

Feature Articles

Settling between Legitimacy and the Law: At the Edge of Ulaanbaatar's Legal Landscape

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Ulaanbaatar is expanding rapidly at its edges through the construction of informal settlements by influxes of former nomads. In an unfolding narrative paralleling the population shifts, laws intended to govern urban settlement have themselves been unsettled. As migrants seek urban advantages — education, cultural cosmopolitanization, and economies of employment and consumption — they must negotiate the legal regime, embracing it when advantageous but selectively skirting its restrictions. Concerned for losing legitimacy, either from breaking laws too recklessly or adhering to laws too strictly, settlers have developed a discourse that tracks with shifts in legal codes. This article studies families navigating the edges of the legal landscape — veering out of and back into legitimacy — and concludes that constructing vernacular housing is crucial to their strategies of urban participation.

In the immediate wake of state socialism's collapse in Mongolia in 1991, Ulaanbaatar's centralized planning, like much else in the command economy, lost both its fiscal base and its operational legitimacy. From the same moment, the demand for urban land increased hastily, as former nomads, fleeing the disruption to their rural system of economic production, moved into Ulaanbaatar, putting strains on the unprepared capital and primate city. Ulaanbaatar's urban space over the subsequent quarter century expanded primarily in the only place it could, at the ever-expanding periphery. And it did so through the recent migrants' construction of their own homes. These are the informal settlements that came to be called the *ger* districts, so named for the tents which the former nomads brought with them from the countryside.¹ As their remnant form of housing these portable structures were among their few material possessions, most of the migrants having lost or sold off the livestock that would have represented their wealth and secured a viable life for them in the countryside (FIG. 1).

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FIGURE 1. *Self-built ger districts have extended the city, but also consumed great tracts of land. While the crests of hills visible here in 2000 were once open pasturage, these hillsides are now the dense settlement of Zuun-ard Ayushin, adjacent to the centrally planned core of Ulaanbaatar.*



In an ongoing effort toward rebuilding governance since the ruin of state socialism, the national legislature has attempted to regain control over the urbanization process. Under state socialism, urbanization had been regulated through the control of people's movements. Contrastingly, the post-socialist era has capitulated to a more open flow of people. But impediments to urban influx still exist through a legal regime regulating land tenure, which determines not how people move around, but how they come to settle in place. However, in an unfolding narrative that parallels the population shifts from rural to urban, laws intended to govern urban settlement have now themselves been unsettled.

As migrants have constructed a path for themselves toward participation in the urban realm — through education, cultural cosmopolitanization, and urban economies of employment and consumption — land laws have become a system that families have negotiated in complex ways. These laws may thus be seen alternately as both help and hindrance, depending on the immediate circumstances a family faces. Families have thus had to pursue differing strategies in relation to the land laws — embracing the laws when it has been to their advantage, but often treading lightly, using the legal regime selectively, while skirting or ignoring laws that limit their activities. Concerned about the potential for losing urban legitimacy — on the one hand from breaking laws too recklessly, but on the other from adhering to them too strictly — peripheral settlers have also today developed a discourse that has tracked the shifts in the legal landscape.

This article explores the activities of several families who have found urban legitimacy through such a successful pro-

cess of negotiation — veering out of and back into legal status — at the edges of the legal regime. As the offshoot of a larger research project on the transformational role of *ger* districts, my work on this topic began with a chance meeting during a nine-month period of fieldwork in 2008–09. While conversing with a young woman, an assistant at a business in the city center, I learned that the land her family had settled was well in excess of the legal size limits at that time. Our discussion had begun on a different subject — economic participation through the construction of businesses in the *ger* districts — but I soon became intrigued by the details of how her family had managed to navigate a byzantine path to acquire the extra land extralegally. The land was captured partially through the construction of multiple, adjacent homes for multiple, distinct households that were in fact all part of one family. The strategy had begun as part of their desire to operate a school for children in their *ger* district (the municipal government had yet to build sufficient school space for the increasing population in this neighborhood at the eastern reaches of Uliastai) (FIG. 2). However, when I returned to conduct another round of fieldwork in 2011, I began piecing together more stories from families who, using the legal mechanisms, were constructing individual paths toward economic stability by building homes and lives in the *ger* districts. Thus, much of the research presented here was collected from that period in 2011. It was based on a three-part methodology: a wider-scale housing survey (of 112 households), a more focused set of semistructured interviews (of fourteen households), and participant observation (of the one extended family with whom I lived for five months).

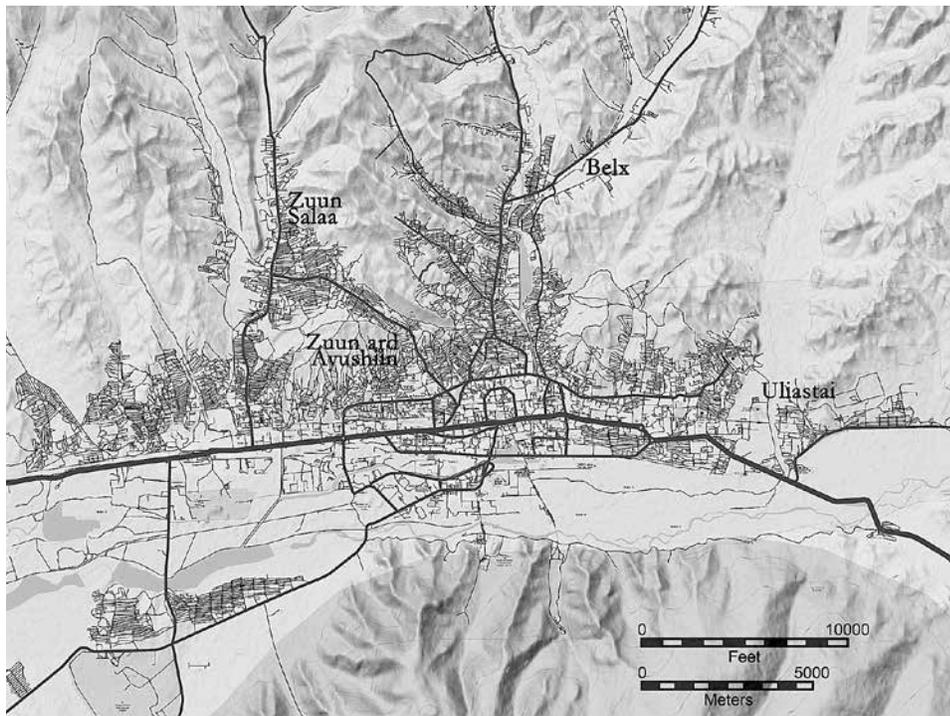


FIGURE 2. A map of topography and roads highlights the regions of fixed settlement. Much of the hillside above fixed settlement areas has also been subsumed into ger-district lands. Map by Matt Zebrowski, cartographer, UCLA Department of Geography.

