

EXCHANGE ON INCLUSION OF PASTORAL CODE IN THE NEW DRAFT LAND LAW IN MONGOLIA

On 7 September, ILC Asia members exchanged information with Mongolian government officials and civil society organizations on pastoral issues to be included in the new draft law of the Parliament

The Director of Environment Development Agency (EDA) JASIL, Dr. Hijaba Ykhanbai opened the meeting between ILC Asia members and Mongolian government and CSOs to discuss the potential of including pastoral issues in the new draft law to be debated in the Mongolian Parliament in the 2013 autumn session.

See PowerPoint: <https://www.dropbox.com/s/rt2p35dao8pur83/OPENING%20ENG2.ppt> (*Ctrl + click all links in the document to download*)

Dr. Ykhanbai mentioned that more than 90% of agricultural land in Mongolia is pastoral land, and therefore it is fundamentally connected to the livelihood of the people. To this end, pastoral land falls under common public ownership. However, this form of ownership can be a challenge as after the fall of the Soviet Union 20 years ago, Mongolia is slowly transitioning to a market economy. At the same time, the common use of pastoral land can also be a problem in terms of the quality of land, as there may be no proper management of pastoral lands, which may be further affected by climate change and other environmental factors. Accordingly, structural improvements are needed in society and in legislation in order to have a method for collective management and use of pastoral lands.



Other issues that are relevant to the management of pastoral lands include debates on what type of ownership would benefit pastoral lands – a combination of private-public ownership, or complete privatization of land. Additionally, while customary practices of traditional nomads do address the management of land to some extent, an important question is how such practices can be put into the Draft Land Law. Another important consideration is on how to increase the capacity of herders to manage the land.

Therefore, the ILC Asia Knowledge Exchange Day was seen as a very timely event in Mongolia as it presents a forum to exchange ideas and opinions to address some of these challenges.

Following this meeting, Nathaniel Don Marquez, Co-Chairperson of the ILC Asia Steering Committee welcomed the Mongolian representatives and ILC Asia members, and went on to say that the tradition of nomadic herding is important in the consideration of the debate over the draft Land Law, as it has informed the long history of Mongolia. At the same time, there are also developing resource constraints in Mongolia with respect to the availability of grazing lands as a common resource due to population growth, overgrazing, agricultural practices and other factors.



The decision on how to allocate grasslands – the common grazing lands to herders can thereby have implications for the rest of the country. Accordingly, ILC Asia members would look forward to learning more of the Mongolian context and the efforts in the drafting of the new laws.

The Member of Parliament, Chairman of the Standing Committee on Environment and Rural Development, Mongolia, G. Bayarsaikhan, then took the floor. He mentioned that while the introduction of democracy and the subsequent freedom of the participation of people have meant a lot of changes in the social and government structures, the role of community has always been an important notion in Mongolia. Moreover, while the legal framework has improved over the years, the people of Mongolia still need to improve and obtain training for their livelihood. To that end, he welcomed the views of all ILC Asia members. The representative ended by saying that he hoped for further collaboration between ILC and Mongolian partners.

B.Khishigt, Standing Committee on Environment and Rural Development, Member of Parliament, Legal Advisor then began the discussion on the reform agenda focussing on what changes are taking place. She mentioned that while Land Laws have been implemented, a number of violations are taking place (*graph in PowerPoint*). Therefore, one important point is on how to prevent such violations.

See PowerPoint:

<https://www.dropbox.com/s/shuqgw14qbky65k/Khishigt-engltransl4.ppt>

Ultimately, the aim Mongolian land policy and law is protecting the balance of the ecosystem along with ensuring security to access land by citizens of Mongolia.

At present, for the draft land law, research has taken place on the natural conditions of the land, and a baseline was established. Correspondingly, there have been studies on how to improve the system of land registration and to clearly identify what land should be used by whom. In this regard, land management plans are being made at the provincial level and at the lower levels of *zuud* and *baak*.

The Member of Parliament, Chairman of

Specially, [for the draft Land Law to be discussed in the Mongolian Parliament this autumn], issues such as how to establish a land trade exchange between private individuals/sector and the Government of Mongolia for ownership of land; who should certify the land on behalf of the government; and how to organize the renting of the land and related processes would be important considerations ...

