent manifestations of land reform in rural Mongolia, being integral to the formal devolution of pasture rights to herders and to co management agreements between herders and the state.

These tenure reforms are but the latest manifestations of historical processes outlined in Section 3 (above) and are illustrative of the current limitations of both state and community-led land reform. In the case of the state, limitations pertain both to state capacity and legislative provision. Limitations are also evident in the extent to which recent state/ donor interventions reflect or respond to community agendas, and in the equity and livelihood implications of actual community practices facilitated by devolution. These are considered further below. However, prior to this analysis, the nature of herders' groups and community organisations emerging from recent state and donor initiatives are considered, as integral to understanding of their grassroots status and their impact on livelihoods and tenure.

4.2 Herders' groups and social innovations

In brief, groups such as GTZ 'communities' or *nukhurlul*, formed throughout Mongolia's Gobi region, represent institutional and social innovations, albeit drawing on aspects of customary practice and social organisation (Upton, 2008).^{11,12} By 2006, 83 *nukhurlul*, including some 1175 households were active across the 13 *sums* of the 3 Gobi *aimags* involved in the project (NZNI, 2006). This equates to some 20% of herding households in project implementation areas (*ibid*). Typically *nukhurlul* in case study areas comprised some 10-15 herding households (or approximately 40-60 people), including

¹⁰ As I demonstrate below, the figure of 7% overall does not reflect the full impact of these innovations on both member and non-member herders in project implementation areas.

¹¹ The GTZ/MNE 'Nature Conservation and Bufferzone Development Project' (1995-2002) was also implemented in other regions of Mongolia. It is only the implementation of this project in the Gobi region and its successor project, GTZ 'Conservation and Sustainable Management of Natural Resources – Gobi Component' project, implemented through the New Zealand Nature Institute (NZNI) (2002-2006), which are considered in this paper.

¹² According to some older herders in case study areas, *nukhurlul* bore some resemblance to collective-era *heseg*. *Nukhurlul* may also resemble 'people of one water' at least in geographical membership terms, although herders' accounts indicate that the latter lacked reality in terms of functions or activities in case study areas.

both related and non-related households, and with members living in geographical proximity to one another for at least part of the seasonal movement cycle, and thus sharing key seasonal grazing areas and/or water sources. Membership was via individual choice of households, but typically required financial or other contribution to secure membership, for example through donation of cashmere, a goat, or up to 50,000tg in cash.¹³

According to GTZ reports and interviews, the particular nature and form of *nukhurlul* arose from project attempts to strengthen self help initiatives and local forms of cooperation, and reflected changes from a more top-down approach to achievement of conservation goals in the project's earlier stages (Schmidt, 2006). In practice, detailed longitudinal material from one case study area (2000 to 2004) indicates that local self help initiatives were lacking amongst herders in this area prior to the project's intervention. Local forms of cooperation were also weak at scales above the household and *khot ail*, being confined to occasional and sporadic assistance over labour intensive tasks and general observance of pasture use norms (Upton, 2008). Herders commented on lack of trust and individualised behaviour of herding families in the aftermath of decollectivisation as detrimental to pasture use, but highlighted particularly a desire for greater state involvement in pasture regulation (81% of herders, n=111), albeit in parallel with improved mechanisms for discussion and conflict resolution between herding households and *khot ail*. Thus, despite a widely articulated desire for improved pasture use and livelihoods, prior to the advent of *nukhurlul*, herders in this case study area had no specific vision of community as opposed to state-led initiatives.

Project documents describe their role as a facilitative one. However, forms and organisation of *nukhurlul* exhibited great commonality across the project area. Most *nukhurlul* had community funds derived from the membership contributions highlighted above, which were used at least in part as a source of micro credit for members. Most also had elected leaders and community councils from amongst their members. Communities typical met formally at least once per season to plan, evaluate and carry out activities, with all member households theoretically required to send at least one household member to participate in *nukhurlul* activities. Activities of communities centred around shared labour and cooperation over timing of seasonal movements, mending winter shelters, shearing livestock and processing and marketing of livestock products. Livelihood diversification, for example into vegetable growing or tourism-related activities, was also integral to the activities of particular communities. Overt conservation activities, such as protection of rare and medicinal flora, and protection of key animal species, were also evident amongst some communities, reflecting more closely GTZ's declared goal of the promotion of biodiversity conservation in conjunction with the facilitation of sustainable livelihoods.¹⁴ Elsewhere, as project staff argued, project goals of 'nature conservation' 'translated into the Gobi herders' objective of

¹³ 1160 tugrug (tg) is currently equivalent to \$1 US. In 2004, the exchange rate was 1000 tg to \$1 US.

¹⁴ Subsequent documents concerned specifically with the later 'Conservation and Sustainable Management of Natural Resources' project refer specifically to community organisation as a response to 'the need to restore pastoral mobility and revive local institutions to coordinate pasture use' (NZNI, 2006), thus reflecting more broadly based notions of conservation.

“mobility”, which in itself was integral to achievement of more sustainable use of resources (Schmidt, 2006:20).