After introducing Mongolia's post-socialist conditions and the realities of the *ger* districts, I will begin by examining current land laws. The first section of the article, "Unsettling Laws," will thus provide a historiography of how the laws settled into their place on the books — but also how, in so doing, they unsettled those who depended on legal legibility for legitimacy. The changes came during two main periods: the 1990s, when an array of new laws set the contours for replacing socialist-era law; and the 2000s, when these laws were provided with mechanisms to set them in motion. I separately address two specific moments when laws changed more drastically: initially, with the founding constitution in 1992; and then, bookending the first two decades of post-socialist development, following a 2010 court decision that reshuffled the meaning of preceding land laws. This discussion will lead into the second major section of the article, in which I will present findings from the primary research. Entitled "Constructing Facts on the Ground," I will explore here ethnographically the different ways families have operated within and beyond the legal regime. The article will then conclude by making a stronger case for autoconstruction of domestic architecture as a strategic path toward urban legitimacy for peripheralized peoples of the global South.

UNSETTLING LAWS

The evolving relationship between the land and laws that govern its use, at least in official terms, is a story that parallels Mongolia's transition from the centralized controls of social-

ism to the market forces of capitalism. Though institutions for delineating legal claims to land had existed well before Mongolia's adoption of state socialism, the centralization that occurred under single-party rule collapsed feudal, monastic and tribal governance into a single state structure. But with the weakening of centralized authority at the end of the socialist era, the arrangement for legally designating land also weakened, resulting in a retreat to pre-twentieth-century customary patterns of tenure based on usufruct rights.²

The effort to again advance Mongolia to a statutory system of land tenure has since paralleled other developments of the post-socialist economy and society. Thus the present series of laws pertaining to control of land have only been adopted since the end of socialism, and in practice the evolving legal framework remains largely inchoate. With the collapse in the early 1990s of the political order, including the Soviet-aligned government and party that had dominated political life over the preceding seven decades, a turn began toward private property and the attendant legal regimes of ownership. Yet, ironically, the legal code that developed initially reinserted a measure of state control into a process that was otherwise self-organizing at the grassroots, and thus unheeding of centralized authority. At the time, a turn toward foreign expertise from international lenders and more-developed states — both for governance inspiration but also for practical guidance in shepherding into existence a new system of private ownership, was projected as inevitable.³ But there were also moments, since bypassed, when it seemed Mongolia might have found a middle path, one that would have led in a more state-capitalist direction, but which might

also have retained autochthonous principles for use of the land as a vestige not so much of state socialism as of Mongolian nomadism.

In the aftermath of Soviet dissolution, Central and Inner Asian states sought a new model of the successful state. Motivated by a wave of pan-Turkism — or, in the case of Mongolia, a sense of Altaic affinity — many Central and Inner Asian states looked to ascendant Turkey on numerous issues, including how it had handled its own land law reforms. Invoking the legacy of a nomadic past (however mythic), Turkey had carved out within its legal regime a sense of the temporality of settlement and inhabitation by transhumance. Squatters rights were thus protected under the distinctly Turkish label of “*gecekondulular* laws,” which bestowed legitimacy on dwellings that had been “built overnight.”⁴ Mongolia in the late 1990s appeared to be developing similar forms of legislation to codify the cultural value of its national nomadic identity into land law.⁵ But, practically, this had limited impact due mostly to the weakness of the central government, as exposed by its incapacity to capture tax revenue, by erratic laws proposed by lawmakers to secure their political base, and by the influence of external advisors seeking to gain control of land to promote capital-intensive development. In particular, intense lobbying related to the latter came from foreign private and state-owned mining interests, sovereign donor/development organizations (USAID), and large capital-funding institutions (the Asian Development Bank and the World Bank).

Thus, against a backdrop familiar across cities of the less-developed world, much of the social legitimacy for settlement depended on the settlers themselves.⁶ And this had to be negotiated between legality and advantages that might be deemed extralegal (“illegal” would not be correct, for this was a period when land law itself remained illegible and unsettled). Citizen application of the emergent legal regime thus evolved sometimes in dialectical complement to the law, but just as often by skirting the edges of the legal terrain.⁷ As a result, the law and how people used it reflected one another, but rarely moved at a similar pace.

Framing a Constitution. The remaking of the relationship between the law and the land began with the drafting of the Mongolian National Constitution, adopted in early January 1992 by the State Ikh Hural [the People’s Great Assembly]. The constitution is composed of seventy articles, divided thematically among six chapters. Article 16, which guarantees an array of rights and freedoms, comes under the second chapter, “Human Rights and Freedoms.” This chapter gathers sequentially those articles that concern the role of the individual in the Mongolian state. Chapter 2, Article 16, Part 3 of the Mongolian Constitution thus reads in its entirety:

Right to fair acquisition, possession, and inheritance of moveable and immovable property. Illegal confiscation and requisitioning of the private property of citizens shall be prohibited. If the State and its bodies

*appropriate private property on the basis of exclusive public need, they shall do so with due compensation and payment.*⁸

While this provision might seem to clearly establish the coming privatization of property, there is also, within the bounds of Article 6, a counter-provision for maintaining a relationship with the land resembling the conditions of state ownership that prevailed during socialism, as well as the pre-socialist model of feudal lords, lamaseries, and Qing-appointed governors. Part 1 of Article 6 thus reads, in whole:

The land, its subsoil, forests, water, fauna and flora and other natural resources in Mongolia shall belong exclusively to the people and be under State protection.

State ownership, on behalf of the people, is thus first established as a norm. And it is only from this, in the second through fifth parts of Article 6, that it carves out the spaces of privatization:

2: The land, except that given to the citizens of Mongolia for private possession . . . shall be the property of the State.

3: The State may give for private ownership plots of land, except pastures and areas under public utilisation and special use.

Article 6 thus establishes state control of land, carving out an exception for privatization. But then from privatization it carves out another exception for state control of any land used according to Mongolia’s pastoral nomadic tradition, or for any other public need. The landscapes that comprised “the countryside” — nearly all of the landscape beyond the narrow bounds of Mongolia’s capital and a few industrial or provincial towns — thus remained under control of the national government for local use according to customary pasturage.⁹ But with nearly half the Mongolian population resident in the primate city of Ulaanbaatar, the question remained how to implement the provisions of the constitution within the context of the urban landscape.

