Legal and regulatory framework for pastureland management in Mongolia

School of Law, Otgontenger University
Suvd Manibadar
02.01.2012
1. LAND DEGRADATION IN MONGOLIA
2. MONGOLIAN PASTURELAND LEGAL FRAMEWORK
3. RECENT INTERNATIONAL TREATIES IN THE FIELD OF THE ENVIRONMENT
4. CONCLUSIONS and PROPOSALS
LAND DEGRADATION IN MONGOLIA

Arkhangai aimag

Dundgobi aimag

Zavkhan aimag
2. MONGOLIAN PASTURELAND LEGAL FRAMEWORK

Law on land

**Use right:**
Summer and autumn pastures → *collectively.*
Winter and spring pastures
→ based on agreement

**Possession right:**
→ Land under winter and spring camps through their Khot ail communities.

**Weaknesses**
Law on land have not been implemented.
Some provisions of this legislation contradict each other.

Unclear policy
Not adapted to a system of Community-based Natural Resource Management (CBNRM).
The status, rights and obligations of Pasture User Groups are unclear.

**Tragedy of the commons**
The Mongolian Land Law of 2002 applies to pastureland uses. However, due to the unclear nature of some of its provisions they have not been properly applied. Moreover, the MEAs that Mongolia has ratified have not been clearly implemented into national policy or legislation relating to pastureland uses.
However, in 2010 the Mongolian Parliament prepared a proposal for a new legislation on pastureland uses based on top-down approaches where the emphasis has been placed basically on strengthening of state organisations and their activities in relation to concepts and legal regulation of pastureland.

Some researchers claim that such approaches are not suitable to match the Mongolian situation of large areas of pastureland.
MSRM has developed draft law on pastureland uses based on the concept community-based natural resources management (CBNRM). However, they needed to focuses on international environment policy.
MONGOLIAN ADMINISTRATIVE UNITS

ADMINISTRATIVE UNITS OF MONGOLIA

Aimags (21)

Capital city (1)

Soums (329)

Districts (9)

Bag (1568)

Khoroo (..)

Legislation (Parliament)

Executive (Government)

Judicial (Court)

HERDER’S ORGANIZATION (PUGs)
Decision making system in Mongolia

Legislation (Parliament) -> Executive (Government) -> Judicial (Court)

Aimag's Governor, Citizen's Representative Khural (Meeting) -> Soum Governor, Citizen's Representative Khural (Meeting) -> Bag Governor, Public Khural (Meeting)

Capital city's Mayor, Citizen's Representative Khural (Meeting) -> District Governor, Citizen's Representative Khural (Meeting) -> Khoroo Governor, Public Khural (Meeting)

HERDER'S ORGANIZATION (PUGs)
<table>
<thead>
<tr>
<th>№</th>
<th>Mongolian policy’s documents</th>
<th>The regulations of pastureland use management</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Millennium Development Goal-based Comprehensive National Development Strategy</td>
<td>➢ conditions for sustainable use and protection of forest reserves, reforestation and maintaining ecological balance shall be created (Article 6.2.4),</td>
</tr>
<tr>
<td></td>
<td></td>
<td>➢ and to develop and implement a policy with regard to regulating the population and structure of livestock in accordance with pastures’ capacity (Article 6.6.4).</td>
</tr>
<tr>
<td>2</td>
<td>Action Program 2008 to 2012 of Mongolian Government</td>
<td>To improve legal regulations related to pasture use and possession (2.3.11).</td>
</tr>
<tr>
<td>3</td>
<td>State Policy of Food and Agriculture</td>
<td>To enable legal environment for possession of pasture land by entities engaged in livestock farming.</td>
</tr>
<tr>
<td>4</td>
<td>General directions for improving legislative acts of Mongolia up to 2012.</td>
<td>To improve management of proper using, possessing and protecting of pasture land”, “enable legal regulation for protection of pasture /land under the winter and spring camps/ through herder groups and partnerships.</td>
</tr>
<tr>
<td>5</td>
<td>National Program on Livestock of Mongolian Breeds</td>
<td>To enable legal environment for use, possession, protection … of pasture land.</td>
</tr>
</tbody>
</table>
Basic approaches of the state policy on pasture-land and hereinabove state policy documents are not complex policy.

For the reason that is these documents included different terms and different contents about pastureland use management.

