

## **Submission of inputs to the Special Rapporteur on the rights of Indigenous Peoples for the 79th General Assembly report on The Situation of Mobile Indigenous People**

**Focusing on the question in the call for inputs:** Please describe the impacts of extractive industries, tourism projects, conservation initiatives and climate change mitigation and adaptation measures on mobile Indigenous Peoples' rights and indicate whether they are consulted on projects that impact their lands, territories and resources. Please identify any other existing threats to mobile Indigenous Peoples' land rights.

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### Overview of the Situation of Mobile Peoples in Mongolia: Nomadic Imaginaries, Pastoralist Marginalities

Mobility as a form of socio-political organization and mobile pastoralism have been practiced across Inner and Central Asia from the pre-modern era to the present. As Atwood (2015) suggests in his analysis of the mobility and mobile pastoralism in the Mongol Empire (13<sup>th</sup> century), historical forms of nomadic political organization were mobile in ways which were not always simply driven by environmental resource access or to fatten herds. Historians of the region also tend to agree that social organization and collective identification was articulated in religious, geographical and kinship terms which have been intertwined with mobile ways of living and social organization. Even today customary land use reflects the importance of kinship and geographical attachment to secure tenure rights (Ahearn 2016). According to 2020 National Census data, 298,789 individuals (approx. 9% of the total population) are directly engaged in mobile pastoralism as a primary livelihood, with an additional 242,024 households who own livestock but do not directly herd themselves. Today, mobile pastoralist herders, continue to live in traditional *gers* (mobile dwellings made from wood and felt) and other mobile dwellings such as trailers, and practice long-range mobility with indigenous breeds of herds of horses, yaks/cattle, goats, sheep, and camels. Mongolian nomadic culture and traditions represent a unique and extremely valuable contribution to global heritage, ranging from musical instruments such as the horse-head fiddle, long song and praise songs, as well as ancient practices of milk fermentation associated with rare micro biotic cultures.

Despite the significance of Mongolia's intangible and tangible cultural heritage, evident in its long history of mobile social organization and its current expression of traditional knowledge including environmentally friendly ways of producing food and treading softly on the earth, the Mongolian government and external parties do not recognize mobile herders as Indigenous. This lack of recognition means that herders cannot access any of the international frameworks which safeguard Indigenous peoples.

In this report, we focus on the contradiction between the celebration of nomadic motifs in Mongolian (and global) tourism and nationalist imagery and the marginalization of herders in political decision making in Mongolia today. We call this contradiction: nomadic

imaginaries-pastoralist marginalities, which are most clearly expressed in the dispossession of pastoralists from their lands due to widespread mineral extraction.

## Background

The Mongolian People's Republic, established in 1924 as an independent state where Soviet-inspired legal systems were installed in country. Prior forms of political organization based on Tibetan Buddhist ecclesiastic orders were oppressed through education campaigns, the destruction of monasteries, and widespread killings (Kaplonski 1998). While Mongolia was never formally incorporated into the USSR, it remained closely aligned with Soviet policies and served as a supplier of raw materials (minerals and livestock products, primarily) and Soviet military base. As such it was subject to Marxist typologies of social evolution, which classified practices of mobile pastoralism as “extremely backward” within the centralized economic plans (Ovdiyenko 1965, p. 3) and called for a complete transformation of mobile pastoralism into an “agrarian-industrial state”. In the first four decades of the 20<sup>th</sup> century, there were major attempts to re-organize Mongolian society according to the Soviet model. Despite widespread protests (involving herders killing millions of their own livestock) (Dupuy et al 1970, p. 298), eventually pastoralism was collectivized and geared towards the production of raw materials – meat, milk, hides, fibre, etc. Mobile pastoralism was integrated into the state as a production system. To this day, the Mongolian government does not have any specific policy to address the situation of mobile pastoralists and the Ministry of Agriculture focuses its policies on developing crop agriculture and projects focusing on livestock intensification, including support for business enterprises based on feedlot farms and the sedentarization of livestock husbandry.

