

Legal Pluralism and Social Practice. A Case Study of Kara Bulak Pasture

Decentralisation of pasture management in Kyrgyzstan

A relatively new law 'On pastures', as ratified in 2009 in Central Asia's Kyrgyz Republic is trying to move responsibilities of natural resource management towards newly formed pasture committees and thus attempts to facilitate a shift towards an increased decentralisation of pasture governance. Interestingly, herders are currently being motivated to (re-)turn to a community-based (local) management of pastures.¹ Accordingly, community-based management is now starting to be widely implemented throughout the country, being recognised as 'good governance' by leading consultative agencies, such as USAID, the World Bank, or Germany's federal development agency GIZ (Bussler 2010: 21-23, USAID 2007). Following Bichsel et al. (2010: 261), emerging regimes of natural resource governance shall be understood as, "the arrangements of power and forms of authority that regularise the appropriation, distribution and value of natural resources in society".

Altered governance features or modes immediately raise questions on the underlying legislative framework, as well as on the 'ifs and hows' of other norms and non-judicial relationships that might be involved in shaping the status quo in terms of social practices related to natural resources. Questions concerning the underpinning complex interrelations of the setting of norms and rules (institutionalisation) of pasture utilisation by the state on the one hand, and their practical application in concerned user's daily routines, will hence be given priority throughout this paper. In what exact manner do these spheres affect each other? Simply put: Do new legislations reach the pastures themselves, and if so, are they being transformed and/or appropriated by local user communities and stakeholders? Bichsel et al. (2010: 263) give a formulaic assessment of this general unease of formal versus non-formal arrangements in the following words,

"The discrepancy between the legal framework and social practices entails inherent tension. Law is a normative prescription for behaviour, and the gap between the 'ought' and the 'is' raises questions about forms of authority and power that regulate actual social practices, and about their basis for legitimacy".

¹ The term, "return to" is used because there appears to be a general assessment and preconception of the inner workings of Central Asian nomadic traditions as largely being based on the concept of kinship and community, rather than a state-centred structure. All too often, in, "following the idealised image of Western democracy, or, alternatively, aid projects build on so-called 'local traditions' but include only selective aspects of these traditions that are of interest, while at the same time attempting to transform their underlying model." (Bichsel et al. 2010: 264) Often, in relying on (the declining use of) elders' courts (*aksakal*) and, "the long tradition of pastoralism" (Beyer 2006, Bussler 2010: 50, Eurasia Foundation 2012), for example, hopes are being generated that those might represent a distinctively Kyrgyz feature of customary self-government and tradition that then helps in further facilitating development (Esengulova et al. 2008: 6, Jacquesson 2010). For a generally contrasting overview on certain historical misrepresentations of nomadic Inner Asia and the distortions that took place in shaping them and also continue to shape today's perception onto issues like these see Sneath (2007: 1) whose aim it is, "[...] to rethink the traditional dichotomy between state and non-state society and to approach the state in a different way - in terms of the decentralised and distributed power found in aristocratic orders".

The research approach can mainly be divided along two lines. First, a series of semi-structured qualitative household interviews with pastoralists on the pasture Kara Bulak were conducted. Secondly, various expert interviews with local officials in the area of Bazar Korgon *Rayon* (district) were being held. The work in hand initially starts off by introducing the specific locality of the study area and by presenting the applied research methods during field research. The main section reviews the modes of legality of pasture use (and their narrative), their application (in observed practice) and a theoretical classification anchored in the concept of legal pluralism. Finally, section three discusses the research outcomes, presents main findings, and provides a conclusion addressing problematic areas that warrant a need for further research.

The pasture Kara Bulak

The study area is located within the Bazar Korgon District in the Jalal-Abad *Oblast'* (province) in south-western Kyrgyzstan. The area is largely characterised by mountain pastures of various altitudes, a walnut-fruit forest, small villages, and an intersecting river, Kara Unkur. Research was conducted on the medium-altitude summer pasture *Kara Bulak* which can be divided into two sections, starkly separated from each other by a steep climb in between the respective pasture grounds. Situated in the north of the *rayon*, Kara Bulak's elevation varies between 1,800m and 2,750m. Its lower part, *kichi* (small, krg.) *Kara Bulak*, shows sporadic growth of trees and vegetation that is not uncommon to be found below tree line. The upper part starts at an elevation of about 2,300m and is in striking contrast to the lower one, with clear signs of landslides triggered by repeatedly occurring rainfalls (Fig. 2.1). Both of those pasture parts are connected with each other by a small river- the pasture's sole water source.



Fig. 2.1: *Kara Bulak* Pasture's lower and upper parts

Pictures taken by Voigt & Walker 2013

During the time span of the fieldwork, nine camps were using the pasture grounds, tending to their flock of cows, horses, and sheep. Five of them were encountered on the upper pasture. However, one turned out to be a shepherd's tent who worked for one of the households on this pasture. The other four households were situated on the lower reigns of Kara Bulak pasture. Since one needs to cross to reach the mountain slope, the accessibility of the pasture depends on the river's gauge. In any case, the distance to the nearest settlement - Kyzyl Unkur - is less than ten kilometers and therefore *Kara Bulak* is

commonly being described as a summer pasture with comparatively easy access. The second part of the research was conducted in different villages and municipalities in the *rayon*. Officials in Kyzyl Unkur and in the district's administrative centre, the town of Bazar Korgon, were interviewed. These represent relevant stakeholders that facilitate utilisation and management of pastures.