Social innovations associated with the UNDP SGMP (2002 -2007) are comparable in many respects. The SGMP operated in 9 *sums* of 3 *aimags*, two of which are in the Gobi region and also form part of the implementation area for the 2002-2006 GTZ project. On conclusion of the UNDP project 67 herder groups involving 780 herding families had been established in project *aimags* (UNDP, 2007). The UNDP project focuses less explicitly on conservation than its GTZ counterpart, but shares similar goals and mechanisms of implementation. Specifically, its stated aim is ‘to increase the welfare of herding families through the sustainable management of Mongolian grasslands...(through)...strengthen(ing) and formalise(ing) existing customary herder community institutions, and strengthen(ing) linkages between them and formal governance structures and the private sector’ (UNDP, 2002). The UNDP project also contains more explicit commitment to bottom up community-based approaches to pastureland management and to the support, revitalisation and (importantly) the formalisation of customary rights, cooperation and practice (ibid; UNDP, 2006). ‘Customary herder institutions’ and groups are equated in project documents primarily with geographical or neighbourhood groupings of herders and existing norms of cooperation amongst such herders (UNDP, 2002). Indeed one key assumption of the project is that ‘herders already cooperate in daily activities or can be easily convinced to cooperate’ (UNDP, 2002:28). As outlined above and considered further with specific reference to the UNDP project below, this assumption is questionable at levels above the household or *khot ail*.

Under the SGMP, herders’ communities typically comprise 10-15 households, who share at least some of the same seasonal pastures, in other words who have the geographical characteristics of *neg usniikhan* or *neg nutgiinkhan* groups. Typical community activities, as with the GTZ project, focus on labour sharing for herding tasks, cooperation over pasture use and management and processing and marketing of livestock products. Community structures are also similar, with elected leaders and community councils forming a core part of most herders’ groups. In practice, despite explicit commitment in UNDP project documents to extending membership beyond established donor-initiated groups (e.g. GTZ *nukhurlul*), empirical work in the one *sum* in Bayankhongor *aimag* where these two projects overlapped highlighted that of the six groups claimed by UNDP, two were originally GTZ *nukhurlul* and continued to be claimed by both projects.

The issue of overlap between groups or communities linked to the various projects is also replicated in the World Bank Sustainable Livelihoods Programme (SLP), the only one of these key projects under consideration still active in the Mongolian countryside. The first phase of this three phase project (2002-2012) was completed in 2006 and a second phase initiated in 2007. Results from Phase 1 indicate the creation, formalisation and/or support of some 544 herders’ groups across 7 *aimags* of which 313 were NGOs, 42 were cooperatives and the remaining 189 comprised ‘informal’ groups (World Bank, 2007a). Geographically, the project overlaps with GTZ and UNDP

projects in two *aimags*, Bayankhongor and Overhangai, and with the GTZ/NZNI project only in Omnogov *aimag*. Empirical data derived from fieldwork in one *sum* of Overhangai *aimag* in 2006 indicated that of six *nukhurlul* affiliated with the GTZ, three were also listed as World Bank NGOs. Herder groups associated with the SLP, perhaps not surprisingly, thus share a number of key characteristics with GTZ and UNDP projects.¹⁵ These include geographical proximity of members, development of community funds, presence of elected leaders and groups' *raison d'être*: the latter typically including (enhanced) cooperation over pasture use, livestock husbandry and marketing in addition to attempts to diversify into non-herding based income streams, for example through vegetable growing.

As for the UNDP project, WB project documents suggest an evolutionary scale of group organisation, with NGO and cooperative status offering advantages over and above 'informal' group status. NGOs and cooperatives constitute legally recognised entities able to transact legal agreements with bodies such as the *sum* administration, and to apply for loans. NGOs also have the advantage of being exempt from income tax, while cooperatives offer greater opportunities for business development, being able to use group assets as collateral in dealings with financial institutions (WB, undated; UNDP, 2006). However, as subsequently acknowledged by the World Bank (2007b), project emphasis on registration of formal herders' groups as NGOs may have been misplaced and encouraged formation of 'paper' NGOs, designed to receive cheap credit or other project support.

4.3 Limitations of community-based tenure reform

4.3.1 State and donor influence

Both state and donors have played important roles in development and implementation of the community-based tenure models at the core of this analysis. Immediately following the decollectivisation of the pastoral sector in 1991/2 the state effectively retreated from a significant role in its regulation and management. As discussed elsewhere, early attempts to reclaim a role in this respect were confounded by local state representatives' lack of capacity to fulfil legal rights and obligations devolved to them through new legislative provision, for example the 1994 Land Law (Fernandez-Gimenez and Batbuyan, 2004; Upton, 2005). State capacity still remains an issue in the implementation of more recent legislative provision, such as the 2002 Land Law, and in state collaboration with donor initiatives (World Bank, 2007a). However, ambiguities and weaknesses in this current legislation are even more important as evidence of limitations of the state vis a vis tenure reform and in shaping land use practice on the ground.

¹⁵ In this *sum* and elsewhere across the project area SLP had also produced pasture use maps which divided all herders into groups on the basis of their geographical location. This created some confusion amongst herders and project staff concerning groups in the case study *sum*. However, these latter forms typically included more than 30 or 40 households and had no activities or structure other than a named leader. Only where sub groups had decided to form NGOs for pasture management or other purposes were more active groups evident. It is to these latter that 'World Bank herding groups' refers, except where otherwise indicated.