Establishing Laws. During a period of inchoate privatization in the 1990s, even in its most developed and cosmopolitan urban areas, Mongolia seemed poised to establish a unique relationship between the people and the land. The legal framework at the time was still distinguished by three conceptual levels of land possession:

газар ашиглах/gazar ashiglaḥ: to use land or place with the sense of improving and profiting from its use, but without ownership or the ability to direct ownership of the land. Land remained the property of the state, but could be used for the contracted period of time: typically following on from customary pasturage rights.

газар эзэмших/gazar eземshix: to own or possess land rights with the ability to benefit not only from the areal quality of the land, but also from the products of the land — in other words, usufruct rights.

газар өмчлөх/gazar өмчлөх: to gain full proprietorship of land or place, with an ability to buy and sell as real property.¹⁰

Two years later, the first detailed terms were written out for how this relationship between people and land would be negotiated. First, the introduction of the 1994 Civil Code reaffirmed the idea of landownership in its Chapter 7. Then the 1994 Land Law set the terms for the private sector not as ownership, but as a limited-term leasehold. Thus, an initial lease of sixty years could be extended for another forty years by any private Mongolian citizen.¹¹ These terms applied only to urban areas, however, not to the countryside — though the terms were extended beyond Ulaanbaatar to provincial (*aimag*) and county (*soum*) capitals in 1995 under Resolution 143. In practice, however, the length of leasehold tenure varied much more widely, and became yet one more term of negotiation between officials representing the state and citizens looking to hold land.¹²

By the late 1990s, this early flurry of legislation began to gather more substance toward implementation, including the creation of links to other parts of Mongolian law and practices of governance. Thus the 1997 Law on Registration of Immovable Property demanded an accounting of what lands were in whose hands. And this led to the 1999 Law of Cadastral Survey and Land Cadastre for ground-truthing land claims. Once it was asked who owned what land, the practicalities of documenting ownership took on fuller definition. In particular, the physical landscape and its legal definition as individuated parcels intersected for the first time in the cadastral survey.¹³ Furthermore, a purpose for the state to track land ownership was established: to collect tax on land holdings. And soon after, in 2000, the Law on Immovable Property Tax was unveiled. In that first decade of post-socialist transition, not only did Mongolia thus manage to tie landscape into its legal codes, but it bound it to the fiscal workings of government.

Revisioning Laws. The subsequent decade of the 2000s would alter the equation further, not only by looking to foreign economies for models, but through the direct influence of consultants and donor organizations promulgating systemic privatization (including USAID, the Asian Development Bank, the World Bank, and briefly, the European Union's Technical Assistance to the Commonwealth of Independent States). An updated version of the land law and a law for setting the limits of Mongolian citizens' ownership of land were both adopted in 2002. In the countryside, this maintained continuity with the past through continued customary-usage rules. However, urban areas became the focus for reorienting the Mongolian economy toward capital-development by legitimating the personal accumulation of land rights.¹⁴ The value

of land was thus no longer conceived only in physical terms but as a fiscal presence in its own right. Private citizens could thus sell or trade land rights or use their rights as collateral against other forms of economic exchange (particularly mortgages and mortgage-backed bonds established under the auspices of USAID'S Development Credit Authority¹⁵).

The 2002 laws, however, instigated a fundamental tension between liberalization and the problems inculcated by a then-emerging political push toward decentralization. This tension had enduring impact on the spatial form of Ulaanbaatar. Devolving the process of granting certification for land to the city's nine *düüreg* governors was meant to enhance the political legitimacy of each district, creating a system that would be responsible to its residents. But at the same time, this political decision incentivized sprawl, placing greater control for urban planning in the hands of officials whose political motivation was typically to expand their political base by encouraging new residents to move into their districts. One economically prominent *xashaa* owner, B—, confirmed that she was able to enlarge her land holdings beyond ordinary legal limits through an appeal to her *düüreg* governor. This allowed more of her relatives to settle in the area and her land-intensive business to grow more productive still.¹⁶

In addition to the devolution to *düüreg* governors, localization of authority was further enhanced by the establishment of *xoroo* (local district) offices as the primary gateway to land registration. Two years later, however, in 2004, the system again reversed itself, and centrifugal forces returned title and registration searches to the control of central bureaus.¹⁷ Capture of revenue may have been part of the state's motivation, as the 2004 Immoveable Property Tax Law came into effect. But additional limits followed as a result of the 2007 Land Fee Law, which further detailed the limits of ownership and control on the part of registrants. Subsequently, only those with proper registration in the geographically appropriate administrative region could register land in their own name.¹⁸

As a result of these actions the rights of citizens to settle periurban land became codified at 0.07 hectare per family in Ulaanbaatar, while in *aimag* capitals and *soum* centers areal amounts were set at 0.35 hectare and 0.50 hectare respectively. These larger increments acknowledged that more land remained available in *aimag* and *soum* centers. But they also reflected concern that Ulaanbaatar would necessarily agglomerate at a higher rate, and thus demand a higher-density form of settlement. Another suspected intent of this graduated reduction in plot size, however, was to disincentivize settlers in *aimag* and *soum* centers from moving up the settlement ladder. This included the typical path by which nomads whose herd sizes were too small to be viable in the countryside moved to ever-larger urban centers. Yet, by reverse logic, the laws ultimately encouraged stock-holders to leave the steppe, as settlement in outlying urban centers came with fewer penalties for jettisoning the pastoral-nomadic lifestyle. In more

outlying urban areas one could thus benefit from semiurban services while still maintaining a partial herd. Thus a familiar pattern was induced whereby nomads had few outlets other than to move to ever-larger urban centers until they arrived at the edge of Ulaanbaatar, often enticed there by the extended family networks who had previously made the scalar jumps.