Methods

Two questionnaires, one for the time on the pasture, the other for local officials, were in constant use. For the pasture, a census was prepared to summarise general household structures. The semi-structured household interviews covered nine main categories, ranging from daily routines to schemes of (shared) pasture management. Among other issues, research focused on the question whether or not the pastoralists had heard about a pasture committee (*jaiyt comitet*, krg-rus.), as being prescribed by the new law 'On pastures', as well as the procedures they were required to go through in order to facilitate usage of this pasture (e.g. fees, documentation, meetings, etc.).² For expert interviews with local authorities the questionnaire was grouped into five different categories: structure of the committee (if applicable), social network, legitimacy and acceptance, knowledge bases, and exclusion (or rather inclusion). All interviews were supported by a Kyrgyz interpreter, who beyond translating the interview also helped in gaining a deeper understanding of Kyrgyz culture in general. Surrounding environs were observed throughout the interviews and the extended stays on the pasture, tackling the issues: How do people spend their lives on the pasture? How do they react to questions and/or which status in their respective institutional department do they have? These observations, coupled with statements given, though not claiming to be conclusive in character, helped shaping an overall image of the underlying principles of social and legal constellation at work. In order to spend more time with the households on the pasture and thus generating mutual trust, we assisted with simple duties (e.g. forming *qurut* as one of the main sources of protein and surplus income) or asked to explain the activities they were occupied with (e.g. how to bake bread, milk the horses, etc.).

Pasture legality within official narratives and social practices on the pasture

The official narratives, as being shared by state representatives throughout the research area, often are in seemingly stark contrast to observed social practices, meaning the recurrent daily activities of pastoralists of the *Kara Bulak* pasture grounds, hence raising questions about frictions between those two general spheres of interest. The overall picture is being further complicated by a diverse set of legal land categories relating to the allocation and management of pastures. As Dörre & Borchardt (2012: 316) state,

“Pastures, since Soviet time an exclusive state property, are located on communal lands that belong to the *ayil oktmotu* (Kyrgyz for local authority, since 2009 expressed in Russian as *aiylnyi okrug*) and on areas of the forest fund and the land reserve. They are categorized

² From here on the term *jaiyt committee* will be used according to the new law “On pastures”. Such a committee is described as “the executive body of the association of pasture users” (Law of the Kyrgyz Republic 2009: 1) and therefore represents the community-based pasture management committee. The concept of associations of pasture users will be described below.

based on their distance from settlements [...] According to the legal requirements formulated in the Land Code of the Kyrgyz Republic and the Resolution ‘On Pasture Lease and Use’ (ROPLU 2002), which was valid until 2009, local authorities were responsible for managing pastures located close to settlements.”

A seminal text, informing about the legal foundations of recent standards on the distribution (or: allocation), maintenance and ownership issues (among others) of the country’s pastures, is the 2009 ‘On pastures’.³ The law’s declared goal is an attempt to move administrative responsibility towards the newly formed *jaiyt* committees. Until 2009, as was partially described above, pasture management was organised in a three tier system that put different categories of pastures under the administration and responsibility of different governmental and legal institutions or entities (UNU-IAS 2012: 3).⁴ With the new law, land reserve territory and communal land comes under the administration of pasture committees, whereas forest fund land will remain to be managed by organizations of the national forestry sector. According to Dörre & Borchardt (2012: 317) *Kara Bulak* belongs to the category of land reserve territory and should be managed by a pasture committee. Therefore it was chosen as a representative study area.

With the new shift towards the decentralisation of pasture governance, herders are currently being motivated to organise around community-based (local) management (*ayil oktmotu*, krg.) of pastures through increased participation in the decision making process. With the establishment of an association of pasture users, “which represents the interests of pasture users, [as a] corresponding administrative-territorial unit with reference to utilization of pastures,” (Law of the Kyrgyz Republic 2009: 1) a pasture committee can be elected by the users themselves. The organization hereby represents the executive body and develops an annual community plan on pasture utilisation. The community plan on management and utilisation of pastures is valid for five consecutive years and contains: border drawing, the (re-)construction of pastoral infrastructure (like water supply), monitoring of pasture conditions and the distribution of land with an optimal amount of animals. Such organisational patterns, perceived by agenda setters, legislative bodies, and executing organs alike as measures of ‘good governance’, strongly rely upon local peoples’ knowledge, willingness, and ability to adapt and adhere to newly set standards (Bussler 2010: 21). Kyzyl Unkur’s Forest administration (*leskhoz*), as well as the *ayil oktmotu*, and the pasture committee of Bazar Korgon Municipality were being questioned and put under scrutiny by the authors in several expert interviews. Although Bazar Korgon’s pasture committee of *ayil oktmotu* is not legally responsible for the particular pasture that is *Kara Bulak*, it was of particular interest due to the inner functioning of such an administrative body. In order to foster a better understanding of the connections between the mentioned

³ Dörre & Borchardt (2012) state that the change towards the new law of 2009 ‘On pastures’ was mainly being informed by the previous failures of the 2002 regulation ‘On Pasture Lease and Use’, to address, “unequal resource allocations”, (316) and a complicated, largely non-transparent mechanism of administration in use (ibid.).

⁴ A detailed chronology of the chequered history of land codes and legal arrangements concerning pastures in the Republic of Kyrgyzstan, reaching as far back as to the country’s independence in 1991, can be found in Dörre (2012: 133-137).

institutions, Fig. 2.2 illustrates the relations between the individual pasture management institutions.

