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I. INTRODUCTION

Mongolia is commonly imagined as a country of open land and “smooth space”¹ where nomads roam freely. Scenic images contribute to this romanticized portrayal of Mongolia as a “promised land of endless space”² or a “land of no fences”³—populated sparsely by nomads living in

¹ See Gilles Deleuze & Félix Guattari, A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA 352, 410 (Brian Massumi trans., Univ. of Minn. Press 2002) [hereinafter Deleuze & Guattari]. A “smooth space” is a concept adopted from Deleuze and Guattari who identify it as infinite, open, and unlimited space that nomads occupy.

² Ole Bruun, Nomadic Herders and the Urban Attraction, in MONGOLS FROM COUNTRY TO CITY: FLOATING BOUNDARIES, PASTORALISM AND CITY LIFE IN THE MONGOL LANDS, at vii (Ole Bruun & Li Narangoa eds., 2006) [hereinafter Bruun].
portable gers, which intermittently dot the landscape. This visual feast of seemingly boundless open space and the panoramic vista of boundless miles smokescreen the visible and invisible boundaries that restrict the free-willing movement of herders in Mongolia.

This article examines the juxtaposition of the romantic portrayal of Mongolia as a nomadic nation of fenceless land and the reality of contemporary legal codes that create barriers, physically and metaphorically, restricting free movement. The article specifically focuses on recent changes in land codes in the post-socialist era and discusses the impact of the collapse of the socialist system on Mongolian society generally and the land regime specifically. The article examines the interplay of space and identity and analyzes how various “reform” policies, such as land privatization, de-collectivization and sedentarization, have altered and remade the Mongolian cultural map.

In doing so, the article discusses post-socialist social changes, as well as legal and policy debates that are continuously reconstituting land politics in Mongolia. In order to map out the context in which the discourse of land is taking place in contemporary Mongolia, Part I provides in-depth background on the reformation of Mongolia’s political and economic system in the post-socialist era. It illuminates the overbearing roles various international financial institutions (such as the World Bank, International Monetary Fund and Asian Development Bank) played in framing the legal and political landscape in Mongolia in the transitional period. It proposes that the “shock-therapy” approach to development that these bodies thrust onto Mongolia bore unexpected consequences that still deeply plaque Mongolian society.

Part II analyzes the ongoing cultural-political processes of reconstructing a collective national identity. It explores the ways Mongolian society has transformed its social construction and re-imagined its national identity detached from the Soviet Union and the political binding of the socialist era. Mongolia’s quest for recognition, belonging, as well as security, partially explains the reification of its essentialized nomadic alter ego. Mongolia nourished its nomadic self-identity, while nomadism in reality fades away. Part II further illustrates how the Mongolian government, as a matter of state policy, nurtures a Mongolian identity that is both romantically nomadic and exotically “authentic”- and which is in some ways a primitivist essentialization of Mongolian culture for outsiders’ “orientalizing” gaze. It demonstrates that reality of this romantic image is becoming more mythical and staged, and ongoing politics of land in Mongolia only furthers Mongolia from its mythical nomadic state.

The remaining portion of the article is dedicated to exploring

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specific policies related to the interplay of land and identity. Part III on DECOLLECTIVIZATION analyzes the impact of policies that dismantled former collectives in a relatively short time and illuminates the ways in which the process uprooted the local population and disrupted the social fabric of these communities. Part IV on SEDENTARIZATION extends this analysis and looks deeper into the direct impact of reform policies in causing a large segment of herding population to leave herding for a more settled mode of life. Part IV on LAND PRIVATIZATION provides an analysis of the evolving legal framework related to land issues and specifically discusses the impact of land privatization policies. Mongolian land has now not only been literally fenced off for private ownership—an absolute antithesis to nomadism—but has also been striated though crippling environmental damage. Tourism and mining activities close off space and undermine the local population’s access to ever increasing areas. More critically, these activities engender serious social and environmental consequences which displace local communities and force them to leave their traditional grazing areas—not for greener pastures, but for the poverty stricken slums of the cities.

II. THE POST-SOVIET POLITICO-ECONOMIC SITUATION

The world order changed dramatically with the fall of the socialist system in the early nineties. Gorbachev’s glasnost and perestroika hallmarked the end of the Cold War and opened a new page for countries that were unleashed from their ideological straightjackets. As history turned its page, the post-socialist countries were forced to renegotiate the collective destiny of the members of their communities. They had to reorient and reinvent themselves from a collective socialist fiction. Mongolia, like many other countries, faced unprecedented—though not necessarily anticipated or prepared for—social changes.

Because the journey from socialism to capitalism was entirely untraveled, every step post-socialist countries, such as Mongolia, took risked unforeseen consequences and rocky paths. As a result, almost all post-socialist countries went through a transitional shock, which included hyperinflation, soaring unemployment, identity crisis and some degree of public unrest. Mongolia was no exception. Policymakers and the public alike had to carve a way out from the transitional abyss in which society plunged.

A. Donor “Aid”

At this particular space of history, international agents stepped into Mongolia with the promise of help. With the immediate withdrawal of aid from the former Soviet Union and Comecon countries, Mongolia was forced to rely on assistance from these new bodies—subjecting itself to their influence and manipulation. As early as 1991, Mongolia was admitted to membership in major financial institutions, including the so-
called ‘Bretton Woods Organizations’—the World Bank, the International Monetary Fund, and regional banking entities (e.g., the Asian Development Bank)—that played a substantial role in the re-ordering of the social tapestry of Mongolia. Membership to these institutions paved a way for Mongolia to seek and gain various loans and financial aid. Because of Mongolia’s dire economic predicament, such aid was much needed and, therefore, preyed Mongolia to unprecedented dependence on “handouts from international organizations and donor countries.”

However, there is no free bread. The donor agencies conditioned aid to Mongolia on adherence to and implementation of a package of reforms blueprinted by the agencies. The reform package included the formation of a market economy—including, but not limited to, price liberalization, privatization of state properties, reduction and eventual elimination of state subsidies and expenditure, currency convertibility, and decollectivization of agricultural collectives and state farms. The purported aim of these reforms was to “emancipate” the Mongolian economy from the political and structural cage of a centrally planned economy. The planned economy was considered inefficient, unproductive, and authoritarian.

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4 Political will aside, Mongolia had to rely on international aid and foreign investment necessary to rescue its crumbling economy. In return, Mongolia has been urged to reform its government in order to create a better investment and business climate. See Elaine C. Kamarck, Globalization and Public Administration Reform, in Governance in a Globalizing World 232 (Joseph Nye, ed., 2000). ADB alone, for instance, carried out a program that exclusively targeted the implementation of public sector administrative and financial management reforms in Mongolia under the bank’s Governance Reform Program (GRP) in 1999. Asian Development Bank, ADB Approves Loans for Second Phase of Public Sector Reforms in Mongolia (2003). The State Property Committee (SPC) in Mongolia noted that “[t]he government of Mongolia [was] committed to an overall policy of reform which include[d] privatizing state-owned assets, increasing private sector participation in the economy, and attracting foreign investment.” State Property Committee, Government Privatization Policy, http://www.spc.gov.mn/english/privatization/current_policy.html (last visited Jan. 10, 2010).

5 Paul D. Buell & Ngan Le, Globalization and Mongolia: Blessing or Cursing, in Blessing or Cursing in Mongolian Culture and Society in the Age of Globalization 27 (Henry G. Schanz ed., 2006) [hereinafter Buell & Le].


7 Rossabi, supra note 6, at 36.
would generate growth and bring a bright economic future to Mongolia. The strong economy would in turn solve social welfare problems.

B. The Fruits and Plagues of Reform

While the reform recipe has borne consistently a benevolent theme, the net results have been murky at best. Despite the promised political stability and economic prosperity, the spoon-fed reform policies have brought social cavities, such as deepening inequality, soaring poverty, increasing corruption and deteriorating social welfare, which have undermined the very thesis of the reform. “Unemployment, inadequate pensions, and low standards of living translated into serious social dislocations.” For example, 60 percent of Mongolia’s 200,000 elderly live below the world poverty line. Nevertheless, Mongolia entered the stream of capitalist economic orthodoxy and has well tasted the fruits and the plagues that the hard-core market economic policies have brought with them.

In the first few years of market liberalization, Mongolian society went through a radical social makeover. “The first major move to liberate prices was taken in January 1991, by government Resolution No. 20 which sought to reduce the number of state controlled prices.” The government eliminated many price controls, which led to soaring consumer prices and inflation reaching as high as 325 percent in 1992 alone. The privatization of state property also started when 44 percent of former state property was privatized through vouchers issued to every

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10 David Sneath, *supra* note 8, at 147. For more extended discussion on emerging serious social dislocations, such as alcoholism, poverty, crime and unemployment as a direct consequence of reform programs. See also ROSSABI, *supra* note 6, especially Chapter 6 on poverty and other social problems.


13 ROSSABI, *supra* note 6, at 52.

14 See Lhagva & Batbayar, *supra* note 12, at 270 (explaining that there were two components in Mongolia’s privatization program: (1) privatization of small enterprises, which included approximately 1600 small businesses; and (2) privatization of large enterprises, which included approximately 700 large state-owned enterprises, to be partially or fully privatized).
citizen of the country in October 1991.\textsuperscript{15} This privatization program was “one of the fastest privatization programs in the reforming socialist countries.”\textsuperscript{16} The Mongolian public was not ready for such a dramatic change after seven decades of communist schooling. As a result, cynicism, paranoia and opposition torched the political landscape and social psyche of Mongolia.

The privatization process was strongly scrutinized (and fairly so) for its mismanagement, inefficiency, and corruption. In the end, privatization has served to advantage a few individuals that held power at either local or national level and has largely manoeuvred the transfer of state property into the hands of a certain number of individuals and groups. As a result, the country’s wealth has been concentrated among the few and has led to a growing gap between the rich and poor, or as Morris Rossabi calls “the remorseless growth of inequality.”\textsuperscript{17} At the same time, reform programs have shattered existing health, educational and welfare systems with sharply reduced budgets across all these sectors.\textsuperscript{18}

Nonetheless, “pure market” policies continue to shape the Mongolian economy and society. In spite of apparent and readily visible cavities, the market economy policies of shock therapy, minimal government and privatization of state property continue to be nurtured in Mongolia by donor agencies, who have capitalized on their leverage to manipulate government policies to suit their cards.\textsuperscript{19}

\textsuperscript{15} See id. The voucher system was selected to give every citizen an equal opportunity to participate in the privatization process. According to the system, each citizen received a voucher with a face value of 10,000 tugriks (Mongolian currency). Each voucher had two parts: a violet voucher for the purchase of small assets; and a blue voucher for the purchase of stocks of large companies.