That such rights to settlement and usage of land were provided on a per-family basis reflected the traditional significance of the *ail*. The *ail* was an extended-family unit important prior to the socialist period when the division of pasturage was based on family-level customary usage. This is not to say that the family unit had an inherently perceived value, per se. But in practical terms, the *ail* was functionally the unit by which families were able to best exploit land areally for pastoral-nomadic production. In the socialist period, the degree to which collectivization succeeded reflected the degree to which *ail* were permitted to herd together in self-governing assemblages.¹⁹ The chief adjustment during socialist collectivization thus did not involve mechanisms of interaction between families, nor their dividing of land; rather it came in terms of state ownership of both herds and land and the centrally planned role of the collectives within the larger economy. Thus, even now, far from its rural origins, the term *ail* continues to haunt the urban landscape, because it was used to name the early *ger* districts according to the families who initially settled them. And those names persisted despite previous removals of *ger*-district residents for Soviet block-style redevelopment.²⁰ Mongolians' adherence to their *ail* thus outlived the modernization meant to make the concept obsolete.

The Court Decides. By the end of Mongolia's second decade after socialism, the array of legislative maneuvers around land, registration and taxation had taken on the patina of settled law, and were seen by many in the *ger* districts as an increasingly legible conduit for their own legitimacy in the city. Yet at the same time, these cumulative steps also opened

minor gaps and fissures through which settlers could seek interpretations to their liking. Not least, the shifting process itself reinforced an unsettling sense in which paper law presented itself as insecure, with the only reassurance available in *de facto* capture of actual land.

Then, in 2010, a constitutional interpretive revision of enacted laws drastically undercut the carefully constructed assemblage of codes, at once jeopardizing urban participation of many yet-to-settle migrants and exposing the land-acquisition process as one that was necessarily structured against those who had already come into legal compliance and become hemmed in on smaller plots of land. While, long term, this legal adjustment may yet provide greater stability of tenure rights, the net effect during the decades of transition — and importantly, the years which saw the greatest influx of rural-to-urban settlers — was a dissolution of predictability in a legal regime that had been otherwise sedimenting into place.

At issue in the constitutional reinterpretation was the fundamental tension between an autochthonous sense of group-ness (which fit with the historic reliance on *ail*, herder collectives, and even the underlying principles of both kinship and socialism) and individualism, as enshrined in a constitution drafted with the input of international advisors. Though kin networks remained culturally significant in the patterns of *ger*-district settlement, the legal pivot was the constitutional guarantee of 0.07 hectare of land on a per-family basis.

While Chapter 2, Article 16, Part 3 of the Mongolian constitution concerned property, both moveable and immovable, it was with Article 14 that property owners' rights were addressed. Article 14, in its first and second parts, defined ownership rights as something possessed by the *individual*, rather than the group, family or *ail*. While land laws until this point had guaranteed usage rights (in Ulaanbaatar) of 0.07 hectare per household, the revision in 2010 changed the terms to 0.07 hectare per individual (FIG. 3).

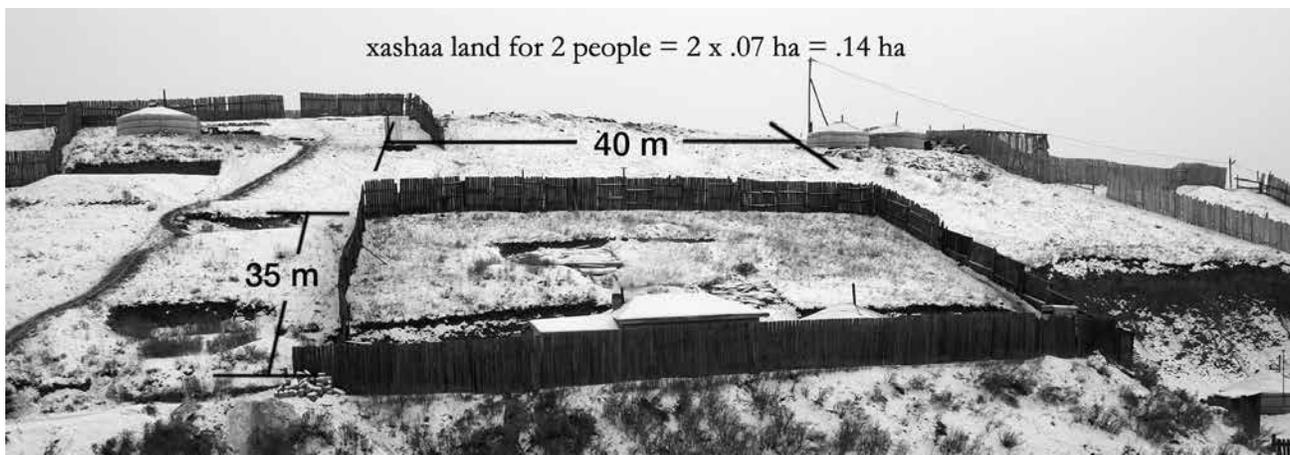


FIGURE 3. The amount of land that could be legally held by a family with at least two members, as enclosed by a *xashaa* in 2011. Based on its location near the core city, the parcel, however, was most likely settled well before the 2010 legal revision. *De facto* control of land graduated into *de jure* legitimacy, securing future participation in the urban economy for the householders.

Under this correction, a family of four members, including children of any age, became entitled to 0.28 hectare with only the nominal one-time fee for registering the land and generally an exemption from annual tax liability.²¹ This revision alone undercut any previous argument for bringing extralegal *xashaa* sizes into acquiescence. In effect, the law had thus shifted beneath the feet of tenure holders, and the strategy of defying the law was rewarded. Former violators found themselves not only amnestied into *de jure* compliance, but effectively legitimated in their *de facto* seizures of land beyond previous legal limits.

CONSTRUCTING FACTS ON THE GROUND

In order to better understand different approaches to establishing extralegal advantage, I conducted in-depth, semistructured interviews with fourteen families in Zuun Salaa, a *ger* district that was then at the far periphery of the city (and the district in which I also lived (REFER TO FIG. 2)). Informants were selected on the basis of visible construction activity within their *xashaa*, as this had been a positive indicator of residential satisfaction on a housing survey I had previously jointly conducted.²² Of the families I conversed with, about half seemed to be making their way in the urban economy, and doing so by establishing their domestic base in the *ger* districts.

Even among these “successful” families the strategies varied, but a commonality was that the members had learned to navigate some structural advantages offered by house construction. For one family, this meant building their home in distinct phases as money became available for the acquisition

of materials. At the time of the study they had completed the concrete foundation and timber framing; but they had only that summer purchased sufficient bricks for cladding, and they could not yet afford roofing or finish materials (FIG. 4). For another family, advantage was gained by saving their funds until they could afford professional assistance in their construction agenda — a path that many homeowners dismissed as more expensive, but which this family had turned to their advantage by engineering a larger building than they would have been able to build by themselves. This had provided them with a multistory structure which made efficient use of the land, but which also provided both living space and rent-free space for income generation (FIG. 5). Yet another family saw a way forward by capturing more land than they could make legal claim to (their own family was only three members). They had used the extra land to speculatively build a second house, which they intended to sell. They would then repartition the land, possibly before having to formalize the land registration process (FIG. 6).