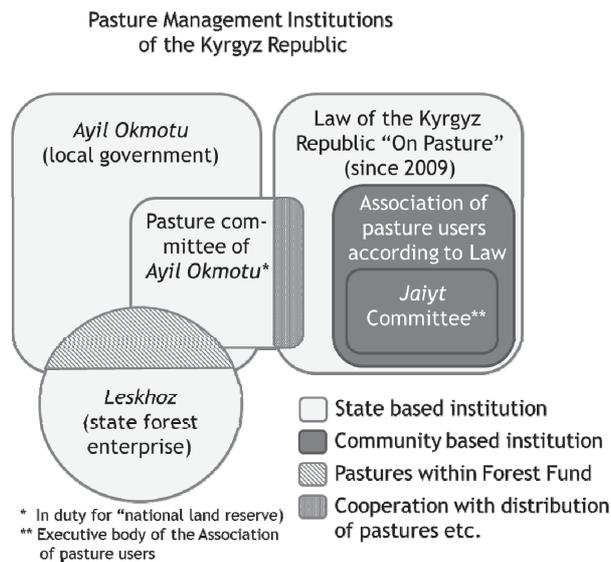


Fig. 2.2: Pasture management institutions of the Kyrgyz Republic

Draft: Voigt & Walker 2014

Analytically, seven core areas of scholarly concern are identified, namely documentation, lease and ownership, appropriation and distribution, commodification and conservation, legitimacy, corruption, and monitoring. An overview over interview statements and their relation to primary and secondary literature is being given in light of these seven areas. Set against the backdrop of social practice observed on *Kara Bulak*, those statements are painting a multi-faceted picture of pluralism of legality at work. The aim of the semi-structured household interviews with users of *Kara Bulak* was to evaluate whether and how this specific law is being implemented, or rather, internalised into the daily routines of the people. However, slightly against our expectations, interviewees had rarely heard about such a law and/or the *jaiyt* committee. Furthermore nearly all camps pay their fees to a local forestry enterprise, which is not in accordance with the above-mentioned land category (land reserve territory) of *Kara Bulak*. The households on the pasture presented a differentiated picture of social stratification. Measured by the amount of owned animals, there were camps which seemed to be economically weaker (e.g. one with two own sheep and one horse only), and those which appeared to be richer (as one household with 550 own sheep and more than ten horses of own belonging implied). These property and income differences could be additionally seen in the diverging living standards on the pasture. Some tents were small, with tent poles made of tree limbs, while others, in contrast, were bigger, generally in good condition, and came equipped with different layers (e.g. one tent on the lower pasture had a mosquito net). Nearly all camps had a built fence around their tent and outdoor area and had special places for milking horses and cows. Furthermore, the production of *qurut* to be sold on the market was observed in all camps. Most of the households had arrived in June and were about to leave in September, except for one that had decided to leave in July since the pasture's resources were presumably not sufficient for their animals. The semi-structured household interviews were mostly conducted with women, as most men kept on staying in their home

villages, cutting grass in order to produce fodder for the time after their family's extended stay on the pasture.

Documentation

According to the legal framework set out by the Kyrgyz Republic in 2009, all pastoralists are required to obtain, maintain, and carry along all necessary legal documents to their grazing grounds at all applicable times. This reading of the 2009 law 'On pastures' was reconfirmed time and again by the official state representatives we conducted interviews with. So-called pastoral tickets serve as an officially acknowledged document, "[...] certifying the right for access to pastures and their utilization" (Law of the Kyrgyz Republic 2009: art. 2). The documentation shall not be left behind in the villages of origin but must instead be taken along to the semi-permanent tent settlements on the pastures; something that could rarely be observed in practice.

Several interview partners stressed that in theory, to check on this state-sanctioned legislation, monitoring members of *leskhoz* could drop in anytime. However, according to them this rarely happened. Only once (out of nine households) the document asked for – a pasture book/ticket – was shown, the ratio thus being a meagre 1:9. None of the pasture users seemed overly worried about monitoring and sanctioning mechanisms regarding the pasture documentation. It appears that the importance of these documents is either not clear (which would imply insufficient communication between the officials and pasture users), or absolutely clear, so that people are afraid to lose or damage them on the pasture. Pasture users apply for the documents at the *leskhoz* village where they also pay a fee to access and use the land. Interestingly, the pastoralists do not see a problem in receiving the documents and usage rights, especially those who have been on *Kara Bulak* pasture before. During a meeting in May, *leskhoz* and *ayil oktmotu* decide on the precise utilisation of the pasture and prepare the documents for the users. In one interview, a woman commented that new applicants for the pasture are obliged to attend this meeting. Furthermore, it was noted that every local administration had its own rules of usage noted in those documents.

Lease and Ownership

Private Ownership of pasture land is not being granted according to the legal codes in action. The right to pasture land, including the license to use water infrastructure or other necessary means, is being given through the process of lease for up to one year at a time, according to the *leskhoz* in Kyzyl Unkur. This right to lease needs to be renewed the following year. Households that have accommodated themselves to the same spot in recurring years, gain a privileged status in negotiations with newcomers to the pasture that claim that exact spot. It is thus being made more difficult to give away a plot of pasture that has been in continuous use by one particular family, a practice that greatly simplifies peoples' preparation of pasture spots for their livestock (for example, one of the households of *Kara Bulak* used the exact same spot on the pasture for seventeen years in a row).⁵ Now, with the slow emergence of *jaiyt* committee throughout the *rayon*, and with

⁵ Interestingly, we stumbled across a case of 'sub-lease', a particular case where someone must have had obtained a one-year license, then re-rented that out to the highest bidder, thus turning a profit on pasture land

Bazar Korgon *ayil oktmotu* pasture committee in particular (its executive heads being elected by 57 pasture users in total), this new institution will itself take on the job of first leasing vacant pasture land, to subsequently rent it out again to pasture users in need.