\textsuperscript{17} ROSSABI, supra note 6.

\textsuperscript{18} See id. at 47, 49, 59 (describing for instance, that the ADB team, supported by Mongolian market economists such as D.Ganbold and M.Enkhsaihan, maintained that expenses on education, health, welfare, and culture should be cut back because they contributed to the budget deficit).

\textsuperscript{19} See Bikales, supra note 6 (arguing that there were differences in the ways successive governments handled the reform policies, such as “First there was radical voucher privatization and other rapid reforms during the 1991-92 Byambasuren administration. Then the conservative 1992-96 Jasrai government slowed reform, halted privatization and poured resources into a spanking new state-owned steel mill, financially teetering crop farms and large infrastructure projects. A new wave of market-oriented reforms began under M. Enkhsaihan in 1996-98. And finally came N. Enkhbayar’s moderation from 2000-04.”). But see ROSSABI, supra note 6, at 59 (showing that what is silent in Bikales’ account is the degree that donor agencies influenced Mongolian politics). See id. “[T]he ADB threatened to withhold a pledged payment of $15 million, which was essential to balance the budget, if the government did not rescind its ban on the export of raw cashmere.” Id. at 80 (explaining the IMF pressed for the privatization of the Most Valuable Companies and threatened to withhold pledged loans if the Gobi
III. RECONSTRUCTION OF MONGOLIAN IDENTITY

In the midst of socio-economic chaos, Mongolia began to revive its national identity and redefine the image of Mongolia detached from the decades of Soviet cultural imperialism. The process was “a challenge to seventy years’ production and reproduction of the Mongol identity and entire social order.”

A. “Resiliently Particular” Mongolia

Mongolia excavated the past to reconstruct its post-Soviet identity. Mongolian identity was thus synthesized with a heavy dose of “real” Mongol signifiers that had either been systematically eradicated under the socialist regime or had “naturally” devolved in the wheel of time.

Narrative constructions of the “real” Mongolian identity are projected from selective memories of the past. The renaissance of the past is articulated through the nationalistic discourse that reinvents a Mongolia that is unique or as Appadurai suggests, “resiliently particular.”

The discourse creates cultural markers that differentiate Mongols from other communities (and perhaps more keenly from the Chinese) and establishes a sense of belonging. The cultural markers of real Mongolia include (but are not limited to), Chingghis Khaan, nomadism, lamaist Buddhism, traditional food, costume, language and writing—all of which have been resuscitated to some degree in the last few years.

Cashmere Company and NIC, an oil company, were not sold).

20 Uradyyn Bulag, Nationalism and Hybridity in Mongolia 254 (1998) [hereinafter Bulag].


22 One of these “real” Mongolian signifiers that were nearly fossilized during the Soviet period was Chingghis Khaan. He was “forgotten” from Mongolian public discourse for his infamy, the destruction he (and his empire) brought upon different civilizations and his feudalistic attributes. However, in the post-socialist years, these sins have been erased from the collective memory of Mongols. Chingghis Khaan has been “reborn” again as the primary root of Mongolian identity and the very reason for the existence of Mongolia. Today, Chingghis Khaan “lives” in every imaginable form in Mongolia from billboards, rock bands to vodka bottles. He has become the preeminent symbol of national grandeur, culture and identity. Similarly, Buddhism has been revitalized and now almost every Mongolian turns to a lama to some degree or other to turn the wheel of fate in their favor. Traditional costumes have also been re-popularized (even if infused with ‘modern’ elements). Mongolian politicians, including the President, Prime Minister, and other prominent politicians are often embellished in traditional outfits to reinforce cultural solidarity. There have also been attempts to restore the Mongolian traditional script, which was abolished during the Soviet period. Although these attempts have not yet led to the restoration of Mongolian script as official policy, Mongolian script has become a representation of an “ideal” and lost Mongolia. Today, much of Mongolian “traditional” art is ornamented with traditional script. For extended discussion on the revival of Chingghis Khaan as the national icon in Mongolia see
These attempts to re-imagine Mongolia and attach it to a romanticized past can be explained by the concerns of sovereignty, especially given the historic and continuing vulnerability of its status as a separate and distinct entity. Therefore, the discursive project of imagining and constructing a post-Socialist identity that is both “original” and unique is inextricably linked to the desire for a cultural demarcation that enshrines unique Mongolness. The concerns of sovereignty and national security shape the ways (at least to a certain degree) that Mongolian society has been reconstructed in the post-socialist years.

Mongolia’s efforts to resuscitate its sovereign-and-unique self partially explain the reification of its essentialized alter ego—nomadic identity. Mongolia has been nourishing its nomadic-self, while its essence is in reality fading away. The Mongolian government, as a matter of state policy, nurtures a Mongolian identity that is both romantically nomadic and exotically “authentic”, and is in some ways a primitivist essentialization of Mongolian culture for outsiders’ “orientalizing” gaze. “Real” Mongolian representation is staged in public performances, tourist camps, concert halls and government receptions for visitors to Mongolia, who choose Mongolia as a destination of a primitive authenticity and unspoiled landscape.

Figure 1 is a picture of a tourist camp in Khar Khorin. Here, as in tourist camps all over Mongolia, nomadic identity is articulated through ger and “nomadic” warriors on their horses. Traditional attire is worn in the most elaborate style, hawking toursty simulations for an authentic and traditional treat. This is a “mythic state of temporal remoteness from the

CHRISTOPHER KAPLONSKI, TRUTH, HISTORY AND POLITICS IN MONGOLIA: MEMORY OF HEROES (2005); Alicia Campi, The Rise of Cities in Nomadic Mongolia, in MONGOL FROM COUNTRY TO CITY: FLOATING BOUNDARIES, PASTORALISM AND CITY LIFE IN THE MONGOL LANDS (Ole Bruun & Li Narangoa eds., 2006) [hereinafter Campi].


24 While current President Nambaryn Enkhbayar made suggestions to curtail nomadism in Mongolia, nonetheless he takes an active part in representing Mongolia as a nomadic nation.


26 Khar Horin (alternative spellings Kharakhorum, Khar Khorum), is one of the earliest cities in Mongolia and was established in 1220. Khar Horin was the capital of Mongolia until Kublai Khan moved his capital to Khanbaliq (Beijing) in China. At the time this particular picture was taken, the tourist camp was getting ready for a well-publicized visit of Japan’s Crown Prince Naruhito and his wife Masako Owada.
Such a reenactment of the nostalgic past and staging of authenticity is not an unusual site in post-Soviet Mongolia and is inherently connected with the self-representation that tailors to Mongolia’s continued need to be recognized as a unique entity.

To borrow Smadar Lavie’s well-suited analogy discussing the Mzeinis self-representation of Bedouin identity for tourists, Mongolia’s simulation of “authentic” Mongolia, such as this tourist camp, resembles a “human zoo.” Human zoos, or the staged representations of Mongolia, attribute to and reinforce the stereotyped essentialization of Mongolia and Mongolian identity. Whether it is painted as romantic, exotic and pristine, or it is voiced as a means of signifying cultural and sovereign boundaries, or denounced as backward—timeless nomadism continues to identify Mongolia.

B. “Triumphantly Universal” Mongolia

While Mongolia has been vigorously reinventing its identity and rethreading the genealogy of its past to the present, Mongolian society has

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dichotomously been reconstructed and detached from its idealized past. Mongolia transited from the socialist-modernist binding into a more and more “triumphantly universal” or a neo-liberal and market-oriented capitalist mould. However, much romanticized, “pure nomadism” is becoming more fictional and staged, and the land on which nomads supposedly free-roam is no longer a “smooth-space”—to come back to Deleuze and Guattarian analogy.

Although Mongolia is turning back toward its nomadic-self, land has been appropriated, fenced and closed off in Mongolia, which is essentially the antithesis of the nomadic way of life. In fact, land today has been fenced more visibly and more vigorously than in any other historical time in Mongolia. If “[t]he primary determination of nomads is to occupy and hold a smooth space,” and if the smooth space is an open space where nomads can move perpetually “without aim or destination, without departure or arrival,” then the reality of post-socialist Mongolia does not conform to the archetype. But by continually returning to its “nomadic-self,” Mongolia is arguably resisting the ongoing neo-liberal land discourse as it takes Mongolia farther from nomadism. “When we long for the past, we long for what might have been as well as what was; it is only by incorporating such longings into our narratives that we can suspend the past and ultimately change its meanings in the present.”

The rest of this article is dedicated to unveiling the paradoxical lived life of Mongols, as opposed to their romanticized image. It discusses how land in Mongolia has become anything but smooth and open, with increasing privatization and visible fencing.

30 See Appadurai, supra note 21, at 334.
31 DELEUZE & GUATTARI, supra note 1, at 353. Deleuze and Guattari use the analogy of Go, as compared to Chess, to describe the space the nomads occupy in comparison to the striated space of the polis. They explained:

Chess pieces are coded; they have an internal nature and intrinsic properties from which their movements, situations, and confrontations derive. They have qualities; a knight remains a knight, a pawn a pawn, a bishop a bishop. Each is like a subject of the statement endowed with a relative power, and these relative powers combine in a subject of enunciation, that is, the chess player or the game’s form of interiority. Go pieces, in contrast, are pellets, disks, simple arithmetic units, and have only an anonymous, collective, or third-person function: “It” makes a move. “It” could be a man, a woman, a louse, an elephant. Go pieces are elements of a nonsubjectified machine assemblage with no intrinsic properties, only situational ones. Thus the relations are very different in the two cases.
32 See id. at 352, 410.
IV. DECOLLECTIVIZATION

One example of the ways that the reform of Mongolian society has unequivocally altered and reconstructed the social fabric of Mongolia is decollectivization and the privatization of collective assets. This caused a rapid disintegration of negdels (collectives) and sangiin aj ahui (state farms), which managed the bulk of pastoral land and agricultural production. During the socialist period, collectives had become the primary social unit for herders and farmers whose identity always carried a label associated with nomadism. Longstanding nomadic identity of Mongols had been thoroughly deconstructed under the collectives as the collective members became highly structured and regulated in their mobility. Contrary to Deleuze-Guattarian notion of smooth space of nomads, the space in which Mongolian herders (who are often dubbed as nomads) located under the collective system resembled more of a game of Chess than of Go.

A. Decollectivization Fiascos

The decollectivization process began in 1991 through privatization of collective assets and livestock, so as to “emancipate” the Mongolian agricultural economy from the socialist leash. The privatization of collective assets was carried out through a state issued voucher (tasalbar) system. The process was completed by 1993 with most of the livestock (as many as 25 million animals in the country or over 95 percent of the national herd) and other agricultural resources becoming the private property of the former members of the collectives.