That is the reason of not possible to implement.
3. RECENT INTERNATIONAL TREATIES IN THE FIELD OF THE ENVIRONMENT

The international environment policy’s concept focuses on public interest of environmental conditions based on sustainable development.
When the CBD is taken into a Mongolian perspective, the three fundamental CBD’s concepts, biological resources, ecosystem”, and sustainable use all have relevance when it comes to pastureland uses and management.

Moreover, several other CBD’s obligations, including development of plans and programmes, identification of components of biodiversity, protection of areas, support of local populations, good decision-making and environmental assessments, are all highly relevant to ensure sustainable pastureland uses.

These principles have, however, not been properly elaborated and made part of the Mongolian legislation relating to pastureland uses.
5. CONCLUSIONS

1. According to the Vienna Convention on the Law of Treaties *International* treaty obligations must be fulfilled in good faith and duty on states particularly Mongolia to honour their international treaty environment commitments, and depending on the constitutional situation, incorporate their obligations into their legal system.
2. Mongolian policy document and law does not really reflect any recent international policies.

3. The system that the law supports is to a large extent centralized and contains unclear provisions on the responsibility of land uses and few substantive provisions on how land is actually to be managed.
4. The Law on land does not stipulate or provide for any mechanism that could facilitate public participation in the preparation of land use plans.

5. Mongolian law on Land provides for a planning system with limited public participation and reflecting a top-down approach.
6. The problem with pasture land management plans is that they are made on a voluntary basis often by PUGs.

*Pasture management plans have been developed based on herder participation.*
7. In principle the PUGs would have an access to a court, however, Mongolian Law on Land does not recognise management plans prepared by PUGs to have any legal foundation thus, the plans could not in fact be enforced by PUGs.
Due to the current situation in Mongolia, there is a real need to organise pastureland uses by clearer rules on responsibilities and enhancement of the connection between the land-users and the land itself.

The formation of herders’ organisation and defining their rights, duties and responsibilities in law is an important factor. Moreover, the MEAs need to be better elaborated and implemented into workable standards, including usable criteria for protecting and sustainable use of pastureland.
1. General and a long term strategic policy on sustainable land uses and defining the most important objectives and concepts, such as ecological sustainability and adaptive management, should be prepared and adopted by Parliament. The strategic policy should take into account and reflect all the latest Multilateral Environmental Agreements (MEAs), define and explain all the necessary concepts and principles.
2. All stakeholders and the general public should be allowed to participate in the preparatory phase of strategic planning.

3. Reports on the implementation of the strategic policy, successes and failures, and plans should be prepared every four years and made available to the general public.
4. New national legislation implementing the relevant MEAs as well as providing strategic planning the necessary legal frame, should be prepared and eventually submitted to the Mongolian Parliament. It should at least contain provisions on:

   a. Strategic planning, including the necessary legal acceptance of the plans and their legal status

   b. Pastureland Management of based upon:
      ▪ Ecological approach
      ▪ Adaptive planning

   c. Public participation during the preparatory phase of planning and decision-making

   d. Periodical evaluation of whether objectives are being met is necessary and if they are not met, a proposal on how to meet them should be put forward

   e. Some effective enforcement mechanisms may be necessary
5. The new legislation should give the Mongolian Herder’s organization (PUGs) the necessary status as a legitimate interest group and PUGs should have access to courts if necessary to protect the interest of its members.

6. In order to enhance responsibility for pastureland uses long-time land leasing to either Herder’s organization (PUGs) should be considered.
Main vision is to achieve the goals of sustainable development including the conservation of natural resources and sustainable pastureland uses.

**CURRENT APPROACH OF PASTURELAND USE SYSTEM**
- Strategic policy based on individual’s interest
- Unsustainable management
  - It creates conditions for chaotic and competitive use of pasture sources management
- Open access and tragedy of the commons
- To provide any authority for state organizations
- Unclear, contradicting each other’s state policy documents, Law on Land and other related laws

**PROPOSED APPROACH OF PASTURELAND USE SYSTEM IN FUTURE**
- Strategic policy would based on common interest
- Sustainable management
  - It will creates conditions for organized use by Herder’s organization
- Exclusive rights
- To provide powers for Herder’s organization
- Policy document with adopted on international treaties of Mongolia

**THE POLICY APPROACH**
- Pastureland use management
- Property right
- The concept
- Legal framework
THANK YOU FOR YOUR ATTENTION

Any comments and questions?