Every year, the grounds of *Kara Bulak* pasture are distributed in a similar fashion - at least this picture arises after conducting the interviews. Except of one household, all semi-pastoralist camps have used this particular summer pasture for more than four years, with one camp allegedly returning there for at least 50 years in succession.⁶ They had kept on using the exact same spot and repairing their old infrastructure (like the fence, clay cooking spot, etc.) every year anew. One of the households on the lower pasture was using their relatives' spot until these were to finish erecting their house they had started to build in the village. Thus, no pastoralist alien to these users is using their pasture while they themselves are hindered to do so. This illustrates the above mentioned fact that known users seem to gain a privileged status for negotiations. Nevertheless, one woman assured that no furthered relation with *leskhoz* staff would be necessary to obtain the same spot each year. However, that does not mean that newcomers may not begin to use *Kara Bulak* pasture. Generally, the upper and lower parts of the pasture – against the expectations – were administered by the *leskhoz*. However, some users are paying their fees to a businessman (named Bakhit). Estimations differ when considering that person's position in regard to pasture lease or ownership. One woman thought that he rented 100 ha of pasture ground for a long time and would sublet it now (this might or might not be connected to a higher price). This was confirmed by Nurbek (head of one household) who had paid Bakhit to use those 100 ha. Others said he had purchased it from *leskhoz*, but *leskhoz* is still obliged to its duty to manage the pasture. In any case, three households were paying to him (Bakhit) for the pasture and in addition they would pay fixed prices to *leskhoz* for using water and fire wood. When we asked about the isolated spot of one camp at the end of the upper pasture, that particular woman told us that this had been Bakhit's decision. After a while we found out that this businessman is a relative of mentioned Nurbek, the richest user of *Kara Bulak* pasture. Given that no response was to be heard about Bakhit on official side, his precise standing remains obscured.

Appropriation and Distribution

Contrary to the initial assumption that *Kara Bulak* would be administered by the National Land Reserve, the administration of the pasture, including both the lower and upper parts, falls under supervision of the *leskhoz* based in KyzylUnkur, as its director and the head of Kyzyl Unkur's *ayil oktmotu*, repeatedly stated. In fact, administration appears to have undergone a recent change from *ayil oktmotu* to *leskhoz*.⁷ Seasonal meetings are being

that he himself would not use. Repeated efforts to locate that businessman and learn more about his peculiar practices remained unsuccessful unfortunately.

⁶ That particular household had relatives who had used this pasture before. They applied in the name of those relatives for continual use of the pasture. That household had a new-born child on the pasture and was relieved to be able to use this pasture since their previous pasture grounds had been in *Toktogul* with chillier nights, were more difficult to access, and were higher in elevation than *Kara Bulak*.

⁷ In total, Kyzyl Unkur's *leskhoz* manages 17,000 ha of grazing and forest ground which is, according to its director, not subject to the reforms of the 2009 law 'On pastures' due to its special status as a joint forestry administration. However, the fact that most pasture users stated to pay to *leskhoz* from the beginning of their usage of *Kara Bulak* give rise to more questions.

held in order to (re-)distribute vacant pasture land on a regular basis. New boundaries for available pasture space are being (re-)negotiated on a seasonal basis as well, the price currently being 87 KGS per hectare.⁸ In distributing leased land, the local pasture committee and *leskhoz* follow a simple distributional formula of 1 cow equalling 1 ha, and 4 sheep equalling 1 ha respectively.

Besides distribution of pasture land, being decided at the annual meeting in May (open for participation by pastoralists), the pasture committee is responsible for solving border problems between pasture neighbours. The households on *Kara Bulak* pasture are aware of the limited space of their pasture. They articulated the capacity of the upper and larger areas being able to accommodate between five and seven households, while the lower part would be able to provide resources for four to five households. Beyond this number the amount of grass would no longer be adequate for livestock. The appropriation and distribution between the pastoralists is not seen as a problem at all. Each family uses a different part of the pasture for their animals, and even if an animal is grazing at the wrong location this is generally tolerated without any quarrels. On the contrary, the neighbouring camps even work together at times. On the upper pasture, for example, people helped each other with major tasks such as sheep shearing. Also, two camps are related to each other and set up their tents directly adjacent to each other. But most of the times they are busy with their own daily routines. Nevertheless, pasture users tend to plan at least one common gathering during the season where all families are being present. On the lower pasture, we observed a stronger cooperation between the neighbours. Here, people know each other quite well and also share their facilities with each other.⁹ However, the biggest support comes from family members who live in nearby villages and come up to the pasture whenever any help is needed.

Commodification and Conservation

Kyzyl Unkur's head of *ayil oktmotu* revealed enlargement plans for the national nature reserve that comprises the Dashman walnut forest district. Due to the gross area affected, such an enlargement would touch on the status of *Kara Bulak* pasture as well, as there are plans of further afforestation of walnut trees within feasible elevation. In fact, first general assessments of the area in question have already been undertaken. Cartographic coverage, as an essential step towards the inclusion of *Kara Bulak* pasture, seems to have been pushed forward, even though the produced maps were not available to the authors. Subsequently, a ban on all livestock grazing could follow, involving all current pasture users, since herders would have to drive their animals through the fragile environment of a young walnut tree forest and planted saplings. Currently, a decision on the area of and around *Kara Bulak* is still pending. Obviously, a potential area of conflict revolves around the issues of necessary environmental protection as stressed by officials on the one hand (conservation), and economic considerations and the protection of peoples' livelihoods on the other hand, in particular pastoral usage regimes (commodification). In practice, it may not be feasible to hold apart these two opposing agendas if one were to go through with

⁸ 87 KGS roughly equal 1.60 US-\$ (as of the publishing date of this paper).