The process of decollectivization was plagued with serious abuses and lasting consequences. “The privatization process was a disaster for the local area due to inadequate legal foundation, lack of control, and political struggle between the negdel organization and the new government.” Much of the collective tangible assets fell into the hands of few privileged people, including the “former managers and their families and friends” who laid claim to more assets than the ordinary people. Bruun notes that all production facilities, including large and small machinery, were dismantled and disappeared in the hands of an emergent class of city-based entrepreneurs.

The decollectivization process in Mongolia has shown that

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34 See Sneath, supra note 8, at 151.
35 DELEUZE & GUATTARI, supra note 1, at 353.
36 Lhagva & Batbayar supra note 12, at 292.
37 Bruun, supra note 2, at 168.
38 Id. See also ROSSABI, supra note 6, at 49.
39 Bruun, supra note 2, at 168.
collective fiction of seven decades could not be so easily “rewritten.” These collectives were not mere petty parts of the state’s administrative tapestry. They had become the means of social and political protection for their members and bridged the population and the state apparatus. Therefore, the decollectivization project was no less galvanizing than the collectivization process itself.

Decollectivization fiascos physically and mentally scarred the communities of negdels. Bulag describes a post-transition condition in a sum “as if ravaged by war.” The physical state of negdels were scarred with empty buildings that were abandoned, half-robbed and destructed. “Spiritually,” the collective fiction that was nurtured and maintained for the last several decades disappeared leaving the former members of collectives in transitional limbo to carve out their own survival in the absence of a sense of stability that the collectives had provided. Many collective members who had previously worked in sum centers lost their jobs. For instance in one sum alone, “[o]f the 600 non-herding jobs in the sum (consisting of 1100 households) little more than a hundred remained.” Of those people who got their share of collective assets, especially in the form of livestock, some turned to herding; some turned to informal entrepreneurships such as mining and business; and some fled to aimag centers or the capital.

B. Renaissance of Pastoralism

As a direct consequence of decollectivization some former collective members turned to herding. Those who turned to herding had typically been children of herding families. While job opportunities had previously been available, they had preferred to stay in the sum centers and rely on the stable employment and income that came with it. Once the employment security vanished, herding animals was a familiar alternative for these households.

For example, in conducting fieldwork for this article, I met a family in Atar sum, in Tuv province: Bataa and Serchmaa and their three children ages seven to fourteen. Both Bataa and Serchmaa’s parents had been herders. However, neither Bataa nor Serchmaa, returned to herding when they finished high school. Bataa had joined the army after which he became a sum tractor driver, and Serchmaa took up a hairdressing job in

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40 Id. at 169.

41 See id. at 164, 168. Bruun observes the transitional condition in Khotont sum, located in southeastern Arkhangai, approximately 400 kms west of Ulaanbaatar. Khotont has a population of roughly 5000 people, distributed between 1100 households.

42 Sneath, supra note 8, at 151.

43 Interview with Bataa & Serchmaa, in Atar sum, in Tuv province, Mongolia (Jul. 30, 2005). The interview was an extended, informal discussion about their experience before and after the collectives collapsed.
the *sum* center. They got married and stayed in the *sum* center until 1991. Both lost their jobs in 1991 in the waves of decollectivization. They received two-dozen heads of sheep and few cattle during collective privatization and decided to re-venture their childhood lifestyles in the absence of many alternatives. Serchmaa said chasing animals for a living was not what they preferred, but it put food on the table. Bataa and Serchmaa relied on herding for about four years until they opened a *guanz* (a roadside café so to speak) by a major road that goes east to west across the country, where I met them in the summer of 2005.\(^44\)

Bataa and Serchmaa’s case is not an isolated one. They represented a large number of people who took up herding as a direct consequence of decollectivization and a lack of employment. There was a brief renaissance of pastoralism in Mongolia as a result. Robin Mearns notes that: “urban to rural migration led to a doubling in the number of herding households between 1990 and 1997.”\(^45\) While some succeeded in livestock rearing, many were victimized by the rapid change in their livelihoods. This new herding population was faced with a condition where institutional benefits that collectives brought—such as pasture allocation, transportation, fodder supply, construction and maintenance of wells, and the services of veterinarians—had entirely disappeared.\(^46\) “Practically all pastoral support institutions collapsed with the *negdel*: the marketing centre closed, pasture allocation was replaced by open access, transportation for moving camp was privatized, all fencing was abandoned, the ensilage production terminated and the state emergency fodder supply was discontinued.”\(^47\) As a result the livestock census plunged from 33.5 million heads in 1999 to 23.5 million in 2002.\(^48\)

Many have blamed natural disasters for the dramatic loss of livestock. These disasters wiped thousands of households out of their livestock, which are essentially *the* means of livelihood of the herder population. But as Sneath rightly argues, harsh climatic conditions are not unusual occurrences:

> Harsh climatic conditions are known to occur from time to time, and the collectives had developed a number of measures including coordinated movements and deliveries of fodder that had kept

\(^{44}\) *Id.* (explaining that road *guanz* has become a popular business and attracts large population settlement along roads).


\(^{46}\) ROSSABI, supra note 6, at 46 (explaining that meanwhile, the government and foreign donors were working to eliminate state budget in these areas).

\(^{47}\) Bruun, supra note 2, at 168.

\(^{48}\) ROSSABI, supra note 6, at 128.
losses reasonably low, and the underlying problem of barely viable herding households, reflects the weakness of the atomized and demechanized pastoral sector that has emerged in Mongolia’s era of ‘transition.’

The dramatic loss of livestock in 1999 and 2002 is the result, at least in part, of the post-collective atomized herding practices. The atomized herding practices are, in large part, due to “insecurity” associated with pasture. Previously, the collective administration regulated pasture use, which prevented overgrazing and resolved conflicts over pastures. The well system ensured a better distribution of grazing land. With the collapse of the institutionalized regulation of pasture with decollectivization, the system of “survival of the fittest” now dictates who gets to have access to certain pasture.

The notion of land privatization provoked herders to claim exclusive sites, especially to winter campsites and sites near water sources—leading to localized overgrazing, reduction in pastoral mobility and regular herding. As Sneath notes, it has become common for herders to stay in one area for the whole year, leading to overexploitation of particular pastures. The best pastures, as well as areas close to settlements experience the pressures of land crowding as a result of both human and animal population increase. As Mearns suggests, wealthier households tend to have greater weight in securing the best pastures, as they have greater human and material capacity to ensure their claims. They employ strategies such as “family-splitting to ensure that they can guard their valued camp sites and associated pastures against out-of-season trespass by others.”

C. Renaissance of Nomadism?

What about the nomads? Where are the nomads now that the collectives disintegrated? In the absence of collective regulations, did not “nomads” find their “smooth space”? Decollectivization did not create the smooth space or the nomos. Former collective members had unbecome collective members but they did not become nomads. Many chose sedentarized livelihood, from settling close to roads, markets to actually moving to and settling in cities. Even those who remain as herders are largely restricted in their rights to freely move.

In general, herders in modern Mongolia do not move in virtual perpetuation. If anything, they move far less now than they did during the socialist period. Under the collective system, seasonal herding practices were encouraged as to avoid overgrazing particular areas. Many herding

49 Sneath, supra note 8, at 153.
50 See id.
51 Mearns, supra note 45, at 45.
families that I interviewed indicated that they do not move more than necessary because of a lack of material and human capacity—but also to secure their existing pastures. This finding was complemented by a recent survey conducted by the Open Society Forum which showed that over 85 percent of participating herder households move less than 6 times per year—with most moving much less. Indeed, over fifty percent of herder households move only 1 to 3 times a year. Only a small portion of the herding population moves over six times a year (see Figure 2).

![Figure 2: The number of moves made by herder households in a year](image)

With changes in the legal codes allowing private ownership of land and exclusive lease rights to land in Mongolia in the last several years, herders have been circumscribed in their ability to move about freely. Further, as I shall discuss later, the smooth space has been literally spoiled and “striated” by excessive exploitation of Mongolian land causing not only immediate barriers and displacement in local communities but also inflicting damages to the land that are long-lasting and irreversible.

V. SEDENTARIZATION

Due to changes that have taken place in Mongolian society in the past decade and a half, the pastoral subsistence of Mongolian herders has substantially changed its pattern, shifting increasingly to sedentism. Sedentism, essentially the antipathy to the notion of nomadism, has pulled

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52 I interviewed families in Tov, Uvurkhangai, Bulgan and Khuvsgul aimags, which bears certain degree of inaccuracy in representing the entire herding population as all these areas are not as dry and barren as the southern region of Mongolia.

herding communities into seeking alternatively to live in more centralized places.

A. Rural Repellant

There are a number of reasons why these formally pastoral communities have been attracted to such different modes of subsistence further away from the mythical state of nomads. “The rural repellent is as powerful as the urban attraction.”54 Due to the destruction of the benefits associated with collectives, pastoralism has become especially daring and challenging. Herders are now much more susceptible to climatic conditions. Harsh droughts in summers and disastrous zud (natural calamity) in winters can annihilate entire herds, or reduce their numbers by the hundreds, leaving herders vulnerable to economic decimation, especially in the absence of collective support. “Disastrous winters in 1999, 2000, and 2001 compelled many of these herders to abandon their pastoral existence and flee to the towns and particularly to Ulaanbaatar.”55

Many former herders consequently have settled near centralized places to market their products such as milk, meat, and animal skins, as well as to take advantage of new opportunities in wage, labor, education and access to health care.56 Large segments of the population, herding and non-herding alike, have been drawn towards areas with better opportunities for trade and marketing, such as near roads, and tourist resorts. Many former herding families settle permanently around tourist resorts where they eke out income from satisfying foreigners’ desire for “authentic” treats such as airag (fermented mare’s milk), posing for photos in their traditional clothes, or offering horse-rides. Some have given up herding altogether and assume an alternative livelihood. The family I discussed about earlier, Bataa and Serchmaa, are among many who chose to settle close to a road where they can generate more reliable income. Some others abandoned rural life altogether and migrated toward urban areas, primarily the greater Ulaanbaatar area, in search of another livelihood.57 The family in the picture, Figure 3, is moving to Ulaanbaatar

54 Bruun, supra note 2, at 182.
55 ROSSABI, supra note 6, at 122.
57 Bruun, supra note 2, at 162; see also Buell & Le, supra note 5, at 30 (arguing that the “brightest and the best are fleeing the pastoral life”). The notion is rather one sided and presumptuous and runs the risk of degrading people who choose to stay in the pastoral sector.
B. Urban Attraction