One key assumption underscoring the UNDP SGMP is that 'an adequate legal environment (already) exists...to provide for the allocation of meaningful tenure rights to herder organisations...' (UNDP, 2002: 29). However, at least with respect to the key piece of legislation, the 2002 Land Law, this remains highly debatable. According to particular donor interpretations, the 2002 Law permits herders' groups to negotiate use or even possession contracts with *sum* governors for winter and spring pastures and campsites and even for all four seasons' customary pastures (Ykhanbai, 2004; UNDP, 2002). However, recent interviews conducted by the author in Ulaanbaatar in 2006 confirm suggestions made in published work by Mongolian policy makers, namely that such interpretations are going somewhat beyond the letter of the law. Ykhanbai (2004:7) argues that, despite a generally favourable regulatory environment for co management or community-based management of natural resources in Mongolia post dzud, the '...allocation of pasture to communities or groups of herders is not yet fully legal. The new Land Law allows herders' groups to contract with *sum* governors only for communal use of winter and spring pasture which can exclude outsiders in those two seasons only. For summer and autumn pastures informal contracts only exist'. UNDP and Centre for Policy Research (CPR) staff suggested in interviews in 2006 that the 2004 version of the Land Law, far from proving a basis for the strengthening of herders' tenure security, actually represented a backward step in this respect. According to this line of argument the 2002 Law only permits use contracts for pasture, while the 1994 did at least arguably leave open the possibility of possession rights being granted to pasture. Clarification and strengthening of legislative provision pertaining to herders' land rights has emerged as a key recommendation for future action from all three projects under consideration. Reforms to pastureland legislation were under consideration by the Mongolian Government at the time of writing.

Consensus amongst policy makers indicates that pasture contracts under the current provisions of the Land Law should be confined to winter and spring pastures (Ykhanbai, 2004; CPR, pers. comm., 2006). This is not always reflected in the practical applications of land legislation under donor projects. Project reports from UNDP SGMP indicate that of the 67 herders' groups formed by the end of the project, 27 had concluded 15 year contracts for user rights over some 363,000 ha of pastureland with local *sum* officials, with most contracts pertaining only to winter and spring pastures (UNDP, 2007; 2006). However, empirical material from one *sum* in Bayankhongor *aimag* in 2006 identified at least one case in which a herders' group had secured a use contract for all four seasonal pastures for a 15 year period under the Land Law. It also highlighted confusion amongst and between local project representatives, *sum* land officers and herders over the number and nature of pasture use contracts in particular areas. For example, in this *sum* project staff identified only one formal use contract for all four seasons pasture areas under the provisions of the Land Law. However, the *sum* land officer argued that all 6 UNDP herding groups had concluded a similar contract. Further discussion with UNDP group herders in this area revealed contrasting views and understandings of the existence, nature, extent and meanings of these pasture use agreements. Formal agreements had also been made between UNDP groups and *sum* officials concerning fencing of vegetable plots, haymaking areas and reserve pastures. Similarly for the World Bank SLP, project documents suggest that some 160 herders'

groups out of a sample survey of 335 in 2004 had concluded contracts with the local *sum* administration for 'long term use of winter and spring pastures' (World Bank, 2007a). These are distinguished from agreements over smaller-scale grazing reserves and from haymaking areas. Again, implementations and understandings on the ground differ amongst various stakeholders. For example, empirical work has revealed at least three instances in which contracts have been made between herders' groups and *sum* administration for all four seasonal pastures, while confusion amongst herders concerning the existence or nature of such contracts was widespread. According to one SLP local project representative in 2006, 'In fact, herders can't the understand meaning of pastureland contracts...'

Consideration of the GTZ/NZNI projects adds further complexity to the picture. The geographical overlap between the three key projects resulted in more than one instance in case study areas in which GTZ *nukhurlul* had concluded land use agreements with *sum* administration for all four seasons' pastures, under the Land Law, and as World Bank NGOs. In addition, these and other GTZ *nukhurlul* also claimed to be the stewards of Community Managed Areas (CMAs) (NZNI, 2006). At present CMAs are not a category of protected area extant in Mongolian conservation legislation, despite the designation of some 26 million km² as CMAs through the GTZ project, both within and beyond national parks in the region (NZNI, 2006).¹⁶ However, this has not prevented some CMAs from being recognised by local *sum* administrations, under legislation pertaining to protected areas, and through pilot contracts drawn up between the *sum*, Protected Area (PA) administration (for land is in National Parks) and the appropriate community members (NZNI, 2006). As admitted in recent evaluations, the legal basis for these contracts was 'rather weak', although not apparently contradictory to the Land Law. Since 2006 a decree by the Ministry of Nature and Environment (MNE) theoretically allows for group possession of natural resources for conservation purposes, albeit with an initial focus primarily on forests, and has been applied in some CMA agreements. Delineation and agreement of CMAs primarily reflects GTZ agendas of nature conservation, with the declared rationale being that the transfer of resource rights to local communities will facilitate their sustainable use and management. Examples of CMA agreements require herders to protect rare animals, medicinal plants, or important natural features, in addition to 'proper use' and protection of pasturelands more generally. The first formal land use contract concluded between *nukhurlul* and the local administration was an agreement of this type, by which land use and management rights for pastureland and associated resources were transferred by the *sum* and PA administrations to *nukhurlul* members for an initial period of 15 years. Where formal contracts have not been concluded, project staff argue that the delineation of CMAs enhances herders' sense of ownership and responsibility, hence promoting conservation-oriented behaviour, despite their lack of legal status.