Since the early 2000s, Mongolia's mining and extractive industry sector has come to dominate the economy with over 2,500 mineral licenses issued across the country (MRPAM 2023). The agrarian economy remains important as the foundation of Mongolia's food security and high-quality fiber export market and serves as a basis of livelihoods for 188,610 households who classified as ‘herder households’ in the national census, representing approximately 20% of the total number of households in Mongolia (2021 National Census). The rapid development of the mineral extraction industries and related infrastructure has been rapidly implemented, with little regard to its social, economic and cultural impacts on rural dwellers.

The UN High Commissioner for Human Rights report issued on 6 March 2020 strongly called for government attention to human rights issues associated with large scale development. The report reads, “the Committee on Economic, Social and Cultural Rights expressed concern that nomadic herders’ rights to their pasture, hay land and water resources were continually infringed owing to mining activities on their traditional lands; free, prior and informed consent of herders was not obtained when licenses for mining in their traditional territory were granted and compensation to herders affected by mining projects were not adequate” (p.3).

## Legal Framework

In the post-socialist period, Mongolia's 1992 Constitution represented a significant transformation by embracing principles such as the rule of law, separation of powers, political human rights, a multi-party electoral system, and, notably, the recognition of private

property.<sup>1</sup> However, two critical internal conflicts persist within land governance, particularly concerning pastureland. Firstly, the placement of pastureland within the property system remains unclear. Secondly, safeguarding pastureland against competing entitlements, particularly mining, presents a substantial deficiency.

Article 6 of the constitution, introduces significant uncertainty in land relations, as evidenced by its interpretation and application. The uncertainty lies at the junction of the constitution and property laws overall. For instance, the constitution explicitly prohibits private ownership of pastures. While the Constitution enumerates various resources as public property, such as water resources, minerals, and wildlife, it does not specify the classification of pastures within these categories. Similarly, the Land Law echoes the Constitution but adds that pastureland should be collectively (niiteeree) used under the supervision of the appropriate governmental authority.<sup>2</sup> These collective users and relevant governmental authorities, as referenced in the Land Law, include a bag and a group of herding households (hot air), and a local khural and a soum governor, respectively.<sup>3</sup>

According to the Land Law, pastures are classified as seasonal pasture (öväljöö, khavarjaa, zunjaa, namarjaa) and encampment pasture (otoriin belcheer), with appropriate government supervision assigned accordingly.<sup>4</sup> However, disputes between collective users regarding pasture usage can only be resolved by Bag Residents' Council and Bag Governors. This presents a contradictory approach in the Land Law.

On one hand, collective users (referred to as "a bag" and "khot ail") have rights to pasture usage and can address disputes within local administrative frameworks. On the other hand, these collective users lack the ability to raise claims against external users, such as mining activities.

Mongolian laws do not categorize pastureland (which constitutes the vast majority of land in Mongolia) as either public or common property.

Moreover, they fail to provide adequate protection to pastureland and those whose livelihoods depend on it. Despite constitutional recognition and legislative frameworks for pastureland, local herders lack meaningful entitlement to it, as they did during the socialist era. Thus, it unveils how the Mongolian State has not strayed far from the socialist state in cases of land policy. Indeed, numerous legal cases illustrate how the existing legal framework for pastureland places herders at a distinct disadvantage when they clash with large-scale mining operations and related development activities.

Various legal cases, especially those arising from the South Gobi region, where the nation's large-scale mining operations are concentrated, underscore the limitations on herders' rights to pastureland and access to essential resources. A significant limitation stems from two critical aspects: although laws may recognize pastureland as common property, in practice, it is treated as terra nullius. Additionally, while Mongolian land law grants collective users like herders

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<sup>1</sup> Constitution of Mongolia [Mongol Ulsyn Ündsen Khuuli], 1992, the last accessed January 16, 2023, see <https://legalinfo.mn/api/front/cons-detail-1992.html>; Unofficial English Translation: <https://legalinfo.mn/mn/edtl/16532180497951>.