While the hardship of pastoral existence on the one hand pushed certain people away from it, the convenience of urban and settled lifestyle, whether imagined or real, pulled them into sedentism on the other. “[T]he relative attraction of towns and cities as spaces for modern and alternative lifestyles and new avenues for social mobility has increased. The populations of urban centers [consequently] have begun to swell.”59 A few years ago, then Prime Minister Nambaryn Enkhbayar shocked the spectators of “nomadism” with his proposal to urbanize 90 percent of the population in modern cities, primarily in a string along the “Millennium Road” across Mongolia east to west.60 While his comment was largely criticized, especially by the lovers of “dear nomadism,” the trend toward sedentism and urbanization had already firmly taken hold in Mongolia.61

According to the 2000 census, 58 percent of the Mongolian

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59 Ole Bruun & Li Narangoa, A New Moment in Mongol History: The Rise of the Cosmopolitan City, in MONGOLS FROM COUNTRY TO CITY: FLOATING BOUNDARIES, PASTORALISM AND CITY LIFE IN THE MONGOL LANDS 2 (Ole Bruun & Li Narangoa eds., 2006) [hereinafter Bruun & Narangoa].
60 Bruun, supra note 2, at 182; ROSSABI, supra note 6, at 130.
61 But see Buell & Le, supra note 5, at 30 (contending that if the “Mongolian pastoral population as a whole, or most of it, moves into the cities, not only will the pastoral sector itself collapse but with it Mongolian society as a whole”).
population lives in urban areas. The urbanized population of Ulaanbaatar alone has since increased to 1 million in 2007 from 786,500 in 2000. There is no updated census that shows the population in other urban centers. What can be speculated is that the numbers alone do not tell the entire story. All population statistics are based on the registered people within the census. Many people who move to Ulaanbaatar and other cities alike are not registered and remain outside the population census.

Mongolia has thus been experiencing what Deane Neubauer has referred to as “hyper urbanization.” He writes, “[h]yper urbanization is clearly related to population growth, and to the ‘urban pull’ within countries and between countries which draws people out of rural areas (and subsistence economies) and into the job-oriented cash economies of the cities and the world of goods.” More and more people in Mongolia have been driven away from their familiar lands into the cities. “As a powerful filtering machine, the city absorbs the talented and the wealthy, representing the uppermost layers of rural communities, but at the same time serves as a refuge for impoverished herder families.”

While the wealthy (and those firmly connected with powerful urbanites) blend into cities better, those underprivileged who were driven out of rural areas in the absence of any alternatives make up vulnerable swathes of population settling in the outer rings of Ulaanbaatar and other cities. These groups of people are not only cast out physically, but also socially from the rest of the city. Physically, they live in utter exclusion—not connected with transportation, electricity and sewage systems. For instance, almost 80 percent of the new comers to Ulaanbaatar settle in the

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62 NATIONAL STATISTICAL OFFICE, MONGOLIAN STATISTICAL YEARBOOK 2000. (2001). This number does not include the population that lives in sum and bag centers, as well as those permanently settled near tourist resorts and roads. Also note that there was rapid rural-to-urban migration between 1990 and 1997.


66 Bruun & Narangoa, supra note 59, at 5.

67 See id. at 16.

68 ‘Traditional’ ger district population that had lived prior to the nineties is typically connected with public transportation to the city, as well as electricity and water access.
outskirts in “ger districts.” A ger is a traditionally mobile felt dwelling and is used as the primary means of housing in ger districts for its affordability. It is estimated that almost 60 percent of Ulaanbaatar population live in ger areas. Ger is “demobilized” in this context, as they are fenced and static residences of settled communities. Socially, they are treated as outcasts, as their very coming to the city is not welcome by both urbanites and the city administrators. They are treated as adding to the pressing urban problems and “creating a tremendous burden on the economy, infrastructure and social safety net in the capital.” In their study of the issues relating to rural-urban migration Joerg Janzen et al demonstrate that rapid migration to the city adds to the already existing problems of the city. According to the authors, the new comers typically are not well educated and not regularly employed owing to the ever increasing urban poverty.

VI. PRIVATIZATION OF LAND

The debris of earlier economic reform policies in Mongolia—soaring unemployment, unequal distribution of state assets, growing gap between the rich and poor, and shattered social welfare system—did not prevent market economists from pushing their privatization agenda further. Just a couple of years into political-economic reform, pure market economists (nurtured and backed up by the donor agencies) pushed forward privatization of land in Mongolia. This was too daring and too threatening to dear notions of nomadic identity for many Mongols. Not only was the notion of private land a radical departure from the way land had been imagined and treated to date, but it also required a reconstruction of the Mongolian national identity. Historically, land was not privately owned in Mongolia for much of its recent history or at least throughout the period of this study. While there were restrictions and regulations associated with public use of land (through the banner system during the Manchu period; and administrative divisions and collective regulations during the socialist period), Mongolian people enjoyed a relative spatial autonomy among the land specified under the relative jurisdictions.

Thus, the notion of fenced land through private ownership “has provoked heated debate in a nation that continues to construct its identity with reference to ancient traditions of mobile pastoralism.” Given the popular (mis)conceptions of fenceless land and mobility of “nomads,” dialogue on land ownership has been one of the most hotly contested and
controversial issues in the recent history of Mongolian political drama and has thus become a game board for power struggles and political ambitions. The clash between the complex interests of policymakers, foreign agencies and the public created growing uncertainty and chaos in the Mongolian social and political landscape. Generally, “the notion that land could be bought-up and owned outright by individuals, particularly outsiders, remains a deeply emotive issue.”

This deep-seated concern was evidenced by protests of Mongolian herders and farmers who drove to the capital on their tractors in November 2002.

A. Land Privatization as a Political Tool

When the debate on land privatization emerged into political discourse, land and what it signifies became the stage for politicians to act out their political productions and gain political mileage. In the early stage of the discourse of private land, the former ruling party, Mongolian People’s Revolutionary Party (MPRP), took a conservative approach. The Party, backed by the ultranationalist Mongolian Heritage and Justice Party (MHJP), largely impeded and delayed the new land legislation. When the Democratic Coalition (1996-2000) assumed political leadership, this theatrical production reached its climax. The new government aggressively pushed the privatization agenda forward and the MPRP and the MHJP, then oppositional forces, took a diametrically opposed stance to it and repeatedly stalemated the new legislation on land. MPRP read the “audience” well, perhaps owing to its extended experience in leadership. Population sentiment toward the notion of land privatization was strongly negative and “voiced” clearly in the next elections. However, the MPRP conservative position on land privatization earned the Party (or at least factored to an enormous extent) landslide victories in the presidential elections of 1997 and the parliamentary elections of 2000. However, the MPRP approach on land privatization has not been free of controversy nor public resentment. Upon assuming the leadership, the party—despite its previous opposition to land privatization—pushed forward the discussion

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74 David Sneath, Notions of Rights over Land and the History of Mongolian Pastoralism, in Conference Constituting the Commons: Crafting Sustainable Commons in the New Millennium (2000) [hereinafter David Sneath].

75 Mongolian political ‘theater’ is essentially divided into two poles. One is the Revolutionary party, mainly comprised of elites from the former socialist regime. Its party leadership is more experienced and conservative. Because most of the party leaders previously served in socialist leadership positions, the Revolutionary party has advocated rather conservative steps toward privatization. The opposition force is the Democratic Coalition. The coalition is comprised of the Democratic Union, the Social Democratic Party, the National Democratic Party, and a few other smaller parties.

76 See David Sneath, supra note 74. My analysis is based on the competing notions of political parties on land privatization benefits.

77 See id.
on land privatization, although not as radical in scope as the previous leadership. This was perhaps due to a strong external pressure, as well as internal rewards from graft and corruption, to privatize land in Mongolia. As was evidenced during the earlier privatization policies, foreign donors such as the Asian Development Bank, World Bank and International Monetary Fund continued to press relentlessly for privatization of land.78

B. Changes in Legal Codes on Land

Amidst this political drama and social chaos, several substantial changes were made to the Mongolian land regime.79 First, the Mongolian Constitution was revised in 1992 with revisions containing the concept of private ownership of land. It stated that “[t]he State may give plots of land for private ownership except pastures and areas under public and special use, only to the citizens of Mongolia.”80

This was a dramatic shift in rhetoric and scope given the previous constitution pertained the land ownership to the state and prohibited private ownership of land of any sort. The constitutional change served as a grand façade for the further development of land privatization. Following the constitution, a 1994 Law on Land, and its revised version of 2002, legalized private ownership of land and used more explicit language in recognizing the concept of private ownership of land.81

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78 For the roles that foreign donor organizations played in privatization policies, including land, in Mongolia, see ROSSABI, supra note 6.

79 See Buell & Le, supra note 5, at 44. According to the authors, the Constitutional reform and Land Law were parts of preconditions the donor agencies demanded with the overarching reform program. Id. They also argue that the notion of privatization is the greatest threat to Mongolian traditional pastoralism. Id.

80 MONG. CONST. art. 6 § 3 (1992) (emphasis added).

81 The 1994 version imposed that “land, except pastures and areas under public utilization and specific use of the state, may be owned only by Mongolian citizens.” See Law on Land of 1994 (Mongolia) [hereinafter Mong. Law on Land]. It was later revised in 2002 to state “[l]and other than the pastureland, land for common tenure and land for state special needs may be transferred for ownership solely to citizens of Mongolia.” Id.
<table>
<thead>
<tr>
<th>Land Category</th>
<th>Current Legal Regime</th>
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<tbody>
<tr>
<td><strong>Agricultural and grazing lands:</strong></td>
<td></td>
</tr>
<tr>
<td>Cultivated: 9537 sq.km. (3682.26 sq.m.)</td>
<td>No legal restrictions on private ownership</td>
</tr>
<tr>
<td>Pasturelands: 1163496 sq. km (449228 sq.m.)</td>
<td>No private ownership</td>
</tr>
<tr>
<td>Hay-making lands: 19074 sq. km (7364.51 sq.m.)</td>
<td>No private ownership</td>
</tr>
<tr>
<td><strong>Lands occupied by cities, villages, other settlements:</strong></td>
<td></td>
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<tr>
<td>Lands under buildings and constructions:</td>
<td>Owned by the State or leased to the owner of the construction</td>
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<tr>
<td>Lands allocated for mining activities:</td>
<td>Leased under a “possession” contract</td>
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<tr>
<td>Public common use lands</td>
<td>No private ownership or leases</td>
</tr>
<tr>
<td><strong>Lands for roads and communication:</strong></td>
<td>Owned by the State</td>
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<tr>
<td><strong>Lands covered by forest:</strong></td>
<td>Owned by the State</td>
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<tr>
<td><strong>Lands covered by water:</strong></td>
<td>No legal restrictions on private ownership</td>
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<tr>
<td><strong>Reserved lands:</strong></td>
<td>No legal restrictions on private ownership</td>
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<tr>
<td><strong>Lands for the state special needs:</strong></td>
<td></td>
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<tr>
<td>Borderlands</td>
<td>May not be individually owned</td>
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<tr>
<td>Lands allocated for state security and defense</td>
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<tr>
<td>Other sub categories</td>
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Table 1: Legal Regime on Land Ownership\(^{82}\)

According to the current legal codes relating to ownership of land, Mongolian citizens can privately own land in cities and urban areas\(^{83}\) (except public usage land\(^{84}\) or other areas restricted from private ownership).\(^{85}\) Further, the law specifies the size of land to be allocated to families for ownership (to be transferred once and for free) as follows:

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\(^{82}\) See Mong. Law on Land of 1994 (amended 2002). Table 1 describes lands that can and cannot be privately owned.