Certainly not all families were able to reposition themselves in a favorable way. But of those who did, the situation of my own homestay family seemed to be the most representative. Uncle N— and his wife had come into Ulaanbaatar from the countryside more than a decade earlier. Without any skills beyond animal husbandry, N— had little purpose there. But life in the countryside was no longer viable, and a number of other members of his family, including his oldest sister and older brother, had already established themselves in the city. His relatives lived in a district which at that time was far from the built core of Ulaanbaatar, so land was relatively available for settlement. Without children of his own



FIGURE 4. Foundations and framing for this home were inspired by a Canadian house seen on television. A son learned to use computer-aided drafting software with sufficient proficiency to lay out a design with more forethought than most *ger*-district houses. Forethought was also key to staging construction as family savings accrued over time. At the time of the photo, the family had purchased cladding material and were planning to restart construction to complete the exterior. They calculated that completion would likely require a subsequent summer.



FIGURE 5. A dual-income couple saved their salaries by leaving their rental apartment in the central city to move to rent-free land in the ger districts. With their pooled funds, they were able to invest in construction that was framed as a “dream-home” but included income-generating space. A sewing studio supplies the homeowner with steady revenue (her husband’s work as a mining engineer is more lucrative but less even).

at that time, N— didn’t need much land. Nevertheless, his sister convinced him to take a decent-sized parcel under his own name, one that she was already considering developing for commercial use.

For many years, as his household expanded with children of his own, N— continued to inhabit a *ger* on his plot. At the same time, neighboring plots began to be developed — some by his extended family members, including a large house one of his nephews was building on adjoining land. Then, as the lands of his extended family were becoming hemmed in, N— too decided that constructing a house was necessary (FIG. 7). Built presence, obtained through con-

struction of such immobile architectural objects as houses, outbuildings, kiosk-shops, or even just fencing (*xashaa*), was often employed by *ger*-district families as a facts-on-the-ground strategy.²³ At one point N— insisted he had arrived at his decision because he finally had the financial capacity to build. But at other times he noted that he could only build by taking advantage of loans and financing, partially from a bank and partially from family members. Indeed, several family members had become increasingly adept at navigating the small-scale loan process for appending smaller structures on their own land, including greenhouses and detached root cellars to improve their agricultural businesses.



FIGURE 6. An entrepreneur has built an energy-efficient house on speculation for an adjacent plot of land. If he is able to sell the house, he will fence off the parcel and build a new house for himself, his wife, and their child on land he can then register in their own name.



FIGURE 7. Construction photos of the house of N—, from July 2011, are paired with similar views of completed rooms during the family's house-warming party in October that year.



FIGURE 8. Anticipating new development 22 kilometers from the present city center, S— points out his recently acquired land. Though he lives in an apartment in the urban core, he may use this land for agriculture until its valuation rises.

In fact, the willingness of the larger family to help subsidize the cost of N—'s construction may have been a defensive move to further secure rights to the use of land that had long been under family control but which had hitherto been without the necessary fixed, physical manifestation of that control. The process had begun with land registration, and now that N—'s family had grown to include at least five family members, he was able to register significantly more land than when he had initially settled (which had also been before the 2010 assertion of constitutionally mandated individual rights). But the temporality of a *ger*, an emblem of national identity as well as domesticity (in the countryside), had also since been exposed as insufficiently stable for maintaining urban legitimacy. This instead now required the physicality of, first, a fence, and second, a fixed house. In the scramble to acquire land in the hemmed-in reaches of the *ger* district, the tactic of an end-run around bureaucracy through the construction of facts-on-the-ground meant perimeters were established first and justified later.

As I conducted interviews not only with *ger*-district homesteaders but with housing experts and professionals in the city, another picture of peripheral land tenure also emerged. This secondary picture indicated that those who operated most efficiently within (and just outside of) the system were not necessarily the rural-to-urban migrants who most needed it. Rather, it was educated and urbane professionals from the urban center who were best able to comprehend the scope of their advantage in acquiring land — land that they rarely occupied themselves, but simply leveraged for later advantage (selling, trading, or establishing *dacha*-style retreats from their more central-city apartment life).

According to a spokesperson I interviewed from the Ulaanbaatar Urban Planning Office, the expressed belief of the municipal government was that more than 93 percent of households in most *ger* districts had registered their land. However, in the field, where offices remained busy accommodating new registrants, indications countered such optimism. Our lateral survey across multiple *ger* districts two years prior to the deadline for closing registration turned up only a small percentage of households that had moved into the city within the previous few months. So any official registration numbers would have skewed toward nontenant landholders from the core, while missing in the count would have been a greater proportion of recent settlers at the periphery.

As if to provide further evidence, during the interview, the Urban Planning Office spokesperson admitted that she had herself registered parcels of land on behalf of her husband and infant child — family members who shared her apartment near the city center. With foreknowledge of planned *ger*-district upgrades and retroactively installed municipal service delivery (electricity, water, paved roads), she had also been able to select parcels that she predicted would soon rapidly increase in value. Thus her advantageous use of land law and her own office's Vision 2030 Plan was for speculation, rather than the housing needs envisioned by the legislation. This was an advantage that had been pressed by a number of urbane, apartment dwellers who did not intend to settle but who saw the staking of land as a longer-term investment (FIG. 8).

In the nomadic society with which Mongolians still identify, what James Scott might have defined as their traditional “weapon of the weak” — mobility — was thus becoming inverted toward new forms of resistance and compensation

through land capture.²⁴ In fact, belief that nomads once resisted by fleeing the controls of a centralized authority contradicts the twentieth-century history of Mongolia. This concept also oversimplifies a society where a herder was typically deeply imbricated with her or his place in a specific landscape (ties that were invisible to or easily overlooked by an outsider). But informal tactics of resistance and compensation through land law do actually represent a nearly exact reversal of Scott's thesis. Thus, it was the settler in the *ger* district who resisted weakly by taking advantage of the legal mechanisms by which land was distributed to the people of Mongolia.