⁹ One family owned a clay oven which could be used for baking bread by the neighbors.

those plans. A process on which all of the interviewed experts were unable to elaborate on due to a pending clearance of an issue considered to be of national interest. Surely enough, the economic function of the nut trees themselves is being taken into account and current pasture users would find compensation through the move to nearby pastures (e.g. *Kenkol* pasture) and by means of a division of tents. A follow-up question concerning possible over-usage –considering that nearby *Kenkol* pasture is already habitat for up to twenty households – was being brushed away by the questioned representatives of *ayil oktmotu*.

The plans to enlarge the national protection area of the natural reserve of Dashman were never being mentioned throughout the interviews with semi-pastoralists on *Kara Bulak*. However, the facts that the users are aware of the limited space and that one family already decided to leave in July instead of September (due to a lack of resources) show that there does exist a certain environmental consciousness. Furthermore, this in part acknowledged by the usage of dead wood for fire instead of resorting to tree cutting. One of the households had at one point made a distinct experience when a pasture had been changed into an area of natural protection only feasible for cutting grass which finally forced the family to migrate to another pasture (to be exact, migrating from *Kol Kamush* pasture to *Kara Bulak* pasture).

Legitimacy

The general impression while interviewing the decision makers at all levels of Bazar Korgon district was either an unreserved or only partially disturbed trust in their own capacities. Kyzyl Unkur's head of the local government, the *ayil oktmotu*, gets newly elected every five years with the last election having been held two months before arrival in the research area. The assumed head of the local pasture committee -the committee theoretically responsible for *Kara Bulak* pasture – could not be located during our stay there and we even got to hear disdainful words about his work by several villagers:

“I have no idea what Torogeldi [name of the head of Kyzyl Unkur's pasture committee] actually does. Nobody in the village really does.” And further on, “nobody ever goes to see him when concerned with any specific problem” (inhabitant of Kyzyl Unkur).¹⁰

However, as Kyzyl Unkur's head of *ayil oktmotu* stated, “everybody knows about it [the 2009 law]”. This was clearly contrasted by opposing facts gained through observation on the pastures. Concerning the pending decision on the instalment, or rather enlargement of the natural reserve, official interviewees stated that people knew about those plans and most likely would not happily agree to a final decision, but would probably cooperate at one point in time one way or another. Participation in the decision process by concerned user groups was neither planned for nor actively encouraged by officials.

Since all pasture users discharge their fees at *leskhoz* (at least for water and fire wood) we asked them how they thought that money was put to use. Most of the interviewees were

¹⁰ In all fairness though: Now, with the decision regarding an enlargement of the natural reserve still pending, Kyzyl Unkur's pasture committee seems to be void of any necessary agency to direct. Therefore, as *ayil oktmotu* head Ömurbek claims, Torogeldi as designated chief of the pasture committee, simply *cannot* thwart any momentum at any issue at the moment, even if he wanted to do so.

rather puzzled with that question emerging.¹¹ One woman could not grasp why she paid at all when after all she had had such trouble to come up to the pasture - one has to cross a river and cannot use a road to access the pasture. Only one household purported that its money was being used to build bridges or repair roads. In theory, the *leskhoz* can be contacted whenever there are problems on the pasture. However, only a few households on the lower pasture had received help yet. After a landslide during the previous year (2012) they were supported by the Ministry for Emergency Situations, sent in by the *leskhoz*, whereas users of the upper pasture who experienced heavy rainfall coupled with a loss of some livestock in 2012, had not received any help. When displeased with the work of *leskhoz* members, the users are able to impeach the head of *leskhoz* (who is elected for a period of five years) through a certain constructive vote of non-confidence. However, there seemed to be a general trust in the work of *leskhoz* staff. With the information about a new law on pastures in mind, we were interested in whether they had heard about this and if a *jaiyt* committee existed at all. However, no one, except of Nurbek (head of one camp), had heard about the law or such a committee before. Nurbek told us about the existence of a committee before and after 2009 but also stated that nothing really had changed after 2009 - except of some rules that no one seemed to oblige to anyways. As a regular participant of several other committee meetings he asserted that neither does it consist of pasture users, as the aforesaid *jaiyt* committee mentioned in the law, nor is it being granted the trust of the tasks and responsibilities outlined in the legislative text. As Nurbek noticed, the committee is important at the beginning of a summer pasture season to divide the pasture only. Beyond this it seems to have no further tasks. We therefore assume that Nurbek was talking about the Kyzyl Unkur's committee.

Corruption

During a workshop on energy efficiency in reversing natural resource degradation in Arslanbob, a Rural Advisory Service's (RAS) expert stated,

“The legal basis is very good in Kyrgyzstan, much better than in other countries of Central Asia. One problem remains corruption, though”.