\(^{83}\) Classified as the territories of the Capital city, cities of Darkhan and Erdenet, aimag centers, and sum and village centers.

\(^{84}\) Such as streets, plazas, roads, areas devoted for resorts, pleasure trips and sports, gardens, cemeteries, dump cites and sanitation areas.

\(^{85}\) Such as grazing land, forest, water basin area, land for special needs, lands used for highways, electric lines and networks.
In Ulaanbaatar up to 0.07 hectares (0.17 acres)
- Aimag centers 0.35 hectares (0.86 acres)
- Sum and village centers up to 0.5 hectares (1.2 acres)\(^\text{86}\)

The process of transferring these lands to Mongolian citizens for private ownership started in May 2003 and was expected to be completed by May 2005. When I interviewed Batsukh Shairai, the head of the Administration of Land Affairs Geodesy and Cartography, in the summer of 2004, he realized the timeline was too ambitious. In his opinion, there should not be any time restriction in allowing Mongolian citizens to claim their rights to own land. Since every Mongolian citizen was allowed by law to claim a right to ownership of land once and for free, the timeline should not prevent people from exercising their right. But he also said the matter was above his head, meaning that it is the legislators who could make that change.\(^{87}\) According to Narantsatsralt Jambal, the main problems concerning the implementation of land reform policy are the following:\(^{88}\)

- Land was under state ownership in its entirety.
- The people’s social mentality was not ready.
- A general lack of understanding the legal and economic knowledge related with private ownership of land.
- The absence of a land information system.
- The lack of systematic knowledge on land cadastre among professionals as well as decision makers at all levels.
- The complexity of the bureaucratic procedure.

As such, the timeline was unrealistic and too ambitious for a number of reasons. First of all, much of the population was not well informed about how to go about exercising their right to own a piece of land. Secondly, not every citizen was bestowed with equal ability to claim land. For those who had already lived in a fenced settlement (hashaa) in ger district areas, the transfer of their right was much easier. According to, Tumurhuyag Batbayar, the head of Ulaanbaatar city Land Administration Department, 91.7 percent of those who live in hashaas have transferred

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\(^{87}\) Interview with Batsukh Shairai, General Director, Administration of Land Affairs, Geodesy and Cartography of Mongolia (June 2004) [hereinafter Shairai].

the land contained within their *hashaas* into their personal property.\(^89\) However, those city residents who had lived in apartment complexes did not have recognized land for their possession and were at a greater risk at being left out of the window time to make use of the law. Some residents, however, had possessed land in summer residential areas (*zuslan*) that surrounded the big cities. Those people were able to secure their rights to their *zuslan* land. Others who did not possess any land frantically claimed plots in areas surrounding the cities by putting up fences, resulting in large disarray. Then there were others who neither traditionally possessed any land to speak of (mostly relative newcomers to the cities or families, and those with limited human and material capacity to escape the city in the summers) and who could not claim land in the given time mainly due to lack of ability to get out of the city and search for empty spots and make sure the land is legally “ownable.” Thirdly, bureaucratic steps for applying for ownership rights are complex and thus intimidated a large number of people and overburdened responsible institutions.\(^90\) “To transfer land into ownership, people need to deal with at least 3 organizations, and it takes approximately 3 months and 14 days to obtain title over the land ownership.”\(^91\) Interested individuals had to provide numerous documents, get them notarized and authorized by other bureaucratic institutions that caused many potential applicants to withdraw from the process.

In the city, laws have been enacted allowing land under buildings and constructions to be transferred to the individuals and businesses who have legally recognized ownership rights to the specified objects. Ever since, city land has become a tragic case of urban disarray. Any empty space (with the potential to be privately owned) has become a battling ground for interested parties. In return, the cities in Mongolia have become victims of chaotic buildings—which are not only aesthetically eyesores, but also a large nuisance to city dwellers. Buildings jet out anywhere, anytime, whenever the bureaucratic matrix produces its magic.

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\(^90\) See Mong. Law on Land, *supra* note 81, § 23. In order to be ‘legally qualified’ to own a land every interested individual (a Mongolian citizen naturally) must provide proof of identification for every member of the family and certified by a notary; administrative and territorial jurisdiction of the land to be acquired for ownership; purpose and size of the land to be acquired for ownership; a letter of confirmation by a respective district governor on the status of the family and number of its members; copies of the licenses to possess the land, or document certifying the right to possess the land, the contract on possession of the land, all certified by a notary; an outlining map showing location and size of the land requested. *Id.*

result, usually meaning behind the scene bidding war winner buys off the respective officers who are notoriously corrupt. Buildings swallow up public spaces and construction occurs night and day. In the absence of zoning, bars, nightclubs and other commercial businesses sprout up anywhere, including inside residential apartment buildings—leaving average Mongolian city-dwellers victim to a continuous assault on their senses. In general, the privatization process is plagued with a “lack of general state coordination and monitoring; illegal trading of land, unorganized land management system and lack of state policies in certain aspects of urban development.”

Presently, the legal codes prohibit the private ownership of pastures, areas under public common utilization and lands for special state needs. Both the 1992 Constitution and the 1994 Land Law (and the 2002 revised version) state that pasture land (80 percent of all the land of Mongolia) remains under state ownership and is legally protected from private ownership. Therefore, technically any individual is permitted unhindered right of entry or passage as long as that land is unfenced or not marked by warning signs. Law on Land 2002, Art. 48.1 states “if land in possession or in use is not specifically protected by erected fences or posted warning signs prohibiting entering and crossing, any person may enter or cross this land without causing damage to the land.”

However, the state-owned land can be possessed (not owned) for up to sixty years with a possibility of an extension for an additional 40 years. The ostensible duration of 100 years of right to possess a particular area, as was feared, would essentially equal private land. How would it matter to a herder, whose access to a certain pasture is blocked by a leaser’s centennial right to the piece of land, whether the land is possessed or permanently owned? In the past, regulations based on administrative divisions contained population density to avoid

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92 The head of the Office of Land Affairs, Geodesy and Cartography, Batsukh Shairai said that there is a lot of suspicion that there is corruption among officials who are in charge of land distribution but there is no evidence or mechanism for the officials to get bribes. (Shairai 2005). On the contrary, according to the USAID assessment of corruption in Mongolia, land allocation, particularly in the high-value areas of Ulaanbaatar and mining zones, as well as payments to obtain mining licenses and avoid tax and customs payments, have been among the most problematic and high-stakes venues for corruption. (USAID 2005). Also another report by Asia Foundation found that public perceives the land regulations officers were the most corrupt. (2006).

93 Narantsatsralt, supra note 88.

94 See Mong. Law on Land, supra note 81, § 30 (regarding the duration of land possession).

overpopulating and overgrazing particular areas. With elevation of such restrictions, many feared that, outsiders (non-traditional users) would intrude the local pastures, displacing local communities and depriving them of traditional herding space.6

C. Opposing Land Privatization

Nevertheless, the echo of private land has deeply shaped the way the public imagined their relations with land. Many are concerned that this initial step of land privatization will be a passageway to the privatization of all land in Mongolia. Although pastureland was not under consideration for privatization, the rhetoric of nomadic lifestyle was largely manipulated in the political discourse. The nomadic way of life has been the main concern, thus has been essentialized, twisted and exploited by various stakeholders to advance their political agenda on the issue of land privatization. Due to a romanticized notion of nomadic identity, emotionally charged narratives of nomadic lifestyle influenced the popular psyche that revolve around this imagined privilege. It was commonly assumed that by privatizing land, “herders will have to stop moving, which would change traditional husbandry relations and break down the entire rural economy and unique culture.”97 Thus, the rhetoric of unique culture-nomadism has served a pretext for much of the protests against the idea of land ownership in Mongolia. Former presidential contender L. Dashnyam (representing the Civil Will Party) warned that Mongolia must be concerned with its nomadic heritage in pursuing land privatization.98

The theme ‘Mal, Hel, Hil,’ (herds, language, border)99 became popularized and land became not only something you can own or not own, but also a symbol of national identity and a sense of community. The show, Mal, Hel, Hil, aired daily on Mongolian national public radio, heavily emphasizing the importance of land for national security and preserving the “unique” Mongolian culture.

Dashbalbar Ochirbat100 and others use land as a signifier of what

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6 See David Sneath, supra note 74.

96 Nyamaa Tumenbayar, Land Privatization Option for Mongolia, in Conference, Constituting the Commons: Crafting sustainable commons in the new millennium (2000) [hereinafter Tumenbayar].

97 G. Otgon, Gazar Omchhuulehiig Yagaan Tasalbartai Zuirlev [Land Privatization Is Compared with the Pink Corruption], ZUUNII MEDEE (Mong.), June 18, 2002; see also Mashbat Sarlagtay, Mongolia: Managing the Transition from Nomadic to Settled Culture, in THE ASIA-PACIFIC: A REGION IN TRANSITION (Jim Rolfe ed., Asia Pacific Security Studies 2004) [hereinafter Sarlagtay].