If counting the number of *xashaa* that exceeded even the relatively lax proscriptive rules was beyond the capacity of municipal regulators, an opposite measure, tabulations of noted infractions of land law, revealed a catalogue of common tactics. Thus, building "without any license or permission thereon" (permission presumably derived through registration) was responsible for 45 percent of all violations of the land law. Assembling more than 0.07 hectare per family (under the pre-2010 regimen) accounted for 30 percent of violations. And illegal transfers of land or alterations of land use (presumably a zoning misuse) comprised an additional 15 percent of violations of the land law.²⁵

In a 2002 study, a third of those who had settled in the neighborhood of the study sites had not registered. For most of the unregistered, the most common reason cited was their lack of official documentation from the county in which they were most previously registered. At the time, migrants had been required to delist themselves in the place from which they were moving before they could register themselves in the new site. And since many had moved to Ulaanbaatar without permission, they had been unable to change their place of residence. A smaller percentage cited the cost of registration, the confusion of the bureaucratic process, or simply not knowing where to even begin the process.²⁶ Thus, if the steady expansion of land laws provided a more legible set of procedures for the more educated registrants, it also further disadvantaged the least-educated and most vulnerable transplants from the countryside.

The Ulaanbaatar Urban Planning Office's estimate that registration rates exceeded 93 percent provoked a similar discussion with one of the most senior officials in the Ministry of Roads, Buildings, and Urban Construction. He privately conceded that the municipal estimate was too optimistic a figure. He also noted that the last extension to the rules allowing fee-free registration was set to expire in May 2013 (our conversation was in 2011). But he acknowledged that this deadline might be extended by legislators seeking to shore up votes in their districts. This in turn provided an indication that politicians on the ground knew that large portions of their districts were comprised of undocumented settlers.

Meanwhile, the planning office looked optimistically to May 2013 as a bookend that could finalize the shape of the city, providing a definitive boundary to the sprawl. However,

with an unabating flow of newcomers to the *ger* districts, their 93 percent registration rate was neither likely nor static.²⁷ The amorphous shape of Ulaanbaatar had stretched well beyond the clarity imposed during the socialist era, but its composition remained yet unsettled.

BUILDING TOWARD URBAN LEGITIMACY

In Ulaanbaatar the laws that govern the making of the peri-urban landscape have evolved over the two decades since the end of socialism and the creation of ownership regimes. Yet the steps for an individual or family to establish rights of use to land remain multiple and negotiable, even when law circumscribes the necessary proceedings. Procedures as set forth by land law provide a proscriptive boundary, but adherence requires a set of negotiations — with rules, with officials, and sometimes with neighbors of bounding *xashaa*. This track of negotiated practice largely parallels the one set out by the legal mechanisms of land acquisition; however, it runs with greater latitude. In some cases, the broader path leads to wholesale extralegal acquisitions, but it is mostly used more modestly to gain more favorable land acquisitions than might be provided by the letter of the law.

The lack of enforcement capacity for a governance structure that seeks centralized control, however, means that the role of officials in the operation of the urbanization processes is ultimately tenuous. Yet, rather than prescriptive, a proscriptive system — one where the government offers boundaries to avoid rather than rules to follow — might offer greater legitimacy for the legal regime itself. Meanwhile, in Ulaanbaatar any delegitimization of the population of rural-to-urban migrants desperate to keep pace with urban advantages serves neither the migrants nor the already-established, already-settled citizenry. It is the ambiguities embedded in current workings of land acquisition (between the law and its practice) that have so far worked to meet each actor's interests.

For the government charged with regulating the system, enacting property regimes that incentivize development fulfills an obligation to constituents in the *ger* districts who rely on access to land. It also corresponds with the agendas of such outside advisors as USAID and lenders as the Asian Development Bank and World Bank. And by remaining proscriptive, few resources are expended on oversight or enforcement.

Meanwhile, *ger*-district tenants gain a foothold into the economic system of the city without excessive oversight of their activities. Furthermore, by having rules in place (however casually defined they might be), *ger*-district residents also gain some security not only in terms of access to land, but also in terms of preventing more powerful interests from overwhelming land markets or swallowing their small-holdings.

Mongolia's post-socialist transition toward sedentarization has followed a similar trajectory to the one by which landownership rights have been devolved to individual citi-

zens. Expanding ownership regimes, in combination with the overall trend toward settlement, may be one of the best opportunities for the *ger* districts to gain distinction. But how this eventually plays out will depend on whether legal structures remain negotiable and how those negotiations continue to occur. Meanwhile, the deployment of domestic schemes for capturing terrain continues to occupy the swelling ranks of rural-to-urban migrants.

More poignantly still, this model from Mongolia offers an even broader lesson for understanding the interactions of law and self-built architecture. In this regard it might find greater applicability throughout the rapidly expanding cities of the global South. When law and vernacular architecture are considered in the same academic space, the architecture has too often been dismissed as a mere outcome of legal-ten-

ure regimes. Informality's aesthetic formalism is thus seen to be based on haste: haste to procure cheap materials, haste to assemble the shelter, haste in staying a step ahead of the enforcers due to the illegality of land tenureship.

But the situation of Ulaanbaatar's self-constructed neighborhoods provides insight to a different relationship between architecture and the legal landscape. In Ulaanbaatar, the construction of the home is integrated into the very strategy of families who come to occupy the edges of the city. Families thus use their capacity for auto-construction to take legitimate control over the urban landscapes they inhabit and that their children will inherit. *Ger*-district dwellers construct their housing, and through these constructions, they extend the space and the advantages of the city for all of its citizenry.

REFERENCE NOTES

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1. This article uses "parcel" or "plot" to describe occupied land in the *ger* districts. The actual Mongolian term is *xashaa*, which means "fence," but which has come to also designate the residential yards typically enclosed by fencing in the *ger* districts.

2. Mongolia's pre-socialist divisions of land through customary, political, and ultimately legal mechanisms have been explored in their nascent forms by both David Sneath and Caroline Upton. See D. Sneath "Land Use, the Environment and Development in Post-Socialist Mongolia," *Oxford Development Studies*, Vol.31 No.4 (2003), pp.441–59; D. Sneath, "Proprietary Regimes and Sociotechnical Systems: Rights over Land in Mongolia's 'Age of the Market,'" in K. Verdery and C. Humphrey, eds., *Property in Question: Value Transformation in the Global Economy* (Oxford: Berg, 2004); and C. Upton, "'Custom' and Contestation: Land Reform in Post-Socialist Mongolia: The Limits of State-Led Land Reform," *World Development*, Vol.37 No.8 (2009), pp.1400–10. These apparatuses continue to be used for partitioning pasture and rangeland for Mongolia's nomadic herders in the countryside. See M.E. Fernández-Giménez and B. Batbuyan, "Law and Disorder: Local Implementation of Mongolia's Land Law," *Development and Change*, Vol.35 No.1 (2004), pp.141–66; as well as D.J. Murphy, "Going on Otor: Disaster, Mobility, and the Political

Ecology of Vulnerability in Uguumur, Mongolia," Ph.D. diss., University of Kentucky, 2011.