<sup>2</sup> Art 52., Land Law of Mongolia [Gazaryn tukhai Khuuli], 2002, the last accessed January 16, 2023, see <https://legalinfo.mn/mn/detail/216>; Unofficial English Translation: <https://legalinfo.mn/mn/edtl/16231470738171>.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

and 'khot ail' the right to utilize pastureland, they lack legal recourse to challenge mining operations in practice.

We present several cases to illustrate this point. Firstly, when Möngön Nakhia<sup>5</sup> mining company sought an exploration license in the South Gobi province, the Mineral Resources Authority of Mongolia (MRAM), the licensing authority, denied the request. MRAM stated that the request was rejected because the Nomgon soum Representative Council (local authority) had opposed it. The mining company contended that the local authority lacked the jurisdiction to reject the request for a mining license unless it overlapped with existing legal rights. The ruling established that the local government cannot reject an exploration license request based on factors such as overlapping with pastureland.

Indeed, pastureland is not recognized as property. The court has failed to acknowledge the rights of collective users to exclude any individual who applies for a mining license over pastureland. In the second case involving the M.I.A. mining company<sup>6</sup>, which sought an exploration license in an area called "Khurmen" overlapping the territories of two soums, Khurmen and Bayandalai, in the South Gobi province, the MRAM denied the license request. This denial was based on the local authorities' intention to designate the land as a protected area, particularly for grazing purposes. However, the court ruled that the licensing body retains the authority to approve or deny the request, regardless of the local authorities' plans to preserve the land for grazing purposes.

For herders, Övöljoo, Khavarjaa (winter and spring camps), and their associated land use permits serve as the sole concrete legal instruments to contend with mining licenses. However, these are merely nominal legal tools whose value hinges on registration and the principle of precedence and only consist of about 0.07 hectares of land. E.g., A.G.M. Mining<sup>7</sup> held the mining license on the same territory where the land use permit was issued by the governor of the Gurvan Tes soum, South Gobi province. After obtaining the exploration license in 2008, A.G.M. Mining changed the status of the exploration license to an exploitation license in 2014 at a location named 'Yamaan usnii khyar' in Gurvan Tes soum, South Gobi. The governor issued a land use permit in 2016 to Munkhnasan Ts., a local herder, for övöljö (a winter place). Munkhnasan argued in the case that we, herders, have lived on this land for generations. The court failed to consider his claim and decided that the mining license was granted to AGM Mining before the land use permit was given to the herder. Therefore, priority of the mining license was upheld.[2]

Practically speaking, the two conditions play a determining role in deciding whose rights take precedence. The first condition is that Mongolia enacted the Minerals Law<sup>8</sup> (1994, 1997, and

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<sup>5</sup> Möngön Nakhia LLC v. the Head of Citizens Representative Council at both the South Gobi province and Nomgon soum, the First Instance Administrative Court, Dalanzadgad city, the South Gobi province, Decision number 120/sh2018/0015, June 26, 2018.

<sup>6</sup> M.I.A. LLC v. the Head of Citizens' Representative Council at the South Gobi province, the First Instance Administrative Court, Dalanzadgad city, the South Gobi province, Decision number 120/shsh2018/00002, January 15, 2018.

<sup>7</sup> AGM mining LLC v. the Governor of the Gurvan Tes soum, the First Instance Administrative Court, Dalanzadgad city, the South Gobi province, Decision number 120/shsh2019/0018, August 13, 2019.

<sup>8</sup> Minerals Law of Mongolia [Ashigt Maltmalyn tukhai Khuuli], 2006, the last accessed on January 16, 2023, see <https://legalinfo.mn/mn/detail/63>; Unofficial English Translation: <https://legalinfo.mn/mn/edtl/16389997472991>.