Thus, recent state and development-led attempts at devolution of resource rights may be considered limited to some extent by the weaknesses and lack of clarity in attendant

¹⁶ NZNI specifically recommend that the Mongolian government consider explicit recognition of CMAs as a new category of protected area, in line with IUCN current debates (NZNI, 2006). However, this recommendation has not been enacted to date.

legislation. Empirical data suggests that these result in diversity and confusion over the recent innovations in tenure, as enacted through the three key donor projects considered here. While diversity in itself is not undesirable, as this may facilitate development of locally relevant tenure solutions, where diversity creates confusion amongst stakeholders, project goals of sustainable land use, underscored by enhanced assurance amongst herders concerning their land rights, are typically undermined. Other limitations of current tenure reforms lie in the extent to which state and donor-led initiatives in devolution actually concur with community agendas. Although concerns for enhanced security of land rights and livelihoods have indeed emanated from herders on the ground, especially since recent *dzud*, donor and state responses to these concerns have typically been conceived of, at least initially, in a top down manner. Reviews of the World Bank SLP have suggested that the push to form groups amongst herders is 'almost certainly...essentially donor-driven...' (Blench, 2004). Although herders' groups are variously described by donors as grassroots, or grounded in custom or tradition, these organised bodies (whether herders' *nukhurlul* or NGO) are, initially at least, donor-driven, state-supported innovations. As one local World Bank SLP representative told me, '... donor projects give the herders a good example of herders' groups, as local herders don't really initiate these activities from the bottom up... Herders don't really initiate these things themselves...'. Furthermore, herders' responses to recent donor and state attempts to formalise and strengthen devolved tenure reveal concerns over possible increases in pastureland disputes and declining flexibility in social and spatial boundaries and reciprocity between herders' groups (World Bank, 2007a). Project appraisal documents for Phase II of the SLP specifically acknowledge that project-driven emphasis on formal groups such as NGOs and cooperatives may have been misplaced (World Bank, 2007b).

Space for community ownership comes through the practical application and domestication of such initiatives, as considered further below. Herders' participation in policy-making arenas also presents an important opportunity for local stakeholders to claim ownership of these agendas. For example, under the UNDP SGMP herders' representatives have participated in sum-level co-management committees, involving three herders out of a total of 7-9 members. These committees were designed to strengthen linkages between stakeholders and to coordinate activities over pasture use through participatory development of *sum* pasture management plans (UNDP, 2006). No herders from case study areas were involved in these committees. Therefore, further detailed comment on their functioning or efficacy is not presented here.

To date, the low degree of take-up of group membership by herders in project areas may be considered at least in part indicative of herders' concerns over or lack of understanding of externally-derived project initiatives. As recognised in GTZ project summary documents, only some 20% of the local herding population has become involved in the project in implementation areas (NZNI, 2006). This picture is duplicated in WB and UNDP projects. Empirical material from my own fieldwork at multiple locations across the Gobi region from 2004-2008 also underscores the limited reach of projects. As noted above, there is a great deal of overlap between herders' groups in areas where more than one of the projects is active, leading to situations in which a

single group may at once be claimed as a GTZ *nukhurlul* and a World Bank NGO or UNDP group – or even in some cases all three. Thus the same herding families continue to engage with the projects, while the majority are not reached.

4.3.2 Community-led reforms and their limitations

Land reforms enacted and domesticated by the community may be limited in diverse ways, not least in their capacity to address environmental and livelihood issues. In this instance evidence from the projects under consideration suggests that, at least to date, innovations in social organisation and associated land rights have been unable to address fully and may even have exacerbated social exclusion amongst local herders. Data for project take up alone suggests the limited ability of community-based land reforms to engage with all herding households in an area. Although acknowledging their limited reach, project-related literature devotes little attention to considering the axes and impacts of this exclusion. Detailed empirical work in one case study area over the period 2000-2004 highlights the nature and results of exclusion or non group membership (Upton, 2008). This work suggests that non membership of GTZ *nukhurlul* is related to a complex array of material, attitudinal and geographical factors including poverty, lack of labour power, weak relations of trust with neighbouring herders (hence hindering abilities to form new communities) and lack of physical and familial proximity to established communities. Concern was also widely expressed amongst non-members over a perceived ‘hardening’ of communities’ social boundaries following initial recruitment of members, for example where communities had reached an optimum size for efficient cooperation and organisation, or where community leaders favoured the recruitment of wealthy households. Fieldwork in two *sums* of adjacent Gobi *aimags* in 2006, wherein all three key projects were active, confirms these factors as integral to non membership of emergent or established herders’ groups. Lack of knowledge and understanding of project interventions, perhaps surprisingly in view of projects’ presence since 2002/3, emerged as important factors in more remote parts of these 2006 case study areas.