98 Ardent nationalist and poet Dorj Zundui initially coined this phrase in his poem.

99 The late O. Dashbalbar—a Charismatic politician, a former poet by career, and the leader of nationalist NHJP—fiercely opposed the private ownership of land and
constitutes a Mongol. Land creates a sense of community and sense of belonging that ties people in a territorial and social space. Unasan gazar, ugaasan us (literally the land one’s body was born upon, and the water that cleansed the newly-born body), is what creates an imagined community and a sense of solidarity groupings. A sense of belonging to the land one was born upon creates a broad community of people who otherwise, as described by Anderson, will perhaps never meet, or hear of each other. “[Y]et in the minds of each lives the image of their communion.” This deep-seated “horizontal comradeship” is for something the members of the solidarity groupings would “willingfully . . . die.” The idea of such “colossal sacrifice” for land was best speculated by Dashbalbar who warned that “if the government was to pursue land privatization, Mongolia might go into civil war.”

Nationalists—xenophobes and moderates alike—were concerned that land privatization may become a palatable avenue for outsiders to pour into the country. They thus used land as a discursive construction of Mongolian national identity, aimed at drawing and maintaining national boundaries. While the current legislation prevents foreign nationals (as well as stateless persons) from owning land in Mongolia, many are concerned that there is always a way to go around rules for non-Mongols to get their hands on Mongolian land, including intermarriage and bribing officials, etc. Nationalists were concerned that private opportunists who would stay in the country and propagate and eventually join the exclusive club of the citizenship which will allow them access to land as much as the “real Mongol.” In one of his debates, ever furious at supporters of land privatization, Dashbalbar contested that:

Suppose, today Delgermaa and I lease our land to
certainly added flavor to the Mongolian political scene for his unparalleled passionate position on preserving land and culture.

102 See id. at 6.
103 Id. at 7.
105 See Tumursukh, supra note 23.
106 See Mong. Const., supra note 80, § 6 (prohibiting Mongolian citizens from “transfer[ing] the land in their possession to foreign nationals and stateless persons by way of selling, bartering, donating or pledging as well as transferring to others for exploitation without permission from competent state authorities”).
107 Tumenbayar, supra note 97, at 10.
108 Delgermaa Banzragch was a parliamentary candidate at the time and later became a member of the parliament. Banzragch was one of the influential democratic leaders who supported privatization of land.
foreigners for 60 years...By the end of those 60 years, very likely, not only will we, ourselves, have long gone, so will our kids likely have disappeared... On the other hand, the descendants of those who had leased our land, will have multiplied, become masters of our land, and would even possibly marry Mongolian women and propagate and then in the end those children may become Mongolian citizens...\textsuperscript{109}

A more serious concern was that land privatization would appeal to Mongolian’s neighbors’ ever-lasting hegemonic appetite. The discourse of national security expresses deep-anchored concerns and historical fear about Mongolia’s ability to maintain its \textit{de facto} sovereign status. With the absence of its “protector,” albeit an exploitative one, “[Mongolia is] now more exposed to an ultimate enemy.”\textsuperscript{110} Many fear that China may assert its influence through silent occupation; therefore, it is important to police the national boundaries with a strong rule of law that does not allow them to penetrate in the first place—or own land once they arrive.

Even those not necessarily enchanted with the notion of romanticized “unique culture” or xenophobic nationalist discourse were concerned that the stability of a transmittable right of usage under the previous system will be diminished. They use a historical approach to justify their position on land.\textsuperscript{111} Although, public access to land in Mongolia has been structured and restricted by various visible and invisible boundaries throughout history, land was never privately owned in the economic orthodox sense. Land has always been regarded as belonging to the highest authorities in Mongolia, the emperor or the state alike, but neither authority was as an absolute proprietor of the land.\textsuperscript{112} Neither the emperor nor the state had a right to sell or exchange the land with another country.\textsuperscript{113} Therefore, historically, while the Mongolian public did not hold formal right of ownership of land, they enjoyed \textit{use} right to the common state land. If land were to be privatized, it was feared that, this right would be undermined. Local herders were concerned that (as was evidenced during the privatization of collective herds and assets), once again the wealthy and politically powerful few will get their hands on a disproportionate portion of the collective land.\textsuperscript{114}


\textsuperscript{110} \textit{BULAG}, \textit{supra} note 20, at 136.

\textsuperscript{111} \textit{See} Sarlagtay, \textit{supra} note 98.

\textsuperscript{112} \textit{See id.}

\textsuperscript{113} \textit{Id. See also} David Sneath, \textit{supra} note 74.

\textsuperscript{114} \textit{ROSSABI}, \textit{supra} note 6, at 130.
D. Supporting Land Privatization

Proponents of land privatization, on the other hand, argue that the state can achieve more efficient use of land and its resources and improve its profitability by transferring land to the private sector. Some have even equated Mongolia with a beggar sitting on a treasure if land is not privatized. The economic rationale of the land privatization policy is to improve economic efficiency, downsize public spending and relieve the state budget. In addition, privatization of land is expected to bring a surplus to the state budget, through land sales and property tax revenues and broaden ownership to a wider share of the population. “Owning private land will help Mongolian people to own something that will not only enable them to enjoy its fruits but also it will be something people can enter into the economic market such as getting bank loans.” Furthermore, private ownership of land is assumed to “provide positive incentive to herders, farmers, and others to maximize production and to protect land from damage or degradation.”

Aside from the positive incentives associated with private land, some base their rationale on Garret Hardin’s tragedy paradigm. Most of the property theories revolve around the desire to shut others from accessing one’s particular property. However, common resources will face degradation or even depletion if left open to public. Or so it is imagined. Extension of this doctrine is that of the tragedy of the commons. Supposedly, the tragedy occurs on the assumption that the world is finite with scarce resources whereas population growth is infinite. When the needs and demand mismatch the tragedy occurs. As a population increases, the natural process of recycling becomes overloaded, “calling

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115 D. Oyunchimeg, Gazryg Ez Huvichilwal Altan Deer Suusan Guigachin Shig Uldene [Not Privatizing Will Mean a Beggar Sitting Over a Treasure], ZUUNI MEDEE (Mong.), June 28, 2002.

116 Tumenbayar, supra note 97, at 10-11.

117 Shairai, supra note 87.

118 ASIAN DEVELOPMENT BANK, ASIAN DEVELOPMENT OUTLOOK (Oxford Univ. Press 1994) [hereinafter ASIAN DEVELOPMENT BANK].

119 Garrett Hardin, The Tragedy of the Commons, SCIENCE (1968). The author maintains:

[t]he ‘logic of the commons’ is as follows: each household has the right to take resources from and put wastes in the commons. To accumulate wealth, each household believes that it can acquire one unit of resources or dump one unit of waste, while distributing one unit of cost across all of the households with whom the common is shared. Thereby, the gain to the household appears large and the cost very small. Some households accumulate wealth more rapidly than others and this, in turn, gives them access to an even larger share of the commons. The logic of the commons breaks down when resources decline and/or population grows too large.
for a redefinition of property rights.” Thus, as a consequence of unparalleled population growth and human greed, without certain intervention or arrangement, common property is supposedly overexploited leading to tragedy.

The imminent cynicism about the common property lies within an assumption that users of the common resources are generally self-fulfilling, myopic and egoist. It is assumed that there are some users in the common resource pool who have motive to cheat on any cooperative arrangement. While they can effectively co-share the resources (win-win scenario) and invest equally, greed of one or more individuals breaks up the pattern and causes irreversible overconsumption or depletion of the resources (lose-lose scenario). In that respect, it reminds us of the “prisoners’ dilemma.” “All parties have to give up something for the sake of a higher long-term collective total, but it is not at all clear that they will do so.”

Carol Rose further elaborates on Hardin’s notion of tragedy. Rose argues property is capable of “telling stories.” According to Rose, The Tragedy of the Commons is a scarcity story among grazers and livestock in a common field. “This story is about the way that property rights emerge with scarcity.” The narratives of the scarcity story aim to convince the audience that private property is a good thing, showering peace and prosperity on its practitioners. Therefore, according to Rose, “[t]he scarcity story has taken tremendous rhetorical sustenance from its numerous dramatizations.”

Mongolia also has experienced dramatizations of the scarcity story. Although land in Mongolia does not resemble the nineteenth century English common land catastrophe that led to enclosures, advocates of land privatization apply the same scenario to Mongolia and use Hardin’s drama as the guiding justification for managing land in Mongolia. On the other hand, there was a story of fenceless land and nomadic culture. Mobile pastoralism is perceived to be the only mode of production suitable to the Mongolian social, climatic and terrestrial conditions (very low population density, cold, dry climate, shortage of water, etc.) This notion fuelled the discourse of land in Mongolia and affected the eventual outcome on land ownership.

According to the current legal codes, only a minor portion of

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122 Id. at 289.
123 Id. at 287.
124 Id. at 288.
125 Tumenbayar, supra note 97, at 10.
Mongolian land has the potential to be privatized. The rhetoric was aptly used by politicians to numb public paranoia over the issue of land privatization. However, this was only a partial painting of the real scene. The state allows Mongolian citizens, businesses as well as foreign nationals and legal entities to lease state-owned land for a specified period of time (typically meaning 60 years plus 40 year extension for Mongolian citizens and businesses; 5 years for foreign citizens with possible extensions).

What does it mean to lease (but not own) land for such an extended period? How does it affect local communities and their existing use rights to their traditional pastures?

Proponents of land privatization rationalized that private ownership of land will generate positive incentive to maximize production while protecting land from damage or degradation. In the case of land lease, the same rationale could not apply since the lease holders have vested interests to maximize their production the best they can while they still have access to a particular land. In return, their interests to generate as much profits as they can extract from the particular land will likely override their interests in protecting the land from damage. As Rose suggests, no one wishes to care for things that may be taken away tomorrow; leading to the overuse and underinvestment in leased land.

E. Tourism

Take a booming industry in Mongolia—tourism—as an example. Mongolia attracts a large number of tourists, who are enchanted with Mongolia’s unique culture, endless landscape and nomadic lifestyle. The Mongolian government supports the tourism industry as a matter of national policy and promotes tourism as a priority sector for its potentials for economic development and investment attraction. The Mongolian government also helps in the construction of a Mongolian identity that is based on exotic culture and unspoiled landscape in order to draw more tourists to the country. The official website of the Foreign Investment and

126 See MONG. CONST., supra note 80. Article 6 § 3 states that state-owned land, defined as the land with its subsoil and other natural resources, shall be the property of the state, except the land given to the citizens of Mongolia for private ownership.

127 ASIAN DEVELOPMENT BANK, supra note 118, at 33.

128 ROSE, supra note 121, at 106.


Foreign Trade Agency (FIFTA)\textsuperscript{131} entices travelers to the exotic land of nomads and no fences, stating: “Mongolia, the land without fences and forever blue skies, is an unspoiled country with pristine nature, rich in traditions and culture . . . [It is] an exotic and unique travel destination.”\textsuperscript{132}

Such is the official government construction of Mongolian identity, which has lead to an increasing number of tourists pouring into the country. For instance, 167,400 tourists visited Mongolia in 2002, whereas Mongolia received 385,000 tourists in 2006. On average, the number of tourists increases by 15 to 20 percent per year.\textsuperscript{133} In response to this growing market, numerous tourist organizations have been established in Mongolia. Many of these tourist organizations open tourist camps and resorts in the most scenic parts of Mongolia.