2006) eight years earlier than the Land Law of Mongolia (2002)<sup>9</sup>. In addition, the government amended the minerals law significantly and rewritten it twice, but the registration of mining licenses has always been intact. The second condition is that, unlike mining license holders, herders and local authorities did not prioritize registration due to cultural practices which traditionally viewed winter and spring camps as seasonal and communal in nature. Therefore, almost no land use permits predate the mining license in Mongolia.

As a result, very few cases are brought to domestic courts. In most instances, herders engage in self-negotiation with mining companies, and to some extent, mining companies recognize a herder's entitlement to pastureland by compensating for the displacement of khavarjaa, övöljöö (spring and winter bases), and the loss of access to resources. While it is uncommon for negotiations between mining companies and herders to fail and result in a lawsuit, there have been a few cases demonstrating how mining companies do, in fact, recognize herders' entitlement to pastureland and access to vital resources. However, even though mining companies acknowledge herders' entitlement to land, such recognition reinforces the perception of pastureland as private property and exacerbates social divisions among herders, leading to social unrest on the ground. Consequently, this undermines and hampers herders' environmental claim-making efforts.

This individual compensation mechanism by mining companies treats pastureland as private property and further exacerbates social divisions at the local level, such as between those who received compensation and those who did not, those impacted by the mining operations and those not impacted, and those who sold their land (nutagaa) and those who did not.

Concisely, there is no legal mechanism in place to protect herders' land rights. Typically, herders enhance their entitlement to pastureland by trying to improve their land use permits. This is achieved in two ways. Firstly, herders often construct various structures on the land, such as additional winter and spring camps, fences, houses, garages, and sometimes even plant trees, to increase the visible usage of the land covered by the permit.

### Implications

The 'Nariin Sukhait' valley in Gurvan Tes soum, the South Gobi, was once a fertile rangeland adorned with tall grasses and small streams. 'Many local herders in the region moves to the valley during summer to fatten their livestock in the past,' said Tsetsgee Uranmandakh, a local herder. However, a stark transformation has occurred, and the valley is now recognized as a coal mining territory, even marked as the 'Nariin Sukhait' coal mining complex on the map. Tsetsgee perceives, this shift as a curse, noting irony that the coal is only found on the fertile land and crucial water resources.

Within the 'Nariin Sukhait' mining complex, several coal mining companies operate, including Mongolyn Alt Company (MAK), South Gobi Sand (SGS), Chinkhua-MAK, Usukh Zoos and among others. In 1991, the Government of Mongolia established 'Shivee Khuren' border point along the Mongolia-China Border, situated approximately 51 kilometers south of the 'Nariin Sukhait' complex. Currently, the 'Nariin Sukhait' coal mining complex exports ... millions of tons of coal to China, constituting 10-15 percent of Mongolia's total coal exports. This

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<sup>9</sup> Land Law of Mongolia [Gazaryn tukhai Khuuli], 2002, the last accessed January 16, 2023, see <https://legalinfo.mn/mn/detail/216>; Unofficial English Translation: <https://legalinfo.mn/mn/edtl/16231470738171>.

underscores the strategic significance of the ‘Nariin Sukhait’ coal mining complex on a national scale.

Indeed, the landscape of the Nariin Sukhait Valley has undergone significant transformations. One of our interlocutors, a local herder, pointed out the rock crusher plant, highlighting how a once beautiful rocky hill had been reduced to dust and disappeared from the landscape due to mining activities. With a sigh, she remarked, ‘This landscape has changed so much; I can barely recognize it anymore.’ Although herders are critical of mining and its environmental impact, little has changed in Gurvan Tes soum. A herder expressed frustration, stating, “Several times, when I met with the mining companies to express concerns about the difficult living conditions and the impact on grazing livestock, the only response was ‘move from this place.’ Now, my fellow herders suspect my activism, accusing me of selling off the land for my own personal gain.” She is deeply distressed, emphasizing, ‘this is my land (nutag).’ Where should I go? Why should I leave? She feels utterly helpless in the face of the current socio-legal landscape, which seems designed to displace her. Despite her activism, she struggles to comprehend why she finds herself in such a helpless situation.