3. World Bank, "Land Resources and Their Management," *Mongolian Environment Monitor* (International Bank for Reconstruction and Development, 2003); and World Bank, "Pressures of Urbanization: Urban Land Markets," *Mongolian Environment Monitor* (International Bank for Reconstruction and Development, 2004).

4. The 1966 Gecekundu Law, No. 775, and the 1984 Gecekundu Amnesty Law, No. 2981, are primary sources. For discussions of legal applicability, see also G.K. Payne, *Land, Rights, and Innovation: Improving Tenure Security for the Urban Poor* (London: ITDG, 2002); and United Nations Centre for Human Settlements, *Best Practices for Human Settlements: Best Practices Database* (Geneva: United Nations Centre for Human Settlements, 1996).

5. In addition to the references cited in note 2 above, see D. Sneath, "Mongolia in the 'Age of the Market': Pastoral Land-Use and the Development Discourse," in R. Mandel and C. Humphrey, eds., *Markets and Moralities: Ethnographies of Postsocialism* (Oxford: Berg Publishers, 2002), pp.191–210; D. Sneath, "The Rural and the Urban in Pastoral Mongolia," in O. Bruun and L. Narangoa, eds., *Mongols from Country to City: Floating Boundaries, Pastoralism, and City Life in the Mongol Lands* (Copenhagen: Nordic Institute of Asian Studies Press, 2006), pp.140–61; and C. Upton, "Institutions in a Pastoral Society: Processes of Formation and Transformation in Postsocialist Mongolia," *Comparative Studies of South Asia, Africa and the Middle East*, Vol.25 No.3 (2005), pp.584–99.

6. For a broad consideration of these issues, see M. Davis, *Planet of Slums* (London: Verso, 2006); and United Nations Human Settlements Programme, *The Challenge of Slums: Global Report on Human Settlements* (London: Earthscan, 2003).

7. Not just citizens, but lawmakers, too, wrote some of the legislation only after unfolding facts-on-the-ground by settlers.

8. This and the following two citations are from State Ikh Hural of the Mongolian People's Republic, *The Constitution of Mongolia* (Ulaanbaatar: State Ikh Hural [The People's Great Assembly: Ард Их Хурал], 1992).

9. Though (as recognized in Murphy, "Going on Otor"), even some nomads would have liked greater clarity brought to rural areas. This suggested the possibility of a parallel lease system as a way to avoid conflicts and potential corruption in the adjudication of customary rights.

10. From a guide to the legal implications for foreign businesses wishing to invest or operate in Mongolia, produced by Anderson and Anderson LLP: <http://www.anallp.com/land-law-of-mongolia> (accessed January 2013). In practice, however, these guiding principles were more muddled, particularly for the Mongolians who settled at the periphery — as they did so with no thought for, nor means of acquiring, legal representation. Thus, even as land remained technically the property of the state, it was used with unhindered usufruct, and bought and sold as if privatized.

11. For non-Mongolians, the 1994 Land Law set terms of five years, with an ability to extend by five years. Contradictorily, Article 87 of the 1994 Civil Code at the same time restricted all forms of ownership only to Mongolian nationals.

12. H— detailed a situation in which the negotiations initially worked against her family in their pursuit of registering a parcel of land. Having already occupied a site for a significant time prior to initiating the registration process, the family established residency, conducted the necessary cadastral survey, and registered the land with the equivalent of the *xoroo* offices (this took place outside Ulaanbaatar, so the *soum* office replaced the municipality in the process). Each of these steps required significant amounts of time and some investment of money — the cadastral survey alone cost them 100,000₮. But the cadastral survey was only the first, rather weak step in exerting their right to legal protection, and a wealthier and more politically connected neighbor contested the claim in order to acquire the land himself. By allegedly bribing local officials, the neighbor was able to legitimate his claim, establishing the necessary legal standing to be issued a certificate for the land. Because no paper trail preceded the acquisition, the family of H— had no recourse of historical or customary claims. The process was never fully resolved, however, as the family was never pushed off the land by any force (but that of law). Rather, a subtle negotiation followed in which the family was contacted by the same local officials suspected of having accepted the neighbor's bribe. The officials eventually then cut through bureaucracy and enabled them to acquire an adjacent parcel that was deemed equally valuable by the family. A new cadastral survey was made, some previous processes were repeated, and the family of H— was subsequently issued a thirty-year certificate (instead of a fifteen-year certificate, which was more typical at that time) for occupation. By raising objections but ultimately backing down from a protracted fight over the original piece of land, the family believes their unofficial recompense was the provision of a longer-term leasehold. This longer lease offset some of the former instability, as they intend to improve the land for economic purposes. Having the longer lease, H— said, gives the family greater reassurance of their long-term investment.

13. The cultural-geographic idea of landscape, following the early argument of Denis Cosgrove, is bound up in this very meeting between the science of quantifying space and the art of envisioning place in more representational form. See D.E. Cosgrove, *Social Formation and Symbolic Landscape* (Madison: University of Wisconsin Press, 1984); and D.E. Cosgrove, "Prospect, Perspective and the Evolution of the Landscape Idea," *Transactions of the Institute of British Geographers*, Vol.10 No.1 (1985), pp.45–62. That Mongolia should now revisit such issues is a return to the era in Europe when landscape was

"invented" as the place where economic activity embraced new legal forms in order to produce the social spaces of postfeudal society.

14. This was just before the mining boom shifted economic attention back to the countryside, creating new legal challenges between private and state ownership of land.

15. "Mongolian Mortgage Corporation (MIK) announced a new collaboration that will increase the availability of long-term housing finance in Mongolia. USAID is assisting MIK in developing a secondary mortgage market with a partial guarantee that will provide credit enhancement to make MIK'S bonds more attractive to investors. Through the bond sales, USAID expects MIK will improve the liquidity and affordability of mortgage loans and stimulate private sector lending for housing finance." See "USAID — Mongolian Mortgage Corporation Partner to Develop Home Financing," *The Mongol Messenger*, September 30, 2011, p.4.