Impacts of tenure reforms associated with (membership or non membership of) herders’ groups are to some extent masked by their relatively recent appearance. However, in the first case study area cited above, by 2004 concerns over declining mobility and pasture access for non member herders were becoming apparent. As one non-member herder observed: “...now the community people have gathered and stay close to each other and it’s difficult to move to these community areas...other people can’t move there...”. CMAs had only very recently been discussed between herders and project staff, and none had been formally contracted with local *sum* personnel at the time. Nonetheless, the formation of *nukhurlul* and hardening of social boundaries had in itself contributed to a sense of declining flexibility of resource access amongst non-member herders.

A number of recent manifestations of successful collective action by functioning communities in this area, notably the repair of old mechanical wells and creation of new surface water points in dry steppe areas, had also contributed to a sense of more exclusive rights to surrounding summer pasture, thus extending notions of exclusivity in

pasture use from winter and spring to other seasons' grazing areas. During interviews in 2004 one non-member herding family complained that "community herders...are mainly just relatives...they don't involve other people and behave as if their community owns the pasture". Another cited a specific incident in which a non-member family were refused permission to stay in summer pasture around one of the new water points by community members. While these are isolated incidents, they serve to highlight the potential for and arguably nascent forms of both social and spatial exclusion linked specifically to recent development-led institutional transformations and associated incremental changes in norms and rights of pasture use. Three *bag* communities had also formed NGOs under the auspices of the World Bank project and concluded land use contracts with the *sum* administration for an initial period of five years. Under the contract, NGO members were required to use in the land in accordance with the provisions of the Land Law, particularly in respect of rotational and seasonal use of pastureland. They were also supported in protecting their pastures from lengthy periods of use by non-members, with the option of informing *sum* and *bag* governors of problems, where necessary. However, contracts also included a provision requiring *sum* governors to make provision for those on *otor* from other group territories and to assist them in negotiating with resident herders.¹⁷

Clearly, the intention of such contracts is to facilitate more sustainable use of pastureland and enhance tenure security, while retaining a degree of flexibility in group/ NGO membership and in land use rights. Community membership appeared to confer a variety of livelihood and land-use benefits. However, the position of non-member herders who rely on the same pasture areas as NGO members was unclear in 2004, as was the ability of these new NGO groups and institutional forms to respond flexibly in times of *dzud*. Thus increasingly complex social boundaries (membership/ non membership of GTZ communities, World Bank groups and NGOs), the diverse relationships of these groups to the spatial boundaries of seasonal grazing territories and lack of clarity over the pasture rights associated with their membership create very a complex terrain in which possibilities for exclusion of particular herding households or *khot ail* are enhanced. Data from adjacent case study areas in 2006 confirm this picture of increasing institutional complexity and perceptions of pasture rights. Certain non group members in close proximity to more active *nukhurlul*, NGOs or UNDP groups complained of exclusion from pasture and/or haymaking areas allocated to groups under CMA or other agreements. Discussions with local group members charged under the Land Law or CMA agreements with management of pastureland indicates a similar understanding, namely that non members should not use designated areas. However, in more than one instance *nukhurlul* members complained of their limited ability to enforce agreements against non-members. In more remote areas limited penetration of the projects and low population densities precluded significant project impacts (negative or positive) on land use or livelihoods.

Thus, in this instance limitations of community-based and community-led reform relate to issues of social exclusion and attendant impacts on informal and formally contracted

¹⁷ *Otor* is long distance migration in search of pasture. In recent years it has been carried out primarily in response to *dzud* or adverse climatic and environmental conditions in herders' usual pasture areas.

or designated pasture rights. These have yet to be tested, for example through *dzud*, but empirical evidence suggests some hardening of social and spatial boundaries associated with group formation and an attendant decline in flexibility where herders' groups are more active. In more densely populated areas, however, group members have on occasion suggested that they are unable to defend these rights fully or that these rights have insufficient strength to protect them against trespassing by non-member herders. A more fundamental limitation of these recent tenure reforms is with respect to mining activities, an issue to which we turn below.

5. MINING AND RESISTANCE: LIMITATIONS OF COMMUNITY-BASED REFORMS

5.1 Introduction

Both the formal and informal mining sectors have expanded extremely rapidly in Mongolia since the late 1990s. Mapping of extensive copper, gold and fluorspar reserves in conjunction with recent development of a favourable legislative framework for foreign investors, have propelled significant expansion of formal mining and mineral exploration activities.¹⁸ In 2006 the minerals sector accounted for some 17% of GDP and 58% of the country's export earnings, with future growth in economic importance of the sector widely predicted (MNMA, 2007; World Bank, 2006; World Bank, 2003b). Current estimates concerning the extent of licensed mineral extraction or exploration activity vary between 11% and 32% of the country's land area (*ibid*; Farrington, 2005). Again, this is predicted to expand in the future. Current mining activities are concentrated primarily in the north eastern, central and southern parts of the country, including the Gobi region.