### Additional Cases

Concerns regarding land acquisition practices has been reflected in several reports and articles, including the UN High Commissioner for Human Rights report issued on 6 March 2020 which strongly stated the need for government attention to human rights issues associated with large scale development. The report reads, “The Committee on Economic, Social and Cultural Rights expressed concern that nomadic herders’ rights to their pasture, hay land and water resources were continually infringed owing to mining activities on their traditional lands; free, prior and informed consent of herders was not obtained when licenses for mining in their traditional territory were granted and compensation to herders affected by mining projects were not adequate.” P.3

For projects that do follow international norms, usually in the form of voluntary standards attached to investor requirements such as the IFC Performance Standards, there is another significant challenge: the pervasiveness of what we call a ‘sedentist imaginary’ in how space and territories are visualised and impacts and risks are conceptualised. In other words, international standards are largely confounded by mobile, flexible and overlapping forms of pastoralist land use and remain stuck in a mindset where only fixed property is accounted for in evaluations of loss and impact on livelihoods. Culture is rarely considered in any discussions of mine impacts.

With over 2000 mine licenses in Mongolia, there is a history of forced resettlement, lack of engagement with local government and residents, and high-level complaints issued against mines operating in this region. In the Gobi provinces alone, there are a total of 48 soums (county) and 57 baghs (county sub-districts) in the four provinces of the Gobi region; of these, there are only 2 counties without mining. There is an abundance of the mineral and oil deposits in this region which is likely to be subject to future exploitation. There are a total of 726 special mining licenses in the Gobi provinces (458 of which are for use; 268 for exploration), which is

27 percent of the total number of state licenses<sup>10</sup>. Additionally, there are 11 oil exploration licenses and one operational oil extraction site. 18 additional sites are declared open (unlicensed) out of a total of 31 fields with 16 of them in the four provinces of the Gobi<sup>11</sup>. One uranium mine license operates in Ulaanbadrak soum of Dornogovi province.

The Government of Mongolia currently does not have comprehensive legislation on land expropriation, acquisition and resettlement. In the Land Law, there are stipulations for the exchange of land or compensation to landowners for the purpose of state special need. The murky legal environment on land acquisition and resettlement has led to a wide variety of practices based on interpretations of the existing legal codes.

Formal complaints which received international attention regarding land acquisition and resettlement for mining project have been lodged via the IFC's CAO and EBRD's PCM mechanisms. These stemmed from two key issues: problems with insufficient stakeholder engagement at the earliest stage of the projects; and problems stemming from ignoring customary land tenure practices and the lack of accounting for impacts on common land. In 2013, a complaint was submitted to EBRD with regards to the Ukhaa Khudag (UHG) Energy Resources Phase II Project, including a coal mine and satellite infrastructure in Tsogttsetsii, Umnugovi province, asserting that the EBRD was not compliant in four areas of its policy. Regarding land acquisition, involuntary resettlement and displacement, the complaint stated that the EBRD had conducted insufficient prevention, mitigation and compensation measures to address livelihood impacts" and also asserted that the EBRD had failed to evaluate Mongolian herders as Indigenous people. Likewise, in the same region of Tstogttsetsii, the Tavan Tolgoi mine was subject to remedial resettlement action plan due to the significant flaws in their approach to land acquisition at the establishment of the operation the company's initiatives to provide opportunities for affected people to choose from various compensation options and seeking of alternative means for affected people were found to be insufficient.<sup>12</sup>

In another case, there are unresolved complaints from 12 herder households against the state-owned Tavan Tolgoi company regarding a 2022 resettlement. A SIA was not completed, and the mining company only agreed to provide compensation based on an asset assessment. According to the assessment, the materials used by herder households to build their winter and spring shelters have no value if they are built using traditional methods such as stones, dried dung and other natural materials. If the shelters are built using blocks, wood or other professional building materials, then the household would be entitled to compensation for the value of those supplies. Herder homes, natural resources including pasture and water, and livestock were not valued as assets. While these complaints have been ignored by Tavan Tolgoi, herders have been forced to move while some continue to mine in the impact zone due to lack of other resources to move away.