This contentious issue is difficult to address openly during interviews but can be illuminated nevertheless. Wherever there is a pasture committee responsible for issues of pasture governance, pasture users will discharge their respective fees to that committee directly - with the price currently being set at 87 KGS/ha and an 'animal head fee' corresponding to the exact size of the herd. Regarding the pastures of the so-called national forest fund people will have to pay their fees for pasture usage to the respective *leskhoz*.¹² Local pasture committees, if they are in existence like the one in Bazar Korgon, will effectively function as an intermediary. By signing a contract, they legally bind

¹¹ Interestingly, all pastoralists told us that the amount of money to be spent for one hectare was 88 KGS, while *leskhoz* and *ayil oktmotu* claim to take in 87 KGS. Unfortunately, we did not find out where exactly the difference of one Som gets lost at.

¹² Asked about what direct use the fees that people transfer to Kyzyl Unkur' *sayiloktmotu* were given to, we got the answer that only about 15 % were being kept by the local administration itself. With the rest of the budgeted money, pasture committees had a free choice to either maintain or upgrade existing infrastructure (e.g. water supply, roads, bridges), as well as cover their own expenses (e.g. salaries, transport). But in the words of an official delegate himself, “roads are the biggest problem here”.

themselves to the principle of not misusing the land, as well as solving any potential disputes over emerging conflicts of territoriality. Generally, only ten percent of local pasture users originate from Kyzyl Unkur itself and fall under administrative reach of Kyzyl Unkur's *leskhoz*. Before entering their pastures, local users will have to go through a headcount at a certain checkpoint - the so-called *Shlagbaum* - as well as a veterinary check-up. Oftentimes though, as several sources openly admitted to, at least the latter often simply will not happen on a regular basis. Deliberately and falsely-stated quantities are being fined with 87 KGS per animal if found out about during monitoring by simple comparison of the pre-/post-status. Representatives of Bazar Korgon's *ayil oktmotu* pasture committee openly admitted to frequent problems with corruption at the checkpoint. This constitutes one of the re-occurring issues of past times, although it had not been duplicated since their arrival on their posts two months prior to the interview.

As already mentioned before, the interviewees commented that no relation to *leskhoz* whatsoever was necessary to achieve access to pasture land. There was no obvious sign of corruption and/or misused authority mentioned during the interviews.

Monitoring

According to the *leskhoz* in Kyzyl Unkur, there is one forester who routinely will go up to the pasture every season and will then also live there for an extended period while checking on trees and firewood usage. Still, many pasture users themselves negated the presence of official delegates, stating that only rarely, if ever, someone from *leskhoz* or the *ayil oktmotu* pasture committee would make their way up to the pastures to inquire about their livelihoods. An international expert comments, "On the one hand there is good law, on the other hand there is no way to enforce, to monitor it".

Nonetheless, there was one dangerous occurrence with a wolf attack in particular when the *leskhoz* send someone in to help. The wolf had attacked two women – one was bitten in her arm, the other one was bitten into her face. The two women were then carried down to the village and later on to Bazar Korgon's hospital. Directly after this incident had happened, the police and a veterinarian were called in and arrived at the pasture. However, a frequent monitoring of pasture utilisation allegedly appears not to occur.

The following table summarizes the seven areas of scholarly concern and gives an overview of the diverse picture of pluralism of legality in practice.

Table 2.1: Pasture-related pluralism of legality in practice

...official narratives	Pasture legality withinsocial practice
<ul style="list-style-type: none"> Pastoral tickets certify the right for access to pastures and their utilization All pastoralists are required to obtain, maintain and carry along all necessary legal documents (pastoral tickets) 	documentation	<ul style="list-style-type: none"> People are generally afraid to lose or damage pastoral tickets on the pasture None of the pasture users seemed overly worried about sanctioning monitoring mechanisms regarding the pasture documentation
<ul style="list-style-type: none"> Private ownership of pasture land is not being granted according to the legal codes in action Right to pasture land is given through the process of lease for up to one year at a time. Lease rights can be renewed the following year Households that use the same spot in recurring years, gain a privileged status in negotiations with newcomers to the pasture 	lease & ownership	<ul style="list-style-type: none"> “Sub-lease” seems to be a common practice. One user will obtain a one-year license, then re-rent that out to the highest bidder, thus turning a profit on pasture land that he himself would not use
<ul style="list-style-type: none"> Administration of the pasture <i>Kara Bulak</i> lies with <i>leskhoz</i>, whereas the upper parts would be administered by the National Land Reserve Seasonal meetings are being held in order to (re-)distribute pasture land and (re-)negotiate boundaries on a regular basis 	appropriation & distribution	<ul style="list-style-type: none"> Distribution is decided on in the annual meeting in May of <i>ayil oktmotu</i> pasture committee (pastoralists can participate here) Appropriation and distribution between the pastoralists is generally not perceived as a problem. Each family uses a different part of the pasture with a high degree of cooperation and mutual trust
<ul style="list-style-type: none"> There are plans to enlarge the national protection area of the Dashman walnut forest district Subsequently, a ban on all livestock grazing could follow Current pasture users might find compensation through the move to nearby pastures (e.g. <i>Kenkol</i> pasture) 	commodification & conservation	<ul style="list-style-type: none"> Plans to enlarge the national protection area of the Dashman District are largely unknown
<ul style="list-style-type: none"> Officials showed an unreserved or only partially disturbed trust in their own capacities Participation in the pending decision process by concerned user groups regarding the natural reserve was neither planned for nor actively encouraged by officials 	legitimacy	<ul style="list-style-type: none"> General trust in the work of <i>leskhoz</i> staff Some pasture users show dissatisfaction with the work in certain areas (e.g. infrastructure improvement) When displeased with the work of <i>leskhoz</i>, users are able to vote the head of <i>leskhoz</i> (he is elected for five years) out
<ul style="list-style-type: none"> Representatives of Bazar Korgon’s pasture committee openly admitted to frequent problems with corruption at the checkpoint (<i>Shlagbaum</i>) 	corruption	<ul style="list-style-type: none"> There was no obvious sign of corruption and/or misused authority mentioned during the interviews
<ul style="list-style-type: none"> According to the <i>leskhoz</i> in Kyzyl Unkur, there is one forester who routinely will go up to the pasture every season and check on trees and fire wood usage 	monitoring	<ul style="list-style-type: none"> A frequent monitoring of pasture utilization allegedly appears to not occur