Informal or artisanal mining has also risen dramatically in importance as a 'safety net' for impoverished individuals, including herders in recent years (World Bank, 2003b).¹⁹ Overall, recent estimates suggest that up to 100,000 people, including herders, participate in 'ninja' mining activities (World Bank, 2006). For the herders the move into mining has typically been propelled by loss of livestock in recent natural disasters (*dzud*). Informal mining is concentrated particularly around placer (alluvial) and hard rock gold deposits in the vicinity of large scale commercial operations, or small-scale, previously unworked placer deposits. Adverse effects of both formal and informal mining practices are felt particularly by remaining local herding populations, for example through effective loss of access to and pollution of grazing land and water resources.

Current understanding of the multiple conflicts and accommodations between mining and herding in the Mongolian countryside is extremely limited, with debates over mining issues having typically been almost wholly divorced from those concerned with

¹⁸ The new Minerals Law of Mongolia, adopted in 1997, was designed to enhance tenure security, profitability and transparency for mineral licence holders and hence the attractiveness of the sector to foreign investors (MNMA, 2007).

¹⁹ This is typically referred to in Mongolia as 'ninja mining' and its practitioners as 'ninjas'. These terms refer to the miners' apparent resemblance to the childrens' cartoon characters, the ninja turtles, occasioned by the green plastic bowls carried on their backs.

sustainable herding livelihoods, group formation and tenure reform within the pastoral sector. However, struggles over land rights are integral to the resolution of conflicts over mining and the protection of herders' livelihoods. In particular the question arises as to whether the devolved and supposedly strengthened land rights assigned to herders through the key donor projects discussed above actually have any meaning when faced with significant external pressures beyond the herding sphere.

According to the World Bank (2006) existing national legislative frameworks are insufficient to ensure that the environmental and economic impacts of formal, legal mining activities are fully addressed or compensated. Furthermore, 'important social topics that are largely unresolved include the complex issues of land use...and the role of informal mining' (*ibid*:3). The 1997 Minerals Law does require compliance with environmental laws and the preparation of Environmental Impact Assessments (EIAs) for mining and exploration activities. Rehabilitation and pollution mitigation thus both constitute legal responsibilities of licence holders. According to Article 49 of the Minerals Law disputes over land should be resolved in accordance with the provisions of the Land Law. However, the only specific reference to pastureland appears is in the requirement for any mining related damages to winter shelters or associated relocation costs to be compensated (*ibid*). According to the World Bank (2006), requirements for compensation for land use are opaque, weak and poorly regulated, as is public or stakeholder participation in any element of the initial licence allocation or subsequent activities or restoration of mine sites. Thus, prospects for acknowledgement and recognition, much less compensation, of herders' land rights under existing legislative provision appear limited (Asia Foundation, 2006; World Bank, 2003b).

Prognoses for herders with respect to the burgeoning informal mining sector are equally gloomy: according to the World Bank (2003b) 'local herdsmen, though resentful of the loss of pasture [associated with artisanal mining activities] are generally voiceless and powerless to make it stop'. However, there is as yet little empirical data to support these propositions, either with respect to small or large scale formal mining practices. Furthermore, such analyses neglect recent pastureland tenure reforms, through devolution and donor-driven formation of herders' groups. This paper's analysis of such innovations has concentrated thus far on the nature and implications of recent tenure reforms amongst herders. However, critical limitations of community-led and community-based reforms may be in the (lack of) ability to confer or assure security of tenure in the face of major external market, non-herding and development pressures.

In the final section of this paper I begin to address these important lacunae through analysis of empirical data from Gobi region case study sites where mining activities overlap geographically with established *nukhurlul*, NGOs or other herders' groups. The recent countrywide emergence of herders' resistance movements, in response to the environmental and livelihood threats posed by mining, suggest that existing tenure provisions alone are insufficient to protect herders' land rights and livelihoods.²⁰

²⁰ The most famous of these movements is the Ongii River Movement, formed in 2001, and whose leader, was recently awarded the prestigious international Goldman Environmental Prize. An additional 10

However, they also, and more optimistically, highlight the development of social and political activism and social capital amongst Mongolia's herders. In addition to analysis of the efficacy of recent tenure reforms in protecting herders' land rights against mining incursions, the following section thus also considers the implications of these emergent genuinely community-led initiatives. Specifically, the following analysis considers whether membership of new donor-driven herders' groups such as *nukhurlul* and World Bank NGOs may have less tangible but nonetheless important benefits in defence of herders' land rights, namely in facilitating herders' mobilisation as members of grassroots resistance movements.