16. The neighborhood in which this informant lives had become synonymous with settlers from the Hovd and Zavkhan *aimags*, in the far west of Mongolia — many of whom were related to each other and who were deeply imbricated in networks of information transfer regarding settlement issues. B— had at times held political favor when a childhood colleague from her home geographic region was elected president of Mongolia. Applying similar patronage systems toward real land tenure, according to neighbors at this district's northern fringes, the governor of the *düüreg* may have become one of its largest landholders. He was assumed to be the owner of the large house protected by a wall surrounding a plot about thirty times the size of neighboring *xashaa*, according to an older woman who herded her and her neighbors' cattle on the hillsides above the property. The house was equated with *dacha* usage — taking advantage of yet another set of urban-planning guidelines in Ulaanbaatar related to holiday and rest camps — yet its existence took advantage of *xashaa* land laws.

17. About the same time that the 2004 Immoveable Property Tax Law was formulated, the singular entity of the Administration of Land Affairs, Geodesy, and Cartography (ALAGaC) moved under the Ministry of Construction and Urban Development (and out of the prime minister's portfolio). It thus became a nexus for all land-settlement issues, from surveying physical landscape to recording and tracking land registration. See G. Myers and P.E. Hetz, *Property Rights and Land Privatization: Issues for Success in Mongolia: A Report Submitted to USAID/ Mongolia* (Washington: USAID, 2004), p.8.

18. For urban residents of Ulaanbaatar, this became dependent on confirmation from the *xoroo* office, but also the only role the *xoroo* office eventually played in the process — though the local office continued to administer related issues of residency, such as voting rights and validating work permits.

19. C. Humphrey and D. Sneath, *Culture and Environment in Inner Asia*, Vols.I,II (Cambridge: White Horse Press, 1996), pp.3–5.

20. When the urban planner Purev-Erdene attempted to translate the concepts he had learned from foreign cities for his students in Ulaanbaatar, the concept of *ail* proved pivotal. The problem was that he was unable to find an equivalent in Mongolian for the English term "neighborhood," one that carried similar social, areal, and place-based complexities. The words *xoroo* and *xoroolol* assumed only a political aspect, without conveying a sufficient sense of place or character or sense of the people who might inhabit an area. Conversely, the use of *ail* alone conveyed the human aspect, but was misconstrued to mean either an immediate neighbor (but not the many who might make up a neighborhood) or, within a larger geographic district, only those people with who were kin-related (rebuffing the geographic component). In the countryside, a collection of families that shared the same common pool of resources often had some kinship tie, as designated within the term *xot-ail* (*xot* also translates as "city"). When pressed on appropriate terminologies for neighborliness, Purev-Erdene ultimately was able to build upon the phrase *ail xorsh* — which connotes neighbors within the same compound, again insinuating a familial connection. But he then extended the use of *xorsh* here to a new compound phrase, *xorsh orchin*, suggesting a "neighboring habitat or environment" to delineate a broader geographic place, including its people.

21. In a housing survey I jointly conducted across more-settled regions of the city (the areas of Belx, Uliastai, and Zuun-ard Ayushiin, per Figure 2), a *xashaa* had an average of 4.1 family members, with "family" potentially comprised vertically from members of three generations, or laterally across siblings and spouses. See J.-M. Caldieron and R. Miller, "Residential Satisfaction in the Informal Neighborhoods of Ulaanbaatar, Mongolia," *Enquiry Journal for Architectural Research*, Vol.7 No.1 (2013), pp.12–18. This relatively low number was an inconsistent mean, however, as many *xashaa* consisted of only a single pensioner or elderly couple, while in others as many as a dozen members crowded into a home. In our study, the average remained consistent when controlling for *ger* dwellers or house dwellers, long-term urbanites or those who

were previously nomads. The statistic was also consistent with National Statistical Office data of family size for Mongolia overall. See National Statistical Office of Mongolia, *Mongolian Statistical Yearbook 2010* (Ulaanbaatar: Mongol Uls Undesnii Statistikiin Gazar, 2011).

22. See Caldieron and Miller, “Residential Satisfaction.”

23. One *ger*-dwelling family living uphill from the *xoroo* office, in the upper reaches of the district, illustrated the conceptual benefits and shortfalls of establishing legal protection for their land. Settling on this land a decade earlier, their experience exposed the graduated levels of legal protection for a dwelling site. They indicated they had previously established possession of the land through a cadastral survey, but only recently registered their land with the *xoroo* office (only a short walk away). By registering, they also undertook to demarcate a more established boundary through the building of a wood fence — a *xashaa*. The legal protection alone did not seem to allay their concerns for possession as much as did the creating of facts-on-the-ground through the more tangible

protection of the fence. Little other effort to alter the land was apparent, nor had they added any significant constructions to complement the *ger* that was their housing, but they displayed an imperative for constructing their perimeter. Thin planking with the uneven edging of scrap material made clear that the fence wood was of low quality and relatively cheap. Unlike an unusually sturdy wall on the other side of the dirt road, built from concrete block, their fence was only a presence in the sense that it was visible. It provided little real security, but its virtue was in rendering the legal boundary manifest.

24. J.C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven, CN: Yale University Press, 1985).

25. C. Badamdorj, “On a New Land Use Classification and Zoning Scheme of Ulaanbaatar, Mongolia,” *Journal of Social Science, Soonchunghyang University*, Vol.10 No.1 (2004a), p.17.

26. C. Badamdorj, “Changes in the Internal Structure of Ulaanbaatar, Mongolia,” *Scientific Annual of Korea Mongolian Economic Association*, Vol.14 (2004b), pp.1–16 (citing J. Janzen and

D. Gereltsetseg, *A New Ger-Settlement in Ulaanbaatar: Functional Differentiation, Demographic and Socioeconomic Structure a Origin of Residents — an Example from 2nd Khoroo of Bayanzurkh Duureg, West of Dari Ekh Ovoo as in June 2002* (Ulaanbaatar: National University of Mongolia, Center for Development Research, 2002).

27. Even among long-standing residents of the *ger* districts with whom I spoke during the survey and interview phases of research, I found that only 78 percent of respondents had registered their land (the rate shifts to 80 percent if one includes the interviewees). And many had only done so recently. In more established areas, such as Bayangol’s 10-r subdistrict, the registration rate met or slightly exceeded the Urban Planning Office’s figures. But in outer districts of Bayanzurkh, the percentage of householders who had registered their land (including those who rented land from others) fell to 73 percent.

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