The concept of legal pluralism and its application in the scope of this case study

Discussing legal pluralism as a conceptual category necessarily harbours a certain problematic. Debates around the concept are far and wide, and it would be grossly negligent to even assume that a conclusive discussion of the various interpretations at hand could be sufficiently done in the scope of this paper. Nonetheless, a few sides around dominating arguments shall be illuminated upon, as basic assumptions on the existence of multiple legal systems within one geographic area can be further enlightening once planted against our case study of *Kara Bulak* pasture.

A large and ever-growing body of academic texts focuses on the possibility of dual or even plural legal orders.¹³ Meinken-Dick & Pradhan (2002: 11) grasp the concept of legal pluralism therein as follows,

“In most social settings more than one legal system (defined broadly) becomes relevant. For many social scientists, law is not limited to state law but is understood very broadly, at least by legal anthropologists, as cognitive and normative orders generated and maintained in a social field. It is thus possible to have various kinds of law such as state law, religious law, customary law, donor law and local law. The coexistence and interaction of multiple legal orders within a social setting or domain of social life is called legal pluralism.”

Sure enough though, co-existing legal orders with their inherent connotation of equality are rarely symmetrically aligned around the distribution of power. Judicial systems may co-exist, as often occurs in many colonial and post-colonial states where the colonizing power originally installed a prescriptive legal order next to prevalent customary law, in the hope of a gradual dissemination of state-sanctioned actions into general societal consensus (Griffiths 2004: 2, Starr/Collier 1989: 9, Tamanaha 2008: 381-386).¹⁴ In fact, in an overwhelming majority of parts of the world, complex situations around consensual community norms antedate the establishment of a modern state per se - a history which abundantly has been tracked through insights into the character and colonial spread of, in the widest sense, European-fashioned politico-economic organisation. In the younger and youngest history of Central Asia (encompassing the Kyrgyz Republic), an obvious case can be made for the ‘invention’, or rather construction of the region’s states, as has been done amply before - first during the era of the Russian czars, then in the Soviet Union and its periphery, and finally with the Central Asian nation’s proclaimed independence in 1991 and the ongoing process of nation-building since then (Roy 2000, Tolz 1998). Socio-political entities or systems without any distinct state-like hierarchy,

“where no courts or clearly recognisable third party institutions were institutionalised, which had no written rule systems, and in which normative knowledge was not sharply differentiated” (von Benda-Beckmann 2002: 52),

¹³ For an introduction into the conceptual landscape around discussions of the term ‘legal pluralism’ see, for example, Griffiths (2004), Tamanaha (2008), and von Benda-Beckmann (2002) whose working group at the Max Planck Institute for Social Anthropology in Halle, Germany, places a special research focus on legal pluralism for more than a decade (2000-2012). Legal pluralism and its implications for natural resource management are specifically being discussed in Meinken-Dick & Pradhan (2002), and Meinken-Dick & Nkonya (2005).

¹⁴ To further complicate the task of finding *the* one definition for the concept of legal pluralism (again: a discussion that is far from being fully resolved), some authors argue for including ‘pluralism within state law’ into the kaleidoscope that is legal pluralism, as does Woodman (1998).

clearly presented a problem to 19th and 20th, and arguably 21st, century decision-makers who would be struggling whether or not such communities knew the concept of 'law' at all. With later writings, the relation between the state and the law became more differentiated and 'watered-down' in its evolutionist assumptions. While the normative sphere of law still largely remained tied to political organisation, that organisation was however not necessarily dependent on a state's specific character - legal pluralism thus became non-statist in a sense (Griffiths 2004: 8, von Benda-Beckmann 2002: 53).¹⁵

Nonetheless though, colonial administrative groundwork often continues to serve as a legal base even for more autonomous post-colonial settings. This groundwork frequently tends to overlook infinitely more complex social, economic, and political relations among (semi-) pastoralists in favour of reductionist administrative jargon - such as 'communal use', or 'custom' (Jacquesson 2010: 104). It is due to this fact that several authors draw a rather derogatory picture of the latest attempts at installing decentralised institutions such as the pasture committees - reforms that commonly have been pushed at through the expertise of large donor organisations.¹⁶ A focused decentralisation of 'central state machineries' through community-based conservation and natural resource management tries to promote small-scale responses that empower rural people's democratic self-governance and further forge and strengthen their livelihoods (Mehta et al. 1999: 9). But in those authors' critical perspective, these newly-formed institutions fail or only insufficiently recognise or consider alternate views on Kyrgyz herding practices. In particular, in lumping together any remains of (pre-) Soviet herding practices under a common denominator such as 'tradition', the effects of laws such as the one from 2009, 'On pastures', greatly simplify the process of administration, allocation and monitoring by assuming that certain communal capacities, like the seemingly long-lasting tradition of decentralisation and self-government among nomads, can be trustingly counted upon - without at the same time truly offering a road map towards consolidating state law within the complex iterations of social practices on the pastures and within the socio-economically stratifying communities that inhabit those pastures (Earle 2005, Jacquesson 2010: 114-116).