5.2 Mining and Resistance

Fieldwork in 2008 commenced with interviews with leaders and members of one of the oldest *nukhurlul* established through the GTZ project. This group was also one of the first to conclude a formal land use agreement for a CMA, in this case for all four season's pastures for a 15 year period and within the boundaries of a Protected Area (PA). According to the *nukhurlul* leader the contract requires members to use pastures properly, in seasonal rotation, and to protect them from use by outsiders or non-members, particularly in the case of key winter grazing areas. In practice, according to the community leader, this does not mean that non member herders are necessarily excluded from the CMA, but that they should only use these areas following discussion and in agreement with community members (a position echoed by *nukhurlul* leaders for their CMAs elsewhere in the *bag*). Since establishment of the community and particularly since agreement of the contract in 2002, changes in behaviour of non-member herders have been remarked on by members. Specifically, the community leader observed that in the years following conclusion of this agreement outsider herders still came to the contracted area and did not always engage in negotiations with community members. In the past two years no outsider herders have come to this area, a situation ascribed by the leader and also by local project representatives to growing awareness and recognition of this pastureland as comprising their community's CMA. Outsiders have, however, recently arrived in the vicinity of the CMA in the form of ninja miners, involved in gold mining. Further discussion highlighted the weaknesses of *nukhurlul* rights and ability to resist mining incursions. Ninja mining is in any case illegal, as are all mining activities in PAs. Initially *nukhurlul* members, on some occasions with PA staff, were involved in trying to chase ninjas away from the mining area and also in rehabilitation of excavations. However, as the leader stated, 'this kind of ninja activity is very difficult... the community has no kind of advantage in this situation...when we went to that area no-one listened to us, even though we worked with the Protected Areas people...'. Further discussions suggested a change in attitude amongst a minority of community members, with a growing belief that it was better for them too to benefit from the mining, but then to ensure adequate restoration.

A second GTZ *nukhurlul*, within whose pastures most of the ninja activity was taking place, had also apparently concluded a CMA agreement through the project with the

movements have since formed, all of whom are part of a coalition of River Movements, the Mongolian Nature Protection Coalition, based in Ulaanbaatar. (MNPC, 2007).

local *sum* administration. According to the *nukhurlul* leader this use contract covered all four seasonal pasture areas for the member households and enable them to prevent outside herders from using these pasture areas. These provisions had yet to be tested as outsider herders had not attempted to use the contracted areas in recent years. However, as with the earlier *nukhurlul*, limitations of their rights with respect to ninja activity soon became apparent. The *nukhurlul* members were unable to displace ninjas, even with assistance of PAA, with the result that a minority of local, including community, herders began to participate in ninja activities.

Thus, empirical evidence suggests that devolved formalised tenure through CMAs may affect other herders' behaviour, but has little efficacy in the face of artisanal mining practices. Very few community members were also members of or interested in emergent River Movements, perhaps because of the currently rather limited activities of these movements in the area at the time of writing. Although one of the 11 herders' movements was established in the *sum* in 2006 and had a local representative in the case study area, membership and awareness of the group were very low amongst all local herders, including community members. Membership of communities also presented no apparent barrier and little disincentive to participation in mining activities. GTZ project staff in the area also commented on the general weaknesses of CMA agreements in the face of mining activities. Should commercial mining activities occur in areas where CMA agreements were extant, project staff conjectured that communities would be effectively powerless, CMAs being but 'a kind of promotional activity for the communities... they don't really have full rights' (pers.comm., 2008).

Commercial mining activities in the area were centred on a gold mining operation to the north of the Protected Area. Discussions with the local *bag* governor suggested that these activities were being carried out in the winter grazing areas of three local herding families. Interviews with one of the herding families, who had been using the same winter pastures for 17-18 years, confirmed that their customary winter pastures had been effectively adversely affected and effectively curtailed by mining activities, with no discussion or offer of compensation from the company concerned. In this instance the family had formal contracts for the campsites only and was not part of a *nukhurlul*, NGO or located in a CMA, although they had joined one of the River Movements, in response to mining impacts on their livelihoods. However, after an initial meeting with local leaders, in which they had agreed to join, the herding family had received no further information nor been involved in any activities. Household members had also made representations concerning their situation at *bag* and *sum* meetings, to no apparent effect.

In nearby *sums*, land designated as a CMA had, however, reportedly been adversely affected by commercial exploration and mining activities. Despite community action in reporting this to *sum* and also *aimag* officials, no recompense has been forthcoming (pers. comm., GTZ community organiser, 2008). Rather community members had been informed that the mining company in question has a licence according to the law - and hence no action could be taken.

Summary reports by two of the three projects considered in this paper confirmed the above indications and highlighted mining-related incursions as major issues facing herders' groups in the future. World Bank reports specifically identified take over and adverse impacts by mining on herders' pastures and campsites as among the most urgent issues requiring resolution in one of the Gobi *aimags*, based on herders' own comments (World Bank, 2007a). Phase 2 reports recognise the need to reconcile competing land uses, including mining, as integral to sustainable resource use in the future, and propose an emphasis on participatory land use planning with herders as a key tool (World Bank, 2007b). GTZ/ NZNI similarly recognise mining as one of the key current and future threats to devolved tenure and herders' sustainable use of pastures, arguing that 'the current procedure and practice of issuing licences....to outsiders without the free, prior and informed consent of local communities...is endangering all successes of engaging communities in conservation, as they lose their stake in the natural resource base and thereby the incentive to invest in it and protect it' (NZNI, 2006).