Further, the land database needs to be made more precise, with classification of land made clear. Also, the use and potential users of the land need to be clearly identified – whether by nomadic herders, or if community groups can acquire title, or if different individuals/groups can get title to the land.

It must be noted that so far while the privatization of land for Mongolian citizens is a notion that has been adopted in the Mongolian Constitution (1992), there has not been much privatization undertaken in the country, though some people do maintain plots privately for vegetables.

Against this background, it is important to ascertain on how to enhance citizens' participation in the planning and implementation of the ownership and management of land.

Specially, issues such as how to establish a land trade exchange between private individuals/sector and the Government of Mongolia for ownership of land; who should certify the land on behalf of the government; and how to organize the renting of the land and related processes would be important consideration. Following this presentation by officials of the Government of Mongolia, the floor was opened up for questions from participants

Q&A

Question – Do women gain access to land? To whom is land distributed – households/families or individuals?

Response: Women and men are equal in front of law – Mongolian citizens can register land under their names. There is no discrimination. According to the court/government there have not been complaints – so it is assumed that this equality principle is enforced

Question – Currently, the distribution of land is at an initial stage in Mongolia. One way of ownership is to give to individuals; another way is to be managed by the state; can there not be a third way – where instead of land being privatized or owned by state, land can be given to collectives (e.g. smallholder farmers for usage)?

Response (JASIL) – Under the Constitution, the third option is not there. Ownership of land is by Mongolian state/individuals. However, yes, it is currently being proposed in the draft Law if it is possible to have titles of usage, especially for pastoral lands

Response (speakers) – Currently, all pasture land is government owned, including sub-soil. So far, nothing about privatization for those lands.

A. Kurelshagai, Director, Administration of Land Affairs, Geodesy and Cartography then discussed about the complexity of having a law for pastoral lands, such as having effective land schedules for use of pastoral lands for grazing in winter and in summer time; ensuring access to land near river basins; and ascertain the number of animals that can graze on that land, taking into account different type of animals. Additionally, the quality of land may differ in the various zones, and land management plans would need to address those differences.



See PowerPoint:

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“While proposals on access of pastoral lands to community groups will be discussed in the Parliament during the debate on the draft Law this year, there is still no clear way forward on questions such as what happens if a herder is given land under the new law, and he then loses all animals, and moves on to a different livelihood – would he still own that land?”

Further, since Mongolia shifted to market economy, it has led to difficult questions on how can herder lands be privatized – would ownership be given to individuals or families? If only land tenancy is given to pastoral lands for how long should it be given? While proposals on access of pastoral lands to community groups will be discussed in the Parliament during the debate on the draft Law this year, there is still no clear way forward on questions such as what happens if a herder is given land under the new law, and he then loses all animals, and moves on to a different livelihood – would he still own that land? It needs to be clarified that if a herder does not use land for the purpose which he acquired land under, should the land be freed to be distributed to others? In that case, the potential role of tenure holders need to be further explored and the government could see some ways on how to have such processes of ownership and use happen.

In Mongolia, the nomadic culture and livelihood has existed for thousands of years and the government would need to ascertain that the developing regulations do not damage traditional values. As mentioned, more than 90% is pastoral land, so if the law is not good, it can have severe implications.

Much research has been undertaken from nomadic traditional experiences to specifics of market rules to scientific research. There have been many norms/procedures discussed, and a good database created. A private sector company from the US - TNC has helped citizens in mapping

their lands. In this regard, ecological issues need to be considered as well – to ensure that there are better management methods to prevent land degradation of pastoral lands. Following this presentation, the floor was opened to another round of questions.

Q&A

Question – In Philippines there are some good laws enacted by our representatives in the government, which pertain to the ownership of farmers and indigenous people. However, even after a decade and subsequent extensions, the problem rests with implementation and enforcement, with the intention of the laws not being followed. What is the consideration given to the actual participation of herders in the laws, to ensure that the intention of the law supports their considerations and interests? What is the consideration given to direct participation of herders in drafting the new laws?

Response: This is important advice. The government is still in a learning process. We have been shifting to a democratic market economy since the last two decades, and yes, it would be important to consider how to enable the making of the Land Law to be more participatory. Some of the information on traditional herding and management has been informed throughout the generations, but are unwritten. We would need to look at such customs to make our laws practical and use such information to inform local management

Question – In Bangladesh, after liberation – 1971, 1972 – land was to be given to the landless. However, in many cases, it has occurred that quality land with economic value has been acquired by rich people, and the rich agricultural land did not go to the people, the landless people who could have used it for small-scale farming. In Mongolia, is it the same way?