Regulating societies through its undeniable embeddedness in social, economic and political functions, the power of law is widely recognised. In modern legal theory in turn it is predicated on the concept of legitimacy: Citizens of a nation state abide to and accept the legal rules set through the state's judicial portfolio. However, laws and their respectively connected rights are dynamic and flexible, often of overlapping nature, and subject to constant negotiations involving various stakeholders. It is due to this that,

¹⁵ Resisting an urge to engage in the debate of grouping law as an analytical category and whether law should be seen as social control, as culture, as discourse, as power, or as process first and foremost (von Benda-Beckmann 2002: 48), still it should again be emphasised that in following the same author, here law shall be generally understood as normative action, or, "conceptions [that] recognise and restrict society's members' autonomy to behave and construct their own conceptions. All legal phenomena, including the cognitive conceptions, are normative in this sense." (von Benda-Beckmann 2002: Ibid.)

¹⁶ For example, the tremendous influence on Kyrgyz decision-makers and their instigated law, "On pastures," (2009) can easily be traced back to the World Bank and other donors and their finalised reports (Jacquesson 2010: 114).

“[i]n general, legal pluralism calls for greater humility in policies and programmes. It is not a matter of getting the 'right' law or 'right' institution to allocate or manage resources. Instead, rights to resources will be determined through messy, dynamic processes. Yet this also provides the scope to respond to the uncertainties that resource users face” (Meinzen-Dick & Pradhan 2002: 16).

Pasture users of *Kara Bulak* certainly demonstrated great capacities in managing their own livestock and would engage in cooperative work wherever appropriate and needed. Certain regulations made on state and sub-state levels did not seem to touch people's everyday lives nearly as all-encompassing as would have been expected. Instead, customary practices and norms could be observed that would definitely need more ample time to observe in full effect and meaning. The law 'On pastures' on the other hand could hardly be counted amongst a legal text that people would have heard about or whose effect they would have felt in any deciding way - for instance, in the form of decentralised entities like pasture committees working close with and for the people. Because of this, it is a fair usage of the term 'legal pluralism' when assuming that in administering pastoral use on *Kara Bulak*, there is more than meets the observer's eye. In particular those short-term observers' eyes whose fleeting presence can only mark the most fundamental amongst the obvious.

Consolidating legal pluralism and social practice? A conclusion and outlook

Obviously, legal reforms need their own time-frame in disseminating down to all strata of society and the people concerned. It is due to this that no generalisation and over-hasty conclusions should be drawn out of a singular case study like ours. Still, a few remarks shall be made in summarizing some of the observed overarching themes during our research. First and foremost it can be stated that the gap between the *is* and the *ought* does truly exist and is even bigger than we had originally thought it to be. Relevant changes bound to the legislation seem to be not sufficiently communicated – even when considering the fact of the management of *Kara Bulak* being in *leskhoz*' hands as a forest fund since one year (or more) instead of a land reserve area and the full extent of the laws purported effects thus not fully or only marginally applying to the case study. In bringing to mind the original research question it therefore follows that the first part of the question (*Do new legislations reach the pastures themselves?*), can be negated without much hesitation, while for sufficiently answering the second part (*If so, are they being transformed and/or appropriated by local user communities and stakeholders?*), we were not able to draw any conclusions in this paper. It should be noted that in order to fully respond to this question it might be more appropriate to spend an extended period of research time on a pasture where it can be assured that the new pasture law is willingly and knowingly applied to full extent. Furthermore, the plan to enlarge the natural reserve area was unknown to a large number of the pasture users who after all strive for their own livelihoods on that exact same pasture. It can thus be inferred that no sufficiently transparent and participatory planning process of the enlargement did take place. The question remains whether environmental protection is inevitably deemed worth more than the livelihoods of the households concerned and whether or not the area of conflict between conservation on the one hand and small-scale commodification on the other hand

can be brought into any meaningful equilibrium. This question can only be answered in a flexible, dynamic, and yes, maybe even messy process, if to be answered in any democratic and transparent sense. Ongoing research should therefore concentrate on the developments regarding the proposed nature reserve in the area and the question of whether and how such a delicate manoeuvre in balancing and trying to unify opposing interests is being tackled.

Several other questions about the nature of power relations, the distribution and perceived value of land, and the legitimacy of it all arise: For example, who holds distributional power when a household is trying to obtain the same spot on *Kara Bulak* for continuous years –as frequently happens there, in some cases for as long as fifty years in succession? Is it the users, is it the *leskhoz*? Again, this would further facilitate an understanding of the nexus of customary laws and/or gained privilege through institutions. Finally, in what exact manner are local elites profiteers of the situation by gaining more decision and negotiating power than others? Understandably, those questions could only rudimentarily be answered due to their sensitive nature.

The large gap between official narratives and observed social practices brings to mind new questions around the possibility of pluralistic modes of legal action. Some of the core aspects of this pluralism of legality in social practice could be satisfactorily shown through the seven core discursive areas of scholarly concern (documentation, lease and ownership, appropriation and distribution, commodification and conservation, legitimacy, corruption, monitoring), while others continue to remain dubious and certainly would require an extended period of mutual trust-building together with the pasture users (and officials for that matter), plus an increased understanding of the concerned people's precise procedures in managing their livelihoods. Our research thus does not propagate to be of any concluding nature whatsoever –something that in light of the complex social and legal arrangements would be slightly presumptuous anyways. It rather opens up the field for further analysis and deepened understanding of the situation and context.

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