6. CONCLUSIONS

In conclusion, the foregoing analysis of complex tenure reforms on Mongolia's pastoral commons highlights limitations in both external and locally reworked manifestations of land reform. Current policy fashions of devolution and community-based initiatives tend to blur the boundaries between state and community-led reforms. As in previous historical manifestations of land tenure arrangements, actual herders' practices around land tend to reflect both contested interpretations of 'custom' and state influences. Since decollectivisation of Mongolia's pastoral sector in the early 1990s, donor-led initiatives in conjunction with the state have become increasingly influential, especially in promoting tenure reforms based on the formation and formalisation of herders' groups.

Limitations of externally driven reforms since decollectivisation have centred around weaknesses in state capacity, but most importantly around weaknesses in legislative provision. Lack of clarity over key legislation, such as the 2002 Land Law, has resulted in diverse interpretations and confusion over the actual status and legitimacy of implemented reforms under various donor projects amongst key stakeholders, not least amongst herders themselves. These cannot be divorced from the issue of capacity: both local state actors and project staff have struggled to enact new initiatives, to explain them to herders and to enrol herders in their implementation on the ground. The presence of multiple donor projects in the same districts, each attempting to enact variations of tenure reform, has only added to this growing complexity. Diversity in actual land reform practices at local levels is by no means undesirable where these reflect grassroots agendas and local contexts. However, where these reflect contested interpretations of a weak legislative framework, empirical data suggest that goals of enhanced tenure security and livelihoods may be compromised.

As noted in the Introduction, characteristics of nomadic pastoralist communities make the implementation of state and donor-driven tenure reforms particularly challenging,

and, historically, particularly unsuccessful, even when these have concentrated on community-based solutions. Flexibility in social and spatial boundaries is integral to 'customary' systems, but may be compromised by formal recognition of customary arrangements under state or donor-led devolution. Furthermore, a normative notion of equity and livelihood benefits of customary systems, allied to flexibility, may be equally misplaced. Empirical material from the Mongolia case studies serves to highlight the formidable challenges faced by community-based tenure reforms aimed at enhancement of livelihoods and sustainable, conservation-oriented land use. Evidence from case study areas suggests that new institutional forms such as NGOs and *nukhurlul*, while beneficial for their members, have failed to address or may have even enhanced broader patterns of social and spatial exclusion, not least through changing perceptions of pasture rights supported by *sum*-level interpretation of national legislation. At the same time, a minority of group members have complained that their devolved rights are too weak to fully enforce what they see as more defined social and spatial boundaries allied to their group membership.

Related questions arise concerning the extent to which recent tenure reforms reflect herders' own agendas. Participatory implementation methods on the part of donors have enabled group members to rework and domesticate recent initiatives. However, the limited reach of the projects in case study areas suggests both a lack of engagement of herders' with the basic models and premises underlying the interventions and/or their effective exclusion from participation in new initiatives. Axes of exclusion are complex, with empirical material highlighting combinations of factors such as wealth, labour power, trust, geographical and kinship proximity to established groups and lack of knowledge or understanding of donor initiatives. In practice this has resulted in the same herders being enrolled again and again in donor projects in case study areas, while the many remain uninvolved.

Recent expansion of minerals licensing across the countryside has also brought the weaknesses of current legislative provisions into sharp relief. Herders' traditional or 'customary' rights, even where supported by the diverse group tenure arrangements enacted by various donor projects, seem powerless to ensure compensation or protection of herders' land rights. The need to address lacunae in current legislative provision is highlighted in recent project documents for the key donor initiatives considered here. These issues are currently under consideration by the Government of Mongolia, as are provisions for regulation of *ninja* activity, which currently threatens to undermine group-based conservation and land management activities.

Although there is currently little overlap between membership of the grassroots herders River Movements and donor and state-initiated *nukhurlul* or NGOs, the former offer the prospect of more genuinely community-led land reforms in the future. Current debates over land tenure and mining issues at the national level are involving leaders of River Movements for the first time, while national human rights NGOs have begun to test provisions and weakness of the legislative framework at the behest of herders and in response to mining-related land alienation. These developments highlight prospects for greater legislative clarity in the future and for the growing influence of herder-initiated

social movements in future land reforms. The recent completion of GTZ/NZNI and UNDP projects and associated withdrawal of donor funding also offer both an opportunity and a challenge for grassroots initiatives in tenure reform. Questions persist concerning the sustainability of these initiatives, but their aftermath also offers herders a critical opportunity for further reworking, domestication and proliferation of these activities. Follow-up capacity building projects are already underway in the Mongolian countryside, for example the IFAD funded project '*Good Governance for Sustainable Natural Resource Management and Poverty Reduction – Scaling Up through Community-Led Learning*', implemented by NZNI. This seeks to build on the GTZ projects considered in this paper, with a particular emphasis on strengthening established community organisations (e.g. *nukhurlul*), and on scaling up and learning policy-related lessons from community-led activities in resource management and poverty reduction (NZNI, 2007). Outcomes are, of course, uncertain at present.

Overall, in Mongolia clear prospects exist for enhanced herders' influence in land reform in the future. However, significant challenges remain, for example in the extent to which herders' agendas will be supported by ongoing legislative reforms. Normative notions concerning community-led land reform must also continue to be challenged. As empirical material shows, community-based and community-led reforms do not offer a panacea to exclusion, inequality and poverty.

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