Response: In reality, in the capital area of Ulaanbaatar, most of the land is tenured to rich people, with ordinary people having land only in the suburbs. In Land Law we need to clarify what land can be privatized. Our planning was not earlier connected earlier with discrepancies and conflicts... Yes, in our laws, it is important to provide citizens to have better opportunities and training, based on adequate considerations on what land is used and to better solutions for using land for public purposes, privatization and land security.

Question – Are indigenous peoples considered in legal framework – in your proposed amendments to land law?

Response: In Mongolia, under socialist rule there were 90,000 herders. Following the transition there were 140,000 herding families, and recently decreased to 120,000 households, with an average of 4 members per households. In Mongolia, we consider herders as indigenous peoples – they and their ancestors are attached to the land, have traditionally lived on that land. This nomadic culture should not be forgotten, and this needs to be shared with the youth. We are going to address access and use of land by herders.

Question – Has there been a problem of desertification - over-grazing?

Response: Yes, this has been a pressing issue in Mongolia due to the increase of livestock. Now, have more than 40 million livestock, and there has been dryness due to climate changes. Another important factor affecting the lands has been mining.

Following this round of questions and answers, the representative from the Government of Mongolia mentioned that the government hopes ILC to undertake more activities/projects in Mongolia, so that co-operation will be expanded.

ILC members then talked about their own experiences on civil society engagement on pastoral issues in their country to give some examples on how civil society has engaged on the issue in different ways.

India's representative from MARAG mentioned how in his state of Gujarat, India, there has been



the establishment of a special investment region (SIR), similar to the special economic zone (SEZ) of China. However, such a policy led to certain villages being put under the SIR without free, prior, informed consent. Following this, villagers from 44 villages got together under the Azad Vikas Sangathan and mobilized to have their rights to the land recognized. It also required a lot of courage, as there have been cases where peaceful protesters were put in jail or were killed.

The strategies used for frequently communicating over mobile phones greatly helped during the mobilization, especially for last minute changes to the venue when it was heard that the state government planned to use force. Within 101 days of mobilization, the people of the area were informed that the government would withdraw its decision on the SIR from all 44 villages, and the people regained access to the 40,000 hectares that were under threat. Mobilization occurred 37 times, with 1,000 people – 20,000 people mobilized for each rally. Following this, during a peaceful ceremony of flag hosting by the villagers during the Indian Independence Day, the government arrested the community leaders, but the leaders were let go the next day when many media networks covered the unjust situation.

ALRD representative then mentioned that Mongolia is currently in a privileged position, as it is in the position where it can balance between people and common uses, and the market economy it is transitioning to. In Bangladesh, a good balance between the two is when communities - civil society organizations are involved in government's pro-poor policies.

RDF representative from Kyrgyzstan then explained that like Mongolia, Kyrgyzstan has also about 90% pastureland. However, earlier in the law the formal and customary laws of pasture management and use contradicted each other. In 2009, a new law was adopted that incorporates

three main principles - protection of the ecosystem, involves local government, and adopts sustainable use of the land. One continuing issue area that needs to be focused on is that in Kyrgyzstan, women need more voice in pasture management and improvement.



AIPP representative then discussed about the conventions on indigenous peoples that Mongolia has ratified, and that preservation of their equality and traditional occupations must be recognized.

One of the ANGOC representatives then noted that the history of Land Reforms in Asia has been driven because of political drivers. However, now this is changing, with land reforms being driven by economic drivers. Global capital needs uniformity, and traditional ownership can be in conflict with the investment that global capital may seek to make on lands. However, traditional use – traditional management as common property can be a basis for legal framework, if such is seen by the larger community to be vital to their way of life and livelihood.

In the closing speech, the representative from JASIL, Mongolia mentioned that it is not yet the right time in Mongolia for privatization of pastoral land, as the tradition and culture of common use of pastoral lands still exists. Moreover, the legal framework for pasture is inseparable from the natural resource rights of the land. Accordingly, herders have lived with the traditional use of pastoral lands, and it is the use of pasture land and related resources in line with traditional ways that needs to be discussed to be brought within the draft law.