Figure 4 below is one of the hundreds of tourist camps that are in operation in Khuvsgul National Park along the Khuvsgul lake. The park is one of the largest and most spectacular protected areas in the country. The National Park, covering 838,070 hectares, was placed under special protection in 1992 and was classified as a national park in 1995, in accordance with the Law on Special Protected areas.

![Figure 4: Tourist Camp in Hatgal, Khusvgul Province\textsuperscript{134}](image)

Tourist resorts, such as above, have emerged around the lake in

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\textsuperscript{131} FIFTA, supra note 130 (explaining that Tourism is the government agency responsible for the promotion and facilitation of foreign direct investment and foreign trade in the country).

\textsuperscript{132} See id.

\textsuperscript{133} See id.

\textsuperscript{134} By the author, June 22, 2004, Khuvsgul, Mongolia.
\end{flushleft}
recent years and the number continues to grow. As you can see from the picture, there are two camps a short distance from each other. Another is to the left out of this picture a few hundred yards away. I interviewed the owner of the camp in the foreground of the picture above. Munkhnasan (Nasan) Oldokh established his company in 2002. Initially he started the camp with three gers to receive a maximum of eight to ten people. In only two years (at the time of interview) he had a dozen gers, another dozen wooden lodging facilities. His camp also had a large wooden dining hall, shower and restroom facilities. The camp, and the other tourist camps, extract water directly from the lake for their water and electric usage. While the government promotes ecotourism, the existence of these many camps in the immediate vicinity of the lake which use excessive amounts of water will certainly entail undesirable environmental consequences. In the meanwhile, businesses and the government blissfully cooperate on promoting tourism and expanding the business.

Tourist camps lease land from the local authorities and pay fees for using the land, in accordance with the Land Law. However, according to Nasan, getting permission to start the business is not very easy since the park is considered a specially protected area of Mongolia and is highly desirable. Informally, in order to get the license to lease the land he stated that “you just have to know the right people.” The stakes are higher the closer the site is to the nearby town, Hatgal, where major tourists arrive. Legally, interested companies are required to submit their requests for a land possession license to governors of respective sums and districts and justify the purpose and duration of respective land possession as well as creditworthiness. Land officials of the respective Land Departments then review and decide whether to approve the given application for land possession license.

How does the existence of tourist camps affect the local community’s access to the land? While the land in the Khuvsgul National park is technically state-owned land, and therefore can be used for common purposes, the fact that land can be “leased” (therefore fenced off for the duration of the lease) for businesses such as tourist resorts severely undermines local community access to the respective land. The extent of the demarcation of the businesses’ supposed land displaces local community, reducing the available grazing (or otherwise common) land. Furthermore, as tourist companies tend to pick the most scenic of areas, the local community is again limited in their access to the areas. The

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135 Interviews with Munkhnasan (Nasan) Oldokh, owner of tourist camp, in Hatgal, Khuvsgul Province (June 20-26, 2004).

136 Since there is no infrastructure to connect all these newly emerging tourist camps, informal roads snake through the forest, which not only makes one’s ride extremely bumpy, but also causes significant damage to the forest landscape.

137 Mong. Law of Land, supra note 81, § 32.
picture below was taken at the Khuvsgul Lake where a tourist camp put up this fence to block ‘trespassers.’\textsuperscript{138}

![Image of fence]

Figure 5: “Fences”\textsuperscript{139}

Culturally, tourist camps essentialize Mongolian culture and create much objectified and imaginary local geography. Almost all tourist resorts use gers exclusively or at least partially. Often, ger camps are fenced off such as the one in the picture below.

![Image of fenced ger camp]

\textsuperscript{138} Carol Rose’s illustration of claims to private property comes to mind. Her \textit{Property and Persuasion’s} cover page features a ‘fence’ made of splayed posts and bed headboard that substitute for real gate. She argues that “the dilapidated object in the picture does not look like much of a fence, but it certainly does assert something about property. It says pretty clearly, ‘This is mine.’” \textit{See} ROSE, \textit{supra} note 121, at 1.

\textsuperscript{139} By the author, June 21 2004. Khuvsgul, Mongolia.
Ger, supposedly the symbol of Mongolian mobility, thus becomes an ironic projection of Mongolian “nomadic” identity in spatially static and archaic construction. The tourism industry in Mongolia is essentially a spectacle for the indigenization of Mongolian culture (minus any costs associated with local community’s rights to land as well as environmental damages). Tourists leave Mongolia with a taste of “real” Mongolia—a Mongolia that the government constructs for the gaze of outsiders—while the majority of Mongolians live a decidedly unromantic and settled life in the ger districts surrounding the cities.

F. Mining

The mining industry is another example of how the so-called common right to state-owned land is circumscribed in the absence of legal protection for the traditional users of the land. Today, a significant size of state-owned land has been licensed for exploration. Mongolia is rich in natural reserves and has substantial deposits of gold, copper, molybdenum, and uranium. Numerous mining companies have emerged in Mongolia in the last few years to exploit these resources (see Figure 7). In a relatively short time, the mining sector has become a major contributor to the Mongolian economy, accounting for between 17 percent and 30 percent of GDP.


141 See WORLD BANK, MONGOLIA MINING SECTOR: MANAGING THE FUTURE iii (2003) (showing the available percentage of total land licensed for exploration ranged from as low as 28 percent) [hereinafter WORLD BANK 2003]; see also Evan Osnos, Mongolia’s Gold Rush: Blessing or Curse?, CHICAGO TRIBUNE, May 13, 2007 (showing the percentage ranged to more than 40 percent).


143 Narantsatsralt, supra note 88.
Mining companies are believed to offer some advantages to the Mongolian economy. According to Tumenbayar and World Bank Reports (2003 and 2006), the mining sector helps the economy by creating employment for a large number of people, bringing diversified incomes to rural people, contributing to the rural economy by generating income through taxes and other indirect sources, and improving the local purchase power. Furthermore, Tumenbayar argues that the mining sector brings new and advanced technology, as well as professional and technical skills development opportunities to local communities.

While mining related economic benefits arguably “help” the economy in the short run, the social and environmental prices paid are unparalleled and many are irreversible. The so-purported economic bonanza entails what economists call the resource curse. Mining companies obtain immediate wealth from extracting the natural resources at a fraction of the costs, while local communities bear lasting costs associated with mining practices including the destruction of their immediate environment and the social and economic devastation that follows. “[R]ural people tend to see mining activities as being

\[144\] RHEINBRAUN ENGINEERING & WASSER GMBH, REVIEW OF THE ENVIRONMENTAL AND SOCIAL POLICIES AND PRACTICES FOR MINING IN MONGOLIA (2003).

\[145\] Nyamaa Tumenbayar, Herders’ Property Rights vs. Mining in Mongolia at the Environmental Conflict Resolution Seminar at Brown University (2002).

\[146\] Id.

\[147\] The term “resource curse” thesis was first used by Richard Auty in 1993 to describe how countries rich in natural resources were not able to use that wealth to boost their economies and how, counter-intuitively, these countries suffer from economic dependence and environmental degradation.

\[148\] Patrick Barta, Mongolia Is Roiled by Miner’s Huge Plans: World-Class
destructive of nature, and contributing little to the local economy.”

The World Bank report suggests that the “environmental record of the Mongolian mining sector is mixed at best.” The mining industry has in fact already caused serious environmental damages throughout the country. Mining has . . . devastated much Mongolian land and gold mining is a serious competitor with herding for scarce water sources. Various methods in mining practices not only pose major social problems for local communities but also cause extensive damage to adjacent environments. Excessive effluent generated by mining companies cause land degradation, water deterioration and environmental pollution. Mining companies use high-pressure water systems to extract minerals, they divert natural flows of rivers and water resources which cause them to drain completely or at least largely reduce in size. For instance, according to Tsetsegee Munkhbayar, in his native Onggii River Basin mining companies started digging for gold in 1993 which destroyed 31 of the 200 small rivers and creeks that run into the Onggii river. “In order to mine the gold, they divert the rivers, destroying their natural course. [Without these tributaries], the Onggii River, which used to run 427 kilometers [265 miles], ran only 96 kilometers [60 miles], and Red Lake dried out completely.” This is one of numerous examples of ravaged watershed due to damages caused by mining companies.

According to the Amnesty International Report, the disappearance of the river left at least 57,000 people in the region short of drinking water. Deposits Spur Battle for Spoils; Makeover for “Toxic Bob,” WALL STREET JOURNAL, 2007, at 4. The executive chair, Robert Friedland (also known as Toxic Bob owing to his alleged role in the contamination of a Colorado river), of Oyu Tolgoi, one of the largest mining companies in Mongolia, reportedly bragged about their project in Mongolia at a 2005 Florida investor conference saying that it is like making “T-shirts for five bucks and selling them for $100.”

149 WORLD BANK 2003, supra note 141, at 21.

150 See id. at 1.

151 The environmental concerns raised here are summarized from the World Bank report 2006, numerous newspaper articles, and online sources.

152 Buell & Le, supra note 5, at 44.

153 Munkhbayar, 40, was awarded the Goldman Environmental Prize this year (2007) and became the first Mongolian citizen to win this prestigious award.

154 The Onggii River is one of the 15 longest rivers in Mongolia, and it runs into Red Lake, which is one of the biggest lakes in Mongolia.