Beyond mines, most state development projects including road ignore mobile pastoralists as legitimate rights holders. We can see this in the case of the Tavantolgoi-Manlai-Hangi road, which is designed to run approximately 477 kilometers from the Tavan Tolgoi mine site to the Khangai port in Dornogovi aimag. The concession contract was awarded to the company

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<sup>10</sup> See <https://www.mrpam.gov.mn/public/pages/196/2023.10.stat.report.mon.pdf>

<sup>11</sup> See <https://www.mrpam.gov.mn/article/178/>

<sup>12</sup> See

<https://documents1.worldbank.org/curated/ar/975351468056079898/pdf/RP17580V10P10800Box385449B00PUBLIC0.pdf>

Takhilt Hairhan Trans in 2019. During our research trip during the summer of 2021, the soum government of Manlai, Omnogovi said to us that they were against the road and did not have sufficient information about the project after it started construction on the soums territory. Herders explained that one day, bulldozers showed up and started digging up the ground of an important area called the Gobi Shakh which includes famous area for training horses.

The road is close to the new railroad that runs between Tavantolgoi and Gashuunsukhait. The construction of a road so close to the railway has been a key point of contention with local herders, who say that they tolerated and even supported the railroad and were not given any information on an additional planned heavy truck road. “We are now under the influence of 2 roads. As for the Mongolian railway, our house is now 5 km away from that railway, and this road ... I have a winter camp and a spring camp, then now I have no right to move to my autumn and spring camp, because livestock could hit by trucks.”

Herders we interviewed mentioned that they were not provided with any specific information, for example, projections regarding the number of trucks per day expected to travel on the road or other information that would impact their lives and livelihoods. One of the herders stated, “They didn't notify us before they build the roads, build their mining camps, and operations. If they did, we could've gotten involved in the conversation. Like, is this a good route to build the road? How many people will be impacted? How many animals are to be impacted? Can they establish the routes along the pasture boundary, not through the middle? Can they build it there, not here? They didn't address our concerns. They only discussed this with the soum mayor, the corresponding minister, and other officials.”

From this case, we can see that herders who are directly impacted by the road do not know what is being developed and are not included in decision-making processes; if consultation does occur, they are expected to accept the situation and live with in the new conditions or move away. As one herder said to us during a research trip in 2021, “*We complained that why was it approved against us but they said that they can only notify us, they don't have to discuss it with us. We don't have the right to suspend the operation. That this is an international operation. The government and transport minister already approved it so its beyond our discussion. We're required to receive the notice and to support the operation. We can only take our animals away from the roads. We can only do that, not discuss whether the roads should be built. That's what they told us.*”





Figure 1: Herders protesting the road construction project through their homeland outside of Tsogtsetsi, Omnogovi



Figure 2: Open pit mining on pastureland in Dalanjargalan, Dornogovi



Figure 3: Herders from the Gobi provinces protesting in Ulaanbaatar

## References

- Ahearn, A. 2016. The role of kinship in negotiating territorial rights: exploring claims for winter pasture ownership in Mongolia. *Inner Asia* 18(2): 245-264.
- Atwood, C. 2015. Imperial Itinerance and Mobile Pastoralism: The State and Mobility in Medieval Inner Asia. *Inner Asia* 17: 293-349.
- Kaplonski, C. 1998. Creating national identity in socialist Mongolia. *Central Asia Survey*. 17(1): 35-49.
- Ovdiyenko, I. K. (1965) *Economic-Geographical Sketch of the Mongolian People's Republic*. Bloomington, IN: The Mongolia Society.