155 Munkhbayar was interviewed by Michelle Nijhuis. In his interview, he unveiled the destructive consequences mining companies brought to Mongolia as well as how he was affected personally. Michelle Nijhuis, He Does Not Dig for Gold: Ts. Munkhbayar Fights Destructive Mining in Mongolia, 2007, http://www.grist.org/news/maindish/2007/04/24/nijhuis-munkhbayar (last visited Jan. 10, 2010).
It also forced the local families to move their livestock (estimated 80,000 cattle) to other provinces.156 “No compensation or other reparation was offered to herdsmen who were forced to leave their land as a result of damage to their livestock and lands associated with the mining industry’s use of chemical toxins.”157

Mining companies use a considerable amount of freshwater which poses a critical problem in Mongolia—a country with semi to very arid climate and where water is of a critical importance. For instance, the Ivanhoe Mines’ Oyu Tolgoi gold and copper project is located in the south Gobi desert region of Mongolia where water is the lifeblood of the fragile desert ecosystem. The project is expected to be the largest in the world in gold and copper productions. Currently the prime exploration area is nearly 90,000 sq.km (34,749 sq.m) hovering over a great part of the desert region (see Figure 8). While the company portrays itself as environmentally conscious, the sheer volume of the project as opposed to the extremely delicate ecosystem of the desert should give enough hint to foresee the irreversible damage the project will bring to the region. Mongolia is already going through rapid desertification (owing partly to global warming, but mainly due to human-induced activities such as mining and overgrazing) and mining companies are speeding the process. “In 2002, 42.5 percent of Mongolia’s territory was threatened by desertification with moving sands having seized 1.44 million hectares of once productive land over the last thirty years, including much formerly useful pasture land, 70 percent of which have now been affected by sand intrusion.”158


157 See id.

158 Buell & Le, supra note 5, at 44. But see Tumenbayar, supra note 97, at 5 (indicating that “as much as 95% of the country’s total land is considered to be vulnerable to desertification” to a varying degree).
In addition, water sources have been polluted with mining waste materials. Waste materials generated from mining, both in the form of waste-rock and tailings, cause a serious environmental problem. It is reported that mining companies dump their ore, effluent, and still-turbid water into running rivers and streams or near wash plants, which contaminate water and surrounding areas. Due to irresponsible mining (and one-sided profit-driven goals), Mongolian ecology has been largely crippled, “including the extinction of many plant species, natural resource depletion, rangeland degradation, and increased desertification.” In addition, local communities have become immediate victims. Not only are their traditional pasture and water sources depleted by mining practices, but also many of them are physically affected by mining related contamination. Munkhbayar (2007) gives a heart-breaking account on how the contaminated water posed threats to his community:

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161 WORLD BANK 2003, supra note 141, at 17.

162 In another interview, Munkhbayar reportedly said: “The nomads are losing their pasture. They're squeezed by mining more and more.” Note, however, the usage of
Because we didn't have water to drink, we had to dig a hole and make a well, but that well water was so contaminated that 30 or 40 kids got very serious with liver damage. My youngest son, who is 15 years old, got sick from drinking that water, and my mother, who was only 50 years old, passed away because of liver damage.

It is not uncommon for lumps of mining waste materials to be left behind without any mitigation after mining companies have closed, posing a danger for people as well as grazing animals and wildlife.\textsuperscript{163}

Take one example: The city of Erdenet is facing one of the most serious cases of current and future environmental and social problems. The city was built in 1975 to exploit Asia’s largest deposits of copper ore. Under the socialist regime, thousands of people were transplanted to Erdenet as a matter of state policy to support the gigantic Mongolian and Russian joint mining corporation built to exploit the deposit. The waste from ore processing was and is still being pumped into a nearby tailings management facility (TMF), a large dyke containing millions of tons mine tailings. Over the years, the corporation has produced an enormous amount of tailings, which are expected to reach 1 billion metric tons once the current plans are completed thus making Erdenet’s TMF’s one of the largest in the world.\textsuperscript{164} The existence of such colossal mining tailings is a mounting disaster both socially and environmentally. Possible seepage poses a risk of contamination to surrounding land and water. As tailings from ore develop acidic conditions (due to the inherent production of sulfuric acid) it increases migration of contaminants to the surrounding environment.\textsuperscript{165} Another problem mentioned in the World Bank report is the blowing tailing dust. Tailing material is very fine grained and can easily be picked up by dust and blown away. It is considered “one of the most serious environmental issues . . . there is not much that can be done to mitigate the problem.”\textsuperscript{166} Erdenet presently has an open area of nearly 500 hectares of dry tailing beaches.

Socially, the city of Erdenet itself is largely dependent on the existence of the corporation. Much of the population is directly and

\footnotesize{the word nomad in this translated quote. It is unlikely that Munkhbayar said ‘nomads’ in his interview as ‘nomad’ (\textit{nuudelchin}) in Mongolian language nomad has an entirely different connotation than herders (\textit{malchid})—the term he most likely used. It is very common that western commentators use the word nomads for herders (let alone Mongols in general) to exoticize their portrayal of Mongolia and Mongolian people.}

\footnotesize{\textsuperscript{163} \textsc{World Bank}, supra note 141, at 14.}

\footnotesize{\textsuperscript{164} Id. at 2.}


\footnotesize{\textsuperscript{166} \textsc{World Bank}, supra note 141, at 11.}
indirectly affiliated with the company. Once the company ceases to exist, the fabric of the city will have to be entirely altered and the thousands of people will need to seek an alternative means to survive. Mining towns, such as Erdenet remain “vulnerable to the rollercoaster of commodity prices and sharp economic decline, with the ultimate closure of the mine as the former main employer and sole engine of economic prosperity.”

Another significant environmental problem is caused by illegal usage of mercury in placer and hard-rock mines in Mongolia. Mercury usage is not only contaminating rivers but also surrounding land. “Mercury contaminated soil is used for grazing by [livestock] and for production of cereals and vegetables.” For instance, “[t]here were high levels of mercury and sodium cyanide in the Zaamar and Boroo mining areas in Toev, Selenge and Ovorkhangai provinces and much livestock was poisoned by these and other toxins.”

Furthermore, informal miners known as ninjas (or what the World Bank referred to as artisanal miners) use various methods to melt the permafrost such as burning rubber tires which causes toxic poisoning, which not only pollutes surrounding areas but also poses serious health problems to miners themselves and local communities, as well as their livestock and vegetation.

Contrary to the stated socioeconomic rationale that the local economy would benefit from mining operations (such as seasonal employment, diversified income, reduction of rural-urban migration), the World Bank report suggests that mining companies do not provide appreciable employment opportunities to local rural populations nor are desired by local communities. As the report indicates, many mining companies prefer to recruit outside the local community (largely from

167 See id. at 21.
168 Id. at 17.
169 Amnesty Int’l, supra note 156, at 186.
170 Ninja is the nickname given to informal miners engaged in placer gold mining for their use of a green plastic bowl for panning, strapped to their backs resembles the turtles in “Teenage Mutant Ninja Turtles.” Significant number of people are engaged in informal mining estimates ranging about 30,000 (government estimates) to at least over 100,000 (independent sources) informal miners in Mongolia. See World Bank 2003, supra note 141, at 8.
171 See World Bank 2003, supra note 141, at 16 (explaining that the smoke from tire fires is serious pollutant as it contains carbon particles, carbon monoxide, polyaromatic hydrocarbons, benzene, phenol, and cyanide).
172 Tumenbayar, supra note 145, at 6-7.
173 See World Bank 2003, supra note 141, at 21 (indicating that one has to look no further than Appalachia to see that the environmental and social fallout that mining brings to local community). See, e.g., Nat’l Geographic, The High Cost Cheap Coal: The Coal Paradox, Mar. 2006.
Ulaanbaatar or other cities or even from across the border), as the management sees outside recruitment providing a better discipline and work ethic.\textsuperscript{174} “Mining enough coal to satisfy this growing appetite will take a toll on lands and communities.”\textsuperscript{175}

In addition, as evidenced by the Onggii River movement and other numerous protests directed against mining activities that have taken place in Mongolia in the last few years, there is growing discontent among local communities with mining operations in their traditional land. The discontent frequently boils over into disputes between local communities and the mining companies. For instance, according to Amnesty International Report 2006, the Mongol Gazar Mining Company in Arkhangai province allegedly used violence against unarmed demonstrators with tear gas, batons and shots fired in the air and even injured some of the protestors. “Activists were protesting that mining would harm water resources and destroy ancestral burial grounds.”\textsuperscript{176} Furthermore, in August of 2006, many informal miners, including women and children, were arrested and charged for trespassing on a site of Altan Dornod mining company.\textsuperscript{177} Over 10,000 people were “forcibly put on trucks and taken to isolated rural areas with no infrastructure and without access to food, water or medical services.”\textsuperscript{178} This real image sharply contrasts with the imagined one of a nation of free-roaming nomads.

The “loophole” in the legal framework concerning state-owned land such as pasture disadvantages local herders and communities. While their use-right is recognized in the legal discourse the very right is not protected by the laws, because the state can lease the land to businesses such as mining and tourism. At a community level, local government oversees the local land within its respective boundaries. As Tumenbayar suggests “the existing taxation and land legislation built up such conditions that make local governments, both of aimag and sum, to be interested in mining activities on their territories.” Most of land and water related lease fees, as well as a portion of royalties from mining are contributed to local budget.\textsuperscript{179} “While sums get scant revenues, merely land use tax and water use fees, Ulaanbaatar gains the gold (Mongol Bank), royalties (government), jobs, stronger banks (seasonal loans), mine engineering support so forth,” and the mining companies pocket all the profits they make from the business.\textsuperscript{180} While the disadvantages of mining

\textsuperscript{174} Id.

\textsuperscript{175} Id.

\textsuperscript{176} AMNESTY INT’L., supra note 156.

\textsuperscript{177} Id. at 186.

\textsuperscript{178} Id.

\textsuperscript{179} Law on Land Fees. §10-1 (Mongolia 2002).

\textsuperscript{180} WORLD BANK, supra note 141, at 21.
practices are seemingly obvious, state and local governments continue to give out lease-rights to businesses for meager financial gain. Meanwhile, traditional users of the land are largely victimized by the destructions caused to their surrounding and often times are displaced of their traditional pastoral areas and are forced to flee their familiar places—a place they call “home.”

VII. CONCLUSION

Current strivings for “reform” in Mongolia have been inherently connected with the neo-liberalist vision of global market growth, mainly promoted by the West, trans-national corporations and regional organizations. Although such reform has consistently borne a benevolent theme, there is much that needs to be unveiled. As I have argued, there are unspoken plagues of the system that need to be further voiced and taken into consideration. I have attempted to illustrate that Mongolia has already experienced some of these plagues of market democracy. While the reform process may be inevitable for certain countries, the West has long pushed this agenda. Such forced reform encapsulates the ironic paradox that “one is forced to be free.” However, one should not be forced to be free.

The sores (fences, mining sites, and tourism debris) on the Mongolian body (land) are a reflection of the price Mongolia has had to pay in its reconstruction project in the post-Soviet years. Perhaps once again given the reality of Mongolia’s vulnerable geopolitical position external influences were probably inescapable. But, at the least, these costs need to be unveiled and voiced instead of being silenced by the persistent romantic myth of the land of free-roaming nomads—who transverse the country on a smooth space with no fences.

\[181\] The U.S. model is formally seen as the desired vision of modernist development and has served as a magnet for which transitional and developing countries have been striving.